

HB

279

<TARGET><BILL>HB 279</BILL><SUBJECT>HB
279</SUBJECT><COMM>HL&C30</COMM></TARGET>

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

MEMORANDUM

Date: January 25th, 2018
To: Representative Kito, Chair
House Labor and Commerce
From: Representative Josephson *AJ*
Re: Hearing Request for House Bill 279

Please accept this hearing request for House Bill 279, entitled "*An Act extending the termination date of the Real Estate Commission; and providing for an effective date.*"

The purpose of this bill is to extend the termination date of the Real Estate Commission for a full eight years, as suggested by the most recent audit. The Real Estate Commission serves an important function for the state of Alaska, in the oversight and regulation of licensees, and therefore should receive the recommended eight year extension.

Find attached a copy of the bill, sponsor statement, 2017 audit, and received letters of opposition and support. Please feel free to contact my office at 465-4939 with any questions and I urge you to support this legislation.

ALASKA STATE LEGISLATURE



REPRESENTATIVE ANDY JOSEPHSON

Sponsor Statement

House Bill 279: Extending the Real Estate Commission

House Bill 279 extends the termination date for the Real Estate Commission until June 30th, 2026.

Per statute, this board is scheduled to sunset on June 30th, 2018 with a one-year wind down if the legislature does not pass legislation extending it. After this date, administrative functions of the commission would transfer to the department.

Legislative Audit reviewed the commission's operations and determined that it is in the best interest of the state to extend this commission. The audit makes one recommendation and recommends a full eight-year extension with a new termination date of June 30th, 2026.

The recommendations are as follows:

1. The Division of Corporations, Business, and Professional Licensing's chief investigator should continue to improve oversight to ensure cases are actively investigated and completed in a timely manner.

The commission is composed of five real estate brokers or associate brokers and two public members. They oversee licenses, regulate what licensees can and cannot do, and enforce licensure regulations through their investigation unit. The commission provides to the public a system for formally filing complaints against licensees.

The continuation of the Real Estate Commission provides an important function in protecting the public interest of Alaskans by licensing practitioners and enforcing established standards.

I invite you to discuss this issue with me further and urge you to support this legislation.

Please contact my staff Megan Holland with any questions: 465-4939,
megan.holland@akleg.gov



2018 OFFICERS

January 20, 2018

**Gwen Place
President**

**Mark Masley
President-Elect**

**ANGIE TALLANT
Treasurer/
Secretary**

**BOB
MANWARING
CEO**

**Representative Andy Josephson
Alaska House of Representatives
State Capitol, Room 102
Juneau, Alaska 99801**

Re: Support HB 279 – Sunset Extension for Real Estate Commission

Dear Representative Josephson:

The Alaska Association of REALTORS® represents over 1,700 of the nearly 3,000 licensees across Alaska. We write to express our strong support for the extension of the Real Estate Commission (REC) to June 30, 2026 as recently recommended by the Legislative Auditor.

In 2016 the Legislature passed HB 290 (Chpt. 24, SLA 16) sponsored by the House Labor and Commerce Committee granting the REC a two-year extension. At the time the Legislature chose to give the REC only a two-year extension rather than the typical eight-year extension, in part due to continued concern over the lack of implementation of a master policy for Errors & Omission insurance for licensees. As a result, the Commission is set to go into a wind down year on June 30, 2018 if it is not extended this Legislative Session.

After passage of HB 290 we, the Alaska Association of REALTORS® worked hard with both the REC and the Department of Commerce, Community, and Economic Development to get a master policy in place through adoption of regulations and a procurement process. Due to the success of that effort the 2017 Legislative Audit Report dated June 15, 2017, recommends an eight-year extension to June 30, 2026.

The Legislative Auditor found the Commission to be serving in the public's interest by effectively licensing and regulating real estate licensees and offices. The commission monitored licensees and worked to ensure only qualified individuals practice in Alaska. Furthermore, the commission developed and adopted regulations to improve the real estate industry and better protect the public, addressing the earlier concern.



We strongly believe the Real Estate Commission should be extended to June 30, 2026 and urge your support to swiftly pass HB 279.

Sincerely,

Errol D Champion

**Errol Champion, Advocacy Key Work Group Chair
Alaska Association of REALTORS®**

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Report Highlights

Why DLA Performed This Audit

The purpose of the audit was to determine if the commission should continue to exist and to what extent its termination date should be extended. The commission is set to sunset June 30, 2018, and will have one year from that date to conclude its administrative operations.

