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SENATE COMMITTEE REPORT

FURTHER

3/17/89

DATE TURNED INTO OFFICE 4/6/89

Mr. President:

Finance

Committee considered SB 128

extending the termination date of the Alaska Code Revision Commission; efd
and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS _____) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new 4/5/89 51.1 updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]
Mike Keane
Paul Frank

[Signature] DR-PASS
[Signature] (CO-CHAIR)
 Chairman signature and recommendation
[Signature] DR-PASS CO-CHAIR

Committee Backup attached

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act extending the termination
date of the Alaska Code Revision Commission...
Sponsor: Senator Sturgulewski
Requestor: Senate Finance

Affecte Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0.0	26.5	26.5	26.5	26.5	0.0
Travel	0.0	15.0	15.0	15.0	15.0	0.0
Contractual	0.0	8.6	8.6	8.6	8.6	0.0
Supplies	0.0	1.0	1.0	1.0	1.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	51.1	51.1	51.1	51.1	0.0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	51.1	51.1	51.1	51.1	0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	51.1	51.1	51.1	51.1	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Please note: 17.6 of FY 90 funding has already been requested in the Legislative Affairs Agency budget request. This fiscal note for FY 90 reflects the 17.6 plus the additional 33.5 to add additional staff months to support the Code Revision Commission.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 4/5/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren W Endicott

Date: 4/5/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL NOTE - SB 128

Funding for the Code Revision Commission has been under the Legal Services Division since FY 87.

Current FY 89 funding is as follows:

23.0 Travel
17.6 Contractual (3.6 contractual--phones, advertising, etc., 14.0 Title 2 rewrite)
<u>1.0 Supplies</u>
41.6

Senate Bill 128 extends the termination date of the Alaska Code Revision Commission.

A recent audit found the funding level of the Code Revision Commission to be inadequate to carry out their function.

The following funding is being requested to adequately support the Code Revision Commission within the Legal Services Division. Existing clerical and attorney time will be absorbed within the Division to provide year-round staff support for the Commission. The funding request for personal services will increase existing staff from 9 months to 12 months.

Personal Services:

3 months at 12A - Admin Asst	9.0	
3 months at 23A - Attorney	<u>17.5</u>	
	26.5	26.5
Travel: Travel of 13.0 has already been requested in the FY 90 LAA budget request. An additional 2.0 is requested.		15.0
Contractual: Contractual of 3.6 has already been requested in the FY 90 LAA budget request. An additional 5.0 is requested for professional services for special projects.		8.6
Supplies: Supplies of 1.0 has already been requested in the FY 90 budget request.		<u>1.0</u>
		51.1

LAA Request		SB 128 Fiscal Note		Code Revision FY 90 Request	
Travel	13.0	Pers Svcs	26.5	Pers Svcs	26.5
Contr.	3.6	Travel	2.0	Travel	15.0
Supplies	<u>1.0</u>	Contr.	5.0	Contr.	8.6
	17.6		<u>33.5</u>	Supplies	<u>1.0</u>
					51.1

1 IN THE SENATE

BY STURGULEWSKI

2

SENATE BILL NO. 128

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act extending the termination date of the Alaska

7

Code Revision Commission; and providing for an effective

8

date."

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

10 * Section 1. AS 44.66.010(a)(8) is amended to read:

11

(8) Alaska Code Revision Commission (AS 24.20.075) --

12

June 30, 1993 [1989];

13

* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

4/14/89

PROPOSED FY 90 BUDGET AMENDMENTS
LEGISLATIVE COUNCIL SUBCOMMITTEE RECOMMENDATIONS
TO THE LEGISLATIVE AFFAIRS AGENCY PROPOSED BUDGET

EXECUTIVE ADMINISTRATION

Reduce mainframe software rental	-53.4
Increase Southwest Energy Council dues	12.5
Add Western States Legis Forestry Task Force dues	3.5
Reduce travel by 10%	<u>- 2.1</u>
	-39.5

PUBLIC SERVICES

Reduce travel by 10%	- 1.5
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ADMINISTRATIVE SERVICES

Reduce travel by 10%	- .8
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LEGAL SERVICES

Add Ethics Attorney (transfer from H & S Ethics)	69.6
Reduce Legal Services travel by 10%	- 1.3
* Reduce Code Revision Commission contractual (14.0 approp for FY 89 Title 2 rewrite; 3.6 remains in contractual for phones, ads, etc.)	-14.0
* Reduce Code Revision Commission travel (remaining 13.0 covers 4 meetings - travel & per diem for 6 non legislative members)	<u>-10.0</u>
	44.3

COUNCIL & SUBCOMMITTEES

Add Student Internship Program *why not let the Univ. pay for it?*
2.5 stipend/intern + intern travel to/from Juneau 30.0

Reduce Admin Reg Review Committee (remaining
balance for ARR 44.0) -26.0

Increase Senate Ethics 9.6

Transfer from Ethics Committees to Legal Services
funding for Ethics Attorney (remaining requests for
House & Senate Ethics after Senate increase and
transfer to Legal Services - Senate Ethics 25.0,
House Ethics 15.0) -69.6

