

HB

405

SFIN

FILE



Alaska State Legislature Senate

Office of the Secretary

OFFICIAL BUSINESS

P.O. BOX V
CAPITOL BUILDING
JUNEAU, ALASKA 99811

FOR YOUR IMMEDIATE ATTENTION

DATE: 5/5/96

TO SENATE COMMITTEE: Finance

FROM: Office of the Senate Secretary

The Chairman of the above-referenced Committee has waived the Committee referral on the following bill(s):

HB 405 - Bd of Optometrists
HB 2 - Boot Camps

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you for your prompt attention to this request.

JR/s

FISCAL NOTE

No. 1

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Bill Version: HB 405
(H) Publish Date: 1/16/96

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act extending the termination date of the BRU: Occupational Licensing
 Board of Optometry: _____ Component: Operations
 Sponsor: House Labor & Commerce
 Requestor: Representative James COMPONENT SERIAL NO. 1844

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	15.7	15.7	15.7	15.7	15.7	15.7
TRAVEL	2.8	2.8	2.8	2.8	2.8	2.8
CONTRACTUAL	4.5	4.5	4.5	4.5	4.5	4.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	23.0	23.0	23.0	23.0	23.0	23.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES	48.5	3.8	48.5	3.8	48.5	3.8

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	23.0	23.0	23.0	23.0	23.0	23.0
TOTAL	23.0	23.0	23.0	23.0	23.0	23.0

Estimate of any current year (FY 96) cost: \$ 27.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 HB 405 extends the Board of Optometry to June 30, 2001. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$27.0. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: January 10, 1996
 Approved by Commissioner: William L. Hensley Date: 1-11-96
 Agency: Commerce and Economic Development

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COMMITTEE COPY

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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April 23, 1996

Senator Rick Halford, Co-chairman
Senate Finance Committee
State Capitol
Juneau, AK 99801

Dear Senator Halford:

Continuation bills for three of our licensing boards are awaiting scheduling in the Senate Finance Committee. The three bills are Board of Dispensing Opticians (HB 382), Board of Chiropractic Examiners (HB 404), and Board of Examiners in Optometry (HB 405). These programs have been audited by the Legislative Audit Division and recommended for continuation. The bills incorporate the changes suggested in the audits.

I would appreciate it very much if you would schedule HB 382, HB 404 and HB 405 for hearings.

Sincerely,



Catherine Reardon
Director

House Labor & Commerce Committee

State Capitol
Juneau, Alaska 99801-1182
907-465-4954

APR 20 1996

TO: Senator Rick Halford
Co-Chair
Senate Finance Committee

Senator Steve Frank
Co-Chair
Senate Finance Committee

FROM: Representative Pete Scott
Chair

DATE: April 18, 1996

RE: CS HB 405 (STA); Request for Committee Action.

I request that CS HB 405 (STA) be scheduled for committee action. This bill, should it be enacted into law, would extend the Board of Examiners in Optometry, which is due to sunset this year. It also clarifies the law by providing that employees of physicians and optometrists may perform duties assigned to them without coming into the jurisdictional purview of the Board of Dispensing Opticians. I enclose herewith the following:

1. A copy of the bill;
2. A sponsor statement;
3. A sectional;
4. A fiscal note; and
5. Backup material.

Should you have any questions, or if I can be of any assistance, please do not hesitate to contact me.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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October 4, 1995

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.

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF EXAMINERS IN OPTOMETRY

October 4, 1995

Audit Control Number
08-1436-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report we assess the operations and performance of the Board of Examiners in Optometry utilizing the criteria set out in AS 44.66.050(c). This criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(19), the Board of Examiners in Optometry is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Examiners in Optometry until June 30, 2002.

The audit was conducted in accordance with generally accepted government auditing standards and the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in developing this report are discussed further in the Objectives, Scope, and Methodology section on page one.

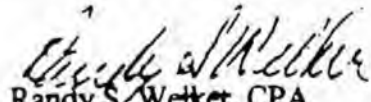

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(19) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Our audit reviewed the operations and activities of the Board of Examiners in Optometry for the period of FY 92 through FY 95.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her optometry license in good standing.
2. Minutes of meetings of the Board of Examiners in Optometry.
3. Annual reports issued by the board.
4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

We also conducted interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing, and the Department of Law.

ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry was established under the provisions of Title 8, Chapter 72 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Four board members must be licensed, practicing optometrists who have been residents in the State for at least three years. The statute also requires one member of the general public to sit on the board.