What DLA Recommends

1. The Division of Corporations, Business, and Professional Licensing's chief investigator should continue to improve oversight to ensure cases are actively investigated and completed timely.

A Sunset Review of the Department of Commerce, Community, and Economic Development, Real Estate Commission (commission)

June 15, 2017

Audit Control Number 08-20105-17

REPORT CONCLUSIONS

The audit concludes the commission is serving the public's interest by effectively licensing and regulating real estate licensees and offices. The commission monitored licensees and worked to ensure only qualified individuals practice in Alaska. Furthermore, the commission developed and adopted regulations to improve the real estate industry and better protect the public.

In accordance with AS 08.03.010(c)(19), the commission is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the commission's termination date to June 30, 2026.

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
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July 13, 2017

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), we have reviewed the activities of the Real Estate Commission (commission), and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
REAL ESTATE COMMISSION
SUNSET REVIEW

June 15, 2017

Audit Control Number
08-20105-17

The audit was conducted as required by AS 44.66.050(a). Per AS 08.03.10(c)(19), the commission is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the commission's termination date to June 30, 2026.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in the Objectives, Scope, and Methodology.

A handwritten signature in blue ink, appearing to read "Kris Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor

ABBREVIATIONS

AAC	Alaska Administrative Code
ACN	Audit Control Number
AS	Alaska Statute
CISA	Certified Information Systems Auditor
commission	Real Estate Commission
CPA	Certified Public Accountant
DCBPL	Division of Corporations, Business, and Professional Licensing
DCCED	Department of Commerce, Community, and Economic Development
DLA	Division of Legislative Audit
fund	Real Estate Recovery Fund
FY	Fiscal Year
ITB	Invitation to Bid
SB	Senate Bill
SLA	Session Laws of Alaska

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ORGANIZATION AND FUNCTION

Real Estate Commission (commission)

Alaska Statute 08.88.011 establishes the commission. Its self-defined mission is:

To protect the public interest by licensing practitioners and enforcing the established standards, to promote professional excellence in the real estate industry, and to support and encourage licensees.

As shown in Exhibit 1, the commission is composed of five real estate brokers or associate brokers and two public members. By statute, commission members who are real estate brokers or associate brokers must be licensed in Alaska for at least three years

prior to appointment. The statute further requires one broker or associate broker be appointed from each of the four Judicial Districts, and one from the state at large. A total of two licensed real estate brokers or associate brokers may be appointed from the state at large if no licensed real estate broker or associate broker is eligible or available for appointment from the Second Judicial District.¹ The two public members cannot be engaged in the real estate profession, be associated by legal contract with a real estate licensee other than as a consumer, or have a direct financial interest in the real estate profession.

The commission licenses brokers, associate brokers, and real estate salespersons, and registers real estate offices. Exhibit 2 reports the commission's duties and powers as outlined in AS 08.88.071 - 08.88.091.

Exhibit 1

Real Estate Commission Members as of March 2017

Eric Bushnell, Chair
Broker, Member at Large

Traci Barickman
Broker, Third Judicial District

Marianne Burke
Public

Cynthia Cartledge
Public

PeggyAnn McConnochie
Broker, Member at Large

Guy Mickel
Broker, First Judicial District

David Pruhs
Broker, Fourth Judicial District

Source: Office of the Governor, Boards and Commissions website.

¹The Second Judicial District includes the cities of Barrow, Kotzebue, Nome, and Unalakleet.

**Department of Commerce,
Community, and
Economic Development,
(DCCED) Division of
Corporations, Business
and Professional Licensing
(DCBPL)**

DCBPL provides administrative and investigative assistance to the commission. The commission is staffed with an executive administrator and project assistant. The executive administrator oversees licensing, maintains files, publishes meeting notices and minutes, approves continuing education courses, conducts education outreach activities, assists with drafting regulations, and serves as a liaison between DCBPL and the commission. The project assistant reviews continuing education courses for compliance with the state law and commission guidelines. DCBPL management also provides budgetary and procurement services, maintains financial information, and helps draft regulations.

