

**HB**

**362**



# ALASKA STATE LEGISLATURE

*Chair:*  
LABOR AND COMMERCE

*Member:*  
MILITARY AND VETERANS AFFAIRS  
COMMUNITY AND REGIONAL AFFAIRS  
LEGISLATIVE COUNCIL  
JOINT ARMED SERVICES




**REPRESENTATIVE LISA MURKOWSKI**  
Government Hill • Elmendorf • East Anchorage

*Session:*  
ALASKA STATE CAPITOL  
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*Interim:*  
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## Memorandum

**Date:** January 29, 2002  
**To:** Representative Norman Rokeberg  
Judiciary Chair  
**From:** Representative Lisa Murkowski   
**Subject:** Hearing Request

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The Board of Governors of the Alaska Bar Association is scheduled to terminate June 30, 2002 and will have one year to conclude its administrative operations if the legislature does not act this session. House Bill 362 acknowledges that the Alaska Bar Association contributes greatly to the protection of the public's welfare and operates in a competent and professional manner. As recommended by the Division of Legislative Audit, House Bill 362 extends the termination date of the Bar Association for another four years.

Enclosed you will find a current copy of House Bill 362, the audit report, and a sponsor statement. Please schedule the bill at your earliest convenience. Please also make available teleconferencing from Anchorage and any other sites wishing to participate. I will contact you with off-site names and numbers when they are made available to me. Thank you for your prompt consideration.

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## Sponsor Statement HB 362

### Extend Board of Governors of Alaska Bar Association

The Board of Governors of the Alaska Bar Association was established in 1955 to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in the state. The Bar Association's primary functions are to screen applicants for admission to ensure that all successful applicants are fit to practice law, and to provide discipline by investigating grievances against members of the Bar. The Bar Association also performs a wide variety of miscellaneous functions including classes for continuing legal education, lawyer referral services, and fee arbitration.

The board consists of twelve members, nine attorneys elected by the active membership of the Alaska Bar Association, and three non-attorney public members appointed by the governor and confirmed by a joint session of the legislature. The Bar Association currently regulates 2,719 licensed attorneys.

The Division of Legislative Audit, in its 2001 report, found that the Bar Association meets the public need in an effective and economical manner. It not only ensures that persons licensed to practice law are qualified, but provides for investigations of complaints and has established a disciplinary process designed to ensure that licensed individuals act in a competent and professional manner.

The Board of Governors of the Alaska Bar Association is scheduled to terminate June 30, 2002, and will have one year to conclude its administrative operations unless the legislature acts this session. House Bill 362 reflects the recommendation of the Division of Legislative Audit and extends the termination date for the Bar Association for another four years.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 362

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Extend Board of Governors of Ak. Bar BRU Alaska Court System  
 Component Trial Courts

Sponsor Representative Murkowski  
 Requester House Judiciary Component No. 768

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

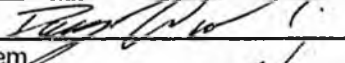
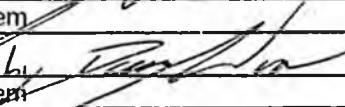
Estimate of any current year (FY2002) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The Alaska Court System does not anticipate any fiscal impact from the passage of HB 362.

Prepared by: Douglas Wooliver  Phone 463-4750  
 Division Alaska Court System Date/Time 1/30/02 2:00 PM  
 Approved by: Stephanie Cole  Date 1/30/02  
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office



## Alaska Division of Legislative Audit Audit Digest #41-20008-02

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\* Requires Acrobat Reader



**SUMMARY OF:** A Sunset review of the Board of Governors of the Alaska Bar Association, November 30, 2001.

### PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association. The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of this board and if it has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law currently specifies that the board will terminate on June 30, 2002.

### REPORT CONCLUSIONS

The Bar Association, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a discipline process designed to ensure that those licensed act in a competent and professional manner. As such, we recommend that the legislature extend the termination date of the board to June 30, 2006.

In general, it is our opinion that the board meets the public need in an effective and economical manner. However, we have made recommendations that, if implemented, will improve the efficiency and effectiveness of the board's operations.

### FINDINGS AND RECOMMENDATIONS

In our report *Board of Governors of the Alaska Bar Association, January 2, 1998*, we made recommendations in the areas of lawyer referral services, continuing legal education, and attorney disclosure. Concerns regarding attorney disclosure have been adequately addressed.