Add Western Legislative Conference Annual Meeting
(Anchorage, 1990) 50.0

- 6.0

OFFICE SPACE

Reduce travel by 10% - .1

Increase contractual for sufficient janitorial 24.0

23.9

HOUSE RESEARCH

Delete funding -644.0

SENATE ADVISORY COUNCIL

Delete funding -616.6

LEGISLATIVE RESEARCH AGENCY

Add funding for combined research 1,260.6

Reduce travel by 10% - 3.4

1,257.2

GRAND TOTAL 17.0

ALASKA CODE REVISION COMMISSION



COMMISSIONERS
JOHN W. ABBOTT · CHAIRMAN
WILSON L. CONDON
PETER FROEHLICH
RICK HALFORD
MARY HUGHES
DICK MADSON
JUDGE (RET.) THOMAS B. STEWART
JOHN SUND

ALASKA STATE LEGISLATURE
P.O. BOX Y · STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-2450

EXECUTIVE SECRETARY
TAMARA BRANDT COOK

December 19, 1988

DEC 22 1988

Randy S. Welker
Legislative Auditor
Division of Legislative Audit
State of Alaska
Budget and Audit Committee
P.O. Box W
Juneau, Alaska 99811-3300

Re: A Performance Review of the Alaska Code Revision Commission
for the years 1985 through 1988; Response of the Commission

Dear Mr. Welker:

This letter will constitute the response of the Alaska Code Revision Commission pursuant to your letter request under date of November 28, 1988. The Commission met in formal session on December 16, 1988 and the following response represents the consensus of the Commission following its review of the performance review performed by Elgee & Rehfeld.

The Commission agrees with most of the matters contained in the performance review. However, it is felt that some clarifications should be made and disagreement with certain conclusions should be stated. The following are clarifications to the report:

1) At page 3 (Report Conclusion), the review states that no new significant legislative projects have been taken under consideration by the Commission.

In fact, the Commission is currently preparing a draft bill on Occupational Licensing. This project was dropped by the Commission during the Sheffield administration when a representative of the governor's office requested that the Commission draft bill and work product be forwarded to the Governor so that the executive branch could pursue legislative updating Title 8. No

such action was undertaken and the Commission again took under consideration the complete overhaul of this title. Because of a new administration, a new director of Occupational Licensing and numerous changes enacted into law by the Legislature, a complete review of the Occupational Licensing draft bill has become necessary. Substantial work will be necessary to provide a draft bill that reflects recent changes by the Legislature. Such a review has been in process since 1987.

The same is true of the Administrative Procedures Act which was exposed to hours of public hearings and considerable written responses from agencies of the executive branch. Because of the new administration, it has been necessary to again solicit responses from all agencies affected by a new APA title. This fresh review of the APA began in 1987 and is expected to conclude with a draft bill within the next six months.

During the last legislative session, the Senate requested that the Commission review Title 2 in its entirety, providing additional funding (\$14,000.00) for the hiring of a consultant to assist the Commission in its review. The Commission will be providing the Legislature with its review and recommendations for changes to this title.

2) The audit report recognizes that the focus of the review should not be the "number or importance of the commission's recommendations that have actually been enacted by the legislature - but rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws". (Page 9 of audit report). However, the report goes on to state at page 10 that the effectiveness of the commission is not impressive because only two recommended changes were enacted into law.

The Commission agrees that the number of bills passed should not be used to determine the effectiveness of its operation. It is important to note that other states that have concluded major overhauls of their statutes have taken from 10 to 15 years from consideration of a topic to enactment by the legislature. Ten years is probably an average amount of time to enact a bill such as the for-profit corporations code. Additionally, the Commission during the last legislative session worked on changes to the Security Interests bill and the Cooperative Corporations Code. Because it is necessary to prioritize the importance of its draft bills, emphasis was placed on those bills most likely to be given consideration by the Legislature. As such, the Commission expended most of its efforts on the for-profit corporations code and the recording act.

3) On page 12 of the report (Efficiency), the report states that "[t]here appears to be a direct correlation between the commission's budget reduction and the amount of work produced by the commission". While the Commission agrees with this proposition, it should also be understood that changes in the membership of the Legislature and the Executive branch of the government necessitate additional changes in the draft bill product of the Commission. This is true of all bills submitted for Legislative consideration and is unavoidable. Also, as previously stated, the scope of legislative change encompassed by the Commission's draft bills will always be reflected in the amount of time needed for enactment of such legislation. What work is not reflected in the "bill passage rate" includes work on Occupational Licensing, Administrative Procedures Act, the non-profit and cooperative corporations codes and updating the Security Interests in Real Property bill. Relatively minor legislative changes have been made in the past on a number of Commission bills which tend to distort the "bill passage rate". As such, it should be understood that the subject matter of the bill plays a significant role in how much time is spent in changes until enactment and how much time is required to get a bill passed into law.

Finally, it is necessary to focus on changes to any draft bill necessitated by a change in administration or recent changes in law enacted by the Legislature. Before a Commission draft bill can be introduced, it is always necessary to "update" the draft to correspond with legislative changes made since the bill was last considered. As such, it is misleading to speak of completion of "legislation" prior to its enactment by the Legislature. Any draft bill is actually complete when considered and enacted by the Legislature.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

First Paragraph: The Commission agrees that there is a relationship between the size of its budget and the time frame within which a particular draft bill is ready for introduction into the legislative process. The Commission disagrees with the analysis concerning completion of a particular draft bill. For the reasons previously stated, and because the laws of the State are continually changing, it will always be necessary to "update" draft legislation, regardless of the size of the budget. It is true, however, that an increase in the budget would allow this "updating" process to be speeded up considerably. It should also

be noted that the Commission has been provided with a substantial amount of assistance by the Legal Division of LAA, with the understanding that work must be prioritized by Legal Division to carry out its main function of serving the Legislature. Every effort has been made by Legal Division to provide the Commission with assistance in performing its function.