Alaska Statute 08.01.087 gives the DCBPL authority to act on its own initiative or in response to a complaint. The DCBPL may:

- Conduct an investigation if it appears a person is engaged or about to engage in a prohibited professional practice.
- Bring an action in Superior Court to enjoin the act.
- Examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010.
- Issue subpoenas for the attendance of witnesses and records.

Alaska Statute 08.01.065 requires DCCED to adopt regulations that establish the amount and manner of payment of application, registration, and license fees.

Exhibit 2

**Duties and Powers of the Real Estate Commission
AS 08.88.071 - AS 08.88.091**

1. Determine whether applicants meet licensing requirements under real estate statutes and issue licenses to those who qualify.
2. Prepare and grade examinations.
3. After hearing, have 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.
4. Prosecute, through the Department of Law, violations of real estate statutes or regulations.
5. Publish notice of disciplinary action taken by the commission against a real estate licensee.
6. Issue a temporary permit to the personal representative of the estate of a deceased 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 concluding the affairs of the decedent broker's real estate business.
7. Issue a temporary permit to a licensee designated by the commission for the purpose of securing proper administration, temporarily managing, or concluding the affairs of the real estate business of a broker if an investigation produces substantial evidence that the broker has misappropriated trust funds; the real estate license of the broker is suspended; or the broker is incapacitated because of a traumatic event or medical condition, as defined in regulations adopted by the commission.
8. Issue a temporary permit to the personal representative of a legally incompetent real estate broker or to another person designated by the commission with the approval of the personal representative of the broker in order to secure proper administration in temporarily managing the real estate business of the broker.
9. Establish and periodically revise the seller's property disclosure statement.
10. Have the authority to levy civil fines as established in real estate statutes.
11. Revoke the license of a broker, associate broker, or real estate salesperson who is convicted of a felony or other crime committed while licensed that, in the judgment of the commission, affects the ability of that person to practice as a broker, associate broker, or real estate salesperson competently and safely or who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or fraud. Notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified to obtain or renew a license under AS 08.88.171(a) - (c) until seven years have elapsed since the person completed the sentence imposed for the conviction.
12. Adopt regulations necessary to carry out the purposes of the real estate commission.
13. Establish by regulation the educational and continuing educational requirements for licenses issued by the commission.
14. Establish core curricula for continuing education in the following areas: real estate sales, property management, community association management, and commercial sales.

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BACKGROUND INFORMATION

Real Estate Recovery Fund

The Real Estate Recovery Fund (fund) is established by AS 08.88.450 to reimburse consumers for real estate transaction losses suffered as a result of fraud, intentional tort, deceit, the conversion of trust funds, or the conversion of community association accounts. It can also be used for real estate education and administrative purposes. Statutes limit claim awards to \$15,000 per transaction with no more than \$50,000 per real estate licensee.

Prior to March 2010, the fund was named the Real Estate Surety Fund. In 2008, the statutes were amended to rename the fund and change the procedures and criteria used by the Real Estate Commission (commission) to make awards.² The new process eliminated the need for the commission to take and hear evidence pertaining to claims; administer oaths and affirmations; issue subpoenas; or engage the services of experts necessary to process claims.

A person seeking to make a claim against the fund must now obtain a court judgment, an arbitration award, or a settlement agreement with a licensee. A claimant must pay a \$250 refundable filing fee and submit a claim form to the commission within two years after the date of the final judgment, award, or agreement, as well as an affidavit describing collection efforts and stating the judgment, award, or agreement is uncollectible using reasonable efforts.

The commission, in collaboration with the Division of Corporations, Business, and Professional Licensing (DCBPL), administers the fund and sets the related fee paid by licensees. Statute requires the fee be adjusted so that the average fund balance is maintained between \$250,000 and \$500,000.

²Chapter 113, SLA 2008 (House Bill 357) effective March 1, 2010.

Errors and Omissions Insurance

Errors and omissions insurance is a form of professional liability insurance that protects real estate licensees and public consumers from financial losses due to claims resulting from errors, omissions, negligence, and other mistakes made in the course of performing licensed real estate activities. A licensee may acquire an insurance policy made available by the commission or independently obtain one that complies with regulations. The commission may suspend or revoke the license of a real estate licensee who fails to secure errors and omissions insurance.

Statutes passed by the legislature in 2008 effective March 1, 2010, required persons licensed as a real estate broker, associate broker, or salesperson to carry and maintain errors and omissions insurance. However, real estate licensees were not subject to the insurance requirement if the commission was unable to secure a master insurance policy.

