

HB

418

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 16 2004
SENATE FINANCE
COMMITTEE

DATE: 5/5/04

FURTHER:

DATE TURNED
IN TO OFFICE: 6 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 418(FIN)

HB 418 REAL ESTATE COM'N/LICENSEE/HOME INSPECT

"An Act extending the termination date of the Real Estate Commission; relating to real estate; relating to home inspectors; relating to real estate licensees; and providing for an effective date."

and recommends:

- be replaced with 5 CS CS HB 418 (FIN)
- adopt previous _____ CS CS forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	3/25/04	✓		✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Frank Doney</i>	✓			
<i>Tom Hoff</i>			✓	
<i>Bill [unclear]</i>			✓	
<i>Bob [unclear]</i>			✓	
<i>Ben [unclear]</i>	X			
COCHAIR:				
COCHAIR: <i>Ermy [unclear]</i>	✓			

MAY 06 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 418(FIN)
(H) Publish Date: 4/14/04

Revision Date/Time (Note if correction):
Title Extending the Real Estate Commission
Sponsor House Labor and Commerce
Requester House Finance
Dept. Affected: DCED
RDU Occupational Licensing (117)
Component Occupational Licensing
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	171.3	171.3	171.3	171.3	
Travel	0.0	21.2	21.2	21.2	21.2	
Contractual	0.0	79.3	79.3	79.3	79.3	
Supplies	0.0	1.6	1.6	1.6	1.6	
Equipment	0.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	273.4	273.4	273.4	273.4	

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	273.4	273.4	273.4	273.4	
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156-Receipt Supported Services	0.0	273.4	273.4	273.4	273.4	
TOTAL	0.0	273.4	273.4	273.4	273.4	

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	2	2	2	2	
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the Real Estate Commission to June 30, 2008. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Commission to conclude its affairs. FY 2005 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2005 budget. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time 3/25/04 6:26 PM
Approved by: Edgar Blatchford, Commissioner Date 3/25/2004
Agency: Department of Community and Economic Development

Amendment Number: # 1
Bill Number: HB 418
Sponsor: Green Date: 5/6/04
Logged In By: Robin

23-LS1548VX C
Mischel
4/30/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: SCS CS(HB 418(L)(c))

1 Page 2, following line 20:

2 Insert new bill sections to read:

3 *** Sec. 3.** AS 08.18.071(a) is amended to read:

4 (a) Except as provided in (d) and (e) of this section, each [EACH] applicant
5 shall, at the time of applying for a certificate of registration, file with the
6 commissioner a surety bond running to the state conditioned upon the applicant's
7 promise to pay all

8 (1) taxes and contributions due the state and political subdivisions;

9 (2) persons furnishing labor or material or renting or supplying
10 equipment to the applicant; and

11 (3) amounts that may be adjudged against the applicant by reason of
12 negligent or improper work or breach of contract in the conduct of the contracting
13 business or home inspection activity, as applicable, or by reason of damage to public
14 facilities occurring in the course of a construction project.

15 *** Sec. 4.** AS 08.18.071 is amended by adding new subsections to read:

16 (d) A general contractor or specialty contractor who is in compliance with the
17 surety bond or deposit requirements of (a) and (b) of this section is not required to file
18 another surety bond or increase a deposit with the commissioner when the general
19 contractor or specialty contractor applies to be a registered home inspector. However,
20 if the general contractor or specialty contractor subsequently is neither a general
21 contractor nor a specialty contractor and becomes only a registered home inspector,
22 the home inspector shall provide a surety bond or deposit in lieu of the bond in the
23 manner and amount required for registered home inspectors under this section.

1 (e) An applicant for, or holder of, a certificate of registration as a home
2 inspector may, in lieu of filing with the commissioner a surety bond or deposit that
3 meets the requirements of this section, file evidence satisfactory to the commissioner
4 that the applicant is employed by a registered home inspector who is in compliance
5 with the surety bond or deposit requirements of this section."

6

7 Renumber the following bill sections accordingly.

**THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES**

NOTES TO DECISIONS

Section not prerequisite to satisfying AS 08.18.011. — No specific language makes satisfaction of this section a prerequisite to a finding that AS 08.18.011 is satisfied. *Fomby v. Whisenhunt*, 680 P.2d 787 (Alaska 1984).

Penalty for violating section. — The penalty for violating this section is contained in AS 08.18.141, which makes it a misdemeanor to violate any provi-

sion of the chapter; and AS 08.18.151 should only be applied to bar an action when the contractor has not registered at all at the time of contracting. *Alaska Protection Servs., Inc. v. Frontier Colorcable, Inc.*, 680 P.2d 1119 (Alaska 1984).

Stated in *Gross v. Bayshore Land Co.*, 710 P.2d 1007 (Alaska 1985).

Sec. 08.18.060. [Repealed, § 1 ch 100 SLA 1968.]

Sec. 08.18.061. Requirements of political subdivision. A contractor who is registered with the state under this chapter may not be required to give bond in applying for or holding a license issued by a political subdivision. (§ 2 ch 100 SLA 1968)

Sec. 08.18.070. [Repealed, § 1 ch 100 SLA 1968.]

Article 2. Bond and Insurance.

Section

- 71. Bond required
- 81. Claims against contractor
- 91. Cancellation of bond

Section

- 101. Insurance required
- 111. Advertising bond and insurance
- 115. Return of cash deposit

Sec. 08.18.071. Bond required. (a) Each applicant shall, at the time of applying for a certificate of registration, file with the commissioner a surety bond running to the state conditioned upon the applicant's promise to pay all

(1) taxes and contributions due the state and political subdivisions;

(2) persons furnishing labor or material or renting or supplying equipment to the applicant; and

(3) amounts that may be adjudged against the applicant by reason of negligent or improper work or breach of contract in the conduct of the contracting business or by reason of damage to public facilities occurring in the course of a construction project.

(b) If the applicant is a general contractor, the amount of the bond shall be \$10,000; if the applicant is a mechanical or specialty contractor, the amount of the bond shall be \$5,000. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner in the amount specified for bonds.

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the commissioner. An action may not be commenced upon the bond later than three years after its cancellation. (§ 2 ch 100 SLA 1968; am § 1 ch 15 SLA 1977; am § 4 ch 83 SLA 1985; am § 5 ch 132 SLA 1988)

NOTES TO DECISIONS

Material and equipment excluded from operation of section. — AS 08.18.161(5), which makes the chapter inapplicable to materials and equipment not incorporated or consumed in the construction of a structure, operates to exclude such material and equipment from the operation of this section and AS

08.18.081. *Balboa Ins. Co. v. Senco Alaska, Inc.*, 567 P.2d 295 (Alaska 1977).

Quoted in *State ex rel. Smith v. Tyonek Timber, Inc.*, 680 P.2d 1148 (Alaska 1984).

Cited in *Allison v. State*, 583 P.2d 813 (Alaska 1978); *Jones v. Short*, 696 P.2d 665 (Alaska 1985).

Sec. 08.18.080. [Repealed, § 1 ch 100 SLA 1968.]

Sec. 08.18.081. Claims against contractor. (a) A person having a claim against a contractor for any of the items referred to in AS 08.18.071 may bring suit upon the bond

SENATE FINANCE COMMITTEE
5/6/2004 COMMITTEE ACTION

Bill Number	HB 418		
Amendment	#1		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

SENATE FINANCE
COMMITTEE

ADOPTED

Amendment Number: # 2

Bill Number: HB 418

Sponsor: Green Date: 5/10/04

Logged In By: Robin

23-LS1548/MQ
Mischel
4/30/04

AMENDMENT

OFFERED IN THE SENATE

BY SENATOR GREEN

TO: SCS CS HB 418 (L3C)

- 1 Page 5 line 2:
- 2 Delete "Section 44(e), ch. 134, SLA 2003, is":
- 3 Insert "Sections 41, 42, 44(e), and 47, ch. 134, SLA 2003, are"

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relating to the purchase of certain housing loans of the Department of Community and Regional Affairs as of June 26, 1992, by the Alaska Housing Finance Corporation, see § 147, ch. 4, FSSLA 1992 in the Temporary and Special Acts; for legislative findings and intent in connection with the enactment of this section, see sec.

1, ch. 147, SLA 1988 in the Temporary and Special Acts.

Legislative history reports. — For legislative letter of intent relating to a legislative oversight committee in connection with AHFC activities under this section, see 1988 Senate Journal 3681.

Sec. 18.56.220. Duty to advise about corporation's programs. The corporation shall make a reasonable effort, through seminars, training sessions, and other forms of technical assistance, to assist local governments, regional housing authorities, nonprofit organizations, and other organizations and individuals to understand the corporation's housing programs and the opportunities that exist to obtain financial assistance from the corporation. (§ 98 ch 4 FSSLA 1992)

Sec. 18.56.300. Construction standards for housing eligible for purchase of loans. (a) The corporation may not make or purchase a housing loan for residential housing the construction of which begins after June 30, 1992, unless the seller of the mortgage loan complies with the provisions of this section and unless

(1) the unit is in compliance with the construction codes of the municipality, if the unit is located within a municipality that has adopted and enforces construction codes and each of those codes meets or exceeds the comparable standards for similar housing established by the state building code; or

(2) the unit is in compliance with the comparable standards for similar housing established by the state building code

(A) if the unit is located

(i) within a municipality whose construction codes do not meet the standards for similar housing established by the state building code;

(ii) within a municipality that does not enforce construction codes; or

(iii) outside a municipality; or

(B) as to each specific code within the construction codes of the municipality that has adopted and enforces construction codes if the specific code does not meet or exceed the comparable standard for similar housing established by the state building code.

(b) As a condition of a commitment to purchase or approve a loan under this section for residential housing the construction of which begins after June 30, 1992, the corporation shall require inspection of the unit of residential housing that is the subject of the loan. The inspection must be performed by a municipal building inspector, by a person who is approved or certified to perform residential inspections by the International Conference of Building Officials or the International Association of Electrical Inspectors, or, when the unit of residential housing is located in a rural area, by an architect registered under AS 08.48, by an engineer registered under AS 08.48, or by another person approved by the corporation. When the unit of residential housing is located in a rural area, the person who makes the inspection may use methods other than a personal physical inspection to make the inspection if the method is approved by the corporation, and variations from the applicable code may be accepted at the corporation's discretion, if the person authorized to inspect the unit under this subsection satisfies the corporation that the variation does not adversely affect the structural integrity of the unit or the health and safety of the residents. The person who makes the inspection shall determine whether the construction conforms to relevant provisions of the construction codes of the municipality or of the state building code, as applicable, at each of the following stages of construction:

(1) plan approval;

(2) completion of footings and foundations;

(3) completion of electrical installation, plumbing, and framing;

(4) completion of installation of insulation;

(5) final approval.