Second Paragraph: The Commission generally agrees with this paragraph with the following comments. First, the Commission has in the past operated at a maintenance level budget and has performed its statutory mandate. It is correct to state that not all minutes of the meetings have been kept (although there are few lapses in the minute records). All of the meetings have been recorded on tape so that the actions of the Commission have been memorialized. The recent practice of having personnel from Legal Division attend meetings and keep the minutes has helped the Commission considerably memorializing its actions.

Third Paragraph: The Commission agrees that a half time position in both administrative and legal research areas be made available to the Commission. It also agrees that these positions should be included in the Legal Division (LAA) rather than creating these positions in the Commission.

Fourth Paragraph: The Commission disagrees that it should be discontinued if a budget increase is not forthcoming. It believes that it can continue to provide a service not presently performed in any other sector of State government. It also believes that it can continue to provide draft legislation of high quality for consideration by the Legislature even with a maintenance level budget and assistance such as is currently available from Legal Division.

RESPONSE TO RECOMMENDATION NO. 1

The Commission agrees that its budget should be increased; that two half-time positions should be added to Legal Division for further assistance to the Commission. The Commission disagrees with that part of the recommendation that holds that it should be discontinued if additional funding is unavailable. It also disagrees with that part of the recommendation relating to the appointment of a special commission to work on legislation on an as needed basis.

The Commission has developed a particular expertise in reviewing existing laws and drafting new laws. Its composition is such that it represents the views of all three branches of State government. Furthermore, as the audit report recognizes,

the mandate of the Commission includes much more than just responding to specific legislative requests. The value of the Commission (and other similar commissions in other states) is the ability of the body to determine on its own areas of the law that require review. This is particularly true in Alaska where much of its statutory law was borrowed from other states in 1959. The Legislature does not normally perform a review of existing law except within the context of drafting an amendment to a particular statute. With the exception of Title 11 (the criminal code) and Title 29 (Municipal Government), the Legislature has never undertaken a wholesale review of a particular title. Performance of this function was one of the main reasons for the creation of the Commission in 1976. Additionally, the Legislature does not normally consider or review the many additional sources for change enumerated in AS 24.20.075 et seq. A special commission appointed to just consider a specific legislative request would not be in a position to perform the additional functions outlined in the enabling legislation nor would it maintain the continuity that a permanent commission enjoys. It is the Commission's belief that without a permanent commission, there will be little likelihood that the work presently performed by the Commission will be undertaken by the Legislature or by a special commission. The ability to continually review existing laws to determine a need for change or amendment is a function particularly unique to a permanent commission and is not something that will be done by the Legislature except in rare instances.

The Commission also disagrees with the underlying premises implicit in the recommendations contained in Recommendation No. 1: that is, that the Commission should be discontinued if it is unable to perform at maximum efficiency. It is the Commission's position that it provides a valuable service not provided by any branch of State government, including the Legislature (except in rare instances). Even though the Commission has operated with a drastically scaled-down budget, it has continued to consider needed changes in the law and has in fact gotten two major pieces of legislation considered by the Legislature in the past session. While the Commission would enjoy a return to its 1984 level of funding, such funding is highly unlikely given the present demands for legislative funding and the greatly reduced sources of revenue for the State. The Commission can continue with a maintenance level budget to hold regular meetings and provide testimony to the Legislature during the sessions. With the assistance now available from Legal Division, both administrative and legal duties can be fully performed. In short, the Commission can continue to function and to fully perform its legislative mandate, providing a service not otherwise provided in the State.

Recommendation No. 2

First Paragraph: The Commission agrees with the content of this paragraph.

Second Paragraph: The Commission agrees with the content of this paragraph.

RESPONSE TO RECOMMENDATION NO. 2

The Commission agrees fully with this recommendation and will recommend to the appropriate appointing authority that members whose attendance falls below the 50% level be replaced with a member who will meet the attendance requirements. The Commission will also amend its by-laws (which govern the procedures used by the Commission) to reflect a requirement of 50% attendance at Commission meetings (excluding legislative members who are considered under recommendation no. 3 in this report).

Recommendation No. 3

First Paragraph: The Commission agrees with this paragraph.

Second Paragraph: The Commission agrees with this paragraph.

Third Paragraph: The Commission agrees with this paragraph. Legislative members in the past have designated persons to attend Commission meetings when they were unable to attend. The practice has been helpful to the Commission. It will add considerably to the dialogue established by the Commission if the designees can also vote on the topics under discussion. The Commission will amend its by-laws to reflect the new procedure recommended by this third paragraph.

RESPONSE TO RECOMMENDATION NO. 3

The Commission agrees fully with this recommendation and believes that the designees of legislative members can contribute significantly to the work of the Commission if they are able to vote on matters being considered by the Commission.

Summary of Responses to Recommendations and Action By The Commission.

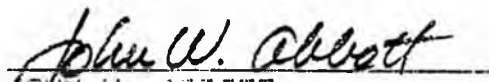
1. The Commission will submit a request for a budget increase to Legislative Council to increase the amount of funds available to contract for professional services. The Commission will also request that Legislative Council provide additional funding for two half-time positions to be included in the Legal Division of the Legislative Affairs Agency. Whether or not additional funding is available will be up to the Legislature. Funding increases would in all likelihood not be available until the next fiscal year. The Legislative Council would probably not request a supplemental appropriation on behalf of the Commission and additional funding would be available for the following fiscal year.