DCBPL established the terms and conditions of the required insurance in December 2011, and the commission established regulations in October 2014. An Invitation to Bid (ITB) was issued in November 2015; however, no bids were received. In response to the failed solicitation, effective March 2017, the commission and DCBPL issued regulations that made errors and omissions insurance requirements less restrictive. A new ITB was issued and the contract was awarded in June 2017.

REPORT CONCLUSIONS

In developing our conclusions regarding whether the Real Estate Commission's (commission) termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c), which are included as Appendix A of this report. Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

Overall, the audit concludes the commission is serving the public's interest by effectively licensing and regulating real estate licensees and offices. The commission monitored licensees and worked to ensure only qualified individuals practice in Alaska. Furthermore, the commission developed and adopted regulations to improve the real estate industry and better protect the public.

In accordance with AS 08.03.010(c)(19), the commission is scheduled to terminate on June 30, 2018. We recommend that the legislature extend the commission's termination date to June 30, 2026.

Detailed report conclusions are as follows.

The commission operated in the public interest and did not duplicate efforts of other entities.

Commission operations were conducted in an effective manner. The audit found that from FY 16 through March 2017, the commission held 16 meetings. Four of 16 meetings were held for the limited purpose of reviewing confidential complaints and investigations. These meetings were not public noticed in accordance with exemptions granted under AS 44.62.310(d). A review of the remaining 12 commission meetings found that meetings were public noticed timely, time was allowed for public comment, and a quorum was maintained for conducting business.

The commission operated in the public's interest by licensing individuals and registering real estate offices in accordance with State laws and regulations. From FY 16 through March 2017, the commission issued 576 new licenses and registered

70 offices (see Exhibit 3). As of March 31, 2017, there were a total of 2,623 licensees³ and 567 registered offices.

A review of commission investigative activity identified 93 complaints open and opened between July 2015 through March 2017. Forty-nine investigations resulted from these complaints, of which 42 were closed during the audit period. A review of seven case files found that three of seven had periods of inactivity ranging from 72 to 194 days (Recommendation 1).

Exhibit 3

Real Estate Commission Licensing and Registration Activity FY 16 through March 31, 2017			
	New Issued (Exclusive of Renewals)		Total Active as of March 31, 2017
	FY 16	July 1, 2016- March 31, 2017	
Associate Real Estate Broker License	11	18	414
Real Estate Broker License	5	6	439
Real Estate Salesperson License	329	207	1,770
License Totals	345	231	2,623
Real Estate Office Registrations			
Branch	4	4	35
Main	40	22	532
Office Registration Totals	44	26	567

Source: Compiled from DCBPL licensing database.

A review of meeting minutes and inquiry with the commission administrator and board members identified two complaints against the commission. One complaint accused commission members of having a conflict of interest because members did not

³The 2,623 licensees represent a six percent increase when compared to 2,468 licensees identified in the 2015 sunset audit (ACN 08-20091-15).

disclose their business affiliations when voting on or promoting regulatory changes. The audit concluded this complaint was efficiently processed and resolved. The other complaint concerned making the errors and omissions insurance policy mandatory for all licensees. Because of the audit timeframe, the audit could not determine whether the complaint was efficiently processed and resolved.

The commission was active in adopting, amending, or supporting regulatory changes, including:

- Amending regulation 12 AAC 64.240 to add a new section that allows a broker to pay a fee or commission to a licensed salesperson, an associate broker, or an entity owned by a licensee. This change provides a licensee the ability to comply with IRS code regarding business compensation versus personal compensation converted to business revenue.
- Amending regulations 12 AAC 64.063 and 12 AAC 64.064 to increase continuing education requirements and establish the topics for continuing education for brokers, associate brokers, and salespersons. These changes align regulations with the recent statutory changes described below and help protect the public by increasing the quality of services provided by real estate licensees.
- Amending seven Division of Corporations, Business, and Professional Licensing (DCBPL) regulations⁴ related to errors and omissions insurance requirements to facilitate procurement of a master insurance policy. The changes included increases to the annual aggregate limit of liability, deductible amount for each covered wrongful act, and maximum annual premium amount, as well as exceptions to the mandatory coverage and coverage adjustment mechanism. As part of the change, the maximum annual premium amount to be charged a licensee for the master policy was increased from \$300 to \$2,500.⁵ By increasing the

⁴12 AAC 02.510, 12 AAC 02.520, 12 AAC 02.530, 12 AAC 02.540, 12 AAC 02.550, 12 AAC 02.560, and 12 AAC 02.590.