(c) A person may not bring an action for damages based on a duty imposed by (b) of this section to inspect a residential unit unless the action is for damages caused by gross negligence or intentional misconduct.

(d) This section does not apply to a nonconforming housing loan made or purchased by the corporation.

(e) In this section,

(1) "construction codes" means, with reference to a municipality, the building, mechanical, plumbing, and electrical codes, or any of them that have been adopted and are enforced by the municipality;

(2) "rural area" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks;

(3) "state building code" means

(A) for building standards, the standards set out in the version of the Uniform Building Code adopted by the Department of Public Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(B) for mechanical standards, the standards set out in the version of the Uniform Mechanical Code adopted by the Department of Public Safety under AS 18.70.080, including the provisions of that code applicable to buildings used for residential purposes containing fewer than four dwelling units, notwithstanding the exclusion of those buildings from the Department of Public Safety's jurisdiction made by AS 18.70.080(a)(2);

(C) for plumbing standards, the minimum plumbing code adopted for the state under AS 18.60.705; and

(D) for electrical standards, the minimum electrical standards prescribed by AS 18.60.580. (§ 2 ch 85 SLA 1990; am § 1 ch 29 SLA 1991; am §§ 1, 2 ch 52 SLA 1991; am § 99 ch 4 FSSLA 1992; am §§ 1, 2 ch 81 SLA 1994; am § 1 ch 2 SLA 1996; am § 6 ch 20 SLA 2002)

Revisor's notes. — Paragraph (c)(2) was enacted effective May 18, 2002, substituted "registered" for "licensed" in two places in the second sentence in subsection (b).
as (e)(3). Renumbered in 1994, at which time former (e)(2) was renumbered as (e)(3).

Effect of amendments. — The 2002 amendment,

Sec. 18.56.390. Definitions for AS 18.56.010 — 18.56.390. In AS 18.56.010 — 18.56.390, unless the context clearly indicates a different meaning,

(1) "adjustable rate mortgage loan" means a mortgage loan with respect to which the interest rate varies or is expected to vary from time to time by reference to an index or formula or other reference point;

(2) "bond" or "obligation" means a bond, bond anticipation note, or other note of the corporation authorized to be issued by the corporation under this chapter, or a mortgage participation certificate issued with respect to mortgages of the corporation;

(3) "construction loan" means a construction loan for land development or residential housing that is secured by a federally insured or guaranteed mortgage or that is insured or guaranteed by the United States or an instrumentality of the United States, or for which there is a commitment by the United States or an instrumentality of the United States to insure or guarantee such a loan, or a construction loan for land development or residential housing which land development or residential housing will be secured by a mortgage loan;

(4) "development costs" means the costs approved by the corporation as appropriate expenditures that may be incurred by sponsors, builders, and developers of residential housing, before commitment and initial advance of the proceeds of a construction loan or of a mortgage loan, including but not limited to

1 construction contract, except a design-build construction contract, must require the
2 offeror, no later than five working days after the proposal that is the most
3 advantageous to the state is identified, to list subcontractors the offeror proposes to use
4 in the performance of the construction contract. The list must include the information
5 required under AS 36.30.115(a). The provisions of AS 36.30.115(b) - (g) that apply to
6 a construction contractor or an apparent low bidder apply to offerors submitting
7 competitive sealed proposals for construction contracts, except design-build
8 construction contracts.

9 * **Sec. 39.** AS 36.90.290(1) is amended to read:

10 (1) "prime contractor" means a person required to be registered as a
11 contractor under AS 08.18 who has a contract with the state or a political subdivision
12 of the state to provide materials or services, other than as an employee, for a public
13 construction or public works project;

14 * **Sec. 40.** AS 45.50.471(b) is amended by adding a new paragraph to read:

15 (45) violating AS 08.18.023(b) or 08.18.152.

16 * **Sec. 41.** AS 18.56.300(c) is repealed.

17 * **Sec. 42.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. The change made by sec. 41 of this Act applies to causes of action
20 that accrue on or after July 1, 2005.

21 * **Sec. 43.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 REGULATIONS. The Department of Community and Economic Development may
24 proceed to adopt regulations to implement this Act. A regulation adopted under this section
25 takes effect under AS 44.62 (Administrative Procedure Act) but not before the effective date
26 of the law implemented by the regulation.

27 * **Sec. 44.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 TRANSITIONAL LICENSING PROVISIONS. (a) Notwithstanding AS 08.18.022,
30 added by sec. 7 of this Act, the Department of Community and Economic Development shall
31 issue a certificate of joint registration that is valid until January 1, 2006, to an individual who

1 submits to the department satisfactory evidence of being in the business of home inspection in
 2 the state at the time of application for registration under this subsection and of having

3 (1) been in the business of home inspection in the state on October 1, 2002;
 4 and

5 (2) passed the building inspector examination or property maintenance and
 6 housing inspector examination given by the International Code Council.

7 (b) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
 8 Community and Economic Development shall issue a certificate of registration to practice
 9 home inspection of previously occupied residences that is valid until January 1, 2006, to an
 10 individual who submits to the department satisfactory evidence of being in the business of
 11 home inspection in the state at the time of application for registration under this subsection
 12 and of having passed

13 (1) the national home inspector examination given by the American Society of
 14 Home Inspectors, American Home Inspectors Training Institute, or National Association of
 15 Home Inspectors; or

16 (2) the examination of the Examination Board of Professional Home
 17 Inspectors.

18 (c) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
 19 Community and Economic Development shall issue a certificate of registration to practice
 20 home inspection of new construction that is valid until January 1, 2006, to an individual who
 21 submits to the department satisfactory evidence of being in the business of home inspection in
 22 the state at the time of application for registration under this subsection and of having passed
 23 the combination inspector examination or the combination dwelling inspector examination
 24 given by the International Code Council.

25 (d) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the Department of
 26 Community and Economic Development shall issue a certificate of registration as an associate
 27 home inspector that is valid until January 1, 2006, to an individual who submits to the
 28 department satisfactory evidence of being employed by an individual who is in the business of
 29 home inspection and is registered under this section or under AS 08.18.

30 44 (e) A certificate of registration issued under this section may not be renewed or
 31 extended.

1 (f) Except as provided in (e) of this section, a certificate of registration as a home
2 inspector or associate home inspector issued under this section is considered to be a certificate
3 of registration as a home inspector or associate home inspector issued under AS 08.18.022,
4 added by sec. 7 of this Act.

5 (g) In this section, "joint registration" has the meaning given in AS 08.18.171, as
6 amended by sec. 33 of this Act.

7 * **Sec. 45.** AS 08.18.011(c) - (f), added by sec. 5 of this Act; AS 08.18.023, added by sec. 7
8 of this Act; AS 08.18.085, added by sec. 17 of this Act; AS 08.18.151, as amended by sec. 30
9 of this Act; and the amendment of AS 18.56.300(b), made by sec. 34 of this Act, take effect
10 July 1, 2004.

11 * **Sec. 46.** Section 35 of this Act takes effect January 1, 2006.

12 * **Sec. 47.** Sections 41 and 42 of this Act take effect July 1, 2005.

13 * **Sec. 48.** Except as provided in secs. 45 - 47 of this Act, this Act takes effect immediately
14 under AS 01.10.070(c).

SENATE FINANCE COMMITTEE
5 / 16 / 2004 COMMITTEE ACTION

Bill Number	HB 418		
Amendment	#2		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOP TED		

ADOPTED SENATE FINANCE
COMMITTEE

AMENDMENT

Amendment Number: #3A
Bill Number: HB 418
Sponsor: Green Date: 5/6/04
Logged In By: Mindy

OFFERED IN THE SENATE
TO: SCS CSHB 418(L&C)

BY SENATOR GREEN by request

Page 2, line 7:

Delete: "one year"
Insert: "three years"

Page 3, lines 12-22.

Delete all material.

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE
5/6/2004 COMMITTEE ACTION

Bill Number	HB 418		
Amendment	#3 A		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
Removed	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTE		

1 * Sec. 5. AS 08.88.291 is amended by adding new subsections to read:

2 (b) Each licensee under this chapter is responsible for ensuring that the
3 commission has current contact information for the licensee for two years after the
4 lapse, expiration, surrender, suspension, or revocation of the license.

5 (c) In addition to the information provided under (a) of this section, a licensee
6 shall provide the commission with a current mailing address and, if active, the address
7 of the broker employing the licensee.

8 (d) The commission shall mail all notices pertaining to a license or surety fund
9 action taken under this chapter or a regulation adopted under this chapter to the current
10 address or addresses of a licensee obtained under this section. Proof of notice
11 provided under this subsection satisfies due process notice requirements.

12 * Sec. 6. AS 08.88.470 is amended to read:

13 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
14 commission's consideration of a claim made under AS 08.88.460, it shall make written
15 findings and conclusions on the evidence. If the commission finds that the claimant
16 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
17 deceit, or the conversion of trust funds or the conversion of community association
18 accounts under the control of a community association manager on the part of a real
19 estate licensee, the commission may award a claimant reimbursement from the real
20 estate surety fund for the claimant's loss up to ~~\$20,000~~ ^{\$15,000} [10,000]. Not more than
21 ~~\$20,000~~ ^{\$15,000} [10,000] may be paid for each transaction regardless of the number of
22 persons injured or the number of parcels of real estate involved in the transaction.

23 * Sec. 7. The uncodified law of the State of Alaska enacted in sec. 44(a), ch. 134, SLA
24 2003, is amended to read:

25 (a) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
26 Department of Community and Economic Development shall issue a certificate of
27 joint registration that is valid until January 1, 2006, to an individual who submits to
28 the department satisfactory evidence of being in the business of home inspection in the
29 state at the time of application for registration under this subsection and of having

30 (1) been in the business of home inspection in the state on October 1,
31 2002; and

1 (2) passed the building inspector examination, [OR] property
 2 maintenance and housing inspector examination, or the residential combination
 3 examination given by the International Code Council.

4 * **Sec. 8.** The uncodified law of the State of Alaska enacted in sec. 44(c), ch. 134, SLA
 5 2003, is amended to read:

6 (c) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
 7 Department of Community and Economic Development shall issue a certificate of
 8 registration to practice home inspection of new construction that is valid until
 9 January 1, 2006, to an individual who submits to the department satisfactory evidence
 10 of being in the business of home inspection in the state at the time of application for
 11 registration under this subsection and of having passed the combination inspector
 12 examination, [OR] the combination dwelling inspector examination, or the
 13 residential combination examination given by the International Code Council.

14 * **Sec. 9.** The uncodified law of the State of Alaska enacted in sec. 44(f), ch. 134, SLA
 15 2003, is amended to read:

16 (f) A [EXCEPT AS PROVIDED IN (c) OF THIS SECTION, A] certificate of
 17 registration as a home inspector or associate home inspector issued under this section
 18 is considered to be a certificate of registration as a home inspector or associate home
 19 inspector issued under AS 08.18.022, added by sec. 7 of this Act.

