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A SPECIAL REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS

April 6, 1983

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# STATE OF ALASKA

AUDIT DIVISION  
POUCH W—ALASKA OFFICE BUILDING

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811


April 6, 1983

Members of the  
Legislative Budget and Audit Committee:

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

A SPECIAL REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS

April 6, 1983



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## PURPOSE OF THE REPORT

In accordance with a Legislative Budget and Audit Committee special request and Title 24 of the Alaska Statutes, an examination of the Department of Commerce and Economic Development, Division of Measurement Standards (DMS), was conducted to determine if:

1. The Division has complied with applicable State statutes and regulations governing its fiscal and budgeting activities.
2. The allegations submitted to the Legislative Budget and Audit Committee are true. (See Appendix A of this report).
3. The performance of the Division is acceptable in terms of economy, efficiency, and effectiveness.

DMS was organized in July, 1982, with the transfer of the permit and weigh station functions of the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. We recognize the problems created by the transition from a section of 18 employees who were located in three areas of the State to a division of 58 employees stationed in eight different locations. Therefore, in general, we focused our evaluation of program performance on those program areas which were in existence within the Weights and Measures Section prior to July, 1982.

The policy and audit approach utilized by the Division of Legislative Audit for Performance Review can best be described as "audit by exception".

This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design finite audit resources are used to identify where and how improvements can be made and little time is devoted to reviewing well run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

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## ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).
2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).
3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25)).
4. Issuing of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25)).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging, and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility to resolve warranty defects of mobile homes. Manufacturers selling mobile homes in the State are required to post a bond guaranteeing the warranty of that mobile home for one year. If the warranty is violated and a complaint is submitted through the Division, the Mobile Home Inspector has the authority to resolve the warranty defect through negotiations with the manufacturer, local dealer, and home owner.

If the problem cannot be resolved, the Division may revoke the bond and use the proceeds to repair the warranty defect.

Under AS 44.33.020(25) the Division is responsible for the operation of 12 weigh stations located on the State highway system. The primary function of these weigh stations is to remove vehicles from the highway system that are in violation of the axle and gross weight limitations adopted by the Department of Transportation under AS 19.10.060.

In addition, DMS administers the oversize and overweight permit program within AS 44.33.020(25). Commercial vehicles that exceed the maximum allowable size, weight, and load limitations are able to legally travel over the highway system by obtaining special permits which are issued for a fee. DMS also regulates pilot cars under this statute.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with 15 employees which is 28% of the current staff and the review of written communications (see Appendix A), it is obvious that a serious morale problem exists within DMS. The cause of the low employee morale does not appear to be centered around any single issue but is due to a build up of problems within the Weights and Measures Section over the past several years. Additional morale problems occurred with the transfer of the permit and weigh station functions to DMS.

During our review the Director of DMS and the Commissioner of the Department of Commerce and Economic Development recognized the severity of the morale problem and its potentially negative effect on program performance. Procedures, including employee interviews conducted by the Department's personnel officer, have been initiated to determine the causes of the low employee morale and to provide for possible solutions.

We encourage the Commissioner to continue these efforts to ensure improved employee morale and to avoid deterioration in program operations.

### Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

We noted several situations during our review which at a minimum give the appearance of a conflict of interest to employees (see Appendix A, Question Nos. 1 and 2) and other persons outside the Division. The situations noted are as follows:

1. Complaints may be filed with DMS by consumers against mobile home dealers and/or manufacturers when a mobile home has warranty defects. The DMS Mobile Home Inspector acts as a mediator between the consumer and the mobile home dealer and/or manufacturer to resolve the complaint.

During the period from July 1, 1981 to January 31, 1983, the Mobile Home Inspector received and mediated at least four complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there. The contracts were for remodeling of the current DMS offices, repair of a damaged weigh station, and construction of stairs at another weigh station. These contracts totalled \$3,689 and required two informal competitive bid proposals, and awarded the contracts.

In order to avoid the appearance of a conflict of interest, DMS should provide written procedures which would require an additional review of the bids by the Section Chief in these situations prior to awarding the contract. In addition, DMS should ensure that the person delegated the responsibility of awarding contracts is familiar with AS 37.05, Section 4, Uniform Purchasing and the State's contract procedures in Chapter 8 of the Purchasing Regulations.

3. A person convicted of price fixing in a retail gasoline business was hired by the Director in March, 1981, as a Weights and Measures Inspector I. The inspector's duties include inspection and testing of retail gasoline pumps.

The Division of Personnel requires a written description of a misdemeanor or felony conviction with the State employment applications. The description is evaluated to determine if the applicant is suitable for the responsibilities of a particular position. The evaluation may include discussions with the probation officer, if any, and the hiring authority.

In this case the hiring authority was the Director of DMS who had full knowledge of the employee's past, however, no written description of the conviction was in his personnel file.

The employee was asked to resign and his termination was effective April 17, 1981. However, as an agency entrusted with the responsibility of regulating industry for the public's protection, DMS should exercise a greater degree of care in its hiring practices.

### Recommendation No. 3

DMS should improve its budgeting and financial management.

Our review of the last three fiscal year budget requests and DMS financial records resulted in the following recommendations (see also Appendix A, Question Nos. 4 through 7).

A. DMS should ensure performance indicators in their budget requests are accurate.

The State budget request includes a form for each agency to report its performance activities of a past fiscal year based on predetermined measurements. In addition, the agency is to project its planned performance activities for the budget year. These performance indicators are one of the guidelines used to determine whether or not the amount of funds requested by the agency is reasonable.

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate. The exceptions noted were as follows:

<u>Performance Activity</u>	<u>Number per Budget Request</u>	<u>L/A Findings</u>
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Fiscal Year 1981

Commodity items audited	699,485	This number represents the estimated population of commodity items from which a sample of items was audited. In comparison, the number reported for Fiscal Year 1982 was 12,577, which was the number of items audited that year rather than the estimated population of commodities.
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Fiscal Year 1982

Value of prepackaged goods found in violation	648,900	This number represents the estimated population of commodity items (see Fiscal Year 1981 above) which does not relate to dollar value. In contrast, DMS reported an estimated \$66,500,000 for this performance activity for Fiscal Year 1981. However, the methods used to derive this dollar amount are questionable.
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<u>Performance Activity</u>	<u>Number per Budget Request</u>	<u>L/A Findings</u>
Devices tested	16,500	The activity reports submitted to management showed a total of 11,276 devices. See Recommendation No. 7(C) concerning the accuracy and completeness of activity reports.
Mobile home inquiries/complaints received	100/150	The number of inquiries is unknown as no log or record is kept by DMS. The number of complaints based on a review of DMS records was actually 26 instead of 150. See Recommendation No. 5 relating to the mobile home program.

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year. DMS presented 17 performance activity measures in the last three fiscal year budgets of which only two have been reported all three years.

DMS should ensure information that is used, in part, to determine their level of funding is accurately and consistently presented in the budget requests.

- B. DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested \$96,900 for rental of State vehicles through DOTPF. Actual costs during 1982 totalled approximately \$62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

State budget requests should reflect anticipated spending to provide the Legislature with an accurate estimate of program needs.

- C. DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548 respectively. The seafood was presented to the members of the Western Weights and Measures Conferences. The State Administrative Manual, Section 6820, prohibits expenditure of State funds for nonessential food-stuffs.

- D. DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling \$39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Recommendation No. 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale (see Appendix A, Question Nos. 16 and 17). Our findings and recommendations are as follows:

- A. DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes have occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer has the supervisory authority over the inspectors. The employee's current responsibilities include only administrative and budgeting duties. The Mobile Home Inspector's duties now include supervision of the weigh stations in addition to mediating mobile home warranty complaints.

The State Personnel Rules, 2.04.2, require each appointing authority to report to the Division of Personnel, material changes in the duties and responsibilities of existing positions. Memorandums in the employees' personnel files indicate that these changes in duties and responsibilities are temporary, however, based on our review and discussions with employees, the changes appear to be more permanent in nature. We recognize the difficulties encountered by management in the transition of becoming a full division. However, the job descriptions and duties should now be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

B. DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

The State Personnel Rules, 3.01.3, state where adequate competition exists among permanent employees qualified for promotion an examination may be announced on a promotional basis.

DMS should utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in their hiring practices.

Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981, through March, 1983. Based on our review we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.
2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints.

3. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.
4. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency which the public looks to for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

We understand the Department has signed a reimbursable services agreement with the Department of Law to transfer the Program. The Department of Law plans to draft and initiate the necessary legislative change.

#### Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). The assessment fee of the NCSBCS is \$2,000 which DMS remits annually. During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, WA; Denver, CO; Boston, MA; Atlanta, GA; and New Orleans, LA. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans. According to correspondence from NCSBCS, delegates must be active in and have responsibilities for building regulations.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, current activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

#### Recommendation No. 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures. Our recommendations are as follows:

- A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS is in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In addition, we determined that it is a DMS policy not to verify field standards in remote locations on an annual basis due to the high transportation costs and infrequent use of the standards.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible); the location of the standard; and the last date of verification. DMS should obtain a current State property list and utilize their word processing equipment to aid in the development of the inventory. In addition, the test lab's recording sheets should include sufficient identifying information to determine exactly which standard was tested.

- B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS does not have sufficient documentation to determine that they are in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

Alaska Statute 45.75.050 states the Director may promulgate regulations which exempt classes of devices from the semiannual inspection and testing required by AS 45.75.080. These regulations should include schedules fixing the frequency required for retests of the exempted class of devices.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list. In addition, DMS should promulgate regulations to reflect any exemptions of classes of devices from the requirements of AS 45.75.080.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

When the Chief of the Weights and Measures Section was asked to explain the correct method of accounting for these activities, the method described did not agree with the instructions he gave the staff in a memorandum dated August 17, 1982. The Chief stated that the memorandum was incorrect. We also noted that the method described in the memorandum would inflate the actual number of devices verified by the inspectors.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The Fiscal Year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in Fiscal Year 1982 reported in the Fiscal Year 1984 budget request. However, we could not reconcile the recorded amount of devices totalling 11,276 to the reported number of 16,500 (see Recommendation No. 3A). The Fiscal Year 1983 activity data has not been entered into the word processing system.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

APPENDIX

APPENDIX A  
DISPOSITION OF ALLEGATIONS  
ON DMS MANAGEMENT

Presented below are the allegations concerning the management of DMS along with our findings. We have not included questions for which there was no documentation to prove or disprove the allegation.

CONFLICT OF INTEREST

Question No. 1

Has DMS hired a mobile home inspector who is related to proprietors of mobile home dealerships in Anchorage?

Finding

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage (see Recommendation No. 2(1)).

Question No. 2

Did the Director hire a person as a Weights and Measures Inspector who had been convicted for price fixing of gasoline prices in Anchorage?

Finding

A person convicted of a misdemeanor was hired by the Weights and Measures Section in March, 1981 (see Recommendation No. 2(3)).

Question No. 3

Was the 1978 directive from DMS, to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding

In May, 1978, a legislative bill (House Bill No. 964) was introduced which would have required fish processors to use electronic hanging scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

#### FINANCIAL MANAGEMENT

##### Question No. 4

Has DMS reported accurate information for performance indicators in their budget requests?

##### Finding

In a review of the Fiscal Year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate (see Recommendation No. 3A).

##### Question No. 5

Has DMS inflated the amount budgeted for State vehicle expense?

##### Finding

DMS budgeted and received funds in excess of 36% of actual State vehicle costs (see Recommendation No. 3B).

##### Question No. 6

Were State funds used to purchase seafood for members of the Western Weights and Measures Conference?

##### Finding

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548, respectively (see Recommendation No. 3C).

##### Question No. 7

Did DMS expend a 1979 appropriation for field test weights and a 1978 appropriation for commercial fishing scale inspections on the Alaska Peninsula and the Aleutian Chain in accordance with legislative intent?