⁵12 AAC 02.550.

maximum premium allowance, the division improved the chances of securing the master insurance policy. Overall, the changes allowed DCBPL to successfully acquire the master insurance policy for the real estate licensees. Per management, the procurement of the master insurance policy helps ensure the insurance is available at reasonable rates to all licensees.

Additionally, the commission supported the following statutory changes:

- Chapter 39 SLA 16 increased the pre-licensing requirements for brokers and associate brokers. Alaska Statute 08.88.091 increased pre-licensing education requirements from 15 to 30 hours. Alaska Statute 08.88.171 increased experience requirements from 24 to 36 months. These changes help protect the public by increasing the quality of services provided by real estate licensees.
- Chapter 39 SLA 16 also repealed a section of AS 08.88.172 that exempted real estate licensees from securing errors and omissions insurance if the commission is unable to obtain a master policy. This change benefited the public by ensuring that all licensees are insured regardless of whether DCBPL procured the master insurance policy.

With a high and increasing number of licensees, the commission focused its efforts on raising standards for the real estate profession by improving education. In addition to the changes in education requirements discussed above, the commission established and approved the topics to be taught under each required continuing education course. This process was designed to improve the consistency of information provided to licensees by instructors. The executive administrator approved courses submitted by instructors against the criteria set by the commission. Additionally, the project assistant reviewed continuing education to ensure licensees met the requirements.

DCBPL management and the commission reduced licensing fees; however, the commission's surplus remains high.

The audit also determined that the commission did not duplicate the efforts of another governmental agency or the private sector. Specifically, commission activities were compared to the activities performed by the Alaska Association of Realtors (association).⁶ The association provides an additional credential to the licensees engaged in residential real estate, based on the association's requirements, not state statute or regulation (commercial real estate agents and property managers are not represented by the association). The commission and the association worked together on changes to AS 08.88.091 and AS 08.88.171 that increased broker education and experience requirements.

The commission receives most of its revenue from licensing, registrations, and renewal fees. Renewals are conducted on a biennial basis, creating a two-year cycle in commission revenues. As shown in Exhibit 4 on page 12, the commission had a \$695,328 surplus at the end of FY 16. Because of the projected surplus, most fees were decreased in October 2015. Exhibit 5 on page 13 presents a schedule of fees from FY 15 through FY 17. As of March 31, 2017, the commission continued to have a surplus of \$578,550.

According to DCBPL staff, the surplus was primarily caused by increase in the number of licenses as well as reduction in personnel and investigative costs. DCBPL management reported that a fee analysis will be performed before the next license renewal period in January 2018.

⁶The association is a local chapter of the national Association of Realtors. The association's objectives are to unite membership for effectively exerting a combined influence upon matters affecting real estate and private property rights, to elevate the standards of the real estate business throughout the state, and elevate the professional conduct of persons engaged in profession.

Exhibit 4

Real Estate Commission Schedule of License Revenues and Expenditures FY 16 through March 31, 2017 (Unaudited)		
	FY 16	July 1, 2016 - March 31, 2017
Revenues		
Licensing Fees	\$1,086,258	\$ 224,911
Other Sources	-	-
Total Revenues	<u>1,086,258</u>	<u>224,911</u>
Direct Expenditures		
Personal Services	228,773	147,856
Travel	12,781	4,862
Contractual	77,401	60,952
Supplies	1,229	-
Equipment	-	-
Total Direct Expenditures	<u>320,184</u>	<u>213,670</u>
Indirect Expenditures	170,691	128,019
Total Expenditures	<u>490,875</u>	<u>341,689</u>
Annual Surplus (Deficit)	595,383	(116,778)
Beginning Cumulative Surplus (Deficit)	99,945	695,328
Ending Cumulative Surplus (Deficit)	<u>\$ 695,328</u>	<u>\$ 578,550</u>

Source: DCCED management.

*Indirect expenditures are estimated based on prior year actuals.