20 * **Sec. 10.** The uncodified law of the State of Alaska as enacted in sec. 44, ch. 134, SLA
 21 2003, is amended by adding new subsections to read:

22 (h) Notwithstanding provisions of this section that provide that a certificate
 23 issued under this section is valid until January 1, 2006, a certificate issued under this
 24 section is not valid for more than two years from the date of issuance unless the
 25 certificate holder has provided evidence to the Department of Community and
 26 Economic Development that the certificate holder has completed continuing education
 27 requirements established by the department. The department may require a person
 28 who must show completion of continuing education under this subsection to meet the
 29 same continuing education requirements that would be applicable to license renewal
 30 under AS 08.18.031(c).

31 (i) The fee for a license issued under this section is \$200. The department

SENATE FINANCE
COMMITTEE

Amendment Number: #3B
Bill Number: HB 418
Sponsor: Green Date: 5/6/04
Logged In By: Mindu

AMENDMENT

OFFERED IN THE SENATE
TO: SCS CSHB 418(L&C)

BY SENATOR GREEN by request

Page 2, line 1:

Delete: "one year"
Insert: "three years"

Page 3, lines 12-22:

Delete all material.

Renumber the following bill sections accordingly.

SENATE FINANCE COMMITTEE
5 / 6 / 2004 COMMITTEE ACTION

Bill Number	HB 418		
Amendment	3B, as amended		
Motion	to adopt		
<u>Motion by</u>	Green		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Membe</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	ADOPTED		

SENATE FINANCE
COMMITTEE

Amendment Number: #3
Bill Number: HB 418
Sponsor: Green Date: 5/6/04
Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE
TO: SCS CSHB 418(L&C)

BY SENATOR GREEN by request

Amendment
split

Page 2, line 7:

Delete: "one year"
Insert: "three years"

3A

Page 3, lines 12-22:

Delete all material.
Renumber the following bill sections accordingly.

3B,

as
amendment

on
separate
sheet

ADOPTED



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 6 May 2004 TIME: 9:00 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 6

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please!
SCS CS HB 418 (FIN)
23 - LS 1548 \ Q
Plus 4 amendments - attached
1 : \ I. 2
2 : \ I. 1
3 A
3 B as amended

Attention: Deb

Of Senator Green's office

RE: SCS CS HB 418 (FIN)

Date: 5/6/04 Time: 2 PM

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,

Senate Finance Secretary

Mindy #4935

Robin #2618

Approved: [Signature]

(please initial)

Return ASAP

*Amends
#1, 2, 3A,
236
as
amended*

*OK to
take down
to Senate
Sec. Per
Stella
4:30
pm*

SENATE CS FOR CS FOR HOUSE BILL NO. 418(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Real Estate Commission; relating to real
2 estate; relating to home inspectors; relating to real estate licensees; and providing for an
3 effective date."

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

5 * Section 1. AS 08.03.010(c)(19) is amended to read:

6 (19) Real Estate Commission (AS 08.88.011) - June 30, 2008 [2004];

7 * Sec. 2. AS 08.18.022(a) is amended to read:

8 (a) The department shall issue a certificate of registration as a home inspector
9 for new homes, existing homes, or both, as appropriate, to an individual who

10 (1) passes the appropriate home inspection examination; for purposes
11 of this paragraph, the appropriate home inspection examination for an individual who
12 applies to be registered for inspection of

13 (A) existing homes is the examination offered by the American
14 Society of Home Inspectors, [AMERICAN HOME INSPECTORS

1 TRAINING INSTITUTE,] or National Association of Home Inspectors;

2 (B) new homes or for a joint registration is the examination
3 offered by the International Code Council;

4 (2) meets the educational and experience requirements adopted by the
5 department in regulations for the type of registration applied for;

6 (3) submits a complete application for registration either

7 (A) within three years [ONE YEAR] after passing the
8 examination required under (1) of this subsection; or

9 (B) accompanied by documentation that the applicant has
10 completed continuing education requirements established by the
11 department; #3A

12 (4) within the seven years preceding the date of application, has not
13 been under a sentence for an offense related to forgery, theft in the first or second
14 degree, extortion, or defrauding creditors or for a felony involving dishonesty;

15 (5) has not had the authority to perform home inspections revoked in
16 this state or in another jurisdiction;

17 (6) is not the subject of an unresolved criminal complaint or
18 unresolved disciplinary action before a regulatory authority in this state or in another
19 jurisdiction related to real estate or home inspection matters; and

20 (7) pays the appropriate fees.

21 * Sec. 3. AS 08.18.071(a) is amended to read:

22 (a) Except as provided in (d) and (e) of this section, each [EACH] applicant
23 shall, at the time of applying for a certificate of registration, file with the
24 commissioner a surety bond running to the state conditioned upon the applicant's
25 promise to pay all

26 (1) taxes and contributions due the state and political subdivisions;

27 (2) persons furnishing labor or material or renting or supplying #1
28 equipment to the applicant; and

29 (3) amounts that may be adjudged against the applicant by reason of
30 negligent or improper work or breach of contract in the conduct of the contracting
31 business or home inspection activity, as applicable, or by reason of damage to public

1 facilities occurring in the course of a construction project.

2 * **Sec. 4.** AS 08.18.071 is amended by adding new subsections to read:

3 (d) A general contractor or specialty contractor who is in compliance with the
4 surety bond or deposit requirements of (a) and (b) of this section is not required to file
5 another surety bond or increase a deposit with the commissioner when the general
6 contractor or specialty contractor applies to be a registered home inspector. However,
7 if the general contractor or specialty contractor subsequently is neither a general
8 contractor nor a specialty contractor and becomes only a registered home inspector,
9 the home inspector shall provide a surety bond or deposit in lieu of the bond in the
10 manner and amount required for registered home inspectors under this section.

11 (e) An applicant for, or holder of, a certificate of registration as a home
12 inspector may, in lieu of filing with the commissioner a surety bond or deposit that
13 meets the requirements of this section, file evidence satisfactory to the commissioner
14 that the applicant is employed by a registered home inspector who is in compliance
15 with the surety bond or deposit requirements of this section.

16 * **Sec. 5.** AS 08.18.101 is amended by adding a new subsection to read:

17 (b) Proof of insurance coverage for an applicant under (a) of this section may
18 be satisfied by providing evidence that the applicant is covered by a policy in effect
19 for the applicant's employer at least to the extent required under (a) of this section.

20 * **Sec. 6.** AS 08.88.251 is amended by adding new subsections to read:

21 (d) A licensee may, subject to the approval of the commission, renew an
22 inactive license for 24 months from the anniversary date of the issuance of the initial
23 inactive license certificate under (a) of this section.

24 (e) An active license that has been converted from inactive status under (c) of
25 this section shall be issued for the remainder of the current 24-month period of the
26 inactive license.

27 * **Sec. 7.** AS 08.88.291 is amended by adding new subsections to read:

28 (b) Each licensee under this chapter is responsible for ensuring that the
29 commission has current contact information for the licensee for two years after the
30 lapse, expiration, surrender, suspension, or revocation of the license.

31 (c) In addition to the information provided under (a) of this section, a licensee

#/
Continued

1 shall provide the commission with a current mailing address and, if active, the address
2 of the broker employing the licensee.

3 (d) The commission shall mail all notices pertaining to a license or surety fund
4 action taken under this chapter or a regulation adopted under this chapter to the current
5 address or addresses of a licensee obtained under this section. Proof of notice
6 provided under this subsection satisfies due process notice requirements.

7 * Sec. 8. AS 08.88.470 is amended to read:

8 **Sec. 08.88.470. Findings and payment.** At the conclusion of the
9 commission's consideration of a claim made under AS 08.88.460, it shall make written
10 findings and conclusions on the evidence. If the commission finds that the claimant
11 has suffered a loss in a real estate transaction as a result of fraud, misrepresentation,
12 deceit, or the conversion of trust funds or the conversion of community association
13 accounts under the control of a community association manager on the part of a real
14 estate licensee, the commission may award a claimant reimbursement from the real
15 estate surety fund for the claimant's loss up to \$15,000 [\$10,000]. Not more than
16 \$15,000 [\$10,000] may be paid for each transaction regardless of the number of
17 persons injured or the number of parcels of real estate involved in the transaction.

18 * Sec. 9. The uncodified law of the State of Alaska enacted in sec. 44(a), ch. 134, SLA
19 2003, is amended to read:

20 (a) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
21 Department of Community and Economic Development shall issue a certificate of
22 joint registration that is valid until January 1, 2006, to an individual who submits to
23 the department satisfactory evidence of being in the business of home inspection in the
24 state at the time of application for registration under this subsection and of having

25 (1) been in the business of home inspection in the state on October 1,
26 2002; and

27 (2) passed the building inspector examination, [OR] property
28 maintenance and housing inspector examination, or the residential combination
29 examination given by the International Code Council.

30 * Sec. 10. The uncodified law of the State of Alaska enacted in sec. 44(c), ch. 134, SLA
31 2003, is amended to read:

#36

1 (c) Notwithstanding AS 08.18.022, added by sec. 7 of this Act, the
 2 Department of Community and Economic Development shall issue a certificate of
 3 registration to practice home inspection of new construction that is valid until
 4 January 1, 2006, to an individual who submits to the department satisfactory evidence
 5 of being in the business of home inspection in the state at the time of application for
 6 registration under this subsection and of having passed the combination inspector
 7 examination, [OR] the combination dwelling inspector examination, or the
 8 residential combination examination given by the International Code Council.

9 * Sec. 11. The uncodified law of the State of Alaska enacted in sec. 44(f), ch. 134, SLA
 10 2003, is amended to read:

11 (f) A [EXCEPT AS PROVIDED IN (e) OF THIS SECTION, A] certificate of
 12 registration as a home inspector or associate home inspector issued under this section
 13 is considered to be a certificate of registration as a home inspector or associate home
 14 inspector issued under AS 08.18.022, added by sec. 7 of this Act.

15 * Sec. 12. The uncodified law of the State of Alaska as enacted in sec. 44, ch. 134, SLA
 16 2003, is amended by adding new subsections to read:

17 (h) Notwithstanding provisions of this section that provide that a certificate
 18 issued under this section is valid until January 1, 2006, a certificate issued under this
 19 section is not valid for more than two years from the date of issuance unless the
 20 certificate holder has provided evidence to the Department of Community and
 21 Economic Development that the certificate holder has completed continuing education
 22 requirements established by the department. The department may require a person
 23 who must show completion of continuing education under this subsection to meet the
 24 same continuing education requirements that would be applicable to license renewal
 25 under AS 08.18.031(c).

26 (i) The fee for a license issued under this section is \$200. The department
 27 shall adopt regulations for the collection of this fee.