The board regulates the practice of optometry in the State by setting education, training, and work experience standards necessary for an individual to be licensed as an optometrist.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.¹

Members of the Board of Examiners in Optometry (As of June 30, 1995)*

James W. Matson, Optometrist & Chairperson
Lynn J. Coon, Optometrist & Secretary
Steve S. Dobson, Optometrist
Randall Christiansen, Optometrist

* As of the date of this report Governor Knowles has not appointed a public member to the Board of Examiners in Optometry (See Recommendation No. 3).

The board's duties and responsibilities under statute include:

1. Holding a minimum of one meeting per year.
2. Examining and issuing licenses to qualified applicants.
3. Holding hearings in order to impose disciplinary sanctions on persons who violate optometry licensing statutes and/or regulations.
4. Adopting regulations necessary to enforce the statutes relating to the board.
5. Adopting a code of ethical practice for optometry.

¹ Recent statutory amendments provide that optometrists may obtain a license endorsement that permits them to prescribe and administer pharmaceutical agents. These pharmaceutical agents (drugs) may only be topically applied to the human eye and its appendages. To obtain such an endorsement an individual must pass "written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the prescription and use of pharmaceutical agents."

Applicants must be a high school graduate or equivalent in addition to having graduated from a recognized college or school of optometry. Additionally, all applicants must certify that they are in good health with no contagious or infectious diseases and have a visual acuity correctable to 20/40. Licensed optometrists are required to obtain 12 hours of continuing education per year.²

Alaska's optometry statutes and regulations do not allow for reciprocity with other states. Optometrists licensed in other states wishing to practice in Alaska must first become licensed in Alaska. Applicants that have passed a written examination in another jurisdiction may obtain waiver from passing the written examination requirement.³ However, AS 08.72.170 specifically states "a waiver of the practical or oral portions of the examinations may not be given."

To become licensed in Alaska optometrists licensed in other states must provide the department with official documentation verifying Alaskan optometry educational requirements have been met. They must also apply for and pass all parts of the state optometry examination, pay all examination and application fees, and fulfill all other licensing requirements.

State law requires all optometrists licensed in Alaska to license each of their branch offices. There are few requirements for the licensing of branch offices. Optometrists must submit completed applications and pay all the required fees to the Division of Occupational Licensing biennially. Currently, the board is no longer enforcing the statute and the division is no longer collecting the required fees.⁴

The board grants license endorsements for optometrists to prescribe and use pharmaceutical agents. The board also grants endorsements for practitioners to only use pharmaceutical agents. Currently, all applicants graduating from optometry schools automatically qualify for pharmaceutical prescription and use license endorsement, after meeting all other licensing requirements.

² If an optometrist maintains a license endorsement for the prescription and use of pharmaceutical agents as discussed in footnote one then they must obtain additional hours of continuing education.

³ The state examination consists of three sections — oral, written, and practical. Alaska Statute 08.72.170 grants the board the authority to waive the written portion of the state examination. The board may not waive either the practical or oral sections. The written section of the examination may be waived if:

- 1) The applicant meets all other examination criteria per AS 08.72.140.
- 2) The applicant holds a current license by examination in another state or a province of Canada if they have been established in an ethical practice for at least three years.
- 3) The applicant can show satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry.
- 4) The applicant has not had a certificate or license revoked for cause in any state, territory, or foreign country.

⁴ AS 08.72.125, and 12 AAC 48.030 relate to the licensing of branch offices. Neither clearly defines when branch office licenses are required, rather they address situations only when they are not (See Recommendation No. 1).

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing (OccLic) provides administrative and investigatory assistance to the Board of Examiners in Optometry. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065, mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Results of our reviews during prior audits determined OccLic has implemented timekeeping policies and procedures to ensure licensing fees for boards and commissions include and closely reflect actual administrative, investigative, and overhead costs incurred by the division.

Further, under AS 08.01.087, OccLic has the authority to act on its own initiative or in response to a complaint and may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified optometrists is necessary to protect the public's health, safety, and welfare. The board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses when appropriate.

The Board of Examiners in Optometry has been found to satisfy a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The Board of Examiners in Optometry statutes, regulations, policies and procedures are current. The board carries out its regulatory oversight function in a professional, competent, and efficient manner.