2. The Commission will adopt amendments to its by-laws to require a minimum of 50% attendance at all meetings by the members. The amendments will also require the Commission to notify any appointing authority of the failure of a member to meet this requirement and will request a replacement for the non-performing member. These amendments will be considered by the Commission at its next regularly scheduled meeting in January 1989.

3. The Commission will adopt amendments to its by-laws which will provide that any legislative members can appoint a designee to attend and vote at all Commission meetings. This amendment will be considered by the Commission at its next regularly scheduled meeting in January 1989.

Since the Commission has already agreed with the recommendations as set forth in this report (excepting therefrom those areas of disagreement), it is anticipated that the by-laws changes will be accomplished at the Commission's January 1989 meeting.

Very truly yours,



JOHN W. ABBOTT
Chairman, Alaska Code Revision
Commission

APPENDIX C

Budgets of the Alaska Code Revision Commission; FY84, FY85,
FY86, FY87, and FY88.

FISCAL YEAR 84

Appropriation received.	<u>\$245,600</u>
Personal Services	111,258
Travel and Per Diem	37,539
Contractual Services	91,345
Material and Supplies	<u>5,488</u>
	<u>\$245,600</u>

FISCAL YEAR 85

Appropriation received	<u>\$180,100</u>
Personal Services	115,175
Travel and Per Diem	20,080
Contractual Services	39,025
Material and Supplies	<u>5,820</u>
	<u>\$180,100</u>

FISCAL YEAR 86

Appropriation received.	<u>\$ -0-</u>
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FISCAL YEAR 87

Appropriation received.	<u>\$ 27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	<u>\$ 27,600</u>

APPENDIX C (continued)

FISCAL YEAR 88

Appropriation received.	\$ <u>27,600</u>
Personal Services	\$ -0-
Travel and Per Diem	23,000
Contractual Services	5,600
Materials and Supplies	<u>1,000</u>
	\$ <u>27,600</u>

BOARD: CODE REVISION COMMISSION, ALASKA

TITLE: Alaska Code Revision Commission

DEPT: Legislature

AUTHORITY: AS 24.20.075

STATUS: 89/06/30

REQUIREMENTS:

PROHIBITIONS: Public members may not be employees of state government.

TERM: 6 years (public members and Bar Association member); terms of public members and Board of Governor's designee begin July 1 and end June 30 six years later (even-numbered years).

DESCRIPTION: 8 members - 1 attorney employed by Executive Branch appointed by Governor; 3 public (not state government employees) appointed by Legislative Council; 1 legislator, appointed by each house's presiding officer; a designee of the Chief Justice of the Supreme Court, and a designee of the Alaska Bar Association Board of Governors appointed by the Board of Governors of the Alaska Bar; members may be reappointed or redesignated; commission selects chair.

SPECIAL FACTS: Serve at pleasure of appointing authority except 3 public members and designee of Alaska Bar Association who serve 6-year terms; quorum - 4 members; summary report to each Legislative Council, the Governor, all legislators, and the Chief Justice; commission selects chair and vice-chair.

FUNCTION: Reviews/recommends changes in statutes, judicial decisions for defects/anachronisms of the law; reviews/considers proposed changes in the law; receives/considers suggestions to review/remedy the law; may hold public hearings and other meetings throughout the state.

COMPENSATION: Standard travel/per diem for legislators.

MEETINGS: As determined by chair 10 times per year; 27 days maximum.

*FOR FURTHER INFORMATION CONTACT: Executive Secretary, Alaska Code Revision Commission, P.O. Box Y, Juneau, AK 99811 PHONE: 465-2450

- Description / Authority of BOARD -

ALASKA CODE REVISION COMMISSION

MEMBER	APPT	TERM
John W. Abbott P.O. Box 100588 Anchorage 99510 346-1039 Public - Chair	88/11/28	94/06/30
Dick L. Madson 712 8th Avenue Fairbanks 99701 (W) 452-4215 (H) 452-4254 Leg/Public	88/04/26	92/06/30
Wilson L. Condon 1121 Hillcrest Drive Anchorage 99503 (W) 276-2713 (H) 277-6137 Public	84/10/23	90/06/30
Peter Froehlich P.O. Box K Juneau 99811 (W) 465-3600 (CAP 412) Attorney/Executive	86/07/01	
Pat Rodey P.O. Box V Juneau 99811 (Cap. 113) (W) 465-3793 Legis/S	89/01/23	
Mary K. Hughes 509 West 3rd Ave. Anchorage 99501 (W) 274-7522 Bar Association	86/07/01	92/06/30
Thomas B. Stewart Pouch U Juneau 99811 (W) 463-4747 Supreme Court		
Fran Ulmer P.O. Box V Juneau 99811 (Cap. 421) (W) 465-4947 Legis/H	89/01/30	