Our recommendation on lawyer referral services has not been fully implemented and is restated in this report as Recommendation No. 1.

We also suggested that the board recommend to the Supreme Court that mandatory continuing legal education (CLE) requirements for attorneys be adopted. In response, the Supreme Court adopted a voluntary, rather than mandatory, CLE program. It adopted a three-year pilot program to determine if modest reductions in licensing fees would satisfactorily encourage attorneys to earn 12 credit hours of CLE

each year. This pilot program is set to end in 2002. We will review the program's results and the 12-hour guideline during the next sunset audit.

1. The Board of Governors of the Alaska Bar Association should establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service.
2. The Alaska Bar Association's executive director should ensure that the public is appropriately notified of board meetings.



\* Requires Acrobat Reader 

November 30, 2001

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.

BOARD OF GOVERNORS OF THE  
ALASKA BAR ASSOCIATION  
SUNSET REVIEW

November 30, 2001

Audit Control Number

41-20008-02

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess 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)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2002.

In our opinion, the termination date for this board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2006.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association. The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of this board and if it has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether the Board of Governors of the Alaska Bar Association should be reestablished. The law currently specifies that the board will terminate on June 30, 2002.

### Objectives

The Alaska Bar Association was established in 1955 as an instrumentality of the State to ensure that only qualified members of the legal profession of good moral character are allowed to practice law in this State. A primary objective of this audit, therefore, was to determine whether the need for protection of the public continues to exist.

A secondary objective was to review the major processes instituted by the Alaska Bar Association, namely the examination of prospective members, admission, and discipline procedures, for effectiveness in meeting the public need. A tertiary objective was to evaluate those processes in particular, and Alaska Bar operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

### Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were the licensing, examination, and discipline functions provided by the Alaska Bar Association, as well as board proceedings. Our audit reviewed the operations and activities of the association from January 1998 through October 2001.

Our review included the following:

- Compliance with statutes and regulations, Alaska Bar Rules, and bylaws
- Minutes of board meetings and correspondence files
- Annual reports issued by the Alaska Bar Association

- Complaints filed with the Office of the Ombudsman, Department of Labor, Department of Human Rights, and Equal Employment Opportunity Commission
- Attorney discipline files
- Attorney applications for examination and licensure
- Complaint files
- Interviews with employees of the Alaska Bar Association

## ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association. The board consists of twelve members, including nine attorneys elected by the active membership of the Alaska Bar Association and three non-attorney public members that are appointed by the governor and confirmed by a joint session of the legislature.

The powers and duties of the board are conferred by the Alaska Integrated Bar Act,<sup>1</sup> the Alaska Bar Rules, and the Rules of Professional Conduct, which are promulgated by the Alaska Supreme Court. Under AS 08.08.080(a), the board may approve and recommend to the state Supreme Court rules (1) concerning the admission, discipline, licensing, continuing legal education, and defining the practice of law; (2) providing for continuing legal education and for certification of a continuing legal education program; and (3) establishing a program for the certification of attorneys as specialists.

The Alaska Bar Association has two primary functions, admission and discipline of its members. To accomplish these and other functions, the Alaska Bar Association operated with a 2001 budget of approximately \$1.9 million. A schedule of revenues and expenses is included at Appendix A. Funding is provided primarily by membership dues, admission fees, lawyer referral fees, continuing legal education charges, interest income, and administrative discipline fees. The Alaska Bar Association did not receive any state funding in the period under audit.

- Admission Function: The board is responsible for screening applicants for admission to the Alaska Bar Association. The board certifies to the Alaska Supreme Court that all successful applicants are fit to practice law. The board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.
- Discipline Function: The board is responsible for investigating grievances against all members of the Bar Association. The board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions

The Board of Governors of the Alaska Bar Association
Mauri Long, President Third Judicial District Term Expires 2004
Lori Bodwell, President-elect Fourth Judicial District Term Expires 2002
Jonathan Katcher, Vice-president Third Judicial District Term Expires 2003
Lawrence Ostrovsky, Treasurer Third Judicial District Term Expires 2004
Anastacia Cooke Hoffman, Secretary Public Member Term Expires 2003
William 'Bill' Granger Public Member Term Expires 2003
Brian Hanson First Judicial District Term Expires 2003
Robert Johnson Third Judicial District Term Expires 2004
Barbara Miklos Public Member Term Expires 2001
Kirsten Tinglum Third Judicial District Term Expires 2002
Bruce Weyhrauch First Judicial District Term Expires 2002
Daniel Winfree Fourth Judicial District Term Expires 2003