Finding

We determined that DMS received an appropriation totalling \$33,200 in Chapter 50, SLA 1980, to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures we found that \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska (see Recommendation No. 3D).

Question No. 8

Did DMS expend \$10,000 to purchase food for the 1980 Western Weights and Measures Conference held in Juneau?

Finding

DMS budgeted and received \$4,000 in Fiscal Year 1981 for the State's contribution to the costs of the 1980 Western Weights and Measures Conference held in Juneau. In August, 1980, DMS issued a warrant for the \$4,000 to the Western Weights and Measures Conference. Additional costs of the Conference, according to DMS staff, were paid for by sources of funding other than the State.

Question No. 9

Did DMS rent facilities in Seattle for fishing scale inspections in Fiscal Years 1982 and 1983?

Finding

DMS budgeted \$900 for Fiscal Year 1982 and \$1,000 for Fiscal Year 1983 to rent facilities in Seattle to conduct fishing scale inspections and conduct a seminar. However, DMS did not rent any such facilities in either fiscal year. According to DMS staff, they could not find rental space in Seattle for either budgeted amounts, however, space was provided free of charge to the State by a scale company and seafood processor. DMS is not requesting funds in their Fiscal Year 1984 budget for rental facilities in Seattle.

Question No. 10

Have personal long-distance telephone calls been charged to the State?

Finding

We reviewed a sample of telephone charges occurring between July 1, 1982, and January 31, 1983. It was determined that internal control over long-distance telephone calls was non-existent prior to January, 1983.

Effective August, 1979, the Department policy and procedures manual requires a record be kept of all long-distance telephone calls indicating date, number, person contacted, and purpose of the call. The recorded telephone calls are to be reconciled to the monthly billing. This procedure was implemented by DMS in January, 1983.

Question No. 11

Was DMS appropriated \$40,000 to purchase electric meter test equipment which actually cost \$5,000?

Finding

DMS received a capital appropriation totalling \$49,500 through Chapter 25, SLA 1982, which was effective August 1, 1982. Through a review of the capital budget request submitted by DMS and discussions with the staff, we determined that approximately \$36,000 of the \$49,500 was for the purchase of new electric meter test equipment and the remaining funds were to be used for the purchase of a mass comparator with a 500 pound capacity.

As of December 31, 1982, DMS had expended \$14,962 of the appropriation. Instead of purchasing new electric meter test equipment, DMS purchased used equipment costing \$5,000. DMS staff stated they knew about the used equipment when they requested the \$36,000 but were not sure it would still be available when DMS received the appropriation. Therefore, DMS budgeted and requested the \$36,000 rather than the \$5,000. In addition, DMS has purchased field weight standards costing \$9,692 to be stored mainly in the Aleutian Islands and Bristol Bay areas to facilitate the testing of fishing scales in those areas. Also, DMS has encumbered \$9,535 for the purchase of a mass comparator with a capacity of 5 to 60 pounds for the Juneau laboratory.

Question No. 12

What was the cost of the truck mounted liquid petroleum prover purchased by DMS and why were funds budgeted for its purchase in both Fiscal Years 1982 and 1983?

Finding

DMS requested \$37,500 in their Fiscal Year 1982 budget for the purchase of a new prover. However, the Legislature did not fund the full request of \$41,000 for equipment purchases but instead only funded \$3,400 making it impossible for DMS to purchase the prover in Fiscal Year 1982. Again in Fiscal Year 1983, DMS requested funds to purchase a prover. The amount requested decreased to \$28,700 due to instructions from the Department to pare down the request. As a result, DMS could not purchase a new prover but instead purchased a used prover for the \$18,750.

Question No. 13

Did DMS properly expend funds for the purchase of office equipment and furniture in Fiscal Year 1983?

Finding

As of December 31, 1982, DMS had expended \$13,944 on various types of office equipment and furniture, including desks, chairs, bookcases, transcribers, tape recorders, etc. These expenditures have been charged against the \$28,700 operating appropriation allocation for equipment, which was requested for the purchase of the truck mounted prover discussed in Question No. 12 and an additional \$7,800 transferred from the Department of Public Safety with the permit and weigh station functions.

We conclude that DMS has properly expended funds to purchase office equipment and furniture.

Question No. 14

Has DMS equipped a weights and measures testing laboratory in Juneau in addition to the one maintained in Anchorage?

Finding

DMS has either purchased or transferred from the Anchorage metrology laboratory equipment totalling \$19,220 for the Juneau laboratory. This equipment will be used to verify the DMS field standards and the standards (test weights) of the fishing and construction industries used in Southeastern Alaska. We conclude that the use of this equipment will result in a cost savings to the State and the industries due to the elimination of costly transportation expenses to transport the standards to Anchorage for verification.

Question No. 15

Has DMS properly budgeted for program revenues?

Finding

DMS budgeted program revenue for Fiscal Years 1981 and 1982 totalling \$10,100 and \$11,300, respectively. The revenue was to be collected from processors and contractors who requested scale inspections which had not been scheduled by DMS. Actual revenue collected for reimbursement of per diem, transportation, and/or mileage totalled \$10,223 in Fiscal Year 1981 and \$2,805 in Fiscal Year 1982 leaving an unrealized balance of \$8,495. DMS budgeted \$12,300 in program revenue for Fiscal Year 1983 none of which has been collected.

DMS staff stated they had discontinued the policy to request reimbursement for unscheduled scale inspections and would not be collecting the program revenue budgeted for Fiscal Year 1983. The Fiscal Year 1984 budget request reflects a decrease resulting from the change in policy.

#### PERSONNEL MANAGEMENT

##### Question No. 16

Has a Weights and Measures Inspector IV and the Mobile Home Inspector been performing duties and responsibilities different from those described on their job descriptions and class specifications?

##### Finding

We determined that material changes have occurred in the duties and responsibilities of these two positions since the formation of the Division (see Recommendation No. 4A).

##### Question No. 17

Did DMS select supervisors of the weigh stations in accordance with the State Personnel Rules?

##### Finding

The selection of the weigh station supervisors was in compliance with the State Personnel Rules. However, we recommend DMS utilize the promotional eligibility list in future situations where sufficient competition warrants to ensure the selection of the most qualified person for the position and to afford equity in hiring practices (see Recommendation No. 4B).

##### Question No. 18

Did DMS comply with the State hiring procedures in the selection of the Chiefs of the Weights and Measures Section and the Permits and Weigh Stations Section?

##### Finding

We reviewed the personnel records and determined that these positions were filled in accordance with the State Personnel Rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 23, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by Personnel Rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the Personnel Rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

Question No. 19

Was a Weights and Measures Inspector IV position held open approximately one year while the Division attempted to qualify a staff member for the position?

Finding

A Weights and Measures Inspector IV position was vacant from May to December, 1980. On December 8, 1980, a Weights and Measures Inspector trainee was promoted to the Weights and Measures Inspector IV position. The employee's application had been rewritten to include work experience not previously included on his application submitted for the trainee position.

Question No. 20

Has DMS complied with the State Personnel Rules and the State Administrative Manual concerning employee moving expenses?

Finding

In November, 1981, a Weights and Measures Inspector I was promoted and transferred from Anchorage to Kenai to operate the field office. He accepted the promotion with the understanding that his moving costs could not be reimbursed by the State due to the agency's fiscal constraints. Then in July, 1982, DMS promoted a Weights and Measures Inspector III to Chief of Weights and Measures Section. DMS transferred him and his family from Juneau to Anchorage reimbursing all moving expenses.

According to the Deputy Director of the Division of Personnel, an agency may offer a promotional transfer without reimbursement of moving expenses if the agency has fiscal constraints and/or the position could be filled by advertising in the area where the position is vacant.

We conclude that DMS has complied with State Personnel Rules and procedures concerning reimbursement of employee moving expenses.

Question No. 21

Is overtime pay properly approved, supported, and recorded in the State accounting records?

### Finding

We reviewed expenditures for overtime pay for Fiscal Years 1981, 1982, and 1983 (through January 31, 1983). Based on the results of our test, we determined that overtime pay is properly approved, supported, and recorded in the accounting records.

### PROGRAM MANAGEMENT

#### Question No. 22

Is the Division's participation in the Western Weights and Measures Conference (WWMC) and the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS) justifiable in terms of economy, efficiency, and effectiveness?

### Finding

The participation by the Director and staff in the WWMC is directly related to their duties and responsibilities under AS 45.75, Weights and Measures Act. However, the duties and responsibilities of DMS relating to building codes and standards were greatly diminished in 1980 with the enactment of the Mobile Home Warranty Program. Furthermore, implementation of Recommendation No. 5 which recommends the transfer of the Program to the Consumer Protection Section, would remove all responsibilities relating to the building codes and standards. Therefore, we recommend the Department seek removal of DMS staff as delegates to the NCSBCS (see Recommendation No. 6).

#### Question No. 23

Have actions taken by the Mobile Home Inspector, relating to an investigation in 1982, resulted in a class action suit being filed against the State, the Director of DMS, and the Mobile Home Inspector?

### Finding

Through inquiries of the Alaska Court System and the Office of the Attorney General, we determined that no suit has been filed naming the State, the Director of DMS, or the Mobile Home Inspector as defendants.

#### Question No. 24

Is DMS discontinuing safety inspections of commercial vehicles in March, 1983?

### Finding

On July 15, 1982, the permit and weigh station functions of the Bureau of Vehicle Maintenance, Department of Public Safety, were transferred to DMS.

The Legislature did not include the transfer of authority for safety enforcement. In order to fulfill the requirements of a federal contract for a safety demonstration project, DMS received a delegation of authority for safety enforcement from the Alaska Transportation Commission which was effective July 1, 1982. This allowed DMS to continue the safety inspections through the completion date of the federal contract, March 11, 1983.

This issue was reviewed by the Office of the Ombudsman and a letter report was issued January 28, 1983. The Ombudsman concluded that the statement which alleges the Department of Commerce is not fulfilling its statutory responsibility for enforcing commercial safety standards is "unsupported". Further, the Department does not have statutory responsibility for commercial safety enforcement. We concur with this conclusion of the Office of the Ombudsman.

Presently, the Director of DMS is working with the Commissioner of the Department of Commerce and Economic Development to provide alternative plans for a commercial vehicle safety program.

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

June 10, 1983

Gerald L. Wilkerson, Legislative Auditor  
Legislative Affairs Agency  
Pouch W  
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Recommendation Number 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

RESPONSE:

The Division of Measurement Standards acknowledges that some morale problems existed during the period of the audit and since the formation of the Division. Positive steps have been taken by both the Department and the Division to respond to the problems, to expand the lines of communications, and to ensure addressing individual concerns. The response to these increased efforts have been very positive and progress will be closely monitored to ensure achieving desired results.

The Division does not agree that the cause was a build up of problems that existed within the Weights and Measures Section over the past several years, with the exception of isolated personnel problems, the specific items identified by the Division's employees are of recent origin and the approach has been to provide solutions to these.

It may also be noted that only two employee grievances were filed in Weights and Measures in the five years preceding the transition to Division status.

Recommendation Number 2

DMS should avoid situations that give the appearance of a conflict of interest.

1. During the period from July 1, 1981 to January 21, 1983, the mobile home inspector received and mediated at least four

complaints involving the mobile home dealership owned by his father. We understand the father has voluntarily dissolved his business as part of an out-of-court settlement with the State's Consumer Protection Section. However, other relatives own mobile home dealerships in the State.

RESPONSE:

1. The mobile home warranty program has been transferred to the Department of Law, office of Consumer Protection.
2. During our review of contract procedures, we found that three contracts were awarded to a mobile home service and repair company. The DMS Mobile Home Inspector is a former employee of this business and his brother currently is employed there.

RESPONSE:

2. During the period when the contracts were awarded, neither the Mobile Home Inspector nor his brother were employed by the company providing the service.

Recommendation Number 3

DMS should improve its budgeting and financial management.