CODE REVISION RESPONSIBILITY

Legislative

Other

	<u>Legislative</u>	<u>Other</u>
ALABAMA	X	
ALASKA	X	
ARIZONA	X	
ARKANSAS		Statute Revision Commission
CALIFORNIA	X	Law Revision Commission
COLORADO	X	
CONNECTICUT	X	
DELAWARE	X	
FLORIDA	X	
GEORGIA	X	
HAWAII	X	
IDAHO	X	
ILLINOIS	X	
INDIANA	X	
IOWA	X	
KANSAS	X	
KENTUCKY	X	
LOUISIANA		State Law Institute
MAINE	X	
MARYLAND	X	
MASSACHUSETTS	X	
MICHIGAN	X	
MINNESOTA	X	
MISSISSIPPI		Attorney General's Office
MISSOURI	X	
MONTANA	X	
NEBRASKA	X	
NEVADA	X	
NEW HAMPSHIRE	X	
NEW JERSEY	X	
NEW MEXICO		Compiler's Office, Executive Branch
NEW YORK	X	Law Revision Commission
NORTH CAROLINA		Attorney General's Office
NORTH DAKOTA	X	
OHIO	X	
OKLAHOMA	X	
OREGON	X	
PENNSYLVANIA	X	
PUERTO RICO	X	
RHODE ISLAND	X	
SOUTH CAROLINA	X	
SOUTH DAKOTA	X	
TENNESSEE	X	
TEXAS	X	
UTAH	X	
VERMONT	X	Statutory Revision Commission
VIRGINIA	X	
WASHINGTON	X	
WEST VIRGINIA		
WISCONSIN	X	
WYOMING	X	

THE FOLLOWING DOCUMENT HAS
NOT BEEN FILMED BUT IS
AVAILABLE IN THE ORIGINAL
FILE

A PERFORMANCE REVIEW
OF THE
ALASKA CODE REVISION COMMISSION

conducted by
ELGEE & REHFELD
Certified Public Accountants

Audit Control Number
30-1349-89-R

Members of the Alaska
Code Revision Commission

John W. Abbott, Chairman
Dick L. Madson
Wilson L. Condon
Peter Froehlich
Senator Rick Halford
Mary K. Hughes
Honorable Thomas B. Stewart
Representative John Sund

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

October 25, 1988

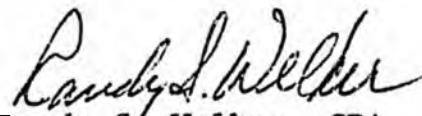
Members of the Legislative Budget
and Audit Committee:

According to the provisions of Titles 24 and 44 of the Alaska Statutes, the Division of Legislative Audit is required to conduct a "sunset" review of the Alaska Code Revision Commission.

Since this Division is part of the Legislative branch of the State, as is the Commission, we lack the apparent independence necessary to perform the review.

As a result, the audit of the Alaska Code Revision Commission was conducted, and this report has been prepared by Elgee & Rehfeld, Certified Public Accountants.

We feel this report discharges our responsibility under Titles 24 and 44. The report is submitted for your review.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

ELGEE
& REHFELD

CERTIFIED PUBLIC ACCOUNTANTS

9220 Lee Smith Drive, Juneau, Alaska 99801 (907) 789-1692

September 26, 1988

LEGISLATIVE AUDIT DIVISION
State of Alaska
P.O. Box W
Juneau, Alaska 99811-3300

SEP 28 1988

LEGISLATIVE
AUDIT

Att: Randy S. Welker, Legislative Auditor

Dear Mr. Welker:

In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska Code Revision Commission using guidelines and standards established in Alaska Statutes for such "sunset" reviews.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA CODE REVISION COMMISSION, is hereby submitted.

Respectfully,

George W. Elgee

George W. Elgee, CPA
Partner

GWE/jb

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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with AS 24.20.271(1) and AS 44.66 (Sunset Legislation), a review of the Alaska Code Revision Commission was conducted to examine the commission's activities, operation, policies and accomplishments. The purpose of the review is to determine if the subject commission has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Alaska Code Revision Commission should be continued or reestablished with changes. As currently specified in AS 44.66.010(a), this commission will terminate on June 30, 1989.

Scope

The major areas studied were the commission's operations, policies, administration and procedures; and the effectiveness of the commission in accomplishing its mandated objective of recommending changes needed to bring "the law into harmony with current needs and conditions." (AS 24.20.075(c)(4)).

The review consisted of examination, research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and amendments thereto:

- (2) Minutes of the commission from August 2, 1984 to June 17, 1988 (with exception of missing minutes).
- (3) Sunset review dated November 6, 1981.
- (4) Sunset review dated November 8, 1984.
- (5) Records and documents of the commission,
- (6) Contracts between the commission and its consultants,
- (7) Commission budgets for FY 86, FY 87 and FY 88,
- (8) Interviews conducted with:
Director of Legal Services, Legislative Affairs
Agency
Members of the commission
- (9) Financial records
- (10) Relevant legislative intent and bill history.

HISTORY, ORGANIZATION AND FUNCTION

The Code Revision Commission was established as a permanent commission of the legislature by an act of that body (CH 114 SLA-1976). The act creating the commission established its membership as consisting of two legislators (one from each house appointed by the presiding officer); a public member appointed by the governor; a designee of the chief justice of the supreme court, and a designee of the board of governors of the Alaska Bar Association. The director of legal services for the Legislative Affairs Agency or his designee serves as executive secretary for the commission.

The commission was created to:

- (1) examine the statutes of the state and judicial decisions to discover defects and anachronisms in the law;
- (2) review and consider proposed changes in the law recommended by the National Law Institute, the National Conference of Commissioners on Uniform State Laws, the Alaska Judicial Council, the Supreme Court, the state or local bar associations, principal departments, agencies, boards and commissions of the executive or judicial branch, and committees of the legislative branch;
- (3) receive and consider suggestions from the Alaska bench and bar, public officials, organizations and individuals as to areas of the law needing revision and remedy;
- (4) recommend changes in law needed to eliminate antiquated and inadequate rules of law and to bring the law into harmony with current needs and conditions.