<sup>1</sup> AS 08.08.

taken against the Bar Association's membership and provides an ethics course that is required for all applicants. The Chief Justice of the Supreme Court appoints hearing committees from each judicial district. The board is responsible for issuing reprimands when warranted, and for recommending that the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

- Miscellaneous Functions: The Alaska Bar Association also performs a wide variety of miscellaneous functions that include providing classes for continuing legal education, a lawyer referral service, and fee arbitration. In conjunction with Alaska Legal Services Corporation, the Alaska Bar Association sponsors the Alaska Pro Bono Program. The Alaska Bar Association provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, and ethics opinions.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 15 full-time and job-share employees.

## REPORT CONCLUSIONS

In our opinion, the Board of Governors of the Alaska Bar Association should be reestablished. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,719 active members practicing in the State. The regulation and licensing of qualified attorneys contributes greatly to the protection of the public's welfare. A license to practice law in the State is a continuing proclamation by the Alaska Supreme Court that an attorney is fit to be entrusted with professional and judicial matters, to aid in the administration of justice as an attorney and counselor, and to act as an officer of the courts.

The Bar Association, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to ensure licensed individuals act in a competent and professional manner. As such, we recommend that the legislature extend the termination date of the board to June 30, 2006.

In general, it is our opinion that the board meets the public need in an effective and economical manner. However, we have made recommendations that, if implemented, will improve the efficiency and effectiveness of the board's operations. See the Findings and Recommendations section of this report.

## FINDINGS AND RECOMMENDATIONS

In our report *Board of Governors of the Alaska Bar Association, January 2, 1998* we made recommendations in the areas of lawyer referral services, continuing legal education, and attorney disclosure. Concerns regarding attorney disclosure have been adequately addressed.

Our recommendation on lawyer referral services has not been fully implemented and is restated in this report as Recommendation No. 1.

We also suggested that the board recommend to the Supreme Court that mandatory continuing legal education (CLE) requirements for attorneys be adopted. In response, the Supreme Court adopted a voluntary, rather than mandatory, CLE program. It adopted a three-year pilot program to determine if modest reductions in licensing fees would satisfactorily encourage attorneys to earn 12 credit hours of CLE each year. This pilot program is set to end in 2002. We will review the program's results and the 12-hour guideline during the next sunset audit.

### Recommendation No. 1

The Board of Governors of the Alaska Bar Association should establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service.

Alaska's Lawyer Referral Service provides an in-state, toll-free telephone number available to members of the public seeking an attorney. Persons calling the number are given the names of three attorneys who practice in the caller's area and who have expressed an interest in the field of law the person requests. A referral summary is included as Appendix D.

Attorneys are charged a \$50 annual enrollment fee for each section they want their name listed in. They are also charged a minimal fee for each referral made to them. All active Alaska Bar members in good standing are eligible and are encouraged to use the service. Participating attorneys are required to maintain errors and omissions (malpractice) insurance of at least \$50,000. However, there are no other eligibility requirements for enrollment in the service, and no screening and oversight to ensure that the attorney is qualified in any particular field of law.

This contrasts sharply with the American Bar Association's recommendation for such programs. According to the American Bar's *Model Supreme Court Rules Governing Lawyer Referral and Information Services*, "the overriding concern of the model rules is consumer protection." These rules further provide that

*requirements for eligibility should include sufficient experience to ensure that the lawyer is qualified in the field of practice. The [lawyer referral] service should require proof of compliance with the requirements so established, which may include certification in affidavit or affirmation form.*

In commentary discussion, the model states:

*The importance of establishing meaningful experience requirements cannot be underestimated. It is inappropriate for the service to simply refer callers to the next lawyer on the list without determining that the lawyer is qualified in the field of practice in which legal services are needed. Since the public relies on services to provide qualified legal representation which improves on what the consumer can obtain by lot, it is incumbent upon these services to ensure that their attorneys have substantially more qualifications than mere bar membership.*  
[Emphasis added.]