- A. DMS should ensure performance indicators in their budget requests are accurate.

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate. The exceptions noted were as follows:

<u>Commodity items audited</u>
<u>Value of prepackaged goods found in violation</u>
<u>Devices tested</u>

The budget instructions state that the agency should select only measures of activities for which data is already being collected or reasonably can be collected in the budget year. In addition, they state that once a useful measure has been identified it is useful to look at the same measure from year-to-year.

RESPONSE:

- A. Some of the confusion associated with the figures are based on lack of understanding of the methods used to document activity and the value of certain information. The following is offered to clarify the information:

In conducting audits of commodities offered for sale, a representative sample of the total population is selected. The selected items are tested to ensure conformance to specified standards. The size of the sample is determined by the size of the estimated total population and the requirement to test sufficient items to achieve statistical accuracy for the inferences made.

Three units of measurement are generally used for documenting activity impact:

Inspections - The number of individual commodity items actually tested for compliance with standards.

Audits - The number of items in the total population.

Value - The cost of the individual items.

The inspection is a measure of the weights and measures officials productive activity. The audit defines the population available for consumption and the value denotes the dollar impact of the commodities. By considering all of these factors, we may analyze a range of management factors from the employee's productivity to their impact on the marketplace.

The misunderstanding stems from typographical errors in the FY 84 budget request. Correct performance indicator titles should be:

1. Commodity items cested
1. Commodity items audited

Devices tested:

Actual count of devices tested was 16,519. See response to recommendation 7(c).

As defined in the budget instructions, the purpose of a performance indicator is to "identify the extent of major BRU activities and functions." As program requirements and emphasis have changed and we have increased the availability of quantifiable management information, we have attempted to select indicators that would represent measures of both activity and economic impact. The intent was to provide a more comprehensive indication of the Division's involvement in the regulatory process. It has been the Division's goal to develop quantifiable measurement indicators that permit analysis of all activities.

- B. DMS should prepare their fiscal year budgets in accordance with the instructions provided by the Office or the Governor.

The State budget instructions require agencies to report transfers between line items with an expenditure category on a specific form provided. This allows the agency to develop a budget which reflects actual anticipated spending.

RESPONSE:

B. The Division of Measurement Standards will prepare all future budget requests in accordance with the instructions provided by the Office of the Governor.

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totaling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska." Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totaling \$39,100 through Chapter 120, SLA 1980, to implement the mobile home warranty program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the mobile home warranty program.

RESPONSE:

D. The audit team did not identify the specific trips that they considered inappropriate, therefore, a general explanation is offered in an attempt to clear up some possible misunderstandings.

Fish buying scales are a highly mobile device that are moved from the factory to the scale repair facility, to various locations throughout the state, depending on specific requirements and appropriate seasons. Every effort is made by the Division to test the maximum number of devices at the most economical cost. An example of device mobility is a particular scale may be used in Seward during the herring season and shipped to the Aleutian Chain for the salmon season. If we can test the device in Seward before it is shipped to the Aleutian Chain, the cost for the inspector's travel will be significantly lower. Another example of a very successful method is the Seattle inspection program. The fishing industry in the Aleutian Chain and Western Alaska normally ship all their scales to Seattle for rebuilding every two years. The Division sends an inspector to Seattle whenever the number of available devices warrant the expenditure, to test and certify fish buying scales at company headquarters and scale repair facilities. By utilizing this procedure, the devices are tested prior to being

shipped to Alaska and being placed into service. This program has permitted the Division to not only increase the number of devices tested prior to their being used in commercial transactions throughout the state and has reduced the cost to the industries involved, but has allowed us to increase the number of devices tested and certified that are used in the remote areas of the Aleutian Chain and Western Alaska.

Some of the trips to Seattle were charged to this supplemental account because it was more economical to test the devices there rather than wait until they had been shipped to the Aleutian Chain. We felt that the intent of the appropriation was to ensure that accurate devices were being used and our effort was directed toward testing the devices where ever they could be located. Some administrative trips were charged to both appropriations to coordinate program requirements.

Recommendation Number 4

DMS should improve its personnel management.

During our review we noted personnel matters which may have contributed to the low employee morale.

A. DMS should update job descriptions and classifications as required by the State personnel rules.

RESPONSE:

A. All the Division employees P-402's were updated prior to the period the audit was conducted. As noted, two personnel were assigned to special projects during the transition period when the Division was in the process of establishing the structure necessary to respond to its basic management requirements. It must be kept in mind that when the permits and weigh station program was transferred from the Department of Public Safety to the Department of Commerce and Economic Development, the management and administrative support staff was not included. With the establishment of the Division of Measurement Standards to consolidate the weights and measures and permits and weigh station functions, both the management and the support staff had to be recruited and trained while continuing the daily activities required by statute. This necessitated the utilization of existing personnel to perform diverse duties to ensure program continuity. This transition period is largely complete and the organizational structure has been redefined to be responsive to program needs. P-402's will be updated to reflect actual duties being performed when the Division structure has been clearly defined and those recently hired into supervisory positions are fully trained.

It should be noted that the opening statement referred to two instances in the five year period considered. It was also noted that these are not violations of the personnel rules. We find the negative implication of the statement to be unjustified.

Recommendation Number 7

DMS should improve its procedures to ensure compliance with statutory requirements.

We noted two areas of statutory compliance in which DMS should improve their procedures.

A. DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

RESPONSE:

A. The Division does have the documentation necessary to identify its inventory of office and field standards and to determine date of verification. To ensure more convenient access to the information, the word processing equipment will be used.

B. DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS staff indicated that the high cost of transportation hinders their ability to comply with the required semiannual inspections. We recognize this problem. However, DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible within budgetary constraints. We recommend the use of DMS word processing equipment, where practicable, to facilitate the compilation and maintenance of the inventory list.

RESPONSE:

B. This is already being accomplished using manual records. The word processing equipment will be utilized to the maximum extent possible with current administrative staff.

C. DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes. The fiscal year 1982 activity data was entered into the DMS word processing system. According to DMS staff, this data was used to calculate the total number of devices tested in fiscal year 1982 reported in the fiscal year 1984 budget request. However, we could not reconcile the recorded amount of devices totaling 11,276 to the reported number of 16,500.

DMS should develop procedures to ensure activity data is accounted for in a consistent manner and that data is complete and organized in a manner which facilitates use by management.

RESPONSE:

- C. A management information system is in place. The annual reports are used for management planning. These reports are developed by counting the individual field test reports.

The monthly reports are utilized by the individual supervisors to compare actual to scheduled activities. A format is being developed that will permit entering the data from each field test report into the word processing system. Device and activity data will be maintained on this system, limited only by availability of administrative staff time.

There is not a point of confusion in where to count various types of field activity. As indicated by our verification of field test reports, the inspection activity and the testing activity are accounted for separately. An actual count of the reports provided the following activity for FY 82:

Device inspections - 14,200  
Device tests - 16,519

As indicated previously, management decisions and budget requests are prepared based on activity data documented on field test reports. Additionally, every reasonable effort is made to verify data prior to drawing conclusions. We afforded the audit team this same opportunity by offering the field test reports to them to verify the data contained in the budget request. This offer was repeated during the audit team's exit briefing and the records are available if verification of accuracy is a concern. We do not feel that drawing conclusions from unverified data is justified. To reemphasize the activity indicator as reported in the FY 84 budget request of 16,500 devices tested, was reverified by the Division by individually counting the field test reports on May 17, 18, and 19, 1983.

APPENDIX A  
DISPOSITION OF ALLEGATIONS ON DMS MANAGEMENT

Question Number 1

Has DMS hired a Mobile Home Inspector who is related to proprietors of mobile home dealerships in Anchorage?

Finding:

We determined the Mobile Home Inspector is related to owners of mobile home dealerships in Anchorage.

RESPONSE:

Relationship is acknowledged (see response to recommendation number 2).

Question Number 3

Was the 1978 directive from DMS. to all fish processors and buyers, disallowing the use of hydraulic type scales in the best interests of the State?

Finding:

In May, 1978, a legislative bill (House Bill 964) was introduced which would have required fish processors to use electronic weighing scales to determine the weight of fish sold. However, a directive was issued by the Weights and Measures Section (now DMS) before any action was taken on the legislation. The directive stated it had been determined that the hydraulic type scales would not hold the tolerances set by Title 3, Chapter 32 of the Alaska Administrative Code. According to the directive, hydraulic type scales were not to be utilized after January, 1980.

We discussed the issue with the Alaska manager of the Pacific Seafood Processors Association. He stated there had been a problem with the accuracy of hydraulic type scales. The processing companies in the organization were not happy about the idea of having to expend monies to replace their hydraulic scales. However, he believes it was in the best interests of the industry. In addition, we sent questionnaires to 78 seafood processors operating in Alaska. Of the 29 questionnaires returned, 9 did not believe the replacement of hydraulic type scales was necessary; 4 believed it was necessary; and 16 had no opinion.

RESPONSE:

The issue that was not addressed by the audit team was whether the device was legal. This device is not legal for use for purchasing fish.

Question Number 4

Has DMS reported accurate information for performance indicators in their budget requests?

Finding:

In a review of the fiscal year 1983 and 1984 budget requests, we determined that some of the information reported by DMS for actual performance activities in fiscal years 1981 and 1982 was not accurate.

RESPONSE:

We do not agree that the information was not accurate (see response to recommendation number 3).

Question Number 10

Have personal long distance telephone calls been charged to the State?

Finding:

We reviewed a sample of telephone charges occurring between July 1, 1982 and January 31, 1983. It was determined that internal control over long distance telephone calls was nonexistent prior to January, 1983.

RESPONSE:

Long distance telephone logs are now being maintained.

Question Number 18

Did DMS comply with the State hiring procedures in the selection of the Chief of the Weights and Measures Section and the Permits and Weigh Stations Section?

Finding:

We reviewed the personnel records and determined that these positions were filled in accordance with the State personnel rules. In addition, the Office of the Ombudsman reviewed the selection of the Chief of the Permits and Weigh Stations Section. In a letter dated January 28, 1983, the Ombudsman concluded that the person hired was within the top five available eligibles, as required by personnel rule 5.02.2. None of the other persons in the top five were considered.

The Ombudsman stated that even though the personnel rules do not require consideration of all persons within the top five, the Department would benefit by adopting a policy which requires the

Gerald L. Wilkerson

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June 10, 1983

appointing officers to consider those persons. Such a practice would improve the quality of appointments by bringing the best qualified applicant to the attention of the appointing officer.

RESPONSE:

The finding that none of the other people in the top five were considered is incorrect. All available eligibles were interviewed and considered for both positions.

CONCLUSION:

Due to the public nature of the final audit report and the possibility that the statement would be construed to lend some validity to unspecified allegations, the Department feels that the opening statement to Appendix A should be limited to: "Presented below are the allegations concerning the management of DMS along with our findings."

Sincerely,



Richard A. Lyon  
Commissioner

RAL:JS:cw

THE MOBILE HOME WARRANTY ACT  
AND CONSUMER PROBLEMS WITH MOBILE HOMES

A Report by the Consumer Protection Section,  
Department of Law,  
February 4, 1984

Introduction

Mobile homes have become a major housing alternative for Alaskans, one which often involves considerable expense. Ranging in price from \$10,000 to well over \$100,000 (not including land), mobile homes in the state sold for an average of \$40,263 in mid-1984, as reported by the Alaska Housing Finance Corporation. Often mobile homes are purchased by consumers who lack the income needed for conventional housing and who are less able to protect themselves from defective products and unfair sales techniques. Yet unlike conventional housing, mobile home construction is not subject to regulation or inspection by local or state authorities, nor is the sale of mobile homes subject to professional licensing requirements.