The commission is empowered to:

- (1) hold public hearings and other meetings as necessary throughout the state, and to determine an appropriate quorum for conducting business;
- (2) establish one or more subcommissions to assist it in the performance of its duties.

The staff of the Legislative Affairs Agency serves as staff for the commission, and (subject to appropriations for the purpose) contracts with other agencies or persons for the performance of necessary services for the commission.

Funds considered necessary for the commission (per diem, travel, contract expenses) are to be sought in a formal budget request to the legislative council. (Appropriated funds are dispersed and accounted for under procedures required by the Legislative Affairs Agency).

All branches of state government are directed to provide information and documents required by the commission necessary to the accomplishment of its work.

The commission is directed to submit its reports and recommendations, and draft legislation as to revision of law, to the Legislative Council, and shall distribute them to the governor, members of the legislature, and the chief justice of the supreme court.

In 1977, membership on the commission was broadened to include a "designee of the governor who is an attorney employed by the executive branch of the state government." (CH 57 SLA 1977).

The enabling legislation was further amended by CH 44 SLA 1980 to:

- (1) clarify the name of the commission as the Alaska Code Revision Commission;
- (2) establish 6 year terms for the public members and the designee of the Alaska Bar Association Board of Governors , and prescribe the manner in which vacancies are filled;
- (3) clarify the per diem and travel allowances provided members of the commission;
- (4) prescribe the manner in which the public members and the designee of the Board of Governors shall determine the length of their respective terms of office;
- (5) bring the Alaska Code Revision Commission within the purview of the sunset law (AS 44.66.101)

In 1982, following consideration of the performance review of the Alaska Code Revision Commission conducted in accordance with the requirements of AS 44.66, the commission was continued until June 30, 1985. The enabling legislation was further amended by ch 65 SLA 1982 which provided for:

- (1) three public members (bringing total commission membership to eight), and specified the length of terms for the additional public members;
- (2) addition of the Alaska Legislative Council and the American Law Institute (formerly National Law Institute) to those organizations whose proposed changes in the law are to be reviewed and considered by the commission;

(3) a requirement that the commission's recommendations as to revisions of Alaska law shall be accompanied by a sectional analysis "using language that is understandable to a layman."

In 1986 AS 24.20.074 (b) was amended to have the three public members appointed by the Legislative Council instead of by the governor. An additional change was also made to continue the terms of commission members until a member's successor is appointed.

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REPORT CONCLUSION

Policy Issues

This review discusses issues raised as a result of our analysis and evaluation of the commission's organization and structure, responsibilities, operations and procedures. Resolution of these policy matters will require legislative action. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decision.

Report Conclusion

In our opinion, the Alaska Legislature should continue the Alaska Code Revision Commission as a permanent commission of the legislature subject, however, to an increase in the commission's operating budget. Additionally some changes should be made to the statutes regarding commission membership and attendance.

The conclusion recommending continuation of the commission is supported by the following rationale:

- (1)The commission serves an important function that is not duplicated by any other agency; i.e. substantive review of entire bodies of state law.

- (2)The commission has the time, objectivity, experience and expertise to conduct research into the often complex areas of law that it seeks to improve.

(3)The commission conducts a continuing forum where interested parties are welcome to provide testimony and to participate in debate with respect to areas of the law in need of amendment or reform.

(4)The commission provides a valuable service to the legislature by its study, hearings and resulting recommendations to the legislative council concerning improvement of state statutes.

The conclusion recommending increases to the commission's budget and changes to the statutes regarding membership and attendance is supported by the following findings:

The budget of the Commission is not adequate to properly conduct its affairs. This is evidenced by the fact that the commission has not kept adequate minutes of its meetings and has not taken on any significant new legislative tasks in four years.

Attendance at meetings of the commission by specific members of the commission was as low as 25% over the period under review.

Discussion

The Alaska Code Revision Commission is a dedicated organization. The members of the commission for the most part are not paid to serve on the commission. The commission's membership is such that the State of Alaska receives thousands of hours of free legal advise and consultation from some of the best legal minds available. The individual members are so dedicated to their mission that even though the commission's budget was eliminated in FY86 they still made themselves available to testify before the legislature on statute changes they had recommended.

It would not be equitable to use the same criteria in judging the performance of the Code Revision Commission, whose job is to make recommendations to the legislature, as would be employed in the audit of an agency or board directly serving the citizens of Alaska. Thus, the focus of this review is not the number or importance of the commission's recommendations that have actually been enacted by the legislature-- but rather, the fairness, effectiveness and efficiency of the commission's procedures in arriving at its recommendations for improvement of Alaska's laws.

FAIRNESS

The commission's work is conducted under the open meetings act. The commission accepts public testimony at all of its meetings. The nature of the commission's work does not attract public attention and the work performed by the commission is such that the average lay person would not comprehend the significance of many of the changes recommended by the commission to modify the specific statutes under review. Additionally, it may be perceived by many that the need to testify before the commission is not urgent in that all work done by the commission is then submitted to the Legislature for further review at which time those concerned may testify.