The model concludes that "*the service must establish procedures for the admission, suspension, or removal of a lawyer from any panel.*"<sup>2</sup>

Alaska's referral service has no such oversight procedures. As long as members are in good standing and maintain malpractice insurance they are eligible to enroll in the service. No consideration is given to past disciplinary actions or competence in the specific field.

By providing a referral, the Alaska Bar creates the appearance that it considers the attorneys referred to be competent to practice in a particular field of law. Members of the public who call the Alaska Bar Association for a referral may erroneously assume that the Alaska Bar has taken some measures to reasonably ensure the attorney has some level of expertise in that field. However, the referral service provides members of the public with little more assurance they will receive competent legal representation than they get seeking an attorney from the telephone yellow pages.

The Alaska Bar Association has added a disclaimer as to its prerecorded Lawyer Referral message. However, this approach does not meet the standard suggested by the American Bar Association.

We believe the people of Alaska would benefit from the board taking a proactive role in screening and overseeing attorneys participating in the Lawyer Referral Service. Adopting aspects of the American Bar's recommended model rules on such services would contribute greatly to consumer protection.

## Recommendation No. 2

The Alaska Bar Association's executive director should ensure that the public is appropriately notified of board meetings.

Under AS 08.08.075, the Bar Association is subject to the Open Meetings Act.<sup>3</sup> Improved meeting notification in two areas would benefit the public.

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<sup>2</sup> The American Bar Association is a voluntary organization of attorneys. The organization's model rules, while not mandatory, provide a suggested framework for individual states' Bar Rules.

<sup>3</sup> AS 44.62.310 - 44.62.312.

First, AS 08.08.075 states that "*the public shall be given 30 days' notice of meetings of the board . . .*" The Bar Association generally does so. However, we did note that for 3 of the 23 board meetings held since 1998, the notice period was somewhat shorter, i.e., 6 days, 21 days, and 28 days.

Second, AS 44.62.310(e) requires these meeting notices to be posted on the Alaska Online Public Notice System. The Bar Association has not yet begun to utilize this system.

## ANALYSIS OF PUBLIC NEED

The following analysis of board activities relates to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. This analysis was 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 Alaska Bar Association admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the passage of the Bar Examination, the Multi-state Professional Responsibility Examination, and a character investigation to determine if the applicant is of good moral character. The Alaska Bar Association also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement. Examination and admission statistics are shown in Appendix C.

The Alaska Bar Association has a lawyer discipline process for the investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found to be in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review; the Court follows the board's recommendations in most disciplinary actions. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board of Governors, Alaska Bar Association staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline. Discipline statistics are shown in Appendix B.

The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement* recommends that discipline be administered through an entity other than the Alaska Bar Association. In response to this recommendation, as well as to help alleviate public concern that discipline is not taken seriously by the Alaska Bar Association, disciplinary rules provide that once a petition for formal hearing is filed, the disciplinary proceedings become open to the public.

Analysis of the complaints filed during our audit period shows that all of the grievances were reviewed, but relatively few were pursued beyond initial investigation. On its face, this may appear troubling, but further scrutiny shows it to be reasonable. Some grievances were referred to the fee arbitration committee or to a mediation panel whose services are discussed below. If a grievance involved pending litigation, it was not accepted; however, the complainant was advised that it may be resubmitted and considered once the litigation is concluded. In some instances, grievances were dismissed because action had already been taken against the attorney. Grievances are often filed that do not have merit or are not based on tangible evidence. These types of grievances are very common in some fields of legal practice. We understand that approximately half of all grievances are filed against criminal law and family practice attorneys, both areas that lend themselves to high emotion. The

potential arises that such a grievance is based on the outcome of a case, rather than attorney misconduct.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report.

The Alaska Bar Association offers fee arbitration as a dispute resolution process. This process provides for a single arbitrator to address disputes of \$5,000 and less. Disputes over \$5,000 are addressed by a three-member panel that consists of two attorneys and one public member. Failure by an attorney to participate in good faith in this process may result in a civil judgment being entered against the attorney and administrative suspension of the attorney's license until the judgment is paid.

Similarly, the Alaska Bar Association offers a mediation process that attempts to resolve disputes between attorneys and their clients, when the dispute is neither fee nor misconduct related. An attorney must participate in good faith if the attorney agrees to mediation.