Apart from the Department of Law's general enforcement powers against unfair or deceptive trade practices, state efforts to prevent and remedy the widespread problems confronted by mobile home purchasers rest solely on the mobile home warranty act, AS 45.30. The Consumer Protection Section's recent experience in administering this act shows that defects in mobile homes and consumers' problems in obtaining corrective action continue to be frequent occurrences and continue to demand significant efforts on the part of the section.

Background of the Mobile Home Warranty Law

In 1980, the Legislature acted to ensure that consumers receive adequate warranty protection when they purchase mobile homes. (Ch. 104, SLA 1980, amending AS 45.30.) This statute requires new mobile homes to be covered by a one-year written warranty against substantial defects in materials and workmanship. One important provision of the mandated warranty is that the dealer and manufacturer are each fully responsible for correcting defects, so that the consumer is not shuttled back and forth with no one taking responsibility. Another important provision is that the warranty must cover not only the structure of the mobile home but also all mechanical systems, equipment, and appliances included when it is sold.

The statute also establishes a method to enforce compliance. Written notices of violations may be issued by a

state inspector, and the enforcement agency may hold administrative hearings on alleged violations. When it is determined, following such a hearing, that a dealer or manufacturer has violated a provision of the law, the violator may be ordered to take corrective action. Moreover, in appropriate cases the manufacturer's \$35,000 performance bond may be forfeited and the proceeds distributed to the injured parties.

The 1980 mobile home legislation did more than establish state warranty requirements; it also revealed existing portions of AS 45.30 which regulated mobile home construction standards. The reason for this repeal was not, it must be emphasized, a belief that such regulation was unnecessary. Rather, it was simply a matter of federal preemption. In 1976 the U.S. Department of Housing and Urban Development (HUD) had taken over the regulation of mobile home construction throughout the country. This meant the preemption of Alaska's construction standards program.

The HUD program, however, did not come close to eliminating many kinds of serious problems that frequently afflict purchasers of mobile homes. As pointed out in a 1980 Federal Trade Commission study of mobile home warranty problems, the scope of the HUD standards is limited and the agency's remedial powers when defects occur are "severely circumscribed." The construction standards, which cover only basic components and focus on safety concerns, do not protect consumers from defects in appliances, cabinetry, carpeting, ceiling tile or wall paneling, floor coverings, and so on; nor do they address damage occurring during transportation or set up. Equally important, inspection is required of a mobile home only once -- at any point -- during the manufacturing process, so that defects may readily occur which are not detected. Indeed, HUD has acknowledged that "no mobile home is completely without failures to conform to the Federal standards." Finally, once a mobile home has been purchased by a consumer, the only defects which HUD can require the manufacturer to correct are those which present an unreasonable risk of injury or death.

Thus, when the Alaska Legislature passed its mobile home warranty act, joining seventeen other states at that time with similar legislation, it did so in recognition of the need to fill a major gap in the legal protection provided to consumers. The House committee which recommended passage of the act had before it a report from the Attorney General's Consumer Protection Section analyzing complaints within the past two years from some 68 consumers having problems with mobile homes. In addition to multitudinous defects reported in interior construction, exterior construction, plumbing, appliances, electrical systems, and plumbing systems, a common thread running through the consumers'

experience was a lack of response from dealers and manufacturers to their complaints. Long delays in merely getting someone to look at the problem were common, and in many cases the defects remained uncorrected even after repeated attempts at repair. Experience since that time amply demonstrates the continuing importance of the warranty law.

Recent Consumer Protection Section  
Experience with Mobile Home Problems

Since the enforcement of the mobile home warranty act was administratively transferred to the Consumer Protection Section in May of 1983, the section has handled 65 complaints and has responded to over 96 inquiries and requests for assistance. Although most consumer mobile home complaints involve several individual problems that the consumer has experienced, the major focus of complaints received during the past year and a half may be summarized as follows:

1.	Defects in materials and workmanship	27%
2.	Misrepresentative sales techniques	46%
3.	Shoddy repair services	16%
4.	Mobile home park and other problems	11%

Specific mobile home related complaints include but are not limited to the following:

1. Doors and windows that will not open or close properly.
2. Cracked sinks and bathtubs.
3. Overly expensive to operate or inadequate heating systems.
4. Excessively high interior humidity
5. Buckling walls and separating components.
6. Misrepresentations about the ability to qualify for a loan, or about the outcome or penalty resulting from not qualifying for or not obtaining a loan to purchase a mobile home.
7. Settling of mobile homes resulting from inadequate or improper setup procedures.
8. Numerous failed attempts to repair mobile home defects by unqualified service persons.
9. Misrepresentations of the authority of a salesperson.
10. Failure to deliver title.

Although a report regarding consumer problems with their mobile homes must be brief, because as one consumer wrote to Consumer Protection just last week "there isn't enough paper in Alaska to state the dissatisfaction we've experienced," a few specific examples will help provide a clear understanding of the seriousness of consumer mobile home problems.

During the past year, three purchasers of a particular brand of mobile home complained to the Consumer Protection Section that the roofs on the mobile homes were leaking severely and that they had been unable to obtain a remedy from either the manufacturer or dealer. The consumer found that the dealer had "disappeared" and the manufacturer's response was that the consumers needed to shove their roofs more adequately in the winter time (despite the dealer's original claim that their roofs were specially designed for "Alaska conditions"). Yet only a minor amount of snow had accumulated on them, and moreover the manufacturer's own "homeowners manual" stated that the roofs should not be climbed or walked on. Although the manufacturer's warranty had expired on two of the mobile homes, through mediation and negotiation the Consumer Protection Section obtained for the consumers new roofs and a one year warranty from the manufacturer that the structure of the roof would remain free from defects.

After resolution of the complaints one of the consumers confided that had the problem not been resolved he would have had to leave his home. It should be pointed out that since February of 1984, 56 mobile homes purchased between 1980 and 1984 were repossessed. According to AHFC personnel many of these homes were abandoned by their owners. With a 17% increase in the cost of a new mobile home between 1983 and 1985 and a slight decrease in the average monthly income of a new mobile home purchaser during the same period, it has become increasingly difficult for mobile home consumers to bear the burden of major defects such as these.

Many consumer complaints have involved the formation of large amounts of condensation on interior surfaces of their mobile homes. In many instances this leads to wet and ruined walls and carpets; in one case a consumer reported mushrooms growing on the floor. Homes inspected by this section have been found to possess warped ceilings, floors and walls. In some cases permanent fixtures such as bathtubs and toilet bowls have begun to sink through the floors. Often manufacturers respond to these problems with allegations that the consumer is improperly ventilating or utilizing the mobile home.

In other recent complaints consumers stated that they ordered mobile homes with particular features and amenities to be included by the manufacturer. They found, however, that when the mobile homes arrived many of these features were not included with the homes. Although the purchase agreements clearly stated that these items would be included, the dealer claimed that the consumer had agreed to accept the home without them. One consumer stated that the dealer kept telling him that he would "take care of it"; the outcome is pending. Consumer Protection records show

that many consumers are promised features or amenities with their mobile homes and then find those features missing upon delivery. They also find that the homes are many times improperly installed and in fact the homes themselves have been damaged in transit or were not properly constructed in the first place.

During the past two and one half years the Consumer Protection Section has recovered over \$132,000 for consumers who experienced defects in their mobile homes or mobile home transactions.

## BUSINESS RESPONSE INFORMATION

### Consumer Protection Section

The Consumer Protection Section of the Attorney General's Office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

### Consumer Complaints

Any consumer who believes that he/she has been subjected to an unfair or deceptive trade practice may file a complaint with this state office. A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We do not attempt to prejudge the merits of complaints by either refusing to handle some complaints or by assuming that one or the other side is "right." It would be impossible, as well as unfair, to make any assumptions on so little information. We do screen complaints to verify that we have jurisdiction to handle the subject matter of the complaint.

### The Complaint Resolution Process

Our complaint handling process is informal and relies upon cooperation from all parties. Whenever a consumer files a complaint against you, we will send the complaint to you as a respondent. By doing so, we are requesting your cooperation in clarifying the situation and resolving the problem. We cannot force you as a respondent to offer a settlement, nor can we force a settlement on either party.

We recognize that there are two sides to every story, and we listen to both sides. We know that sometimes consumer complaints are inaccurate or unreasonable. The fact that both sides may be angry does not make either one of them "right."

By our mediation efforts, we hope to give both sides to a consumer complaint a chance to better understand each other and, once understood, resolve their problem. Much of the time, this process yields satisfactory results for both sides.

### How to Respond to a Complaint

We request that you respond, in writing, to the complaint. Written responses help you give us all the details we need, avoid misunderstandings, and help us work faster. (We can handle several matters in the time it takes to do an interview, and somebody still has to write all the details.)

To enable both this office and the consumer to better understand your position, we ask that you investigate the complaint; for instance, talk to the employees involved and check your business records. We request that you respond with a discussion of the facts of this complaint and any figures that might be necessary to better understand the situation. Often, it is important to include a statement of your standard business procedure so that there is a context in which to view this particular complaint. Finally, please include a statement of your position on this consumer complaint, as well as any suggestions or plans you may have for resolving this matter.

#### What Happens When Mediation Fails

If mediation fails (or if you fail to respond), we will review the information we obtained to determine whether or not there is a pattern or serious indication of deceptive practices which justifies formal action by the state. Formal actions include conducting a formal investigation or, in the face of serious violations of the law, filing a lawsuit seeking an injunction to stop the disputed practice and to seek restitution for consumers and civil penalties.

If we determine that formal state action is not appropriate, we will usually advise consumers that they have the right to proceed privately through small claims court or a private attorney if they so choose. The fact that the state does not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential. We do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

#### ANCHORAGE

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Anchorage, AK 99501  
(907) 279-0428

#### FAIRBANKS

1st National Center  
100 Cushman, Suite 400  
Fairbanks, AK 99701  
(907) 456-6588

#### JUNEAU

S.S. Fuller Building  
4th & Harris, Suite 214  
Pouch K  
Juneau, AK 99811  
(907) 465-3692

#### VALDEZ

P.O. Box 671  
Valdez, AK 99686  
(907) 835-2462

# CONSUMER INFO

## CONSUMER PROTECTION SECTION

The Consumer Protection Section of the Attorney General's office enforces Alaska's Unfair Trade Practices and Consumer Protection laws, which laws benefit both individual consumers and business people. One of the functions of this office is to handle consumer complaints.

## WHY WE NEED YOUR COMPLAINT IN WRITING

Consumer Protection is here to serve you. We can do a better job and process your complaint faster if you help us. We need to have your complaint in writing because written complaints help you give us all the details we need and help us work faster than with initial interviews. (We can handle several complaints in the time it takes to do an interview, and somebody still has to write out all the details.) If we need more details after reading your complaint, we will contact you.

If you aren't sure whether you have a complaint, go ahead and fill out one of our complaint forms anyway. If you don't have a complaint, we will contact you promptly. Usually you do have a complaint or you wouldn't be here.

## WHAT WE DO WITH YOUR COMPLAINT

A staff member initially reviews all complaints to determine whether there is evidence of a clear, serious violation of law. If so, the complaint will go to a staff attorney. Otherwise, we will handle the complaint in our informal complaint resolution procedure.

We send the business a letter and a copy of your complaint, asking them to tell their side of the story. When we get their reply, we will contact you for your comments or to tell you about any proposed settlement offer from the business. Much of the time, this process yields satisfactory results.

If there is no voluntary offer of settlement or the proposed settlement is not acceptable to you, you must then proceed privately through the Small Claims Court or a private attorney. The state can only take formal action when there is a serious indication of deceptive practices in violation of law. The fact that we do not take formal action does not necessarily reflect on the merit of either party's position in this matter.

All complaint files are kept for future reference in case other complaints against the business are received. This way we can keep track of deceptive or fraudulent patterns which may begin to evolve. However, unless we file formal legal action in court, all complaints are confidential; we do not perform the function of a Better Business Bureau by releasing complaint information about particular businesses.