EFFECTIVENESS

The effectiveness of the commission is not impressive for the period under review. In the four years since the last review, the commission has had only two recommended changes enacted into law (see Appendix A). These two bills were issues which had been before the commission for almost ten years. This lackluster accomplishment can be viewed in both

a positive and a negative light. The fact that the recommendations were eventually enacted after ten years of effort lends credence to the importance of the legislation as well as the diligence of the commission. Probably no other formal body could have maintained the continuity and determination to pursue passage of these bills. The downside is that it took the commission ten years to get legislation approved and that the conditions under which the commission operates are such that only two bills passed in a four year period.

EFFICIENCY

Since its last sunset review, the commission incurred a substantial reduction to its operating budget. From 1982 until 1985, the commission had an attorney with substantial state government experience as its research director and a secretary. This staff provided the commission with an ability to conduct its business in what appears to have been an extremely efficient and effective manner.

There appears to be a direct correlation between the commission's budget reduction and the amount of work produced by the commission. During the period from 1982 to 1984, when the commission had full funding, eight major

pieces of commission legislation were enacted by the legislature. From the period 1985 to 1988, only two pieces of commission legislation have been enacted. It is important to note that, the work on these two pieces of legislation had been substantially completed by the commission before 1985. It appears the lack of commission staff has dramatically affected its ability to efficiently deal with its work load.

Per statute, the staff of the Legislative Affairs Agency serves as staff for the commission. In practice, however, the staff of the Legislative Affairs Agency has only infrequently been able to serve as staff for the commission; and contracting with consultants has not been possible since the commissions budget has been reduced.

* * *

The findings and recommendations contained in the following section of this review are designed to improve the fairness, effectiveness and efficiency with which the commission conducts its service to the legislature.

FINDINGS AND RECOMMENDATIONS

Recommendation No.1

The commission's budget should be increased. If the commission's budget is not adequately funded then the commission should not be continued.

The drastic reduction of the commission's budget appears to have had a substantial affect on the committee's ability to perform its function. The commission presently appears to be dealing only with legislation which it had substantially completed before its budget was cut. There is no indication that the commission has taken on or completed and sent to the legislature any new legislation which was not already substantially completed from prior years.

The commission's budget appears to be below even that of a maintenance level. The commission no longer has funds for personal services and insufficient funds to contract for any significant professional services. The funds available to the commission are basically for travel and per diem. During the period reviewed, the commission did not have staff for basic duties such as keeping the minutes of their meetings, these duties being assigned to individual commission members on a meeting by meeting basis.

Consequently, some minutes were not kept and were not available for review.

It is recommended that the commission be funded at a level sufficient to enable the commission to properly function. It is suggested that at least a half time position in both the administrative and legal research areas be made available to the commission. These positions might best be placed in the, legal services section of the Legislative Affairs Division and be made available to the commission on an as needed basis.

If the commission does not receive adequate funding then it is suggested that the commission not be continued. An alternative to the commission would be to appoint a special commission with adequate funding to work on legislation on an as needed basis as the legislature determines necessary.

Recommendation No. 2

Commission members who are excessively absent from commission meetings should be replaced.

In a review of the attendance by individual members of the commission, it was discovered that in some instances attendance was below 50%. The Legislature has recognized the importance of a commission whose makeup represents a broad range of legal and public interests. If a commission member is not able to attend meetings, then it is possible the commission is not getting sufficient input from the realm of legal and public areas of interests as envisioned by the legislature.

It is recommended that if attendance by an individual commission member falls below an acceptable level, that the member be replaced.

Recommendation No. 3

Legislative members of the commission should be allowed to designate a person to represent them at commission meetings should they not be able to attend.

A review of attendance by legislative members of the commission indicated that they attended less than 25% of commission meetings.

In interviews with commission members, it was agreed that participation by legislative members was both desirable and beneficial. Legislative members that have been actively involved in specific commission legislation have apparently been quite helpful in getting the commission's work enacted into law.

It is suggested that instead of replacing legislative members who have poor attendance, that they be allowed to designate a person to represent them at commission meetings. These designees should have full voting powers.

ANALYSIS OF PUBLIC NEED

The public need factors defined in the "Sunset" law pertain primarily to regulatory bodies, or to commissions, boards and agencies directly serving the public.

The following analysis of the Alaska Code Revision Commission addresses those factors deemed applicable to a permanent commission of the legislature that we were able to cover within the scope of our review.

A determination as to whether a board or commission or agency program has demonstrated a public need for its continued existence shall take into consideration the following factors.

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

1. The commission has recommended revisions to Alaska law which in its judgement were in the general public interest.

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

1. The commission's budget has dramatically decreased since its last sunset review. In FY86, the commission's budget was completely eliminated. (see Budget Information Appendix B). Yet despite reduced funding the commission has continued to operate. However, if the legislature is not going to appropriate adequate funding the commission should be eliminated (See Recommendation No.1).

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest;

1. The commission has recommended statutory changes which in its judgement was of benefit to the public interest.

IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided;

1. The commission has accepted and encouraged testimony on its recommendations.

V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions;

1. The commission has consistently attempted to notify all parties of interest in topics that it was studying, and has encouraged their participation in its meetings.

VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. No complaints have been filed with the ombudsman's office in a four year period.

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

Not applicable to this commission.

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

Not applicable to this commission.

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

Please refer to FINDINGS AND RECOMMENDATIONS section of this report.