The Alaska Bar Association maintains the Lawyers' Fund for Client Protection. The purpose of this fund is to reimburse clients who have suffered uninsured losses of money, property, or other things of value as a result of a dishonest act by an attorney. Ten dollars of each Alaska Bar Association member's annual dues is deposited in this fund.

The Alaska Bar Association jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal services to low-income Alaskans.

The Alaska Bar operates a Lawyer Referral Service, which is funded by subscribing attorneys. Members of the public can call an in-state, toll-free number and receive the names of three attorneys who have listed themselves as practicing law in a certain field. However, as discussed in Recommendation No. 1, Alaska's Lawyer Referral Service does not meet the standards recommended by the American Bar Association.

***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.***

The operations of the board are funded entirely by the membership through annual dues, admission fees, continuing legal education, lawyer referral fees, convention revenue, and interest income. The 2001 budgeted revenue was approximately \$1.9 million.

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

The board has not recommended any statutory changes during this audit period. However, the board has been active in the process of evaluating and revising the Alaska Bar Rules that govern the Alaska Bar Association's policies and procedures.

The board has also addressed certain recommendations presented in our 1998 audit. Most notably, the Alaska Bar Association introduced changes to the Alaska Bar Rules, which require written fee agreements for legal representation contracts in excess of \$500. The board prepared a pamphlet, which attorneys are encouraged to give their clients, that explains the client's rights and responsibilities. Along with the written fee agreements, attorneys are required to disclose certain items to their clients, such as the absence of professional liability insurance coverage or a reduction in coverage below required amounts.

***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.***

The Alaska Bar Association membership is involved in its operations. This involvement may include service on one of the six standing committees or five Alaska Bar Rules committees. It may also include participation in a section or group of members with interest in a particular field, e.g., bankruptcy law or criminal defense. Each section monitors developments in the field and produces periodic continuing education programs. It may also include participating in an adjunct organization such as the Alaska Pro Bono Program or special projects like the Lawyer Referral Service.

The Alaska Bar Association publishes all proposed changes to the Alaska Bar Rules in its semi-monthly publication, the *Alaska Bar Rag*, which is distributed to all members of the Alaska Bar Association and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the board.

The board also advertises board meetings in four Alaska newspapers and in the *Alaska Bar Rag*. As discussed in Recommendation No. 2, postings to the Alaska Public Online Notice System would also be helpful to the public. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

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

In addition to the three public members who serve on the Board of Governors, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Alaska Bar Association publicly advertises meetings of the board. Time is allotted at all board meetings for public comments.

*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.*

The Alaska Bar Association is an instrumentality of the State, but is not administratively assigned to any department. Four complaints have been filed against the Alaska Bar Association with the Office of the Ombudsman during the last four years. All four of the investigations were closed; full investigations were not considered necessary.

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

The Alaska Bar Association investigates complaints against its members. Since 1998, these activities have resulted in 65 sanctions against attorneys. Thirty of these sanctions were against nine attorneys. All nine were disbarred.

The Alaska Bar Association offers continuing legal education programs to its membership and it also maintains an educational library.

*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 of interest.*

We found no evidence that the board was not complying with applicable personnel practices.

Nothing came to our attention that showed the Board was in violation of any affirmative action or hiring requirements.

The Board has on occasion voiced concern over the low minority pass rate of the Alaska Bar Examination. In order to overcome this concern the Board has instituted a tutoring committee to review essay examinations and offer suggestions to the failing candidate or assistance in preparation for future examinations.

*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 the Findings and Recommendations section of this report.

**APPENDIX A**

Board of Governors of the Alaska Bar Association  
Revenues Compared with Expenditures  
 Calendar Years 1998 through 2001  
 (unaudited)