Exhibit 5

**Real Estate Commission
License and Other Fees
FY 15 through FY 17**

	FY 15	FY 16	FY 17
License fee	\$450	\$325	\$325
Biennial license renewal fee	400	325	325
Fee for office changes	125	75	75
Transfer of license fee	225	225	225
Application fee for initial license	125	175	175
Initial office registration fee	300	225	225
License inactivation or reactivation fee	125	125	125
Duplicate license fee	50	50	50
Name change fee	75	75	75
Reinstatement fee for lapsed license	250	250	250
Post-license education certification and new license document fee	30	30	30
Initial course certification fee (per credit hour)	30	30	30
Biennial course recertification fee (per credit hour)	25	25	25
Instructor approval fee (per instructor)	200	200	200
Temporary instructor approval fee (per instructor)	250	250	250
Instructor approval recertification fee	100	100	100
Information pamphlet on landlord and tenant rights	5	5	5

Source: DCBPL Regulations.

The commission maintained the real estate recovery fund balance in accordance with statutory requirements and used the fund for educational and administrative purposes.

The commission, in collaboration with DCBPL, administers the real estate recovery fund and is required to adjust the fund's fee so that the average fund balance for the two-year licensing cycle is maintained between \$250,000 and \$500,000. Exhibit 6 on page 15 presents the fund's schedule of revenues and expenditures from FY 16 through March 2017. The audit found the average fund balance met statutory requirements, and the fee per licensee was maintained at \$30.

During the audit period, no claims were paid out of the fund. The fund was primarily used to pay the project assistant's salary and 10 percent of the executive administrator's salary. Per DCBPL management, the commission relies on statutory authority⁷ to use the fund for educational and administrative purposes related to the commission.

Licensees are required to maintain errors and omissions insurance by either using the State's master policy or securing an individual policy.

During 2016, the section of AS 08.88.172, which exempted licensees from insurance requirements if the commission and DCBPL had not obtained the master policy, was repealed. Thus, effective January 1, 2018, the insurance is mandatory for all licensees and will be required as a part of the license renewal process. Because DCBPL awarded a contract for the master errors and omissions insurance in June 2017, the licensees now have a choice between obtaining their own policy or using the State's master policy. The master policy would benefit licensees when, in the absence of a master policy, the insurance would have been cost prohibitive.

⁷Alaska Statute 08.88.450 (a) and AS 08.88.472(d).

Exhibit 6

**Real Estate Recovery Fund
Schedule of Revenues and Expenditures
FY 16 through March 31, 2017
(Unaudited)**

	FY 16	July 1, 2016 - March 31, 2017
Revenues		
Licenses and Permits	\$127,235	\$ 28,795
Interest and Investment Income	3,614	1,228
Total Revenues	<u>130,849</u>	<u>30,023</u>
Expenditures		
Personal Services	118,422	90,592
Travel	-	-
Commodities	89	-
Services Non-Claims	5,097	1
Total Expenditures	<u>123,608</u>	<u>90,593</u>
Annual Surplus (Deficit)	7,241	(60,570)
Fund Balance-Beginning of Year	454,665	461,906
Fund Balance-End of Year/Quarter	<u>\$461,906</u>	<u>\$401,336</u>

Source: DCCED management

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FINDINGS AND RECOMMENDATIONS

The prior 2015 sunset audit made two recommendations:

- The Real Estate Commission's (commission) chair and the Department of Commerce, Community, and Economic Development (DCCED), Division of Administrative Services director should work together to procure a master errors and omissions insurance policy for real estate licensees.
- The Division of Corporations Business, and Professional Licensing's (DCBPL) chief investigator should take action to ensure cases are actively investigated and completed timely.

The prior audit recommendation, to procure a master errors and omissions insurance policy for real estate licensees, is considered resolved, as DCBPL awarded the contract in June 2017. The prior audit recommendation to ensure cases are actively investigated and completed timely was partially resolved. The division made progress in decreasing the period of inactivity. An electronic dashboard was created to monitor the case resolution progress, and internal benchmarks were designed to establish timeliness performance goals for investigators. However, testing found improvements were still needed. The recommendation is reiterated as Recommendation 1 of this audit.

The audit makes no new recommendations.

Recommendation 1:

DCBPL's chief investigator should continue to improve oversight to ensure cases are actively investigated and completed timely.

The audit identified three cases in a judgmental sample of seven cases with periods of inactivity without justification ranging from 72 to 194 days.

Management reported that investigators have varying caseloads, priorities, and case management and investigative skills that can affect timeline goals. Cases that are not actively investigated increase the risk of incompetent or unlawful licensees providing services to consumers.