## YOU SHOULD REALIZE THAT:

- 1** THE CONSUMER PROTECTION OFFICE CANNOT ACT AS YOUR ATTORNEY. WHEN THE ATTORNEY GENERAL SUES A BUSINESS, HE SUES FOR THE STATE--TO STOP THE PRACTICE AND COLLECT FINES.
- 2** THE COMPLAINT HANDLING PROCESS USUALLY TAKES AT LEAST SIXTY (60) DAYS.
- 3** IT IS NOT POSSIBLE FOR THE STATE TO SUE EVERY TIME A CONSUMER IS TREATED UNFAIRLY OR EVEN DEFRAUDED. THE STATE CAN ONLY ACT IN THE GENERAL PUBLIC INTEREST.
- 4** EVEN THOUGH YOU FILE A CONSUMER COMPLAINT WITH OUR OFFICE YOU ALSO WANT TO CONSULT A PRIVATE ATTORNEY, OR THE LEGAL SERVICES ATTORNEY, OR FILE A CLAIM IN SMALL CLAIMS COURT AT THE SAME TIME.

Anchorage

Fairbank

Juneau

Valdez



Official Business

# Alaska State Legislature

## Senate

### Committee on Labor & Commerce

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### CSHB 148 (Jud) Sectional

- Section 1) Increases the performance bond required of a mobile home manufacturer from \$35,000 to \$100,000.
- Section 2) Adds a new section which would permit a buyer to pursue a "private cause of action" against a manufacturers bond;
- Section 3) Adds a new section which outlines the sureties responsibilities, liabilities, and duties with respect to the cancellation of a surety bond.
- Section 4) Transfers the enforcement authority from DCED to the Department of Law.
- Section 5) Adds a new paragraph to the unfair trade practices/consumer protection statutes relating to mobile home warranties.

NOTE: The bill which passed over from the House shows two section 2's; This will be corrected prior to the meeting.

# STATE OF ALASKA

**DEPARTMENT OF LAW**  
**OFFICE OF ATTORNEY GENERAL**  
**CONSUMER PROTECTION SECTION**

April 11, 1985

Honorable Fred Zharoff, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, AK 99811

Re: HB 148

Dear Senator Zharoff:

This letter is written to encourage the Senate Labor and Commerce Committee to quickly consider and pass HB 148. This bill passed the House Labor and Commerce Committee unanimously and also passed the House Judiciary Committee unanimously, although the present version is a committee substitute that was developed in the House Judiciary Committee. House Bill 148 passed the House on a vote of 39 to 0 with one excused. As you can see there was tremendous support for this legislation. I believe the reason for this support and the popularity of the bill is the important relief granted to a purchaser of a mobile home in Alaska. Essentially the bill accomplishes three changes in the present law:

1. It raises the performance bond required of a manufacturer of mobile homes from \$35,000 to \$100,000.
2. It creates a private cause of action for a mobile home buyer against the manufacturer's bond for warranty violations.
3. It transfers warranty enforcement authority from the Department of Commerce and Economic Development to the Department of Law.

Increase in bond amount from \$35,000 to \$100,000.

This bill would amend AS 45.30.015(a) to increase the bond amount that a manufacturer of mobile homes would have to post with the State from \$35,000 to \$100,000. The purpose of this bond is to assure compliance with the provisions of AS 45.30.011, which set forth the warranty obligation by a manufacturer of a mobile home. The increase in the cost of mobile homes since the statute was first enacted suggests the need for the increase in the bond. You are probably aware that there are many persons in the state who live in mobile homes or choose to purchase mobile homes for

**BILL SHEFFIELD, GOVERNOR**

XXREPLY TO

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100 CUSHMAN, SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE (907) 456-8588

S. S. FULLER BLDG  
4th & HARRIS, SUITE 214  
POUCH K  
JUNEAU, ALASKA 99811  
PHONE (907) 465-3692

STATE COURTHOUSE, ROOM 26  
P. O. BOX 671  
VALDEZ, ALASKA 99686  
PHONE (907) 835-2462

their primary residence. There are no manufacturers of mobile homes in the State of Alaska, and the posting of this bond aids in making certain the mobile homes sold in the state are warranted for one year and that the manufacturer corrects any substantial defects that occur. Attached is a report that we prepared which sets forth some of the problems mobile home consumers have had with their mobile homes.

We, in this section, conducted a survey to determine the cost to a manufacturer if the bond amount were increased from \$35,000 to \$100,000. Our research showed that there would not be significant increase to the cost of a manufacturer whose mobile homes were sold in Alaska if the bond were increased. The cost of a bond pursuant to AS 45.30.015 would be between 1% and 2% of the face value annually, but in most cases only about 1% of the face amount. Thus, a \$100,000 bond would cost a manufacturer approximately \$1000, with an upper limit of \$2000 a year.

The financial stability and net worth of a manufacturer might well determine the cost of a bond or even if the manufacturer can obtain a bond. Any company's inability to obtain a bond would probably be a good indication of its level of reliability in fulfilling its bonded obligations, according to one local insurance broker. If the manufacturer is currently able to obtain a \$35,000 bond that same manufacturer would likely be able to obtain a \$100,000 bond. Thus the manufacturer would be looking at an increase from approximately \$350 to approximately \$1000 if this bill is enacted increasing the bond required from \$35,000 to \$100,000

#### Private cause of action against the bond

The current mobile home warranty statute, at AS 45.30.040, only allows a private buyer injured by the manufacturer of a defective home to request the state to take administrative action against the bond. In order to obtain the proceeds of the bond for any consumers, the state would have to show in an administrative action that the mobile home manufacturer's violations of the warranty act were "regular and recurring." Thus, an individual mobile home buyer may have a serious defect in the purchased mobile home but not be able to obtain the bond proceeds absent state action. The state is not likely to take action unless there are several mobile home buyers who experienced defects in a particular manufacturer's mobile homes.

Also, a buyer may believe she or he has a valid claim against the bond in a case in which the state enforcing authority

does not agree that administrative action is warranted. Providing a clear private cause of action against the bond may relieve a burden on government by reducing the number of administrative hearings and yet ensure that a individual can choose to enforce his own rights, whether or not a state agency agrees with the individual. Of course the mobile home buyer under the proposed revision to the statute would still have to file an action in court and prove that the mobile home manufacturer had violated the warranty provisions of the Mobile Home Warranty Act. The benefit to the mobile home buyer to be able to bring his or her private action against the mobile home manufacturer's bond becomes readily apparent in that case where the mobile home manufacturer has gone out of business, gone bankrupt or has no assets that can be used to satisfy a judgment that a mobile buyer might receive in court. Since all the mobile home manufacturers are located outside the state, collection efforts against an outside mobile home manufacturer may be very difficult for an individual mobile home buyer in the state. It is hoped that creating this private cause of action will make it possible for many claims to be settled without any formal action. The mobile home buyer would notify the manufacturer and the surety on the bond and hopefully some settlement or agreement could be arrived at to provide repairs or correct the defect without the necessity of litigation in many cases.

Transfer of enforcement from the Department of Commerce and Economic Development to the Department of Law

The bill proposes a change in the definition of "department" to mean the Department of Law in AS 45.30.100(2).

The Department of Commerce and Economic Development and the Department of Law agree that this is the most appropriate place to locate the enforcement of the Mobile Home Warranty Act. The Division of Legislative Audit prepared a special report on the Department of Commerce and Economic Development, Division of Measurement Standards, on April 6, 1983. In that report Legislative Audit recommended the transfer of the responsibility to resolve warranty defects of mobile homes found at AS 45.30 from the Department of Commerce and Economic Development to the Department of Law. The audit reflected three reasons for the need for the transfer:

1. Alleged possible conflicts of interest involving the Department of Commerce and Economic Development mobile home inspector;

2. Alleged possible failure of the Department of Commerce and Economic Development to carry out the duties of the mobile home warranty act / and alleged use of money appropriated for that purpose in other ways.

3. The public perception that the Consumer Protection Section of the Department of Law is the agency to contact concerning consumer complaints with problems relating to mobile homes.

A follow up report was issued by the Division of Legislative Audit on June 4, 1984. That audit report provided: "The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the legislature."

For your convenience I have attached a copy of the 1983 report and the 1984 follow up report by the Division of the Legislative Audit.

We respectfully request that the Senate Labor & Commerce Committee carefully consider enacting the suggestions of the Division of Legislative Audit and transferring the responsibility for enforcement of AS 45.30 to the Department of Law. From a consumer viewpoint it would seem beneficial to alert the public to the fact that the actual enforcement of the Mobile Home Warranty Act now lies with the Department of Law. For instance, if a private attorney were advising mobile home owners, the attorney would no doubt look to the current statute and attempt to make contact with the Department of Commerce for additional information. It is difficult to justify the referral from one agency to another that is necessitated simply because the definition contained in AS 45.30.100 of "department" has not been changed by the legislature to the Department of Law.

Thank you for consideration of this legislation. We stand ready to assist the committee in any way that we can. I would be happy to testify via teleconference or in person. I have

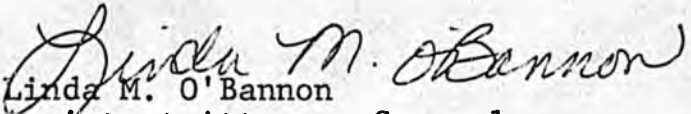
Honorable Fred Zharoff, Chairman  
Senate Labor and Commerce Committee

April 11, 1985  
Page 5

a very moving and interesting video tape of the defects in one particular mobile home. The House Labor and Commerce Committee viewed a portion of that video tape. I would be happy to play a portion of that for your committee. Again, we encourage you to consider this legislation as quickly as possible and pass the bill out of your committee. Thank you for considering our position.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Linda M. O'Bannon  
Assistant Attorney General  
Consumer Protection Section

/pc

Enclosures

A FOLLOW-UP REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS  
(Originally Released April 6, 1983)

June 4, 1984

Commissioner, Department of  
Commerce and Economic Development

Richard A. Lyon

Deputy Commissioners, Department of  
Commerce and Economic Development:

Vincent O'Reilly  
Terry Elder

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

June 4, 1984

Members of the  
Legislative Budget and Audit Committee:

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

A FOLLOW-UP REPORT ON THE  
DEPARTMENT OF COMMERCE AND  
ECONOMIC DEVELOPMENT  
DIVISION OF MEASUREMENT STANDARDS  
(Originally Released April 6, 1983)

June 4, 1984



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

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PURPOSE OF THE REPORT

In accordance with the provisions of Title 24 of the Alaska Statutes and a special request of the Legislative Budget and Audit Committee, a follow-up review of the Department of Commerce and Economic Development's Division of Measurement Standards was conducted to determine the extent of implementation of recommendations presented in our report titled A Special Report on the Department of Commerce and Economic Development, Division of Measurement Standards, April 4, 1983.

## ORGANIZATION AND FUNCTION

The Division of Measurement Standards (DMS) was established in July 1982 with the transfer of the permit and weigh station functions from the Department of Public Safety to the Department of Commerce and Economic Development, Weights and Measures Section. The Division has four distinct statutory requirements:

1. Public and consumer protection through maintenance of uniform standards which ensure the accuracy of commercial weighing and measuring devices within the State (AS 45.75).
2. Consumer protection for buyers of mobile homes through the enforcement of mobile home warranties (AS 45.30).
3. Operation of weigh stations to identify and remove overweight commercial vehicles from the State highway system (AS 44.33.020(25)).
4. Issuance of special permits authorizing the operation of overweight and oversize vehicles, and the collection of fees for these special permits (AS 44.33.020(25)).

The "Weights and Measures Act", AS 45.75, requires a system of weights and measures that conforms to the standards customarily in use in the United States. The weights and measures obtained by the State are to be verified by the National Bureau of Standards (NBS) and are to be properly maintained to ensure their reliability and traceability to NBS.