<u>Revenues</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Membership Dues	\$ 1,314,795	\$ 1,318,629	\$ 1,308,794	\$ 1,283,575
Admission Fees	207,965	189,520	200,055	196,875
Continuing Legal Education	152,514	125,540	153,886	168,915
Lawyer Referral Fees	95,808	76,225	81,462	81,500
Annual Meeting	41,907	49,919	66,892	45,000
Interest on Investments	135,512	92,938	208,140	115,000
Other	<u>88,148</u>	<u>100,761</u>	<u>104,944</u>	<u>20,979</u>
<b><u>Total Revenues</u></b>	<b><u>2,036,649</u></b>	<b><u>1,953,532</u></b>	<b><u>2,124,174</u></b>	<b><u>1,911,844</u></b>
<b><u>Expenses</u></b>				
Admissions	172,470	169,401	177,650	176,002
Board of Governors	42,191	33,936	43,289	64,627
Discipline	558,765	586,576	584,688	603,628
Administration	397,609	419,461	413,117	409,912
Lawyer Referrals	52,775	52,326	49,236	47,573
Continuing Legal Education	288,665	290,962	338,087	404,302
Fee Arbitration	47,524	54,435	52,405	52,794
Annual Meeting	51,482	80,051	79,950	80,000
Other	<u>150,936</u>	<u>163,752</u>	<u>155,857</u>	<u>155,992</u>
<b><u>Total Expenses</u></b>	<b><u>1,762,417</u></b>	<b><u>1,850,900</u></b>	<b><u>1,894,279</u></b>	<b><u>1,994,830</u></b>
<b><u>Excess (deficit) of Revenues over Expenses</u></b>	<b><u>\$ 274,232</u></b>	<b><u>\$ 102,632</u></b>	<b><u>\$ 229,895</u></b>	<b><u>\$ (82,986)</u></b>

Source: The 1998 – 2000 data was obtained from the Alaska Bar Association’s annual reports. Budget amounts are shown for 2001.

**APPENDIX B**

Board of Governors of the Alaska Bar Association  
Discipline Statistics  
 Calendar Years 1998 through 2001  
 (unaudited)

<u>Disposition of Closed Disciplinary Cases</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>Total</u>
Disbarment by Supreme Court	2	5	1	22	30
Suspension by Supreme Court	0	2	6	1	9
Public Censure by Supreme Court	0	0	0	1	1
Private Reprimand by Disciplinary Board	1	0	3	7	11
Private Admonition by Discipline Counsel	4	3	5	2	14
Dismissed	<u>28</u>	<u>25</u>	<u>27</u>	<u>12</u>	<u>92</u>
<b>Total Closed Cases</b>	<u>35</u>	<u>35</u>	<u>42</u>	<u>45</u>	<u>157</u>

<u>Status of Open Cases at Year End</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Attorney on Probation	1	1	1	1
Pending Supreme Court	2	2	1	18
Pending Disciplinary Board	2	0	18	0
Pending Hearing Committee	6	23	21	17
Pending Stipulation	3	4	11	6
Pending Approval to File Formal Hearing	0	15	0	1
Pending Approval to Issue Written Private Admonition	0	1	0	0
Pending Written Private Admonition	0	1	0	0
Abycance due to Court Case	1	0	0	1
Pending Bar Counsel Investigation/Decision	82	60	50	51
Pending Complainant Reply	0	2	0	0
Pending Respondent Response	7	2	8	8
File Under Review	<u>0</u>	<u>0</u>	<u>0</u>	<u>37</u>
<b>Total Open Cases</b>	<u>104</u>	<u>111</u>	<u>110</u>	<u>140</u>

Source: Data for 1998 – 2000 was obtained from the Alaska Bar Association’s annual reports. 2001 data was compiled by the Alaska Bar Association’s staff. These numbers reflect individual complaints filed and not the number of attorneys under investigation.

**APPENDIX C**

**Board of Governors of the Alaska Bar Association  
Bar Examination and Admission Statistics**

1998 through 2001  
(unaudited)

<u>Bar Examinations</u>	<u>Number Taking Exam</u>	<u>Number Passing Exam</u>	<u>Percent Passing Exam</u>
February 1998	51	35	69%
July 1998	68	45	66%
February 1999	66	37	56%
July 1999	60	36	60%
February 2000	56	36	64%
July 2000	62	41	66%
February 2001	<u>50</u>	<u>37</u>	<u>74%</u>
<b>Total</b>	<u>413</u>	<u>267</u>	<u>65%</u>

**Admission Under Motion for Reciprocity**

<u>Calendar Year</u>	<u>Number Admitted</u>
1998	20
1999	13
2000	46
2001	<u>16</u>
<b>Total</b>	<u>95</u>

Source: Data for 1998 – 2000 was obtained from the Alaska Bar Association’s annual reports. 2001 data was compiled by the Alaska Bar Association’s staff. The 2001 reciprocity data is presented through August 9, 2001.