Alaska Statute 08.03.010(c)(19) requires the Board of Examiners in Optometry be terminated on June 30, 1996. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend legislation be enacted to extend the board's termination date to June 30, 2002.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

Current statutory provisions related to the Board of Examiners in Optometry contribute to administrative "bottlenecks" in the licensing of optometrists. Additionally, certain statutory requirements are apparently no longer relevant to conventions of current practice. Specifically, we suggest the legislature consider:

1. Eliminating reference to, or extending the deadline for applications. Under current statute (AS 08.72.150) applicants for licensure may submit their applications and supporting documentation 15 days before examination or license expiration date. This 15 day deadline has caused a workload "bottleneck" for the licensing examiner during renewal periods. During these periods, the licensing examiner must process large volumes of various types of documentation received from applicants and license holders. He must check the applications for completeness and follow-up on missing documentation, in preparation for final review and approval of the full board.

The 15 day deadline allows little time for the licensing examiner to request additional documentation and to make corrections before the board reviews applicant files. The statutes for most other licensing boards leave the setting of the deadline to the discretion of the Division of Occupational Licensing (OccLic) or provide for more time than 15 days. We suggest that the legislature repeal AS 08.72.150 and leave the establishment of administrative deadlines to OccLic and the board through the adoption of regulations.

2. Repealing license requirements related to branch offices. At a June 1994 meeting, the board directed OccLic to no longer enforce AS 08.72.125 which requires the licensing of each branch office of any licensed optometrist's practice. This statute directs that "*a person may not practice, or attempt or offer to practice, optometry without obtaining a license for each branch office from the board.*"

Since the board's decision, no collection notices have been sent to optometrists and branch office licensing fees have not been actively collected by OccLic. The only occasion these fees have been collected has been when an optometrist has voluntarily remitted payment. From our review of statutory history and the discussion of the board it appears the conditions and concerns that originally gave rise to branch office licensing requirements no longer exist. We suggest the legislature repeal this statute.

3. Repeal health and visual acuity requirements. Currently, AS 08.72.140 requires applicants for examination and licensure to provide the division with notarized or certified documentation verifying they are free from contagious and infectious diseases and have visual acuity of 20/40 in at least one eye as corrected. With one exception, no other profession — not even those that are typically thought of as being more medically related such as physicians, dentists, or nurses — has such a disease-free requirement.

Enactment of the federal Americans with Disabilities Act increased both the number and types of discrimination claims which may be asserted by individuals and enforced by a court of law. The potential for litigation against the board and/or State based on assertions that these two requirements are discriminatory may now exist. We suggest that OccLic obtain an opinion from the Attorney General's office regarding the advisability and legality of these requirements. We also suggest the legislature reconsider these statutory requirements in both AS 08.74.140 and AS 08.72.181 (which pertains to renewal of licenses).

4. Clarify the status of unlicensed professionals supervised by optometrists. There is a unique professional and commercial overlap between licensed optometrists and dispensing opticians. Both professionals are licensed to dispense eyeglasses and contact lenses. Both professions are allowed to supervise unlicensed individuals to assist them in the dispensing of corrective lenses. However, it has been asserted by dispensing opticians that all unlicensed assistants should be registered optician apprentices — subject to requirements set out in the optician licensing statutes. Analysis by the Department of Law supports this interpretation of current statute.

There are allegations that despite the requirements of statute (as further interpreted by the Department of Law) many optometrists utilize unlicensed or unregistered assistants to dispense corrective lenses. Twice in recent years the Board of Examiners in Optometry has sought legislation that would exempt staff supervised by its licensees from having to be either an optician or a registered apprentice. We suggest the legislature consider statutory amendments to clarify the current statute that sets the demarcation line of responsibilities between the two professions.

Recommendation No. 2

The Division of Occupational Licensing should enforce only those optometry application requirements set out in either statute and regulation.

OccLic has been enforcing optometry application requirements not required by state statutes or regulations. Specifically, application forms for optometric examination and licensure require applicants to submit certified or notarized copies of an unmounted 3" x 3" photograph taken within six months previous to filing the application.

Applicants must also submit official transcripts from all colleges or universities attended prior to optometry college to the Division of Occupational Licensing. All applications include a

statement to the effect that these items must be submitted to the division before the applications will be considered for licensure.

Neither the optometry statutes or regulations direct that applicants to meet these submission requirements. It appears the division has unilaterally imposed these requirements without clear legal authority. In our view, there is no compelling justification to support imposition of either requirement.

Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

State law (AS 08.72.140) requires that "*four board members shall be licensed, practicing optometrists who have been residents for at least three years. One board member shall be a public member* [emphasis added]." Over the past three fiscal years the Board of Examiners in Optometry has operated for extended periods without benefit of a public member. During the period of FY 93 - FY 95 there was no appointed public member for four of the board's seven meetings.

This problem has developed in part from the actions of the Knowles administration. Upon assuming office, the governor removed a public member that Governor Hickel had appointed in December 1992. Although the Hickel-appointed member was removed, no public member was appointed in an expedient manner by the Knowles administration. As of the date of this report, no appointment has been made. It appears to us that the Hickel-appointed member, subject to legislative confirmation, could have served until the Knowles administration provided for a replacement appointment. Alaska Statute 08.01.035 which states "*members of boards . . . are appointed for staggered terms of four years. A member of a board serves until a successor is appointed* [emphasis added]."

The public board member serves as a representative of the citizenry at large. The intent behind placing public members on licensing boards is to provide more access to the board's actions and deliberations. The presence of such a member serves as a check against a professional licensing board becoming too insular or self-serving in its actions.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Examiners in Optometry has operated in the public interest. The board has spent considerable time in developing regulations for basic education, training, and establishing licensure and licensure endorsement requirements. Further, the board pursued passage of legislation furthering the public interest, health, and welfare.

The board developed, and the legislature passed, two amendments to the optometry statutes during the 1992 legislative session — AS 08.72.175(a) dealing with license endorsements, and AS 08.72.272, which related to the use of pharmaceutical agents. Further, the board developed and the legislature passed, legislation to enact AS 08.72.273. The statute allowed optometrists to remove foreign objects from the eyes of patients. The board, in conjunction with the Department of Law, developed companion regulations related to these statutory changes.

The amendments and enacted legislation furthered the public's interest, health, and welfare by allowing optometrists to perform non-invasive, non-surgical practices only licensed ophthalmologists or physicians were previously allowed to perform. Before amendment and enactment of these laws patient care choices were more restricted, potentially more costly, and the potential for misdiagnosis and mistreatment of eye conditions and diseases was higher.

As an example, in the past when optometrists visited remote areas of the State to perform optometry examinations they were not allowed to prescribe and use topical pharmaceutical agents or remove foreign objects. Instead, optometrists would have to refer the patient to a physician, that in many cases may have less experience or knowledge of the diagnosis and treatment of eye conditions and diseases than the optometrist.⁵ If a physician was not available, the patient would either have to wait for an ophthalmologist or physician to arrive, or would have to fly out to receive proper treatment from an ophthalmologist.

⁵The term "physician" is used in context to refer to a medical doctor practicing general medicine.

The extent to which the operations of the board 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.

The board's operations have been impeded by the following:

1. Administrative bottlenecks caused by the relatively short period that is set out in statute between the time an applicant can apply for licensure and examination (See Recommendation No. 1). These inefficiencies have been exacerbated by OccLic requiring applicants to submit documentation not required by either statute or regulation (See recommendation No. 2).
2. The board operated for extended periods of time without a public member because ex-Governor Hickel and current Governor Knowles did not make appointments in compliance with state board statutes (See Recommendation No. 3).

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

The board made several statutory recommendations that were adopted by the 1992 legislature. As discussed earlier in this section, the board supported passage of legislation that allowed properly credentialed optometrists to utilize topical therapeutic agents and to non-invasively remove superficial foreign bodies from the eye. This bill benefited the public by increasing the number and types of services optometrists are able to provide patients without having to refer them to either general practitioners (physicians) or ophthalmologists. Often referrals of this nature required patients to travel from rural areas of the State to metropolitan centers to receive these services. Requiring these individuals to travel potentially increased the risk of damage to their eyes and the costs of their treatment.

In addition, the board also recommended amending AS 08.72.159 related to the application for examination to extend the filing date for submission of verification documentation by applicants for examination and licensure from 15 to 60 days before examination. This measure was not adopted into law (See Recommendation No. 1 for further discussion).

Results of our review determined the board's second recommendation was in the public interest. The amendment would have allowed the licensing examiner more time to ensure applicants submitted all required documentation supporting their applications before the board's review of their application files for approval to sit for examination and be licensed.

During FY 95 the board also recommended new legislation to allow nonresident optometrists to assist or substitute for a licensed Alaskan optometrist. This recommended legislation, House Bill (HB) 168, "An Act relating to temporary permits for certain optometrists" would create

temporary permits, called "locum tenens" permits for these purposes. HB 168 addressed the need for additional optometrists to serve in rural areas of the State.