To accomplish this mandate, DMS is the custodian of the State's weights and measures and conducts the periodic verification with NBS. The State's standards of weights and measures are used to verify all office standards. The office standards then are used to verify all field standards used by DMS. In addition, these standards become the basis for verification of all instruments and devices used for determining weight or measure in commercial transactions within the State.

DMS fulfills its responsibilities through physical inspection of devices, examination of packaging and the investigation of complaints. DMS may issue "stop-use" or "removal orders" of measuring devices and commodities offered for sale, when it is necessary to enforce the Weights and Measures Act.

Alaska Statute 45.30 mandates the responsibility for resolving warranty defects of mobile homes to the Department of Commerce and Economic Development. The Department assigned the responsibility for carrying out the provisions of the

statute to the Division of Weights and Measures upon its creation in July of 1982.

The 1983 audit of the Division recommended that the Mobile Home Warranty Program would be better served under the Consumer Protection Section of the Department of Law. The recommendation was made on the basis that the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and would therefore be best suited to administer the program. The Department of Commerce and Economic Development has entered into a Reimbursable Service Agreement with the Department of Law to transfer the program. Legislation to make the transfer permanent was introduced into the 1984 session of the Legislature.

The Division, under the provisions of AS 44.33.020(25) has the responsibility for the operation of the weigh stations located on the State highway system. The primary function of the weigh station program is the enforcement of the size, weight and load limitations adopted by the Department of Transportation and Public Facilities under AS 19.10.060.

Additionally, DMS administers the oversize and overweight permit program as provided under AS 44.33.020(25). Permits are issued, for a fee, which allows commercial vehicles that exceed the maximum allowable size, weight or load limitations the right to legally travel over the State highway system. DMS also regulates pilot cars under this statute.

## PRIOR AUDIT RECOMMENDATIONS

In a previous audit report dated April 6, 1983, we presented the Commissioner of Commerce and Economic Development with seven recommendations relating to the operation of the Division of Measurement Standards. Three of those recommendations had a total of nine sub-recommendations. The following is the current status of each:

### Prior Audit Recommendation No. 1

The Department should take immediate action to improve the employee morale of the Division of Measurement Standards (DMS).

As a result of interviews with fifteen employees and a review of written communications during our prior audit, it was obvious that a serious morale problem existed within DMS. The cause of the low morale did not appear to be centered around any single issue but was due to a build up of problems within the Weights and Measures Section over the past several years.

### Legislative Audit's Current Position

Prior to the final release of our previous report, the Department initiated procedures to determine the causes of the low morale and to provide for possible solutions. These efforts have continued and included:

1. Employee interviews conducted by the Department's personnel officer.
2. The Director meeting collectively and individually with employees of the Division.
3. The development of a new employee evaluation manual and procedures that define management's expectations of employees and provides for ongoing communication between the staff and management.
4. The Director's standing offer to meet with any employee to discuss problems and, if possible, provide reasonable solutions.

During our present review, we found that there continues to be a certain amount of employee dissatisfaction, however, in our opinion, the Department and Division management are making a reasonable and good-faith effort at resolving remaining problems.

Prior Audit Recommendation No. 2

DMS should avoid situations that give the appearance of a conflict of interest.

During our prior audit, we noted three situations which, at a minimum, gave the appearance of a conflict of interest to employees and other persons outside the Division.

Two of the situations involved the DMS Mobile Home Inspector and the third related to the 1981 hiring of a person convicted of price fixing in a retail gasoline business as a weights and measures inspector. This employee was asked to resign and his termination was effective April 17, 1981.

Legislative Audit's Current Position

The Division no longer administers the Mobile Home Warranty Program. On June 15, 1983, the Division entered into a Reimbursable Service Agreement (RSA) with the Department of Law wherein the Department of Law would, through its Consumer Protection Division, administer the program.

The issue of hiring a person convicted of price fixing, in the retail gasoline business as Weights and Measures Inspector I was addressed and resolved prior to the initiation of the original audit. During the current audit nothing came to our attention which would lead us to believe that DMS is not exercising care in the selection of employees.

In our opinion, these situations were isolated instances and the Division is cognizant of the need to avoid conflict of interest situations.

Prior Audit Recommendation No. 3A

DMS should ensure performance indicators in their budget requests are accurate.

The State budget documents for Fiscal Years 1983 and 1984 included forms for each agency to report its performance activities of the prior year based on predetermined measurements.

In our review of the Fiscal Year 1983 and 1984 budget documents, we found that some of the information reported by DMS for actual performance activities in Fiscal Years 1981 and 1982 was not accurate.

Legislative Audit's Current Position

Beginning with Fiscal Year 1985, the budget request format has been revised. The section devoted to agency performance

in meeting its objectives no longer identifies prior years' actual performance. Information is limited to those measurements planned for the prior year and those estimated for the budget year at various levels of funding.

DMS has continued to maintain actual performance statistics as a measure against planned performance objectives. Prior to Fiscal Year 1984, the Division's methods of compiling and reporting performance data were cumbersome.

During Fiscal Year 1984, DMS began developing methods, including data processing, for improving the system of data collection, retention, analysis and reporting. A review of Fiscal Year 1984 performance activity summaries and supporting documentation showed no significant errors.

Prior Audit Recommendation No. 3B

DMS should prepare their fiscal year budgets in accordance with their anticipated spending plans.

The DMS Fiscal Year 1982 budget requested \$96,900 for rental of State vehicles through the Department of Transportation and Public Facilities (DOTPF). Actual costs during 1982 totalled approximately \$62,000, 36% less than budgeted. DMS staff explained that this budget line item was intentionally overbudgeted and the excess funds were used to cover expenditures in other underbudgeted line items within the contractual services category for which funding was harder to secure.

Legislative Audit's Current Position

For Fiscal Year 1984, DMS budgeted \$77,900 for State vehicle rental costs which represents a \$19,000 reduction from the inflated Fiscal Year 1982 budget amount.

For Fiscal Year 1985, the DMS budget reflects a change from the "wet lease" approach, in which both a fixed rental cost and a repair and maintenance rate are paid to DOTPF, to a "dry lease" approach whereby a fixed rental cost is paid to DOTPF and DMS assumes responsibility for repair and maintenance. According to DMS, this change will result in a significant reduction in vehicle costs.

Prior Audit Recommendation No. 3C

DMS should ensure State funds are expended only for authorized purchases in accordance with the State Administrative Manual.

DMS purchased seafood in August, 1981, and September, 1982, totalling \$100 and \$548 respectively. The seafood was presented to the members of the Western Weights and Measures

Conferences. The State Administrative Manual, section 6820, prohibits expenditure of State funds for nonessential food-stuffs.

Legislative Audit's Current Position

A review of the Division's Fiscal Year 1984 expenditures showed no unauthorized purchases of seafood. The seafood presented at the most recent Western Weights and Measures Conference was purchased at the Director's personal expense.

Prior Audit Recommendation No. 3D

DMS should ensure appropriations are expended in accordance with law.

DMS received an appropriation totalling \$33,200 through Chapter 50, SLA 1980 to "purchase scale testing equipment and to provide transportation to test scales for seafood processors in the Aleutian Islands and Western Alaska". Through a review of the related expenditures, we found \$8,148 was expended for travel to areas other than the Aleutian Islands or Western Alaska.

In addition, DMS received another appropriation totalling \$39,100 through Chapter 120, SLA 1980, to implement the Mobile Home Warranty Program enacted by Chapter 104, SLA 1980. We determined that \$2,875 of these funds were expended on travel unrelated to the Mobile Home Warranty Program.

Legislative Audit's Current Position

A review of Fiscal Year 1984 expenditures and correspondence showed the Division is cognizant of the legal limitations of expending appropriations. During the year, DMS has requested approval and/or advice on certain expenditures from the Department's Division of Administrative Services, the Office of Management and Budget, and the Division of Legislative Audit.

Prior Audit Recommendation No. 4A

DMS should update job descriptions and classifications as required by the State Personnel Rules.

We determined through a review of job descriptions and employee interviews that material changes had occurred in the duties and responsibilities of two classified positions since the formation of the Division.

A Weights and Measures Inspector IV position no longer had the supervisory authority over the inspectors. The employee's responsibilities included only administrative and budgeting duties. The Mobile Home Inspector's duties

included supervision of the weigh stations in addition to mediating mobile home warranty complaints.

We recommended that job descriptions and duties should be changed to reflect the actual duties and responsibilities of these positions to decrease the confusion and misunderstandings within the Division.

#### Legislative Audit's Current Position

The Weights and Measures Inspector IV position was reclassified to a Management Analyst III on November 23, 1983.

With the transfer of the Mobile Home Warranty Program to Consumer Protection in the Department of Law, DMS reclassified the Mobile Home Inspector position to a Weigh Station Operator II.

#### Prior Audit Recommendation No. 4B

DMS should utilize promotional eligibility lists to the extent possible.

In July, 1982, DMS assumed the responsibility of the weigh stations from the Department of Public Safety. Twenty-eight commercial vehicle inspectors were transferred from the Department of Public Safety to DMS, however, DMS did not receive a transfer of any supervisory personnel. In order to provide sufficient supervision of the weigh stations, DMS upgraded three of the commercial vehicle inspector positions from a range 12 to a range 15. The incumbents in two of the upgraded positions became supervisors while the other inspectors were not afforded the opportunity to interview for the positions.

#### Legislative Audit's Current Position

DMS has used the Division of Personnel's departmental eligibility lists in making promotions since our previous audit.

#### Prior Audit Recommendation No. 5

The Department should seek legislation to transfer the Mobile Home Warranty Program to the Consumer Protection Section of the Department of Law.

We reviewed the function of the Mobile Home Warranty Program and the activity from July, 1981 through March, 1983. Based on our review, we noted the following:

1. The Mobile Home Inspector acts as a mediator between the consumer and the dealer and/or manufacturer in order to resolve complaints.

2. During Fiscal Year 1982, DMS received 26 mobile home warranty complaints. As of March, 1983, DMS had received nine complaints in Fiscal Year 1983.
3. The Consumer Protection Section receives and investigates mobile home complaints from consumers. According to a memorandum dated March 17, 1983, from an assistant attorney general, the Consumer Protection Section had five complaints currently under investigation.

Since the Consumer Protection Section is the agency to which the public looks for resolution of consumer problems and the Mobile Home Warranty Program deals with consumer protection warranty laws, it appears that the program could be more efficiently and effectively administered by the Consumer Protection Section.

#### Legislative Audit's Current Position

The Mobile Home Warranty Program is presently being administered by Consumer Protection through a Reimbursable Service Agreement with DMS. For Fiscal Year 1985, the program is budgeted within Consumer Protection.

During the 1984 legislative session, Senate Bill No. 497 was introduced to amend AS 45.30 by placing the responsibility for the program in the Department of Law. The bill was not passed by the 1984 Legislature.

We recommend that the Department resubmit the proposed legislation change to the 1985 Legislature.

#### Prior Audit Recommendation No. 6

The Department should seek removal of DMS staff as delegates to the National Conference of States on Building Codes and Standards.

The Director and the Mobile Home Inspector are delegates to the National Conference of States on Building Codes and Standards, Incorporated (NCSBCS). During the period from May, 1981, through January, 1983, the Director attended five meetings related to NCSBCS which were held in Seattle, Denver, Boston, Atlanta, and New Orleans. The Mobile Home Inspector also attended the meetings at Seattle and New Orleans.

DMS duties and responsibilities relating to building codes and standards were greatly diminished with the repeal of the State mobile home standards in September, 1980, and the enactment of the Mobile Home Warranty Program. Furthermore, activity in the Mobile Home Warranty Program does not warrant involvement of DMS in NCSBCS.

### Legislative Audit's Current Position

The Director of the Division of Measurement Standards is still the delegate of record to NCSBCS however, he has initiated action to have his name removed as a delegate. A review of the Director's Fiscal Year 1983 and 1984 travel showed that no travel involving NCSBCS business has occurred since September of 1982.