**APPENDIX D**

Board of Governors of the Alaska Bar Association  
Attorney Referrals  
Calendar Years 1998 through 2001  
(unaudited)

<u>Area of Discipline</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
Administrative	244	267	290	234
Admiralty	46	35	34	11
Adoption	45	48	52	46
Alaska Native Law	15	20	17	19
Arts	5	5	1	3
Bankruptcy	203	143	118	116
Commercial	207	266	215	222
Construction	34	32	29	28
Consumer	568	532	700	414
Criminal: Felony	205	275	243	169
Criminal: Misdemeanor	452	334	285	218
Discrimination	62	64	38	38
Divorce/Dissolution/Custody	1,877	1,570	1,851	1,189
Eminent Domain	6	0	6	1
Environmental	3	11	2	4
Foreign Language	2	6	1	2
Guardian/Conservator	27	43	47	30
Insurance	117	73	115	80
Labor Relations	726	636	693	502
Landlord/Tenant	289	250	293	233
Malpractice	365	334	323	202
Military	39	29	35	21
Mining	6	5	1	0
Negligence	976	843	783	812
Patent/Copyright	31	0	0	40
Public Interest	0	0	6	1
Real Estate	272	234	273	187
Social Security Insurance Cases	154	3	12	0
Tax	31	31	34	0
Traffic	122	84	65	52
Trust/Will/Estate	204	187	230	161
Workers' Compensation	<u>263</u>	<u>294</u>	<u>337</u>	<u>320</u>
<b>Total</b>	<u>7,596</u>	<u>6,654</u>	<u>7,129</u>	<u>5,355</u>

Source: The 1998 – 2000 data was obtained from the Alaska Bar Association's annual reports. 2001 data was compiled by the Alaska Bar Association's staff and is reported through September 9, 2001.

January 3, 2002

Pat K. Davidson  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RE: Management Letter No. 1  
Sunset Audit of the Alaska Bar Association

Dear Ms. Davidson:

Thank you for the prompt and thorough audit and the opportunity to respond to your preliminary assessment of the Alaska Bar Association.

We really appreciated the audit's conclusion that the Board of Governors meets its statutory responsibilities and public need in an effective and economical manner. We work very hard to maintain the highest level of professionalism in the Bar while remaining within our budget. It is always nice to hear that our efforts are recognized.

These comments will first address the sunset date and fiscal consequences; next we focus on the recommendations to the Board included in the audit. Steps have already been taken as to some recommendations. We have outlined our concerns about some of the proposed recommendations.

#### Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2006. Because you are preparing this audit so promptly, no bill has been filed with the legislature. However, when that occurs, there will be no fiscal note attached, as the Alaska Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 15 years, the Bar Association has paid those expenses without state funding.

Response to Recommendation No. 1: The Alaska Bar Association will review the Lawyer Referral Service to determine the extent it can comply with the American Bar Association Model Rules.

The audit recommends that the Board of Governors establish screening and oversight procedures for attorneys wishing to participate in the Lawyer Referral Service, consistent with the ABA Model Rules governing Lawyer Referral and Information Services.

Following the 1998 audit, the Bar Association added the following disclaimer to its prerecorded message which callers hear before they speak to the Lawyer Referral Service Assistant.

*Thank you for calling the Lawyer Referral Service. All lawyers listed with this service are members in good standing of the Alaska Bar Association.*

*However, the Alaska Bar Association does not have a program to certify lawyers as specialists, and therefore the Bar cannot vouch for the skill of any lawyer referred.*

\* \* \*

Lawyers on the Lawyer Referral Service are the only lawyers who are required to earn 12 hours of continuing legal education (CLE) credit each year, including at least one hour of ethics. Bar Rule 65, which establishes the Voluntary CLE pilot program, provides that "only members who complete the minimum recommended hours of approved CLE are eligible to participate in the Alaska Bar Association's Lawyer Referral Service."