The board discussed HB 168 during its June 2, 1995, meeting. During this meeting the board expressed reservations about certain provisions in the bill they felt needed to be addressed. Specifically, the board was concerned HB 168, as worded at that time, would allow out of state optometrist to practice in the State without an Alaskan optometry license for up to 180 days. The board felt that just because an individual was licensed in another state that did not mean they would necessarily qualify for licensure in Alaska.

Currently, all individuals wishing to practice optometry in Alaska must pass the Alaska examination and meet all other Alaska licensing requirements, even if they are licensed in other states. Alaska does not have license reciprocity with any other states, nor do the optometry statutes allow for licensing by credentials. In our view, the board's concerns were well founded and showed the board member's desire to address public safety, health, and welfare concerns that are in the public interest. We believe if the concerns of the board regarding HB 168 are effectively addressed by the legislature this bill would serve in the public's interest by providing additional optometrists, effectively regulated by the board, to serve patients in rural areas of the State.

The extent to which the office, 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 that it has provided.

The location, date, and time of board meetings were published in newspapers around the State providing the opportunity for interested members of the general public to attend the meetings during the period of our review.

The Division of Occupational Licensing's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to a previously unscheduled teleconference. Under these criteria, all meetings of the board were properly advertised, and the board's agenda allowed time for the general public to address the board.

Further, the board solicited and received public comment on statutory, regulatory, and other changes or policies suggested by the board. The board pursued issues and concerns raised from the public comments they received with the department regulations specialist, and, if and when applicable, the Department of Law.

The extent to which the board has encouraged public participation in the making of its regulations and decisions.

Based on our reviews and analysis of how public comments were used to develop final regulations and affect board decisions, we believe the Board of Examiners in Optometry encouraged public participation in the making of its regulations and decisions.

The board considered the public's input and often took further action based on these comments and suggestions. Correspondence from interested parties was reviewed and discussed by board members at their meetings. Some of the correspondence related to regulatory changes. During our review we noted these proposed regulations were often made available for public comment by the board. Further, the responses received from the public during the public comment period did, on occasion, require the board to make changes to the optometry regulations.

As an example, the board received much input regarding problems optometrists were encountering with branch office licensing. The board discussed these issues and gave due public notice that they intended to repeal these regulations. After the public notice period passed, the board unanimously resolved to repeal all branch office regulations and no longer try to enforce the statute (See Recommendation No. 1).

After making this resolution the board forwarded its recommended repeal of the branch office licensing regulations to the Department of Law for review, comment, and/or approval. The Department of Law, in a letter sent to the board's regulations specialist July 12, 1995, concluded that, "repealing the regulation mandated by statute without adopting another regulation in its place is inconsistent with the statute."

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.

Since FY 93, the Division of Occupational Licensing received 11 complaints related to the activities, or the licensees, of the Board Examiners in Optometry. Two of the complaints involved the licensing process.

We reviewed a sample of eight of these complaints. From our review we determined the Division of Occupational Licensing and the Board of Examiners in Optometry investigated complaints in a timely manner — given the budgetary constraints involved. No frivolous cases or cases where jurisprudence was lacking were found. All closed cases were closed for reasonable and justifiable reasons.

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

We believe the board has regulated entry into the occupation/profession, and has presented qualified applicants to serve the public. Further, we believe the licensing process and criteria established by the board are reasonable and appropriate.

During the period FY 92 through FY 95 the board licensed 26 individuals to practice optometry, issued 73 license endorsements for the use and prescription of pharmaceutical agents, and issued 8 branch office licenses.

Also, from our review of board meeting minutes, complaints that were filed, and discussion with the licensing examiner, we determined there had been no rejected applicants, or complaints regarding the rejection of applications between FY 92 and FY 95.

Results of our testing of five license files determined that some required documentation was missing from the files of licensees who had been licensed for several years. Further, we determined the department was incorrectly enforcing application requirements not set out in state optometry laws and regulations (See Recommendation No. 2).

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.

Nothing came to our attention during the course of the audit that showed the Board of Examiners in Optometry was not complying with state personnel practices, including affirmative action, in qualifying applicants. Each time the Board of Examiners in Optometry has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. We did not find any evidence of noncompliance.

However, as reflected by our discussion in Recommendation No. 1, we do have concerns that the current optometry licensing statutory requirements may be unduly restrictive and discriminatory. Statutory requirements that license holders and applicants be free of contagious and infectious diseases, as well as have specified visual acuity may not be in compliance with the requirements of the federal Americans with Disabilities Act (ADA).