### Prior Audit Recommendation No. 7A

DMS should provide sufficient documentation that office and field standards (official test devices) are verified in accordance with law.

We could not find sufficient documentation to determine if DMS was in compliance with AS 45.75.060 which requires verification of office and field standards on an annual basis.

In order to provide sufficient documentation, DMS should develop a complete inventory of all office and field standards with identifying numbers (where possible), the location of the standards, and the last date of verification.

### Legislative Audit's Current Position

The Division has developed a complete inventory of field standards and laboratory standards. The field standards status report lists the standards by type, serial number, location, inventory date, last certification date and certification due date. According to Division personnel, the lists will be maintained on a current basis.

### Prior Audit Recommendation No. 7B

DMS should develop procedures to ensure that weight and measure devices are inspected and tested semiannually in accordance with law.

DMS did not have sufficient documentation to determine that they were in compliance with AS 45.75.080 which requires all weights and measures in commercial use to be inspected and tested at least semiannually or more often as the Director considers necessary. We were able to review inspection dates for 110 businesses located in Southeastern Alaska. Of those 110 businesses, 43 received annual inspections, 23 received semiannual inspections, and the remaining 44 did not have sufficient information to determine the frequency of inspections.

DMS should compile an inventory of devices including location and the last date of testing. This will provide management with data to determine the extent of compliance possible

within budgetary constraints.

#### Legislative Audit's Current Position

Beginning with the Anchorage area, the Division is in the process of developing a route system for the inspection and testing of devices. Inventory schedules using the data processing equipment are being prepared which will list location of the commercial device, type, serial number, date of previous inspection and date of previous approval, date of current inspection and date of current approval. The inventory lists should provide a positive response to the problem of testing devices semiannually in heavily populated areas. In addition, legislation was introduced during the 1984 session of the Legislature which would eliminate semiannual inspections in favor of annual inspection (Senate Bill No. 491).

The Fiscal Year 1985 budget for DMS approved by the Legislature and the Governor reflects a significant reduction in the inspection activity of the Division. In light of this reduction, the proposed statutory change appears justified.

#### Prior Audit Recommendation No. 7C

DMS should develop a uniform method for compilation of weights and measures verification activity data.

An inspector, in order to verify a weight or measure device, performs an inspection which is an evaluation of the physical characteristics of the device, and a test which is the actual test for accuracy through the use of standards, e.g. test weights. We noted inconsistencies in the methods used by inspectors to count the number of devices, and inspections and tests of those devices.

In addition to the inconsistencies in accounting for activities, we noted that monthly activity information is not organized in a manner to facilitate managerial use of data for planning and budgeting purposes.

#### Legislative Audit's Current Position

Monthly statistics are compiled from test reports submitted by the inspectors. Since the system is manual, it is relatively cumbersome and error prone. DMS is working towards a uniform method of compiling verification data. DMS should continue to work for a more efficient system of data compilation.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

July 9, 1984

RECEIVED  
JUL 11 1984  
LEGISLATIVE AUDIT DIVISION

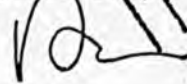
Mr. Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit  
The Legislature  
Pouch W  
Juneau, Alaska 99801

Dear Mr. Wilkerson:

I have received your follow-up report on the Department of Commerce and Economic Development, Division of Measurement Standards dated June 4, 1984 and have no disagreement with the recommendations in the report. As stated, all recommendations have been addressed and corrective measures taken by the division.

Thank you and your staff for your efforts in performing this follow-up audit.

Sincerely,



Richard A. Lyon  
Commissioner

RAL/mm0442M  
7984a

CSHB 148(Jud): "AN ACT RELATING TO MOBILE HOME WARRANTIES"

THIS LEGISLATION MAKES 3 MAJOR CHANGES TO THE CURRENT MOBILE HOME WARRANTY LAW:

- 1) IT INCREASES THE PERFORMANCE BOND REQUIRED OF A MOBILE HOME MANUFACTURER FROM \$35,000 TO \$100,000
- 2) IT ALLOWS A CONSUMER TO PURSUE A PRIVATE CAUSE OF ACTION AGAINST A MOBILE HOME MANUFACTURER FOR WARRANTY VIOLATIONS.
- 3) IT ALSO TRANSFERS WARRANTY ENFORCEMENT AUTHORITY FROM THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT TO THE DEPARTMENT OF LAW.

Chairman's Information:

1) CSHB 148(Jud) "An act relating to mobile home warranties"

- a) Introduced: Governor
- b) Co-Sponsors:

2) INTENT: This legislation raises the performance bond required of a mobile home manufacturer from \$35,000 to \$100,000; it also allows a consumer to pursue a private cause of action against the manufacturer for warranty violations, and it transfers warranty enforcement authority from DCED to the Department of Law.

FISCAL NOTE: 0

NOTE: Bill which came over from the House has two section 2's;

3) ADDITIONAL REFERRALS: Judiciary

4) PUBLIC HEARINGS:

- a) Sponsor:
- b) Public witnesses:

5) BILL ACTION:

- a) Hold in committee?
- b) Assign to sub committee for further review?
- c) Move from Committee?
- d) close public hearings?

6) COMMITTEE ACTION:

- a) amendments?
- b) CS adoption?

MEASURE HISTORY  
AN ACT RELATING TO MOBILE HOME WARRANTIES.

PRIME SPONSOR: RULES COMMITTEE  
CO-SPONSORS:

BY REQ OF THE GOVERNOR

CURRENT STATUS: (S) CALENDAR 3/4

DATE	PAGE	ACTION
01/30/85	200	READ THE FIRST TIME - REFERRAL(S)
01/30/85	200	GOVERNOR'S TRANSMITTAL LETTER
01/30/85	200	ZERO FISCAL NOTE/ANALYSIS HSE SUPPL 11
01/30/85	200	ZERO FISCAL NOTE
02/08/85	292	L&C RPT 7DP
03/27/85	718	JUD RPT CS, NEW TITLE 6DP
03/29/85		RLS TO CALENDAR
03/29/85	756	READ THE SECOND TIME
03/29/85	756	CS (JUD) ADOPTED UNAN CONSENT
03/29/85	756	ADVANCED TO THIRD READING UNAN CONSENT

MEASURE HISTORY

DATE	PAGE	ACTION
03/29/85	756	READ THE THIRD TIME CSHB 148(JUD)
03/29/85	756	PASSED Y39 N- X1
03/29/85	757	COTTEN NOTICE OF RECONSIDERATION
04/01/85	789	RECONSIDERATION NOT TAKEN UP
04/01/85	789	TRANSMITTED TO (S)
04/02/85	693	READ THE FIRST TIME - REFERRAL(S)
05/07/85	1105	L&C RPT 3DP
05/10/85	1210	JUD COMM REFERRAL WAIVED
03/03/86		RULES RPT CALENDAR 3/4

CSHB 148:

Additional comments from Robert Mintz (279-0428) of the Consumer Protection Section of the Department of Law.

- 1) There are currently NO manufacturer's of mobile homes in the State of Alaska;
- 2) Warranties on Mobile Homes are typically about a year; This provision would not extend to a dealer who purchases a mobile home from a person while it is still under warranty, however if a private person sold a mobile home to another private person and the mobile home was under warranty, then the provisions of this statute would apply.
- 3) They don't have a clear handle on the number of mobile homes in the state however, AHFC has financed the following numbers of mobile homes:
  - a) FY83: 1,872
  - b) FY84: 1,619
  - c) First half of FY85: 383
- 4) Penalty provisions:

amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state. (§ 1 ch 104 SLA 1980)

Sec. 45.30.020. Duties of department.

Repealed by § 5 ch 123 SLA 1972.

Editor's note. — The repealed section derived from § 2, ch. 80, SLA 1971.

Sec. 45.30.030. Administration.

Repealed by § 5 ch 123 SLA 1972 and § 5 ch 104 SLA 1980.

Cross reference. — For current provisions concerning deposit of performance bonds, see AS 45.30.015. derived from § 2, ch. 80, SLA 1971; §§ 2, 5, ch. 123, SLA 1972; §§ 3, 4, ch. 114, SLA 1974.

Editor's note. — The repealed section

Sec. 45.30.040. Enforcement of compliance. (a) A department inspector shall give written notice to the owner, dealer or manufacturer of a mobile home of each violation of AS 45.30.011. The notice of violation shall accurately describe the violation and give specific reference to the section and paragraph of the statutes.

(b) Repealed by § 5 ch 104 SLA 1980.

(c) Whenever it determines that there may be a violation of the provisions of this chapter by a manufacturer or dealer of mobile homes, the department may give notice of hearing and, within 30 days after giving notice, hold a hearing to determine whether there has been a violation. After notice and hearing,

(1) if the department finds that there has been a violation of the provisions of this chapter, the department may issue an order directing that the person who is violating the provision cure the violation in a reasonable time and in a reasonable manner;

(2) if the department determines that violations of the provisions of this chapter are regular and recurring, it may require forfeiture of the bond to the benefit of the state and arrange for distribution of the proceeds of the bond to the mobile home owners injured by the activities of the dealer or manufacturer, or to mobile home dealers injured by the activities of the manufacturer.

(d) The provisions of AS 44.62.330 — 44.62.630 apply to a hearing held under (c) of this section. (§ 2 ch 80 SLA 1971; am § 3 ch 123 SLA 1972; am § 5 ch 114 SLA 1974; am §§ 2, 3, 5 ch 104 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), inserted "dealer" preceding "or manufacturer" near the beginning of the first sentence, substituted "AS 45.30.011" for "the regulations adopted under AS 45.30.010"

at the end of the first sentence, and substituted "statutes" for "regulations" at the end of the second sentence; repealed subsection (b); and added subsections (c) and (d).

Sec. 45. Repealed

Cross re: provisions co: see AS 45.30.

Sec. 45. Repealed

Cross re: provisions co: 45.30.100.

Sec. 45. prohibited of sale that home park ch 138 SLA

Sec. 45. (1) "buy personal u (2) "dep: Economic I (3) "mob habitation authorized

Editor's n from AS 45.30

- Article
- 1. Interest
- 2. Collection
- 3. Merchand
- 4. Funerals
- 5. Regulatio
- 10. Miscellar

- Section
- 10. Legal rat
- 20. Higher r
- 30. Action fo of usur
- 40. Usurious entire

I think this is what they are getting at but I am NOT 100% SURE. MICHAEL

§ 45.30.040

mobile home  
(980)

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, ch. 114, SLA

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§ 45.30.050

TRADE AND COMMERCE

§ 45.30.100

**Sec. 45.30.050. Penalty.**

Repealed by § 5 ch 104 SLA 1980.

**Cross reference.** — For current provisions concerning forfeiture of bond, see AS 45.30.040.

**Editor's note.** — The repealed section derived from § 2, ch. 80, SLA 1971; § 4, ch. 123, SLA 1972; § 6, ch. 114, SLA 1974.

**Sec. 45.30.060. Definitions.**

Repealed by § 5 ch 123 SLA 1972.

**Cross reference.** — For current provisions concerning definitions, see AS 45.30.100.

**Editor's note.** — The repealed section derived from § 2, ch. 80, SLA 1971.

**Sec. 45.30.070. Certain landlrd-vendor agreements prohibited.** A vendor of mobile homes may not require as a condition of sale that a purchaser locate the mobile home in a particular mobile home park or in one of a particular group of mobile home parks. (§ 6 ch 138 SLA 1976)

**Sec. 45.30.100. Definitions.** In this chapter,

(1) "buyer" means a person who purchases a mobile home for his personal use and not for purposes of resale;

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

(3) "mobile home" means a vehicle designed and equipped for human habitation, and which may be drawn by a motor vehicle only when authorized by permit. (§ 4 ch 104 SLA 1980)

**Editor's note.** — This section derives the revisor of statutes pursuant to AS from AS 45.30.061 and was renumbered by 01.05.031.