The audit states that "no consideration is given to past disciplinary actions" in Bar members eligibility to remain on the Service. However, the Bar removes from the Lawyer Referral Service any lawyer who is subject to formal disciplinary proceedings, until the proceedings are concluded. This policy is stated in the participation agreement:

*In event that a petition is filed for removal to inactive status for disability and/or if formal disciplinary proceedings are initiated against me, or if a criminal complaint is filed or an indictment returned alleging a serious crime [as defined in Alaska Bar Rule 26(b)], I hereby agree to a suspension of referrals until final resolution of the matter.*

The Auditor quoted the ABA Model Rules' "overriding concern" as consumer protection. The Board believes that the above referenced protections, along with the requirement that practitioners using the service maintain an errors and omissions policy, meets our goals and obligation to provide a very high

level of protection to the public. Nevertheless, since the Auditor expressed these concerns, the Board will review the Lawyer Referral Service to determine the extent to which we could further comply with the ABA Model Rules. Presently a limited number of lawyers, 113, participate in the Service. Thus, we will also review the extent to which it would be feasible to continue the program given the costs of adjusting the Service to meet the ABA's Model Rules.

Recommendation No. 2: The Alaska Bar Association agrees with the importance of public notice.

The Bar Association agrees that timely public notification of its meetings is important and the Board has conscientiously complied with the statutory requirement to give public notice of its regularly scheduled meetings.

The Audit noted 3 instances in which the notice period was somewhat shorter than the required 30 days.

Notice of the August 27, 1998 Board meeting was published on July 22, 1998, more than the required 30 days. However, the Board decided to publish an additional notice that it would, at that meeting, be considering a proposed Mandatory CLE rule at that August 27, 1998 meeting. That additional notice of a specific agenda item was published on August 21, 1998. Notice of a specific agenda item was not required under A.S. 44.62.310, so the second notice was simply a courtesy.

Our files indicate that on July 19, 1999, the Bar faxed a notice to the newspapers with a request that the August 19, 1999 Board meeting notice be published no later than July 21, 1999 (30 days prior). It was published on July 22, 1999, one day late.

Notice of the August 9, 2001 meeting notice was published on July 18, 2001. There is a note in the file that due to an oversight the Bar staff neglected to get the notice to the newspapers timely.

Given the importance of this issue, the Executive Director and the Executive Assistant will calendar publication of Board notices with greater lead time.

To further increase public access, the Board will begin posting its meeting notices on the Alaska Online Public Notice System, beginning with its next meeting in January 2002. The Board understands that it is fulfilling its obligation under AS 08.08.075 to provide public notice and open meetings and that its participation in the Alaska Online Public Notice System does not

Response to Legislative Audit  
January 3, 2002  
Page 4

change its exemption under AS 08.08.100 for the adoption of bylaws and regulations. In addition, the Bar will continue publishing notices of its meetings on its website.

Concluding Comments: Lawyer self-regulation has been effective in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members and qualified to address such issues as admission standards and peer review.

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitments to improving the profession and service to the public.

Sincerely,  
Alaska Bar Association

Mauri Long  
President

**Subject: Testimony on HB362**

**Date:** Wed, 6 Feb 2002 12:55:16 -0800

**From:** akpirg@akpirg.org

**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>

FEB 06 2002

Testimony on HB362

Barbara Williams, President Alaska Injured Workers <?xml:namespace prefix = st1 ns =  
"urn:schemas-microsoft-com:office:smarttags" />Alliance

507 E. St., Suite 213, 278-3661

<?xml:namespace prefix = o ns = "urn:schemas-microsoft-com:office:office" />

I seek an amendment to the statute to condition the extension of the authority for the Alaska Bar Association Board of Governors on a change of membership. My concern is not motivated by any Ideological bias or like or dislike for legal professionals.

As an unpaid lay educator I work with hundreds of injured workers who cannot find legal representation. I am often referred workers by Alaska attorneys to help them with their contested claims. Invariably, these workers must contest their claims against licensed attorneys in administrative and legal proceedings. I have asked the bar association to monitor the behavior of these attorneys on an ongoing basis when they confront an unrepresented person to determine if ethical and professional violations occur. The bar association has refused.

For this reason, I ask you to amend the statute as a condition of its extension to include a lay person who is specifically familiar with these situations where unrepresented persons must negotiate and litigate against represented persons: I am certain that from that position, the bar association and the Alaska State Supreme Court can be motivated to police the behavior of licensed attorneys when they contest claims against ordinary working people with no legal skills.

Testimony on HB362

Barbara Williams, President Alaska Injured Workers Alliance

507 E. St., Suite 213, 278-3661

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