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APPENDIX A

LEGISLATIVE ENACTMENT OF THE
RECOMMENDATIONS OF THE ALASKA
CODE REVISION COMMISSION 1985, 1986, 1987, 1988

APPENDIX A

LEGISLATIVE ENACTMENT OF COMMISSION RECOMMENDATIONS 1985,
1986, 1987, AND 1988

1985

NO COMMISSION LEGISLATION WAS ENACTED

1986

NO COMMISSION LEGISLATION WAS ENACTED

1987

NO COMMISSION LEGISLATION WAS ENACTED

1988

CORPORATION CODE
CH 166 - SLA88

DOCUMENT RECORDING
CH 161 - SLA 88

APPENDIX B

SCHEDULE OF
ALASKA CODE REVISION COMMISSION
LEGISLATION SUBMITTED TO THE LEGISLATURE
AND
WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

APPENDIX B

LEGISLATION SUBMITTED TO THE LEGISLATURE AND WORK IN PROCESS
BUT NOT SUBMITTED TO THE LEGISLATURE 1985, 1986, 1987,
1988.

14TH LEGISLATURE 1985-86.

LEGISLATION SUBMITTED TO THE LEGISLATURE

CORPORATION CODE
RECORDABLE DOCUMENTS (1)
SECURITY INTEREST IN REAL PROPERTY (2)

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT
COOPERATIVE CORPORATION CODE REVISION

15TH LEGISLATURE 1987-88

LEGISLATION SUBMITTED TO LEGISLATURE

DOCUMENT RECORDING (1)
REAL PROPERTY SECURITY INTEREST (2)
CORPORATIONS CODE

WORK IN PROCESS BUT NOT SUBMITTED TO THE LEGISLATURE

ADMINISTRATIVE PROCEDURE ACT
REVISION OF TITLE 8 (BUSINESS & PROFESSIONS)
OCCUPATIONAL LICENSING

- (1) Same bill, different titles
(2) Same bill, different titles

APPENDIX C

BUDGET OF THE ALASKA
CODE REVISION COMMISSION
FY84, FY85, FY86, FY87, FY88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act extending the termination
date of the Alaska Code Revision Commission...
Sponsor: Senator Sturgulewski
Requestor: Senate Judiciary

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0	0	0	0	0	0
Travel	23.0	23.0	23.0	23.0	23.0	0
Contractual	17.6	17.6	17.6	17.6	17.6	0
Supplies	1.0	1.0	1.0	1.0	1.0	0
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	41.6	41.6	41.6	41.6	41.6	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Personal Services funds are not included in this fiscal note. The Legislative Affairs Agency Legal Services Division provides all required staff assistance for the commission.

The current level of funding for the Code Revision Commission is adequate.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 3/13/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren Endicott

Date: 3/13/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act extending the termination
date of the Alaska Code Revision Commission...
Sponsor: Senator Sturgulewski
Requestor: Senate Judiciary

Affect Agency Legislative Affairs Agency
BRU: Legislative Council
Components Legal Services

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services	0.0	53.0	53.0	53.0	53.0	0.0
Travel	0.0	*0.0	23.0	23.0	23.0	0.0
Contractual	0.0	*5.0	8.6	8.6	8.6	0.0
Supplies	0.0	*0.0	1.0	1.0	1.0	0.0
Equipment	0.0	5.6	0.0	0.0	0.0	0.0
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	63.6	85.6	85.6	85.6	0.0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

General Fund	0	63.6	85.6	85.6	85.6	0
Federal Fund	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	63.6	85.6	85.6	85.6	0

POSITIONS:

Full-Time	0	0	0	0	0	0
Part-Time	0	2	2	2	2	0
Temporary	0	0	0	0	0	0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

*41.6 of FY 90 funding has already been requested. This fiscal note for FY 90 reflects additional funding requested to add 2 staff members to the Code Revision Commission.

Prepared By: Pamela Stoops, Director
Division: Administrative Services

Pamela Stoops

Phone: 465-3850
Date: 3/15/89

Approved By: Warren Endicott, Executive Director
Agency: Legislative Affairs Agency

Warren Endicott

Date: 3/15/89

DISTRIBUTION (BY PREPARER)
LEGISLATIVE FINANCE
LEGISLATIVE SPONSOR

REQUESTOR
OFFICE OF MANAGEMENT & BUDGET
AGENCY (IES)

CONTINUATION OF FISCAL NOTE - SB 128

Funding for the Code Revision Commission has been under the Legal Services Division since FY 87.

Current FY 89 funding is as follows:

23.0 Travel	
17.6 Contractual (3.6 contractual--phones, advertising, etc., 14.0 Title 2 rewrite)	
1.0 Supplies	
<u>41.6</u>	

Senate Bill 128 extends the termination date of the Alaska Code Revision Commission.

A recent audit found the funding level of the Code Revision Commission to be inadequate to carry out their function.

Staffing is requested as follows:

Personal Services:

6 months at 12A Admin Asst	18.0
6 months at 23A Attorney	<u>35.0</u>
	53.0

Travel: Travel of 23.0 has already been requested in the FY 90 budget request.

Contractual: Contractual of 17.6 has already been requested in the FY 90 budget request. For FY 91, 92 and 93, 14.0 is reduced from contractual for rewrite of Title 2. Additional funding for office space would be required for 2 staff-- 5.0 office space rental.

Supplies: Supplies of 1.0 has already been requested in the FY 90 budget request.

Equipment:

Equipment would be needed for 2 staff:

Computer	2.5
Laser Printer	2.0
Chair	0.5
File Cabinet	<u>0.6</u>
	5.6