**Chapter 45. Trade Practices.**

**Article**

1. Interest (§§ 45.45.010 — 45.45.070)
2. Collection of Advance Interest (§§ 45.45.080 — 45.45.090)
3. Merchandise (§§ 45.45.100 — 45.45.110)
4. Funerals (§ 45.45.120)
5. Regulation of Motor Vehicle Repairs (§§ 45.45.130 — 45.45.240)
10. Miscellaneous (§ 45.45.900)

**Article 1. Interest.**

**Section**

10. Legal rate of interest
20. Higher rate of interest prohibited
30. Action for recovery of double amount of usurious interest paid
40. Usurious rate as working forfeiture of entire interest

**Section**

50. Recovery by assignee of usurious contract of amount paid by him
60. Contract not usurious because of agreement to pay taxes
70. Enforcement of contracts entered into under AS 45.45.060

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST

Bill/Resolution No.: HB 148, No. 1  
 Title: "An Act relating to...  
 mobile home warranties..."  
 Sponsor: House Rules/Governor  
 Requestor: Ofc. of Gov. - OMB  
 Date of Request: 12/10/84

FISCAL DETAIL

Agency Affected: Department of Law  
 Program Category Affected: Public Protection  
 BRU, Program or Subprogram(s) Affected: Consumer Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

ANALYSIS:

This bill creates a private cause of action relating to mobile home warranties, and transfers responsibility for enforcement of mobile home warranties from the Department of Commerce and Economic Development to the Department of Law. A 1983 legislative audit report recommended transfer of the enforcement process to the Department of Law. The transfer of the existing mobile home warranty enforcement position, including funding, from the Department of Commerce and Economic Development to the Department of Law, was accomplished July 1, 1984. Consequently, enactment of this bill will not require additional funding nor will it cause a fiscal impact.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 12/10/84  
 Approved by Commissioner: Norman C. Gorsuch  
 Agency: Department of Law Fiscal notes (0)

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: December 3, 1984

REQUEST

Bill/Resolution No.: 111-1048

Title: Relating to Mobile Home Warranties

Sponsor: \_\_\_\_\_

Requestor: \_\_\_\_\_

Date of Request: \_\_\_\_\_

FISCAL DETAIL

Agency Affected: Commerce & Econ. Dev.

Program Category Affected: Protection

BRU, Program or Subprogram(s) Affected: Measurement Standards

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0				

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0				

ANALYSIS: Attach a separate page if necessary

Prepared By: Joe Swanson  
Division: Measurement Standards

Phone: 345-7750

Date: 12/4/84

Approved by Commissioner: Richard A. Lyon  
Agency: Commerce and Economic Development

Date: 12.5.84

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 30, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to mobile home warranties. This bill increases government efficiency in enforcement of mobile home warranties, and encourages private consumer self-help.

The bill has two main components: (1) the creation of a private cause of action in a mobile home buyer against the manufacturer's bond, which AS 45.30.015 requires be posted with the state; and (2) a transfer of warranty enforcement authority from the Department of Commerce and Economic Development (DCED) to the Department of Law.

With regard to the first of the components, it is the understanding of both DCED and the Department of Law that, when the mobile home warranty statute, AS 45.30.011, took effect in 1980, a private buyer injured by a manufacturer who sold a defective home to a buyer in this state would be allowed to make a claim against the bond under AS 45.30.040. However, that statute only provided a procedure for the consumer to petition the state to take administrative action against the bond. Experience in the last few years has shown that a buyer may believe that he or she has a valid claim against the bond in a case in which the state enforcing authority does not agree that administrative action is warranted. Providing a clear, private cause of action against the bond may relieve a burden on the government by reducing the number of administrative hearings, and insure that an individual can choose to enforce his or her own rights, whether or not a state agency agrees with the individual.

The second component of the bill is a transfer of the warranty enforcement powers from DCED to the Department of Law. The April 1983 legislative audit of the division of measure-

ment standards, DCED, studied this issue and recommended  
The Department [of Commerce and Economic  
Development] should seek legislation to  
transfer the mobile home warranty enforce-  
ment program to the Consumer Protection  
Section of the Department of Law.

Both departments have agreed that this is a more efficient  
enforcement pattern, as the Department of Law, consumer  
protection section, already processes mobile home complaints  
that fall outside the warranty Act, as well as those that  
may duplicate warranty Act enforcement by DCED. In FY 84,  
DCED transferred the one mobile home investigator position  
to the Department of Law through a reimbursable services  
agreement.

The bill promotes government efficiency by encouraging  
private self-help, rather than reliance on government. I  
feel that it will have the support of both industry and  
consumers. I urge your affirmative action on this measure.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield  
Governor

STATUTES RELATING TO CSHB 148(Jud)

CHAPTER = 45.30  
SECTION = 45.30.011  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 30.  
Mobile Homes and Mobile Home Parks.  
CITATION Sec. 45.30.011.  
CATCH LINE

TEXT MOBILE HOME WARRANTIES.  
(a) After August 27, 1980, a new mobile home sold by a mobile home dealer to a buyer is subject to a mobile home warranty. A mobile home warranty shall be set out in a separate written document entitled "Mobile Home Warranty" which shall be delivered to the buyer by the mobile home dealer at the time a contract of sale is signed. The warranty shall contain the name, address and telephone number of the mobile home manufacturer and the mobile home dealer and shall include at least the following provisions:

- (1) the mobile home is free from any substantial defects in materials and workmanship;
- (2) the manufacturer or dealer, or both, shall take appropriate action at the site of the mobile home to correct substantial defects in materials or workmanship which become evident within one year of the date of delivery of the mobile home to the buyer if the buyer, or his transferee, gives written notice of the defect by registered or certified mail addressed to the business address of the manufacturer or dealer on a date which is not more than one year and ten days after date of delivery of the mobile home;
- (3) the manufacturer and the dealer are jointly and severally liable to the buyer, or his transferee, for the fulfillment of the terms of warranty, and the buyer may notify the manufacturer or the dealer, or both, in the event action is required to correct substantial defects in materials or workmanship;
- (4) the warranty is applicable to the mobile home structure, its plumbing, heating and electrical systems, and all appliances and equipment installed or included in the mobile home unit by the manufacturer or dealer; and
- (5) notwithstanding separate warranties applicable to appliances contained within a mobile home unit issued by the manufacturers of the appliances, primary responsibility for appropriate corrective action under the warranty rests with

the manufacturer and the dealer of the mobile home unit, and written notice of defects must be initially reported to them.

(b) The warranty provided under (a) of this section is in addition to and not in derogation of all other rights and remedies which a buyer may have under any other law or instrument.

(c) The manufacturer and the dealer may not require the buyer to waive his rights under (a) of this section. A waiver of rights required by a manufacturer or dealer is contrary to public policy and is unenforceable.

(d) A mobile home dealer shall display a notice of reasonable size stating the applicability of the warranty required by this section, and shall, upon request, provide a sample copy of the warranty. The notice shall be posted in each area in which purchase orders and sales contracts for mobile homes are written.

(e) The manufacturer shall compensate a mobile home dealer who incurs expenses as a result of warranty obligations for which the manufacturer is legally responsible or for obligations which the manufacturer imposes upon the dealer. A provision of contract which is contrary to this subsection is void as against public policy.

(f) In this section, a defect is "substantial" if it materially affects the fitness of the mobile home for occupancy or use by the buyer or his transferee.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.30  
SECTION = 45.30.015  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 30.  
Mobile Homes and Mobile Home Parks.  
CITATION Sec. 45.30.015.  
CATCH LINE

BONDS.  
TEXT (a) A manufacturer constructing mobile homes for sale in the state shall deposit a performance bond in the amount of \$35,000 with the department to assure compliance with the provisions of AS 45.30.011.  
(b) A manufacturer who discontinues construction of mobile homes for sale in the state shall maintain a performance bond in the required amount for a period of 24 months after the date the last mobile home was delivered to a buyer in the state.

HISTORY (Sec. 1 ch 104 SLA 1980)

CHAPTER = 45.50  
SECTION = 45.50.471  
TITLE = 45  
HEADINGS TITLE 45.  
Trade and Commerce.  
CHAPTER 50.  
Competitive Practices and Regulation of Competition.

ARTICLE 4.

Unfair Trade Practices and Consumer Protection.

CITATION Sec. 45.50.471.

CATCH LINE

UNLAWFUL ACTS AND PRACTICES.

TEXT

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce are declared to be unlawful.

(b) The terms "unfair methods of competition" and "unfair or deceptive acts or practices" include, but are not limited to, the following acts:

(1) fraudulently conveying or transferring goods or services by representing them to be those of another;

(2) falsely representing or designating the geographic origin of goods or services;

(3) causing a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;

(4) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;

(5) representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparaging the goods, services, or business of another by false or misleading representation of fact;

(8) advertising goods or services with intent not to sell them as advertised;

(9) advertising goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation on quantity;

(10) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engaging in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives or damages a buyer or a competitor in connection with the sale or advertisement of goods or services;

(12) using or employing deception, fraud, false pretense, false promise, misrepresentation, or knowingly concealing, suppressing, or omitting a material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not a person has in fact been misled, deceived or damaged;

(13) failing to deliver to the customer at the time of an installment sale of goods or services, a written order,

contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language;

(14) representing that an agreement confers or involves rights, remedies or obligations which it does not confer or involve, or which are prohibited by law;

(15) knowingly making false or misleading statements concerning the need for parts, replacement, or repair service;

(16) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(17) basing a charge for repair in whole or in part on a guaranty or warranty rather than on the actual value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the guaranty or warranty, if any;

(18) disconnecting, turning back or resetting the odometer of a vehicle to reduce the number of miles indicated;

(19) using a chain referral sales plan by inducing or attempting to induce a consumer to enter into a contract by offering a rebate, discount, commission, or other consideration, contingent upon the happening of a future event, on the condition that the consumer either sells, or gives information or assistance for the purpose of leading to a sale by the seller of the same or related goods;

(20) selling or offering to sell a right of participation in a chain distributor scheme;

(21) selling, falsely representing or advertising meat, fish or poultry which has been frozen as fresh food;

(22) failing to comply with AS 45.02.350;

(23) failing to comply with AS 45.45.130 45.45.240;

(24) counseling, consulting or arranging for future services relating to the disposition of a body upon death whereby certain personal property, not including cemetery lots and markers, will be furnished or the professional services of a funeral director or embalmer will be furnished, unless the person receiving money or property deposits the money or property, and money or property is received, within five days of its receipt, in a trust in a financial institution whose deposits are insured by an instrumentality of the federal government designating the institution as the trustee as a separate trust in the name only of the person on whose behalf the arrangements are made with a provision that the money or property may only be applied to the purchase of designated merchandise or services and should the money or property deposited and any accrued interest not be used for the purposes intended on the death of the person on whose behalf the arrangements are made, all money or property in the trust shall become part of his estate; upon demand by the person on whose behalf the arrangements are made, all money

or property in the trust including accrued interest, shall be paid to him; this paragraph does not prohibit the charging of a separate fee for consultation, counseling or arrangement services if the fee is disclosed to the person making the arrangement; any arrangement under this paragraph which would constitute a contract of insurance under AS 21 is subject to the provisions of AS 21;

(25) failing to comply with the terms of the Alaska Gasoline Products Leasing Act (AS 45.50.800 45.50.850).

(c) The unlawful acts and practices listed in (b) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other state statutes.

(d) Repealed by sec. 21 ch 166 SLA 1978.

HISTORY

(Sec. 2 ch 246 SLA 1970; am sec. 1 ch 53 SLA 1974; am sec. 1 ch 138 SLA 1974; am sec. 1 ch 183 SLA 1975; am sec. 2 ch 146 SLA 1976; am sec. 3 ch 197 SLA 1976; am sec. 3 ch 234 SLA 1976; am sec. 21 ch 166 SLA 1978)