28 * Sec. 13. Sections 41, 42, 44(e), and 47, ch. 134, SLA 2003, are repealed.

29 * Sec. 14. This Act takes effect immediately under AS 01.10.070(c).

#2



Alaska Division of Legislative Audit

Audit Digest #08-20023-03

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SUMMARY A Sunset Review of the Department of Community and Economic Development,
OF: Division of Occupational Licensing, Real Estate Commission.

PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Real Estate Commission (REC) to determine if the termination date for the commission should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if REC should be reestablished. Currently, AS 08.03.010(c)(19) specifies that REC will terminate on June 30, 2004, and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for REC should be extended. The commission serves a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties.

The commission carries out its responsibilities to educate both the public and REC licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical. We recommend that legislation be enacted to extend the commission's termination date to June 30, 2008.

FINDINGS AND RECOMMENDATIONS

1. The legislature should amend the statutes related to the Real Estate Surety Fund (RESF) to provide more complete, effective, and efficient consumer protection to claimants.

RESF provides consumers reimbursement for financial losses they may have suffered from a real estate transaction attributable to "fraud, misrepresentation, deceit, or the conversion of trust funds..." on the part of an REC licensee. Claims for reimbursement are subject to a hearing process administered in accordance with the state's administrative procedures act. In order to make the RESF operate in a manner consistent with the fund's evident purpose, we recommend the legislature amend state laws related to the fund in order to:

- o Increase the limits on reimbursement of claims to \$20,000 per transaction and the associated

maximum payment per licensee to \$100,000.

- o Only require the Division of Occupational Licensing (OccLic) to make reasonable efforts to provide right-of-appeal notification.
- o Specify that mobile home transactions are subject to RESF claims.

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* Requires Acrobat Reader



October 16, 2003

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
DIVISION OF OCCUPATIONAL LICENSING
REAL ESTATE COMMISSION SUNSET REVIEW

October 16, 2003

Audit Control Number

08-20023-03

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 commission, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(19), the Real Estate Commission is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the commission would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for REC should be extended. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. We recommend that legislation be enacted to extend the commission's termination date to June 30, 2008.

The audit was conducted in accordance with generally accepted government audit 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.

Pat Davidson, 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, we have reviewed the activities of the Real Estate Commission (REC) to determine if the termination date for the commission should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if REC should be reestablished. Currently, AS 08.03.010(c)(19) specifies that REC will terminate on June 30, 2004. If no action is taken by the legislature, the commission will have one year from that date to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the commission should be extended.
2. To determine if the commission is operating in the public interest.
3. To determine if the commission has exercised appropriate regulatory oversight of real estate licensees.

The assessment of the operations and performance of the commission was based on 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 commission.

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 commission proceedings, licensing, complaint investigation and resolution functions. During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Files and documentation related to individuals licensed as real estate salespersons, associate brokers, and brokers, including those who have been issued a courtesy license to practice within Alaska.
- Files and documentation related to individuals who applied for licensing as a salesperson, associate broker, or broker; testing of licensing candidates, and continuing education necessary for an individual to maintain their license in good standing.

- Minutes of commission meetings, budget documents, and annual reports related to, or issued by REC.
- Complaints filed with the Division of Occupational Licensing, the Alaska State Commission for Human Rights, the Office of the Ombudsman, the Office of Victims' Rights, and the Federal Equal Employment Opportunity Commission.
- Financial information relating to the REC and the Real Estate Surety Fund (RESF) claims handling process.

Additionally, we conducted interviews with Division of Occupational Licensing staff and members of the REC.

ORGANIZATION AND FUNCTION

Commission Membership

Alaska Statute 08.88.011 establishes the Real Estate Commission (REC). REC is a regulatory commission consisting of seven members, specified in statute to consist of five real estate brokers or associate brokers who have been licensed as such in Alaska for at least three years prior to appointment, and two public members in accordance with AS 08.01.025. The statute further specifies that one of the five members of the commission who must be real estate brokers or associate brokers should be from each of the four Judicial Districts, and one from the state at large. However, if no licensed real estate broker or licensed associate broker is eligible or available for appointment from the Second Judicial District, then two licensed real estate brokers or licensed associate brokers shall be appointed from the state at large. Currently, the Office of the Governor has exercised this option, and has appointed to REC two members from the state at large.

REAL ESTATE COMMISSION (As of October 14, 2003)

Jeannie Johnson, Broker – 1st Judicial District –
Chairperson

Lottie M. Michael, CCIM, Broker – Member at Large

Barbara Parker-Ramsey, Associate Broker –
3rd Judicial District

Susan Rainey, Associate Broker – 4th Judicial District

David B. Somers, Broker – Member at Large

Bradley J Fluetsch, CFA – Public Member

Vacant – Public Member

Statutory Authority of the Commission

Alaska Statute 08.88.071 defines the commission's authority, purpose, and scope of work. Under this statute, REC must perform the following duties:

1. Determine whether applicants meet requirements for licenses under this chapter and issue licenses to those who qualify.
2. Prepare and grade examinations.
3. Prosecute, through the Department of Law, violations of real estate statutes and regulations.
4. After a hearing, REC has the authority to suspend or revoke the license of a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a licensee who violates real estate statutes and regulations.
5. Prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations adopted under this chapter.

6. Release for publication in a newspaper of general circulation (in the locale of the offending person's principal office registered with the commission) notice of disciplinary action taken by REC against a licensee.
7. Issue a temporary permit to the personal representative of the estate of a deceased or legally incompetent real estate broker (or to another person designated by the commission, with the approval of the personal representative of the estate) in order to secure proper administration in either:
 - A. concluding the affairs of the decedent broker's real estate business (if deceased); or
 - B. temporarily managing the real estate business of the broker (if legally incompetent).
8. Establish and periodically revise the form of the seller's property disclosure statement required by AS 34.70.010.
9. Have the authority to levy civil fines as established under AS 08.88.
10. Revoke the license of a broker or associate broker who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude committed while licensed under AS 08.88.

License Requirements

REC licenses real estate brokers, associate brokers, and salespersons. In order to obtain initial licensure, real estate brokers and associate brokers must pass an examination and have a minimum of 24 months of active and continuous experience as a real estate salesperson. A broker differs from an associate broker in that a broker must be an owner of a real estate business, or must be employed as a broker by a corporation or partnership. An associate broker is an individual who has met the statutory requirements of a broker, but does not meet the ownership criteria for a broker.

A real estate salesperson must pass an examination, be at least 19 years old, must not be under indictment for any felony involving moral turpitude, or, if convicted for an offense, the person must have completed the imposed sentence; and be employed by a real estate broker.

REC also conducts a variety of educational activities such as holding clinics, meetings, and seminars, as well as publishing educational pamphlets for the purpose of raising the standards of the real estate profession and improving the competency of its various licensees.

Real estate licenses are renewed biennially. The next biennial renewal date is January 31, 2004. In order to renew their license, real estate licensees must complete a renewal application, provide evidence of continuing education, and remit a license fee.

Duties of the Department of Community and Economic Development

The Department of Community and Economic Development (DCED), Division of Occupational Licensing (OccLic) provides administrative and investigative assistance to REC. This 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 that DCED, 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.

Alaska Statute 08.01.087 empowers OccLic with the authority to act on its own initiative, or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

Real Estate Surety Fund

The real estate surety fund (RESF) operates under Article 4 of AS 08.88. REC administers the fund and sets the surety fee paid by all licensees. The fund was established in 1974 to serve as a substitute for corporate surety bonds, which licensees were previously required to obtain; and to fund the education of licensees and the public.

By law, the fund is to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of any real estate licensee. Claims for reimbursement require a \$250 filing fee and claim payments are limited to \$10,000 per transaction, up to a maximum of \$50,000 per licensee. The statutes grant REC the following authority when considering a claim for payment from the RESF:

1. Take and hear evidence pertaining to the claim.
2. Administer oaths and affirmations.
3. Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the claim.

4. Engage the services of an investigator, accountant, or other expert necessary to process the claim.

However, the commission currently exercises its option under AS 08.88.472(c) to contract under AS 36.30 (State Procurement Code) with a hearing officer employed by OccLic to perform the above hearing and legal services for REC.

In order to facilitate the management of the RESF and the fee setting process, DCED is required by statute to provide the commission every three months with a financial statement that includes the following information regarding the RESF:

- the activities of the fund.
- balances in the fund.
- interest earned.
- interest returned to the fund.

BACKGROUND INFORMATION

The Alaska Real Estate Commission (REC) was created in 1964. In one of its earliest actions, REC required all licensees to carry a surety bond. Salespersons were required to maintain a \$1,000 bond while brokers had to carry bonding for \$5,000. The purpose of these bonds was to provide consumers some protection from malfeasance on the part of REC licensees.

At the request of REC, the Legislature established a state-administered surety fund in 1974

Although there were few claims against these bonds, the real estate profession and REC realized the required bonding levels were too low to adequately protect the public. Following the example of 12 other states, the industry together with REC, actively lobbied the 1974 legislature to create a state-administered surety fund that is funded by licensee fees. The fund was to serve a two-fold purpose:

1. To provide indemnification up to \$10,000 per transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds.
2. To provide funding for real estate education of both the public and REC licensees.

Originally, the surety fund only paid court-ordered judgments against real estate licensees

The 1974 legislation, which was patterned after the California model, required a court judgment against a licensee prior to any disbursement from the Surety Fund. Under the original 1974 law there was no requirement that the fund be reimbursed by the licensee whose actions resulted in a claim payment, nor did the law provide for any review by REC prior to payment from the fund. From the 1976 license renewal cycle (when the first fees were paid into the surety fund), judges were able to order payment to the successful complainant directly from the fund to satisfy a judgment.

In 1980, surety fund statutes were amended to provide for an administrative hearing process

The legislature responded to a recommendation in a 1980 REC sunset review by amending the surety fund statutes. We recommended that REC take on the responsibility of not only hearing cases involving RESF claims, but also approving awards from the fund. The use of hearing officers, in accordance with the Administrative Procedures Act, began in late 1982. At that time, the commission adopted regulations that became effective in early 1983.

Under these regulations, claims are filed directly with REC. A \$250 filing fee is required; however, the fee is refunded if the complainant prevails. Once a complaint is received the administrative hearing process begins. The hearing consists of presentations by the claimant and the licensee(s) involved. The hearing officer has the power to subpoena evidence and to require the attendance of witnesses. Both parties are allowed legal counsel if they so choose.

Administrative hearings provide all of the due process protections, with the exception of a jury trial, that are afforded through the civil court system. The rules of evidence are more informal than in court; although, as a practical matter, most of the evidence that is presented in administrative hearings would be allowed in a civil court proceeding.

At the conclusion of the hearing, a document titled Findings of Fact and Conclusions of Law is prepared by the hearing officer. This document summarizes the hearing officer's findings and recommended action as to whether REC should approve payment of the claim from the fund. Once a hearing officer has made a recommended decision, the commission reviews the case and decides if the claim should be paid from the RESF. After the final decision is made, the licensee or the claimant has the option to appeal to the Superior Court.

Statute requires the surety fund maintain a minimum balance and also sets the maximum level

Alaska Statute 08.88.450 establishes the floor of the fund at \$250,000 and the ceiling at \$500,000. The funds in RESF may be used to pay claims and fund education for real estate professionals. The surety fee is set by REC and is capped at \$125. This fee may be adjusted downward by REC as long as the fund is maintained at a level that can pay claims against it without going below the minimum fund balance of \$250,000. REC is also responsible for approving education expenditures and all consumer claim payments charged to the fund.

REPORT CONCLUSIONS

In accordance with AS 08.03.010(c)(19), the Real Estate Commission (REC) is scheduled to terminate by statute on June 30, 2004. If no action is taken by the legislature, the commission will have one year in which to conclude its affairs and will be dissolved on June 30, 2005.

REC is responsible for licensing and regulating individuals who hold themselves out to the public as real estate salespersons, associate brokers, or brokers. The commission accomplishes this by establishing: (1) qualifications for licensure; (2) the scope and extent of continuing education necessary for real estate professionals to remain licensed; and, (3) evaluating and approving payment of claims from the real estate surety fund to consumers seeking reimbursement for a loss suffered in a real estate transaction attributable to fraud, misrepresentation, or deceit on the part of a REC licensee.

In our opinion, the termination date for REC should be extended. The commission serves a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. The commission carries out its responsibilities to educate both the public and REC licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical. We recommend that legislation be enacted to extend the commission's termination date to June 30, 2008.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

The Real Estate Surety Fund (RESF) provides consumers reimbursement for financial losses they may have suffered from a real estate transaction attributable to "*fraud, misrepresentation, deceit, or the conversion of trust funds...*"¹ on the part of an REC licensee. Claims for reimbursement are subject to a hearing process administered in accordance with the state's administrative procedures act.

In reviewing the administration of the fund in recent years, we have noted instances or circumstances that are not consistent with the evident purpose of the fund. That is, the fund is not operating in a manner that provides individuals with a less cumbersome alternative to formal litigation in the courts when they have been financially injured in a real estate transaction. Towards the end of making RESF operate in a manner consistent with this evident purpose, we recommend the legislature consider amending state laws related to the fund in order to:

1. Increase the limits on reimbursement of claims. Under current state law, RESF claim payments are capped at \$10,000 per transaction,² up to a maximum of \$50,000 per licensee.³ The current limits were set in 1974 when RESF was first established in statute.

The mandate for licensees to pay a fee (set by REC) to fund the RESF was also set out in the 1974 statute. The statute was amended in 1998 limiting this fee to no more than \$125.⁴ Currently, the license fee is set by REC at \$30 per licensee. The amount paid by licensees is primarily determined by how close the balance of the fund is to \$500,000 (the maximum set in statute) or to \$250,000 (the statutory minimum). During our audit period, the RESF has fluctuated close to the \$500,000 ceiling; at no time did the balance approach the \$250,000 minimum floor.

Given the soundness of the fund, we suggest the legislature consider increasing the claim limit. The following observations indicate a need to reconsider the claim limit:

- Each of the last five RESF claim payments was for the maximum \$10,000. The alleged losses associated with each of these successful, and presumably valid, claims exceeded the \$10,000 limit (although all but one was less than \$20,000).

¹ AS 08.88.460(a)

² AS 08.88.470

³ AS 08.88.475(a)

⁴ am § 36 ch 45 SLA 1998

- If the \$10,000 amount established in 1974 was adjusted by the consumer price index for Anchorage, the current equivalent sum would be \$31,500.
- Compared to other states with similar recovery funds our limit is low. The average per-transaction limit of 26 states surveyed is just over \$21,000. The average per-licensee limit (in states with a two-tiered limit such as Alaska) is just under \$70,000.

Increasing the limits on claim payments would not only cause an increase in the amount of funds paid out of the fund, but also may increase the number of claims made on the fund. However, considering the balance of the fund over the past eight years, it is unlikely that this will have a material effect on the fund balance or cause REC to significantly raise the RESF fees. Given these factors, we recommend the legislature increase the limit on claim payments to \$20,000 per transaction and the associated maximum payment per licensee to \$100,000.

2. Only require the Division of Occupational Licensing (OccLic) to make reasonable efforts to provide right-of-appeal notification. Claims against RESF are administered under the state's Administrative Procedures Act (APA).⁵ Under this act, either party may appeal the final decision made by REC. When a RESF "judgment" involving the actions of a REC licensee is made by the commission, the licensee has a right to appeal. Final payment from the RESF is held until the appeal is filed and considered or the individual involved waives their appeal rights.

This has resulted in a situation where a successful claimant has been waiting over nine months to receive a \$10,000 payment and OccLic has not been able to locate or notify the losing respondent of their rights to appeal. It is very likely the individual has left the state, but the Department of Law has advised OccLic to continue their attempts of contacting the respondent in order to afford him full opportunity in exercising his APA appeal rights.

Such notification requirements are inconsistent with the central evident purpose of RESF – allowing consumers an expedited way to recover some, if not all, of their financial loss from the fraudulent actions of real estate licensees. Accordingly, we recommend that the legislature permit REC and OccLic to disburse RESF claim payments after they have made a good faith effort to locate the losing respondent regarding appeal options. If such efforts are unsuccessful, then OccLic should be allowed to presume the individual is waiving their appeal rights -- and disburse claim awards to the prevailing plaintiff.

3. Specify mobile home transactions are subject to RESF claims. State law specifies that RESF can be used to reimburse an individual for a loss "*suffered in a real estate transaction as a result of fraud, misrepresentation, deceit ...*"⁶ In two instances, during recent years, attorneys representing REC licensees have sought to have

⁵ AS 44.02

⁶ AS 08.88.460

RESF claims dismissed because the claims involved transactions in the purchase of mobile homes. The attorneys argued that since mobile homes are considered personal, rather than real property, their sale do not represent a "*real estate transaction*" as specified in law.

The hearing officer handling the case has always disallowed this argument. However, such procedural rulings made in the course of an administrative hearing do not have any value in establishing recognized precedence. Accordingly, in some future claim hearing, it could be held that the RESF statutes do not cover mobile home sales transactions.

As reasoned by the hearing officer, the intent of RESF is to compensate victims of fraud, misrepresentation, and deceit on the part of REC licensees. Mobile home purchases still represent a large commitment of capital on the part of the buyer and necessary reliance on the performance of a real estate professional. Therefore, we recommend the legislature amend the statute to specify mobile home transactions as being subject to RESF claims.

The implementation of the above recommendations will enhance the consumer protection offered by the RESF as well as the consumer satisfaction in the adjudication of their claims. Further, implementation will streamline the administration of the Fund by increasing the efficiency with which disbursements from RESF are made.

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ANALYSIS OF PUBLIC NEED

The following analyses of commission activities relate to the public need factors defined in AS 44.66.050(c). 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.

In FY 93, REC implemented a system of electronic testing for licensure examinations required of salespersons and brokers. The passing score report generated upon successful completion of the examination was designed to also serve as the license application, which reduced the processing time involved in issuing the initial license. Since that time, REC has continued to administer and maintain oversight for the licensing exams. Exam times and sites are offered at various locations throughout the state on at least a monthly basis.

REC developed and issued an informational booklet titled *The Landlord and Tenant Act: What it Means to You*. The booklet served as a reference source for both landlords and tenants, explaining the requirements and responsibilities of each party under state law. REC completely rewrote and reissued this booklet in July 2002, incorporating changes in the laws and regulations since the original publication date.

REC also developed and issued revisions to the Property Transfer Disclosure Statement and provided statewide distribution and training on completing the form. In addition, REC periodically publishes a newsletter. This newsletter has articles regarding statutes and regulations, including upcoming changes; highlights from the most recent REC meeting; and, articles of interest to the real estate profession.

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

The table on the next page summarizes the number of claims filed and their disposition during the period of our audit. With respect to surety fund claims, it appears that the timing of claims processing and resolution may be impeded by the availability of only one hearing officer to service the entire OccLic division. This has resulted in extensive delays in the finalization of claims. The initial response to claims appears to be expedient; however, final resolution appears to generally be taking two years or more.

In September 2001, the licensing examiner's position was expanded from part-time to full time. The position was expanded in response to the steady growth in the number of real estate licensees and the resulting increase in workload. In FY 03, there was a dramatic increase in Real Estate Surety Fund (RESF) claims (as shown in the table at right); consequently, in FY 04 we expect a corresponding rise in personnel service costs for the hearing officer.

RESF Claims Filed and Disposition of Claims	FY 00	FY 01	FY 02	FY 03
New Claims Filed	3	5	5	14
Disposition:				
Withdrawn	1	0	2	0
Moved to small claims	0	1	0	0
Dismissed	1	0	0	0
Resulted in payment ⁷	1	1	0	0
Pending	0	2	3	14
Appealed to Superior Court	0	1	0	0

Licensing fees and Commission Operating Expenses

State law requires "...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." The schedule below summarizes the operating costs and revenues for REC for the period of FY 00 through FY 03. As reflected in this schedule, REC is in material compliance with the law at the end of FY 03.

**Real Estate Commission
Schedule of License Revenues and Commission Expenditures
FY 00-FY 03
(Unaudited)**

	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>
Total Revenues	\$ 126,600	\$ 646,700	\$ 84,100	\$ 629,000
Direct Expenditures:				
Personal Services	171,300	142,800	141,700	178,400
Travel	21,200	16,800	11,900	16,700
Contractual	79,300	78,500	45,700	67,100
Supplies	<u>1,600</u>	<u>1,500</u>	<u>2,900</u>	<u>600</u>
Total Direct Expenditures	273,400	239,600	202,200	262,800
Administrative Indirect Costs	<u>102,700</u>	<u>95,700</u>	<u>88,200</u>	<u>93,300</u>
Total Expenditures	<u>376,100</u>	<u>335,300</u>	<u>290,400</u>	<u>356,100</u>
Revenues over (under) Expenditures	<u>(249,500)</u>	<u>311,400</u>	<u>(206,300)</u>	<u>272,900</u>
Cumulative Surplus (deficit)	\$ <u>(800)</u>	\$ <u>248,700</u>	\$ <u>(62,700)</u>	\$ <u>143,600</u>

⁷ FY 00 claim payment made two years after original filing date, FY 01 claim payment authorized 26 months after original filing date (check not disbursed as of audit fieldwork).

In FY 03, total operating expenses for REC increased by 12% from the previous fiscal year; direct expenditures for REC increased markedly by 27%. This is primarily due to significant increases in personnel services, and to a lesser degree, travel expenditures. Even with the increase in costs, the cumulative biennial deficit shown at the end of FY 01 has almost been eliminated.

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

The REC has monitored and revised regulations to comply with statutory changes and administrative needs on an ongoing basis. However, REC has made no recommendations for statutory changes over the last four years.

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

The public received notice of all meetings consistent with the requirements of statute and regulation. The agenda of items to be discussed was available before scheduled meetings. A public comment period has been set aside in the agenda for each commission meeting.

Interested parties can attend meetings in person or by teleconference. In addition to accepting public comment at the meetings, REC regularly discussed correspondence from various individuals, agencies and other interested parties. OccLic forwards public comment and concerns, for consideration during commission meetings to REC.

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 that it has provided.

Draft regulations developed by REC were properly advertised for the required amount of time. Public notices of regulatory hearings were published in major newspapers and on the commission's website. The commission accepted public comment at meetings.

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 victims' rights or the office of the ombudsman have been processed and resolved.

During the 48-month period from July 1, 1999 through June 30, 2003, OccLic opened 152 investigative cases related to individuals certified by REC. Almost two-thirds (97) of the cases were generated from complaints made by clients, or from the general public. A little less than a third of the complaints (43) involved allegations of negligence, incompetence, or

professional ethics violations. Another one-third of the cases (51) involved alleged misrepresentation or fraud by the licensees.

As of the date of our review, 117 of the 152 cases had been closed. Just over 40% of the cases (48) were closed with a finding of no violation. Of the remaining closed cases, 20 were closed with warning letters issued by the commission, and 16 resulted in some form of licensure action.⁸ Seven complaints resulted in the initiation (by OccLic in conjunction with the Attorney General's Office) of a formal disciplinary hearing and 15 were closed for miscellaneous other reasons.

The remaining 11 cases were administratively closed under what was termed the Director's Case Reduction Plan (DCRP). The new director of OccLic established a policy that all division investigations that had been open for more than a year were to be administratively closed if they did not involve a significant public safety concern.

Of the 35 cases still open, as of the date of our review, nine had been opened within the previous 120 days. Seven of the cases have been open longer than one year and were pending closure under DCRP policy. The remaining 19 open cases are in various stages of ongoing investigation. If DCRP is applied to investigations on an ongoing basis, then nearly half of these remaining 19 cases will be closed administratively within 90 days of our report.

The investigative unit of OccLic was directed to close all cases that are: (a) over one-year old, and (b) do not involve a serious public safety issue. These criteria would apply to nearly all REC investigative cases since they rarely involve public safety issues, but rather the protection of Alaska's consumers. The one-year time limit under DCRP appears rather arbitrary, particularly since no consideration is given as to the nature of the complaints received by various boards and commissions. A third of the complaints regarding REC licensees involve allegations of fraud or misrepresentation. Such cases may be dropped, despite the underlying validity, simply because they "timed out."

We reviewed the nature and extent of complaints filed involving REC licensees. Except for the arbitrary nature of the criteria used under the new DCRP policy, we conclude that OccLic (in conjunction with the commission) has proceeded in a manner consistent with the potential threat these complaints posed to the public welfare.

During the period of our review, the office of the Ombudsman received one complaint against the Alaska Real Estate Commission. This complaint was dismissed immediately due to the fact that the complainant would not allow disclosure of his identity. No other complaints were filed with the office of the Ombudsman and no complaints were filed with the Office of Victims' Rights.

⁸ Licensure action includes suspension or revocation of the individual's license to practice, or imposition of a Memorandum of Agreement - which typically limits the individual's practice to some extent.

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

REC is charged with regulating entry into the occupation. To obtain a real estate salesperson license, an individual must submit an application for license (with fee), pass an examination, and obtain 20 hours of pre-licensing education.

New Licenses Issued	FY 00	FY 01	FY 02	FY 03	Total for Period	Current Licenses at June 30, 2003
Salesperson	169	197	224	222	812	1,215
Assoc. Broker	2	6	1	2	11	368
Broker	2	2	5	2	11	475
Total	173	205	230	226	834	2,058

Other provisions exist for individuals previously licensed in other states and additional criteria are required for Broker and Associate Broker licenses. The above table shows the number of licenses issued, by category for each of the listed fiscal years.

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.

We found no evidence of REC not complying with state personnel practices, including affirmative action, in the qualifying process of applicants. Each time the commission has denied an applicant's certification the reasoning has been based on requirements set out by statute and regulation, not on the personal attributes of applicants. The reasons for denials are stated in writing, with the applicant always informed of their rights and the process in which they can contest or appeal any denial of licensure.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.

Administrative Hearings

Currently, when an individual pursues a surety fund claim all the way to an administrative hearing, the process often exceeds two years. The purpose of the RESF hearing process is to allow individuals to recover losses without the burden of more formal litigious processes as would be experienced in a court of law. In order to serve the public interest, the RESF claim process should be carried out as expeditiously as possible.

One hearing officer serves the entire Division of Occupational Licensing, or approximately 20 separate professional boards. While the number of investigators has increased over the last few years, there remains only one hearing officer available to handle all administrative

hearings for the boards. This creates difficulties in scheduling both the hearing and the report writing phases. We suggest that OccLic determine whether other boards and commissions are also experiencing significant delays in the administrative hearing process. If so, the division should consider obtaining additional hearing officer services or some alternative relief.

Educational Requirements

In order to obtain an Alaska real estate license by endorsement, applicants must show evidence that certain educational requirements have been met as specified in 12 AAC 64.063.

Currently, when applicants with real estate licenses from other states apply for an Alaska license by endorsement, REC accepts the out-of-state license as proof that the applicant has completed the courses required by the commission. Although every state may require completion of courses prior to issuing a license, REC should not rely on the controls of other states. Insisting on proof that applicants have completed the courses specifically required by the commission will ensure that REC is accepting qualified applicants to serve the people of Alaska.

Real Estate Surety Fund (RESF)

The legislature needs to consider amending statutes related to the administration of RESF in order to better accomplish the public policy objective behind the fund's operation – consumer protection. Specifically we recommend:

1. Increase the limits on reimbursement of claims.
2. Require that OccLic make reasonable efforts to provide right of appeal notification.
3. Specify mobile home transactions are subject to RESF claims.

Adherence to AS 08.01.025 for public members

Earlier this year an individual was appointed to the Real Estate Commission as a public member but did not meet the qualifications of public membership outlined in AS 08.01.025.

Specifically, the statute states a public member of a board may not:

1. Be engaged in the occupation that the board regulates.
2. Be associated by legal contract with a member of the occupation that the board regulates except as a consumer of the services provided by a practitioner of the occupation.
3. Have a direct financial interest in the occupation that the board regulates.

As an attorney, his relationship with various clients who are licensees of the commission put his appointment in violation of AS 08.01.025 (2) and likely (3), as cited above. He has since submitted his resignation from the REC.

To avoid future recurrences the Office of the Governor should consider requiring current and proposed public members of boards and commissions sign an affidavit attesting that they are in compliance with AS 08.01.025.

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ACCOUNTANT'S REPORT

Members of the Legislative Budget
and Audit Committee:

We have reviewed the accompanying comparative statements of revenues, expenditures, and changes in fund balance of the Department of Community and Economic Development, Real Estate Surety Fund for the years ending June 30, 2000, 2001, 2002, and 2003, in accordance with Statements on Standards for Accounting and Review Services issued by the American Institute of Certified Public Accountants. All information included in these statements is the representation of the management of the Department of Community and Economic Development.

A review consists principally of inquiries of department personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion regarding the financial statements taken as a whole. Accordingly, we do not express such an opinion.

As described in Note 1, only the statements of revenues, expenditures, and changes in fund balance have been presented. These statements are not intended to be a complete presentation of the results of operation and the financial position of the Real Estate Surety fund, which would require the presentation of balance sheets.

Based on our reviews we are not aware of any material modifications that should be made to the accompanying statements of revenues, expenditures and changes in fund balance in order for them to be in conformity with generally accepted governmental accounting principles.

Pat Davidson, CPA
Legislative Auditor

October 16, 2003

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State of Alaska
Department of Community and Economic Development
Real Estate Surety Fund
Comparative Statements of Revenues, Expenditures, and Changes in Fund Balance
For the Fiscal Years Ended June 30, 2000, 2001, 2002, and 2003

	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>
Revenues				
Licensee Fees, Claim Filing Fees, and Claim Reimbursements	\$ 19,525	\$ 86,475	\$ 21,751	\$ 86,357
Interest Earned	<u>25,361</u>	<u>26,730</u>	<u>48,250</u>	<u>24,439</u>
Total Revenues	<u>44,886</u>	<u>113,205</u>	<u>70,001</u>	<u>110,796</u>
Educational Expenditures				
Personal Services	94,236	82,866	78,503	59,775
Travel	1,550	1,817	- 0 -	1,103
Contractual	29,876	8,685	1,815	4,354
Commodities	- 0 -	- 0 -	- 0 -	2,229
Equipment	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>1,884</u>
Subtotal educational expenditures	125,662	93,368	80,318	69,345
Hearing, legal, and claims settlements	<u>250</u>	<u>31,544</u>	<u>5,016</u>	<u>- 0 -</u>
Total Expenditures	<u>125,912</u>	<u>124,912</u>	<u>85,334</u>	<u>69,345</u>
Revenues over (under) expenditures	<u>(81,026)</u>	<u>(11,707)</u>	<u>(15,333)</u>	<u>41,451</u>
Transfer in from General Fund	<u>- 0 -</u>	<u>- 0 -</u>	<u>- 0 -</u>	<u>60,698</u>
Net change in Fund Balance	<u>(81,026)</u>	<u>(11,707)</u>	<u>(15,333)</u>	<u>102,149</u>
Fund Balance, beginning of year	<u>548,230</u>	<u>559,937</u>	<u>575,270</u>	<u>473,121</u>
Fund Balance, end of year	<u>\$467,204</u>	<u>\$548,230</u>	<u>\$559,937</u>	<u>\$575,270</u>

See accompanying Accountant's Report and Notes to the Financial Statements.

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State of Alaska
Department of Community and Economic Development
Real Estate Surety Fund

Note 1 – Summary of Significant Accounting Policies

Alaska Statute 37.05.150 requires the State of Alaska to conform to generally accepted accounting principles (GAAP) as prescribed by the Governmental Accounting Standards Board (GASB). GASB is the accepted standard-setting body for governmental accounting and financial reporting principles which are primarily set forth in GASB's Codification of Governmental Accounting and Financial Reporting Standards.

The statements provided in this report present only the revenues, expenditures, and changes in fund balance of the Department of Community and Economic Development, Real Estate Surety Fund for fiscal years 2000 through 2003. As such, these statements are not intended to be a complete presentation of the fund's results of operations and financial position on the modified accrual basis of accounting. The following is a summary of the significant policies applicable to the Department of Community and Economic Development, Real Estate Surety Fund.

Real Estate Surety Fund

The Real Estate Surety Fund (RESF) was established in 1974 as a sub-fund of the State of Alaska General Fund under AS 08.88.450. The fund was created to provide indemnification up to \$10,000 per transaction for persons who have suffered financial loss because of a Real Estate Commission (REC) licensee's actions that involve fraud, deceit, misrepresentation, or conversion of trust funds, and to provide funding for real estate education of both the public and REC licensees.

Alaska Statute 08.88.450 establishes the floor of the fund at \$250,000 and the ceiling at \$500,000. The funds in RESF may be used to pay claims and fund education for real estate professionals. The surety fee is set by REC and is capped at \$125. This fee may be adjusted downward by REC as long as the fund is maintained at a level that can pay claims against it without going below the minimum fund balance of \$250,000. REC is also responsible for approving education expenditures and all consumer claim payments charged to the fund.

Measurement Focus and Basis of Accounting

The accounting and financial reporting presentation is determined by measurement focus. Basis of accounting refers to when revenues are recognized in the accounts and reported in the financial statements. These financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting.

State of Alaska
Department of Community and Economic Development
Real Estate Surety Fund

Note 1 – Summary of Significant Accounting Policies (Continued)

Under the modified accrual basis of accounting, revenues are recognized when they become measurable and available to finance operations during the current year or to liquidate liabilities existing at the end of the year (collected within 60 days of fiscal year end). Major revenues that are determined to be susceptible to accrual include.

- A. Surety fund fees paid by real estate licensees when applying for or renewing a real estate license in lieu of obtaining a corporate surety bond.
- B. Filing fees retained from claimants, all of whom must pay \$250 to the commission at the time their claim is filed.
- C. Income earned on investment of the money in the RESF.
- D. Money paid by the public, real estate licensees, or potential real estate licensees to receive an educational item or service that was provided by the commission through money expended from the fund.

Expenditures are recognized when a liability is incurred. However, expenditures related to claims and judgments are recorded only when payment is due and payable. Major expenditures include claims against the fund, hearing and legal expenses directly related to fund operations and claims, and real estate education.

Note 2 – General Fund Transfer

Prior to September 1999, real estate surety funds in excess of the \$500,000 ceiling lapsed into the General Fund. At June 30, 1998, \$60,698 lapsed into the General Fund, but was appropriated back to the Real Estate Surety fund by Ch 84, SLA 1999, Sec. 21 in FY 00.

November 17, 2003

Ms. Pat Davidson, Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

RE: REAL ESTATE COMMISSION – PRELIMINARY AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to respond to the Alaska Real Estate Commission Preliminary Audit Report.

Findings and Recommendations

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

Item 1. Increase the limits on reimbursement of claims.

The Department concurs with the recommendations to increase the limits on reimbursement of claims.

In addition, we recommend considering increasing the surety fund filing fee required under AS 08.88.460(d); the current fee is \$250. A substantial amount of staff time and resources are involved in processing a claim before it is forwarded to the hearing officer. With an increased limit on the amount reimbursable from the fund, an increased number of claims may result. If the filing fee is increased, it may assist with ensuring frivolous claims are less likely. However, a concern would be to ensure the filing fees is not so high that legitimate parties, who have already suffered a loss, are not further taxed by extremely high filing fees. In accordance with AS 08.88.460(d)(1), if a claimant is successful, ne/she is refunded the filing fee.

Item 2. Only require the Division of Occupational Licensing (OccLic) to make reasonable efforts to provide right-of-appeal notification.

The Department concurs with the review and analysis of instances where staff has been unable to notify the losing party of the final judgement and appeal rights—therefore, holding up payment of judgments for a substantial amount of time. We support amending the provisions to provide for recognition of reasonable efforts to contact the parties at their last known address.

The Department also recommends an amendment which would allow a claim to proceed to hearing based on records which reflected staff's reasonable effort to contact the parties. Licensees have been known to either surrender their license, or move with no forwarding address, just prior to a surety fund claim being filed. Once a licensee surrenders his/her license, or the license lapses, the licensee has no further obligation to keep the Commission informed of their mailing/service address. In these instances, substantial delays occur while staff try to find the licensee/previous licensee. Once found, obtaining successful service is often a challenge; legal service of claims is often avoided by such persons. If a claimant is eventually successful in being awarded a judgement from the fund, the licensee (or lapsed licensee) may be liable for reimbursement to the fund.

Item 3. Specify mobile home transactions are subject to the RESF claims.

The Department supports this recommendation on the basis that all practices and activities as conducted by a real estate licensee, as part of their real estate business and conducted under the auspices of their license/brokerage, should be covered by the Surety Fund for loss suffered from a licensee's fraud, misrepresentation, or deceit. However, such an amendment should clarify that the inclusion of allowing a surety fund claim for mobile home transactions, is not to be interpreted to *require* a real estate licensee for the selling of a mobile home (currently, new or used mobile home dealers are not required to hold a license with the Real Estate Commission). The Department does not support requiring all mobile home dealers (new and used) to be licensed by the Real Estate Commission. If a real estate licensee chooses to conduct transactions and act as an agent for a mobile home seller or buyer, the provisions of the surety fund should apply. The licensee, when acting as a agent would be required to conduct all mobile home transactions through his/her brokerage. This requirement is appropriate for the consumers' protection when they are dealing with a licensee.

Any statutory amendment involving this issue should be very clear as to when the surety fund applies and when a licensee may assist another to buy/sell a mobile home without falling under the brokerage and surety fund (i.e., when can a licensee help a friend sell a mobile home—similar to any member of the public—and not have the transaction fall under the jurisdiction of the licensee's broker and ultimately the surety fund?). Disclosure would undoubtedly be a key in such legislation.

Analysis Section regarding complaint processing:

The department disagrees with the assessment that under the Director's Case Reduction Plan, cases involving allegations of fraud or misrepresentation may be dropped simply because they timed out. The nature of each complaint is reviewed and only those which are clearly without merit and have not progressed within a 12 month period are to be closed.

Department Recommendations

A. Amendment to AS 08.88.251 Requested

In accordance with AS 08.01.100, unless otherwise provided, licenses are subject to biennial renewal on a date set by the department. Real Estate licenses are subject to renewal February 1 of even numbered years (i.e., all Real Estate licenses expire 1/31/04). The Department seeks an amendment to AS 08.88.251, to allow issuance of an expiration date for an "inactive" license (whose inactive status is crossing a renewal biennium), to coincide with the date the licensee is eligible to reactivate under AS 08.88.251(c). The Commission currently has situations where an individual's license expiration date is 1/31/04, however, the licensee is no longer eligible to renew the license because their "24 months of inactive status" crossed a previous renewal cycle. In these situations, the licensee's two year period for being eligible to reinstate under .251(c) ended prior to the license expiration date printed on their license. An expiration date for reinstatement eligibility which differs from the expiration date on the printed license causes confusion and recently litigation was pursued to resolve which expiration date took precedence.

B. Sunset of the Commission and Continuation of Licensing Through the Department.

The Department recommends the legislature sunset of the Commission and continue the licensing function through assignment to the Department. This is not being suggested as a criticism against the current, or prior, Commission. Licensing could continue in a manner similar to past boards which have been eliminated (i.e., the Board of Mechanical Administrators, Board of Electrical Administrators and the Big Game Commercial Services Board). If this is an area the Legislature is interested in considering, my staff will be available to discuss the specific statutes which would need to be amended to give authority for licensing to the Department.

Again, thank you for the opportunity to comment.

Sincerely,

Edgar Blatchford
Commissioner

cc: Rick Urion, Director,
Division of Occupational Licensing

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Jeannie Johnson
1621 Second Street
Douglas, Alaska 99824
(907) 364-2121

November 10, 2003

Pat Davidson
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Alaska 99811-3300

Re: *Preliminary Audit, Alaska Real Estate Commission Sunset Review, October 16, 2003*

Dear Ms. Davidson:

On behalf of the Alaska Real Estate Commission I would like to thank you and your department for the good work involved in the sunset review of the Real Estate Commission. We are pleased with its conclusion for the enactment of legislation to extend the sunset date to June 30, 2008. The Commission does have a concern with one of the recommendations contained therein.

With respect to the three recommendations:

After reading the back-up material and seeing the statistical reasoning, the Commission concurs that the limits of reimbursement of claims be increased to \$20,000 per transaction and the associated maximum payment per licensee increased to \$100,000. The Commission will assist with this change in any manner needed.

The Commission is aware of the right-of-appeal notification problem and would welcome the necessary changes to correct it. We certainly do support successful claimants receiving payment as quickly as possible. The particular case you are referring to has been a source of concern for the Commission as well. Again, the Commission will assist with this change in any manner needed.

With respect to the third recommendation, mobile home transactions being subject to the Real Estate Surety Fund, the Commission emphatically disagrees.

This change is fraught with problems. That this recommendation has been made points to perhaps a different issue that needs to be addressed within the real estate industry by the Commission. However, the Commission believes making all mobile home transactions eligible for surety fund reimbursement has the potential of becoming a huge burden borne solely by licensees who provide the money to maintain the surety fund.

A mobile home *by itself* is personal property; it is no different than an automobile. Even though through the years mobile homes have grown into larger and larger entities and cost more money, there is nonetheless no real property (land) included with their sale. They are mobile homes that are parked in a mobile home park. The title to a mobile home is just that, a title. Ownership is transferred through the Department of Motor Vehicles. No real estate license is required to sell mobile homes. There may be a motor vehicle dealer license required. The Commission is not familiar with licensing requirements for motor vehicle transactions (which may include the sale of mobile homes).

The only training an Alaska Real Estate licensee now receives about mobile homes is that they do not fall under the definition of real property. Therefore, licensees are not licensed to sell mobile homes, only real property. Some may have knowledge of mobile home facts and sales procedures just as some may have knowledge of how to sell an automobile. Such training is not included in that required to obtain an Alaska Real Estate License.

If a mobile home is placed on a piece of real property (land) and made a part of the land, there is a possibility one could construe this entire entity, the land and mobile home to be real property. In common practice this does sometimes occur. In such a case, if the owner were going to list that entity for sale, he/she would need to utilize the service of a real estate licensee. The trigger here is the real property (land) being sold. The Commission, at the present time, would have no problem considering a surety fund claim in this example, (mobile home on real property).

Where the problem seems to arise is when a real estate licensee lists for sale a mobile home in a mobile home park. This is not a real estate transaction and does not require a real estate license. The Commission can see where the confusion might arise in the mind of the public. The uninformed buyer sees a real estate sign on a mobile home in a park and could reasonably assume a subsequent transaction was protected through the surety fund. In reality, the Commission doubts uninformed buyers and sellers are aware of the existence of the surety fund.

There are companies in business for the express purpose of selling mobile homes. Those companies do not need a real estate license. The Commission

does not want the surety fund to be available to such transactions. Again, those transactions are concerned with personal property, not real property.

The Commission will take up the matter and make a recommendation to correct this perceived problem as soon as possible. One recommendation might be for those Real Estate Brokers choosing to allow their licensees to sell mobile homes in mobile home parks to establish a second business with different signage and a disclaimer provided to any prospective seller or buyer. Such a disclaimer should emphasize the difference between real and personal property and alert them the proposed transaction does not involve real property.

Another possibility would be to require anyone selling mobile homes to have a real estate license.

The Commission will be happy to work toward a better solution for the few cases that have come before us concerning mobile homes. At this point, the Real Estate Commission is reluctant to include those unlicensed persons selling mobile homes to have coverage of Real Estate Surety Fund.

Again, the Commission thanks you for your good work and looks forward to assisting with these matters in the near future.

Sincerely,

Jeannie Johnson
Chair, Alaska Real Estate Commission
Alaska Real Estate Broker since 1977

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November 24, 2003

Members of the Legislative Budget and
Audit Committee:

We have reviewed the department's and the commission's response to our report. Comments made regarding our recommendation on the Real Estate Surety Fund (RESF) statutes and our observations about the policy related to administrative closure of investigations warrant further discussion and clarification. Accordingly, we offer the following information and clarifications:

1. Mobile home sales and the RESF statutes. Our suggestion that RESF statutes be amended to specify coverage of mobile home sales did not mean that such legislation be used to limit who can make such sales. Any person, whether or not they hold a REC license, could be involved in the sale of a mobile home. However, if an individual licensed by REC is involved in such a sale, they are expected to exercise due professional care and the transaction should be covered by RESF.
2. Administrative closure of complaint investigations. The department takes exception with our assessment that investigations of REC licensees, involving alleged fraud or misrepresentation, were dropped because they "timed out." Our comments stemmed from a review of various REC complaints that were administratively closed under the director's case reduction plan (DCRP). When we inquired with the Chief Investigator about these cases, he confirmed investigations of the complaints were stopped pursuant to the DCRP policy. This policy, as he understood it, required all investigations exceeding a year be dropped, unless the complaint presented a threat to public health.

The only written statement of DCRP policy is an electronic mail message (e-mail) composed by the Chief Investigator. This e-mail served to confirm the policy set out by the director's verbal directives. Closure of complaints, involving alleged fraud and misrepresentation by REC license holders, was consistent with the standards set out in the e-mail.

Accordingly, based on our review of the department and commission responses, and the clarifying comments we discussed above, we reaffirm the findings, conclusions, and analysis presented in our sunset review.

Pat Davidson
Legislative Auditor

Alaska State Legislature

Rep. Tom Anderson, Chair
Rep. Carl Gatto, Vice - Chair
Rep. Norman Rokeberg, Member
Rep. Nancy Duhlstrom, Member
Rep. Bob Lynn, Member
Rep. Harry Crawford, Member
Rep. David Guttenberg, Member



State Capitol
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House Labor & Commerce Committee

SPONSOR STATEMENT

CSHB 418 (FIN)

Prepared by Representative Norman Rokeberg

CSHB 418 accomplishes three things:

1. It extends the life of the Real Estate Commission to 2008.
2. It clarifies procedures with regard to inactive real estate licensees, contact information for licensees, and notice requirements.
3. It makes clarifying amendments to the home inspector legislation passed by the 2003 Legislature (HB 9).

The Legislative Budget and Audit Committee has indicated that the Real Estate Commission does serve a purpose and that it should be extended. The Real Estate Commission is the entity that licenses and oversees almost 2,000 Alaskans working in the real estate or property management industries.

At the request of the Division of Occupational Licensing, language was inserted in Sections 4 and 5 that clarify the operations of the Real Estate Commission concerning inactive real estate licenses and contact information for real estate licensees.

The remainder of the bills is clarifying language concerning the home inspector law that was passed last year. During the development of proposed regulations for the industry, some problems became apparent. These problems are addressed in CSHB 418 (FIN):

1. Current law would require each registered home inspector to have a policy of general public liability, even if that individual was employed by a company that has a company wide policy. Section 3 addresses this situation by stating that an individual covered by a employer's policy does not have to have an individual policy.
2. Current law and its interpretation by the Division of Occupational Licensing would require that an application take four individual examinations instead of the residential combination examination (one exam). This change in Sections 6 and 7 allows that exam to be used as a qualifying exam for home inspectors.
3. Current law states that a transitional home inspector registration may not be renewed. Sections 9 and 10 address that by repealing that language and requiring that a transitional license may be renewed by providing proof of continuing education.

Your support for this legislation would appreciated.

Alaska State Legislature

Rep. Tom Anderson, Chair
Rep. Carl Gatto, Vice - Chair
Rep. Norman Rokeberg, Member
Rep. Nancy Dahlstrom, Member
Rep. Bob Lynn, Member
Rep. Harry Crawford, Member
Rep. David Guttenberg, Member



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House Labor & Commerce Committee

SECTIONAL ANALYSIS

CSHB 418 (FIN)

Prepared by Rep. Norman Rokeberg

- Section 1:** Extends the Real Estate Commission to June 2008.
- Section 2:** Deletes reference to "American Home Inspectors Training Institute"
Amends subsection 18.18.022(a)(3) to indicate that an individual may register with the Division as a home inspector upon submitting a completed application within one year after passing the appropriate exam, or providing proof of completed continuing education requirements.
- Section 3:** Amends current law to provide that if an employee/registered home inspector is employed by a company that has liability and other insurance that the employee does not have to provide proof that the employee has an individual policy. Without this change the employee would have to carry his or her own individual coverage.
- Section 4:** Clarifies the law on inactive real estate licenses.
- Section 5:** Requires that a real estate license must keep the Commission advised of current contact information. Sets forth mailing procedures for notices.
- Section 6:** Amends the home inspector law to provide that one of the exams that may be used is the residential combination examination. Without this amendment, regulations recently promulgated would require that an applicant take four individual exams instead of this one combo exam.
- Section 7:** Adds language to the transitional licensing provision regarding the residential combination examination referred to in Section 6 above.
- Section 8:** As the (c) section referenced in the deleted language is repealed in Section 10, this is a conforming amendment.
- Section 9:** Provides that a transitional license may be renewed if continuing education documentation is provided.

Permits charging for the home inspector transitional licenses.
- Section 10:** Repeals the section of law that indicates that transitional licenses may not be renewed.
- Section 11:** Immediate effective date.



ALASKA ASSOCIATION OF REALTORS, INC.
4205 Minnesota Drive Anchorage, Alaska 99503
Telephone (907) 563-7133 Fax (907) 561-1779
www.alaskarealtors.com

February 23, 2004

The Honorable Norm Rokeberg
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

RE: House Bill 418, extending the termination date of the Real Estate Commission

Dear Representative Rokeberg,

The Alaska Association of REALTORS is in favor of extending the termination date of the Real Estate Commission to June 30, 2008, rather than June 30, 2004.

The Association does not concur with the Division of Legislative Audit recommendations that the limits of reimbursement on surety fund claims increase from \$10,000 to \$20,000 per transaction and the associated maximum payment per licensee be increased to \$100,000.

Sincerely,

A handwritten signature in cursive script that reads 'Kathryn Clark'.

Kathryn Clark
President



Subject: attached spreadsheet

Date: Mon, 03 May 2004 12:33:32 -0800

From: Pat Davidson <pat_davidson@legis.state.ak.us>

To: Jane Alberts <Jane_Alberts@legis.state.ak.us>




Hi Jane,

Attached is a spreadsheet that identifies some states that have a state administered real estate recovery fund (i.e. Real Estate Surety Fund). For the selected states we have identified the maximum payment per real estate transaction and the maximum payment per licensee.

This is not a complete list of states that may have recovery funds. Please let me know if you have any questions.

Pat Davidson

 surety fund.xls	Name: surety fund.xls Type: EXCEL File (application/msexcel) Encoding: base64
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provided by Senator Bunde

A Selection of Other States with State Administered Real Estate Recovery Funds

State	Maximum Payment per Transaction	Maximum Payment per Licensee
Alabama	25,000.00	50,000.00
Alaska	10,000.00	50,000.00
Arizona	30,000.00	90,000.00
Arkansas	15,000.00	50,000.00
California	20,000.00	100,000.00
Colorado	50,000.00	150,000.00
Georgia	15,000.00	
Hawaii	25,000.00	
Idaho	10,000.00	
Illinois	\$10,000, plus atty fees up to 15 % of award	50,000.00
Indiana	20,000.00	50,000.00
Kansas	15,000.00	
Kentucky	10,000.00	50,000.00
Montana	25,000.00	
Nevada	10,000.00	20,000.00
New Mexico	10,000.00	30,000.00
North Carolina	25,000.00	50,000.00
North Dakota	15,000.00	
Ohio	40,000.00	
Oklahoma	15,000.00	50,000.00
Pennsylvania	20,000.00	100,000.00
Rhode Island	50,000.00	
South Dakota	15,000.00	
Tennessee		
Texas	50,000.00	100,000.00
Utah	10,000.00	
Virginia	20,000.00	50,000.00
Wyoming	4,000.00	

SENATE FINANCE COMMITTEE

SIGN - IN

HB 418-REAL ESTATE COM'N/LICENSEE/HOME INSPECT'

✓ NAME: Ruch Bachwell Subject/Bill No: HB 418
Co./Dept./Title: Alaska Association of Realtors Phone: 789-3888
Paradise Realty
Address: 9040 Glacier Highway Zip: 99801

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE COMMITTEE REPORT

DATE: 04/22/04

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 5/5/04

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 418(FIN)

HB 418 EXTEND REAL ESTATE COMMISSION

"An Act extending the termination date of the Real Estate Commission; relating to real estate; relating to home inspectors; relating to real estate licensees; and providing for an effective date."

and recommends:

- be replaced with S CS CSHB 418 (LEC)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

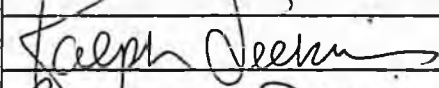

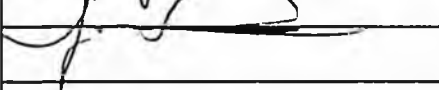
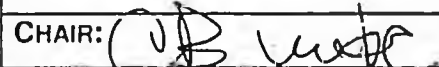
NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Sackins</i> 	✓			
<i>Davis</i> 	X			
<i>G. Steens</i> 			X	
CHAIR: <i>Brunde</i> 	✓			