The duty to investigate occupational licensing complaints is

statutorily assigned to DCBPL. The efficiency with which complaints are investigated is one of the sunset evaluation criteria used in the legislative oversight process. Alaska Statute 44.66.050(c)(6) specifies the sunset review must evaluate:

The efficiency with which public inquiries or complaints regarding the activities of the board or commission 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.

We recommend the DCBPL chief investigator continue to improve oversight to ensure cases are actively investigated and completed timely.

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Real Estate Commission (commission) to determine if there is a demonstrated public need for its continued existence.

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 commission should be reestablished. Currently, under AS 08.03.010(c)(19), the commission will terminate on June 30, 2018, and 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's interest.
3. To determine the status of recommendations made in the prior sunset audit.

Scope

The assessment of operations and performance of the commission was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the commission. We reviewed the commission's activities from FY 16 through March 31, 2017.

Methodology

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

- The prior sunset audit report (ACN 08-20091-15) to identify issues affecting the commission and to identify prior sunset audit recommendations.

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- Applicable statutes and regulations to identify commission functions and responsibilities, determine whether statutory or regulatory changes enhanced or impeded commission activities, and help ascertain if the commission operated in the public interest.
 - The State's online public notice system to verify the commission meetings were adequately public noticed.
 - Commission meeting minutes and annual reports to gain an understanding of commission proceedings and activities, the nature and extent of public input, whether a quorum was maintained, and whether commission vacancies impeded operations.
 - Expenditures, revenues, and fee levels for the commission to determine whether fee levels covered the costs of operations.
 - Real Estate Recovery Fund schedule of revenues and expenditures to evaluate compliance with statutory requirements.
 - Investigation data of the commission for cases open six months or longer to determine whether complaints were actively investigated. Excluding the cases reviewed as a part of the prior sunset audit, a judgmental sample of seven of 13 cases were reviewed for periods of inactivity.
 - Various state and news related websites to identify complaints against the commission or other commission related concerns.
 - Public comments, letters, and newsletters presented at commission meetings to gain an understanding and evaluate the commission consideration of the comments and complaints received.
 - Internal controls over the licensing database and investigative case management system were assessed to determine if controls were properly designed and implemented.
 - Websites of the national real estate organizations to evaluate possible duplication of efforts.

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- Procurement documents for the errors and omissions insurance to determine if the division published the invitation to bid for the master policy.

To identify and evaluate commission activities, we conducted interviews with Division of Corporations, Business, and Professional Licensing staff, commission members, and the Department of Administration's Division of General Services procurement personnel. Types of inquiry included commission operations, regulations, duplication of effort, and complaints against the commission.

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APPENDIX SUMMARY

In developing our conclusion regarding whether the Real Estate Commission's termination date should be extended, its operations were evaluated using the 11 factors set out in AS 44.66.050(c). Under the State's "sunset" law, these factors are to be considered in assessing whether an entity has demonstrated a public policy need for continuing operations.

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APPENDIX A

Analysis Of Public Need Criteria (AS 44.66.050(c))

A determination as to whether a board or commission has demonstrated a public need for its continued existence must take into consideration the following factors:

- (1) the extent to which the board or commission has operated in the public interest;
- (2) the extent to which the operation of the board or commission 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;
- (3) the extent to which the board or commission has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board or commission 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;
- (5) the extent to which the board or commission has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board or commission 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;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;

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- (8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board or commission to its own activities and the area of activity or interest;
 - (9) the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection;
 - (10) the extent to which the board or commission has effectively attained its objectives and purposes and the efficiency with which the board or commission has operated; and
 - (11) the extent to which the board or commission duplicates the activities of another governmental agency or the private sector.

Agency Response from the Office of the Governor

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Governor Bill Walker
STATE OF ALASKA

August 17, 2017

Kris Curtis
Legislative Auditor
P.O. Box 113300
Juneau, AK 99811-3300

RECEIVED

AUG 21 2017

LEGISLATIVE AUDIT

Dear Kris Curtis:

Thank you for the opportunity to respond to the Legislative Budget and Audit Committee regarding the preliminary audit reports for the Real Estate Commission under the Department of Commerce, Community and Economic Development.