The ADA has resulted in numerous additional protected classes of individuals, and requires that employers, businesses, and governments make reasonable accommodation for individuals with various disabilities. As discussed in Recommendation No. 1, we suggest that the Division of Occupational Licensing consult with the Department of Law regarding the advisability and legality of these statutory requirements.

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 [of Alaska Statutes].

See the Findings and Recommendations section for a discussion of recommended statutory and administrative changes related to the operations of the Board of Examiners in Optometry.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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November 30, 1995

Mr. Randy S. Welker
Legislative Auditor
Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 08 1995

LEGISLATIVE AUDIT

Dear Mr. Welker:

Re: Board of Examiners in Optometry Preliminary Audit Report

Thank you for this opportunity to comment.

Recommendation No. 1

The Legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

We concur with the discussions involving need for certain statutes to be repealed and/or clarified.

- AS 08.72.150 - The 15-day exam application deadline is too short a time period to allow adequate review and examination scheduling/preparation.
- AS 08.72.125 - Branch office licensing requirements serve no public protection purpose and, in fact, are not being enforced by the board. The board has attempted to repeal the regulations which provide for implementation of the branch office licensing, however, the Department of Law would not authorize repeal as long as the statute remains which "requires" branch office licensing.
- AS 08.72.140 - The requirement for all applicants to provide proof of 20/40 visual acuity and certification that the applicant is free of any contagious disease appears inappropriate when considering the American with Disabilities Act. However, due to limited Assistant Attorney General time available to the Division, I will not request an Attorney General

opinion at this time. I will support repeal of this requirement by the Legislature and (prior to legislative action) if an applicant raises concern in providing this information with his/her application, an Attorney General's opinion will be requested.

AS 08.72.181 - Your recommended findings indicate that this renewal statute should also be considered in conjunction with the above comments, however, there is no specific discussion regarding your concerns with this authority.

The department does not strongly recommend amendments to this authority; however, it may be appropriate to repeal the exemption for payment of renewal fees by active military licensees. License fees are set to commensurate with the costs of implementing the licensing program. Whenever certain persons are exempted, the burden to cover the costs for those individuals falls to the other licensees who maintain licensure in the state.

Scope of Practice - The scope of practice and delegation of dispensing does need to be clarified by the Legislature. Currently, employees dispensing lenses in many of the Optometrists offices are doing so without benefit of licensure/registration though the Board of Dispensing Opticians. This continues to cause considerable discontent amongst the practitioners on both sides of the issue.

Recommendation No. 2

The Division of Occupational Licensing (OccLic) should enforce only those optometry application requirements set out in either statute or regulation.

We agree with your recommendation that applicants no longer be asked for a photograph at the time of application. Applications are developed in conjunction with the board. We believe this requirement was initially intended for use at the exam site in identifying exam candidates; however, the photos have not served this purpose for a number of years and, in fact, the board members are not given a copy of the photograph when they review the application for approval. Photographs are not necessary for exam identification, and we will recommend to the board that the applications be revised to drop this requirement.

Similarly, we concur that official transcripts from colleges or universities (other than official transcripts reflecting the optometry degree) are not necessary and will work with the board to revise the application accordingly. We suggest going a step further and recommending that AS 08.72.140(3) be repealed. If an applicant has a degree as a Doctor of

Mr. Randy S. Welker

-3-

November 30, 1995

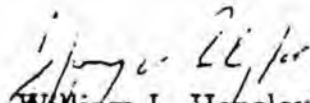
Optometry, ensuring four years of high school attendance (or the equivalent) is insignificant in determining the applicant's qualifications.

Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

My department is not involved with board appointments; this recommendation will be passed along to the Governor's office for comment as applicable.

Sincerely,


William L. Hensley
Commissioner

WLH/BG/cw1653.ol
103095b

cc: Catherine Reardon, Director

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 4/1/96

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/18/96

The Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 405(STA) am Relating to the Board of Examiners in Optometry/ relating to licensure of dispensing opticians; efd.

and recommends:

- P HFN*
- be replaced with _____ CS _____ (_____)
 - adopt previous _____ CS _____ (_____)
 - attached amendment(s)
 - adopt Letter of Intent by _____ Committee
 - further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
		<i>like bill</i>	<input checked="" type="checkbox"/>		
		<i>John Brown</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Tom Kelly</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DKED</i>	<i>4/11/96</i>		<i>48.5</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill