

HB

63

<TARGET><BILL>HB 63</BILL><SUBJECT>HB
63</SUBJECT><COMM>HJUD28</COMM></TARGET>

Alaska House of Representatives

Rep. Wes Keller, Chair
Alaska State Capitol, Room 118
Juneau, AK 99801



Rep. Bob Lynn
Rep. Max Gruenberg
Rep. Lance Pruitt
Rep. Neal Foster
Rep. Charisse Millett
Rep. Gabrielle LeDoux

House Judiciary Committee

Letter of Intent for House Bill 63

“It is the intent of HOUSE BILL NO. 63 “An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date” that a critical function of the Alaska Bar Association is the continuing legal education (CLE) of its membership. CLE contributes to lawyer competence and benefits the public and the profession by ensuring that attorneys remain current regarding the law, the profession’s obligations and standards, and the management of their law practices.

Accordingly, the Alaska Legislature respectfully recommends that the Alaska Supreme Court increase the number of Mandatory Continuing Legal Education (MCLE) credit hours for active members of the Alaska Bar Association.

A handwritten signature in cursive script, appearing to read "Wes Keller".

Representative Wes Keller, Chair
House Judiciary Committee

Representative Mike Hawker
Alaska State Legislature



Session:

State Capitol
Juneau, AK 99801
907 465-4949 office
907 465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
907 269-0248 fax

House District 27:

Anchorage
Glen Alps
Rainbow
Indian
Bird
Girdwood

MEMORANDUM

TO: Representative Wes Keller
Chairman, House Judiciary Committee

FROM: Office of Representative Mike Hawker

A handwritten signature in black ink, appearing to read "M. Hawker".

DATE: January 16, 2013

RE: House Bill 63

I request that House Bill 63, which extends the termination date of the Board of Governors of the Alaska Bar Association until June 30, 2021, be scheduled for a hearing at your earliest convenience. I have attached a copy of the bill and Sponsor Statement, for your review.

Please feel free to contact me or my legislative aide, Cecile Elliott, at 465-4949 for any additional information.

Representative Mike Hawker

Alaska State Legislature



House Bill 63

Sponsor Statement

Session:

State Capitol
Juneau, AK 99801
907 465-4949 office
907 465-4979 fax

Interim:

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Short Title: Extend Bar Association Board of Governors

HB 63 extends the termination date of the Board of Governors of the Alaska Bar Association until June 30, 2021, in accordance with the recommendation of the Legislative Auditor.

The Board of Governors serves an important public service by ensuring that persons licensed to practice law are qualified and providing a forum for complaint investigation. The Board also appoints the Bar counsel, which is responsible for oversight and all disciplinary actions taken against licensees.

HOUSE BILL NO. 63

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HAWKER

Introduced: 1/16/13

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act extending the termination date of the Board of Governors of the Alaska Bar
2 Association; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 08.03.010(c)(2) is amended to read:

5 (2) Board of Governors of the Alaska Bar Association (AS 08.08.040)
6 - June 30, 2021 [2013];

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

Fiscal Note

State of Alaska
2013 Legislative Session

Bill Version: HB 63
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB063-OOG-EO-2-23-13
Title: EXTEND BAR ASS'N BOARD OF GOVERNORS
Sponsor: HAWKER
Requester: House Judiciary

Department: Various
Appropriation: Various
Allocation: Various
OMB Component Number:

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2014 Appropriation Requested	Included in Governor's FY2014 Request	Out-Year Cost Estimates					
			FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2013) cost: 0.0

Estimated CAPITAL (FY2014) cost: 0.0

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version.

Prepared By: Guy Bell, Director
Division: Administrative Services
Approved By: Guy Bell, Director
Division of Administrative Services

Phone: (907)465-3876
Date: 02/23/2013 01:40 PM
Date: 02/23/13

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2013 LEGISLATIVE SESSION

BILL NO. HB63

Analysis

This legislation extends the sunset date of the Alaska Bar Association.



Division of Legislative Audit

Report Digest #41-20075-12

SUMMARY OF: A Sunset Review on the Alaska Court System, Board of Governors of the Alaska Bar Association (board), July 11, 2012

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the board. The purpose of this audit was to determine if there is a demonstrated public need for its continued existence and if it has been operating in an effective manner. As required by AS 44.66.050(a), this report shall be considered by the committee of reference during the legislative oversight process in determining whether the board should be reestablished. Currently, under AS 08.03.010(c)(2), it will terminate on June 30, 2013 and will have one year from that date to conclude its administrative operations.

REPORT CONCLUSIONS

We conclude that the board's termination date should be extended. The board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for complaint investigation and has established a disciplinary process designed to promote competence and professionalism in licensed individuals. We recommend that the board's termination date be extended to June 30, 2021.

One recommendation was made to increase continuing legal education (CLE) for attorneys. CLE contributes to lawyer competence and benefits the public and the profession by ensuring that attorneys remain current regarding the law, the profession's obligations and standards, and the management of their practices.

FINDINGS AND RECOMMENDATIONS

1. The board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be increased.
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Thomas S. Obermeyer, Sr., Missouri Attorney, M.B.A.

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Anchorage, Alaska 99508-4413
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tsobermeyer@gci.net

February 22, 2013

TO: House Judiciary Committee: Chair Rep. Keller, Vice-Chair Rep. Lynn;
Rep. Foster, Rep. LeDoux, Rep. Millett, Rep. Pruitt, and Rep. Gruenberg

RE: HB 63 Hearing scheduled 2/25 Extending Termination Date of AK Bar Association
REF: Alaska Legislative Audit # 41-20075-12, Alaska Bar Association Sunset Review

I ask that the termination date of the Alaska Bar Association pursuant to HB 63 not be extended and the Alaska Bar Association be allowed to sunset. This will provide time in the next year for the Legislative Audit Division and the Alaska Bar Association to reevaluate the admissions process, particularly the Alaska Bar Exam methodology and the unjustifiably low passage rates.

I have a great deal of respect for the sponsor of HB 63 who like the new Legislative Auditor is a Certified Public Accountant. This bill is not about whether the Alaska Bar Association is financially solvent but about whether it is operating in the best interest of the public. The focus of the current Audit is an increase in mandatory Continuing Legal Education hours. This is a very minor issue compared to fair admission practices.

The Alaska Bar Association essentially has three functions: Admission, Discipline, and Continuing Legal Education (CLE), in that order of importance. The Legislative Audit on which the House Judiciary Committee relies in hearing HB 63 completely ignores the most important and pressing issue: Passage rates on the Alaska Bar Examination. The 64% passage rate found in the Audit for the last four years (including 52% on one Alaska Bar Exam) is unacceptable and will continue for another 8 years if you pass HB 63. This rate is arbitrarily set by the Alaska Bar Association through manipulative grading methodology which adjusts essay scores up or down to meet the target passage rate. Utilizing multiple regression analysis to combine the subjective (essay) and objective (multiple choice) portions of the exam inevitably results in about 1/3 failing under a bell-shaped curve.

There is little or no oversight of the Alaska Bar Exam passage rates and grading procedures by the Board of Governors or the Supreme Court, contrary to findings in the Audit. Both bodies are handed lists of names of passing applicants on the Alaska Bar Exam to rubber-stamp as admitted to practice. Failing applicants face an arduous appeal procedure taking many months through the Alaska Supreme Court, or if able, they must pay a couple of thousand dollars to prepare and take the exam again.

The National Conference of Bar Examiners (NCBE) tacitly acknowledges state control of passage rates. The difference between Alaska and other states is that most others have the decency to pass 80-90% of applicants. The NCBE has ranked Alaska Bar Exam passage rates among the lowest in the country for 30 years. At statehood one did not even need a law license to practice or to become a judge. Low passage rate on the Alaska Bar Exam is not due to a "tough exam." Instead, it is due to a fraud on the public who think Alaska applicants face a national standard. I consider the Alaska Bar Association's "rigging" or fixing" bar exam passage rates through manipulative grading procedures and methodology a violation of constitutional due process and tantamount to a restraint of trade.

Controlling passage rates is not possible on the United States Medical Exam which is 100% objective nationwide. It took nine years for states to reach this agreement. The American Bar Association is testing a Uniform Bar Exam (UBE) in some states, but application to date is not universal nor totally objective and it is still subject to the whims of state control.

Alaska's applicants are among the best trained in the country, all graduates of American Bar Association accredited law schools. The average law student debt is \$130,000 in an economy of diminishing job prospects. Why does the Alaska Bar Association perpetuate this fraud on the public by limiting licensure, increasing revenues, protecting incomes, and limiting competition for the benefit of its own trade guild? Wisconsin licenses 100% of all graduates of its state law schools at the time the law students graduate.

In my own case as a Category I licensed attorney in Missouri for 23 years, I take 15 hours mandatory CLE each year including 2 hours ethics. I find the training in Missouri both educational and social. But before requiring mandatory CLE, Missouri first passes about 90% on its bar exam. I am now preparing to take, as I have since February, 1984, my umpteenth Alaska Bar Exam February 26-28, 2013, because the Bar Association will not accept my application for reciprocity pursuant to Alaska Bar Rule 2.2b(3) devised to exclude me, as I have been targeted for 29 years.

Respectfully Submitted,

Thomas S. Obermeyer, Sr.

Cc: Rep. Mike Hawker
Ms. Kris Curtis, Legislative Auditor

September 19, 2012

Kris Curtis, CPA, CISA
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Curtis:

Thank you for the Division's thorough review of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2021.

There will be no fiscal note attached to any bill filed with the Legislature to extend the sunset date of the Board, as the Board will not be seeking any state funding for its operational costs. The Board obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 26 years, the Board has paid those expenses without state funding.

As noted in the audit, the operations of the Board are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education (CLE) seminar fees, Lawyer Referral Service charges, convention fees, and interest income. Ironically, a decision to sunset the Board would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be increased.

The Board takes its responsibility to provide continuing legal education (CLE) programs very seriously. Over the past thirty years, the number and variety of programs have increased substantially.

The Board has worked closely with the Alaska Supreme Court in setting the framework for a mandatory CLE program. But it's important to remember that the Supreme Court, in the exercise of its constitutional rule-making

authority under Article IV, Section 15 of the Alaska Constitution, makes the final determination regarding the size and scope of a mandatory CLE requirement.

Those early efforts culminated in a voluntary CLE program enacted by the Court in September 1999 with the first reporting year in 2000. The Court advised that every active member of the Bar Association should complete at least 12 credit hours of approved CLE, including one hour of ethics CLE each year. The Court wrote in its comment to Rule 65 that it wasn't convinced a mandatory rule was necessary and believed that a CLE program could become successful by using incentives to encourage voluntary participation in CLE rather than sanctions to penalize non-compliance with a mandatory rule. It envisioned a three-year pilot project with an assessment at the end of that period of the project's results.

Then in 2008, following committee and Board meetings as well as meetings with the Court itself, the Court decided that the time had come for a mandatory program. As you've noted, the current program requires three credit hours of approved mandatory ethics CLE and a recommended nine additional hours of voluntary CLE. Again, the Court advised that at the end of three years, it would assess the project's results, including recommendations and statistics provided by the Board and would determine whether an expanded mandatory CLE program was necessary.

Those reports have been submitted to the Court together with a proposal for refinement of the current rule to make it easier for members to determine the procedures for compliance. The Board hopes an administrative rules conference will be scheduled so that this proposal can be discussed and to assist the Court in its review of the program since the 2008 amendment.

In this regard, you can be assured that the Board will continue to work with the Court and make suggestions to the Court about a program that, in the introductory words of Bar Rule 65, "promote[s] competence and professionalism in members of the Association" as they provide fulfill their responsibilities to clients, the courts, and the people of the State of Alaska.

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection program is referenced on page 9. However, claims for reimbursement due to a lawyer's dishonest behavior can arise from any circumstances described in Alaska Bar Rule 45 and are not limited to fee arbitration proceedings.

Financial statements.

Attachment 1 lists the total liabilities and net assets for the general fund as \$4.1 million. This amount includes accounts receivable funds. The majority of the accounts receivable is bar dues income which is earned each month. These assets will be spent down through the year by the 2012 budgeted expenses of \$2.8 million. If the Bar Association closed its doors midyear, the unearned bar dues funds would have to be paid back to the Bar members.

Concluding comments.

It is also our belief that the present management system of the Bar Association provides a variety of public service, ensuring both accountability and good management. As an instrumentality of the state, the Bar Association is subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline and fee arbitration panels as well as on the Board of Governors. Its rule-making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process. The Board provides public service through activities such as its pro bono program, which includes programs such as the Martin Luther King Day of Service and the Elizabeth Peratrovich Legal Clinic at the AFN Conference, and through its Sections and committees work, such as the Law Related Education Committee activities in the schools and website legal guides. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Thank you for the opportunity to comment on the audit report. We believe that the Board has demonstrated its continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association

Hanna Sebold
President

Appendix A
(continued)

ALASKA BAR ASSOCIATION STATEMENT OF FINANCIAL POSITION December 31, 2011				
	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Assets:				
Current Assets:				
Cash	\$ 590,042	\$ 407,717	\$ 26,338	\$ 1,024,097
Investments	1,750,216	849,462	-	2,599,678
Accounts Receivable	1,643,150	-	-	1,643,150
Accrued Interest Receivable	7,792	8,080	-	15,872
Due from General Fund	-	32,732	-	32,732
Prepaid Expenses	83,587	-	-	83,587
Total Current Assets	<u>4,074,787</u>	<u>1,297,991</u>	<u>26,338</u>	<u>5,399,116</u>
Property and Equipment, at Cost:				
Videotape Library and Equipment	7,586	-	-	7,586
Office Furniture and Equipment	502,916	-	-	502,916
Leasehold Improvements	99,056	-	-	99,056
Historical Artifacts	3,750	-	-	3,750
Subtotal Property and Equipment	<u>613,308</u>	<u>-</u>	<u>-</u>	<u>613,308</u>
Less Accumulated Depreciation and Amortization	<u>(593,907)</u>	<u>-</u>	<u>-</u>	<u>(593,907)</u>
Total Property and Equipment	<u>19,401</u>	<u>-</u>	<u>-</u>	<u>19,401</u>
Total Assets	<u>\$ 4,094,188</u>	<u>\$ 1,297,991</u>	<u>\$ 26,338</u>	<u>\$ 5,418,517</u>
Liabilities and Net Assets:				
Current Liabilities:				
Accounts Payable and Accrued Expenses	\$ 127,696	\$ -	\$ -	\$ 127,696
Due to Bar Foundation	3,710	-	-	3,710
Due to Other Funds	37,601	-	-	37,601
Deferred Dues and Fees	2,156,075	30,240	-	2,186,315
Total Current Liabilities	<u>2,325,082</u>	<u>30,240</u>	<u>-</u>	<u>2,355,322</u>

Appendix A
(continued)

**ALASKA BAR ASSOCIATION
STATEMENT OF FINANCIAL POSITION
December 31, 2011**

	<u>General Fund</u>	<u>Lawyers' Fund for Client Protection</u>	<u>Court System Library Fund</u>	<u>Total All Funds</u>
Liabilities and Net Assets (continued):				
Net Assets:				
Unrestricted (designated by the Board of Governors):				
Designated for Working Capital	\$ 1,315,000	\$ -	\$ -	\$ 1,315,000
Designated for Asset Acquisition	165,847	-	-	165,847
Undesignated	<u>284,509</u>	<u>1,267,751</u>	<u>26,338</u>	<u>1,578,598</u>
	1,765,356	1,267,751	26,338	3,059,445
Permanently Restricted	<u>3,750</u>	-	-	<u>3,750</u>
Total Net Assets	<u>1,769,106</u>	<u>1,267,751</u>	<u>26,338</u>	<u>3,063,195</u>
Total Liabilities and Net Assets	<u><u>\$ 4,094,188</u></u>	<u><u>\$ 1,297,991</u></u>	<u><u>\$ 26,338</u></u>	<u><u>\$ 5,418,517</u></u>