In speaking with the Division Operations Manager for the Division of Corporations, Business and Professional Licensing, Sara Chambers, she agrees that this Commission is meeting the needs that were the reason for the statute that created the board. They continue to regulate and control licensing, provide disciplinary suspensions and revocations of real estate professionals as required, and manage the recovery fund.

There were no recommendations for our office in your report. We agree that the Commission is functioning in the best interest of the public and that the board's termination date should be extended until June 30, 2026.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shirley Marquardt".

Shirley Marquardt
Director
Boards and Commissions

SM/li

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Agency Response from the Department of Commerce, Community, and Economic Development



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

OFFICE OF THE COMMISSIONER

P.O. Box 110800
Juneau, AK 99811-0800
Main: 907.465.2500
Fax: 907.465.5442

August 14, 2017

RECEIVED

AUG 15 2017

LEGISLATIVE AUDIT

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

RE: Confidential Preliminary Audit Report, Department of Commerce, Community, and Economic Development, Real Estate Commission, June 15, 2017

Dear Ms. Curtis:

Thank you for the opportunity to comment on Confidential Preliminary Report regarding the Real Estate Commission. I am pleased to know that you are recommending a full extension of this board to June 30, 2026.

Recommendation No. 1

The Division concurs with the audit finding that while some progress on timely investigation of complaints has been made; there is still room for improvement. Many investigative actions that effect the assessment of case age include actions documenting continuing education requirements worked by the Division's Paralegal who began reporting to the Chief Investigator in July 2016. There is not currently a Standard Operating Procedure (SOP) for the processing of these actions and no established time standards for completion. The Division's Chief Investigator will redress this lack of structure and guidance by authoring an SOP on the subject matter of Continuing Education Audits by December 2017.

Additionally, Investigative staff will be required to enter case notes explaining any gaps between meaningful investigative activities greater than sixty days. While there are times when investigations cannot progress due to factors outside investigators' control (i.e. Board Member or Expert Review, Litigation and / or opposing counsel response to settlement offers) we will make strong effort to explain why the action is not moving forward in order to make the record reflective of those challenges.

Lastly, each member of staff is held accountable for the timeliness of their investigative actions. Employees who fail to meet the unit goals are actively coached and closely supervised. We feel that timeliness of investigations are important to protecting public safety, to addressing consumer concerns and to decreasing stress on those licensees who may find themselves the subject of an

Kris Curtis, CPA, CISA
Division of Legislative Audit
August 14, 2017
Page 2

specious or unfounded allegation; and the Division constantly seeks to improve and speed processes to resolves allegations completely and quickly.

Again, thank you for the opportunity for the DCCED to provide input on this matter. Should you have any questions about the contents of this letter, please do not hesitate to contact me at 907-465-2500.

Sincerely,


f/ Chris Hladick
Commissioner

cc: Janey Hovenden, Director, Division of Corporations, Business and Professional Licensing
Micaela Fowler, Legislative Liaison, DCCED

Agency Response from the Real Estate Commission

August 25, 2017

Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
P.O. Box 113300
Juneau, AK 99811-3300

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AUG 25 2017
LEGISLATIVE AUDIT

Dear Kris Curtis:

Thank you providing the opportunity to respond to the information and recommendation included within the Legislative Audit of the Alaska Real Estate Commission. The information contained in the audit was very thorough and easy to understand. The areas addressed appeared to be pertinent and relevant.

The "Findings and Recommendation" section spoke to the 2015 sunset audit issues with the Alaska Real Estate Commission (AREC) obtaining a master Errors and Omissions policy for all licensees and DCBPL's chief investigator should take action to ensure cases are actively investigated. The Error and Omissions project finally came together this year with the assistance of many within the DCCED and AREC member Marianne Burke. Marianne Burke was instrumental in coordinating the many moving parts of this project, and I would like to ensure that she is acknowledged for her hard work. The second issue on investigations is critical and is also listed in this audit as a Recommendation. The findings within the audit show there have been improvements, but there is more room for improvement. I concur with your findings in this matter. The AREC will continue to work with staff and investigators to conclude these investigations in a timely manner.

The Real State Commission strives to make a difference in Alaska. Our goal is to be approachable and to listen to the public and the industry to effect appropriate changes when needed. Oversight and quality education will continue to be a priorities for the Real Estate Commission.

Once again thank you for the opportunity to provide a response.

Sincerely,

DocuSigned by:

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Eric Bushnell
Chairperson
Real Estate Commission

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