

LEGISLATIVE FINANCE - HOUSE / SENATE FINANCE COMM. FILES 8879

HB 146 cont. HB 147 469 60

Representative Ron Larson
Representative Lyman Hoffman
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April 2, 1990

does it think it is getting its authority to discipline permittees under AS 08.64.331 or to suspend or take surrendered permits under AS 08.64.332 and 08.64.334? Those statutes refer only to licenses. I think the better view is to interpret "license" throughout the chapter to include "permits" and not to have this section in the bill.

Sec. 24. Expands this immunity language to additional organizations that help substance abusers.

Sec. 25. Requires licensees to report to the board about malpractice claims.

Sec. 26. Adds language relating to the use of "M.D." in a person's title.

Sec. 27. Requires a report by the Board in 1992.

Sec. 28. Immediate effective date.

TL:pl
WKP4/001

April 10, 1990

Honorable Max F. Gruenberg, Jr.
Co-Chairman
House Judiciary Committee
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

You expressed surprise this afternoon over one particular portion of the Department of Commerce and Economic Development's position paper on CSIB 146 (HESS). Having now reviewed the position paper itself, I can see why you would have been surprised. While the statements I made may be correct, I failed to indicate, as I did before the House HESS Committee (of which you are a member), that the Division of Occupational Licensing nevertheless does not object to the language in Section 22 of the bill. Indeed, I discussed the present version of HB 146 with the Medical Board just yesterday (April 9), and the Medical Board itself is also no longer as concerned. (Please see the enclosed letter from Dr. Conley regarding the present version of HB 146, which also does not mention any problem with Section 22 and states that the "board is generally pleased with the bill.")

Again, as I have stated to you and your staff, while we would no doubt prefer no amendment to this section, in the spirit of acceptable compromise, the division and the board do not object to the language presently contained in Section 22 and support passage of the bill in its present form.

Respectfully yours,



Randall P. Burns
Director

RPB/bkt1635c
041090a

Enclosure

cc: Linda Wild, Deputy Commissioner
Department of Commerce and
Economic Development

HB 146

FROM: Thomas L. Conley, Legislative Committee
State Medical Licensing Board

TO: State Legislature, State Medical Licensing Board,
Other Interested Parties

DATE: November 20, 1989

SUBJ: Proposed Legislation, Explanation of Provisions

Enclosed please find a proposal for legislation to supersede our proposals of last year. It borrows heavily from last year's proposal, incorporates material from the Committee Substitute for HB 146 introduced in House Labor & Commerce and our response to that substitute and uses ideas from Elements of a Modern State Medical Board produced under a HRSA Contract with the Federation of State Medical Boards. For convenience and ease of understanding it is presented in what the committee hopes is standard bill form. The format could be used to introduce a newly numbered bill, as a committee substitute for HB 146 now in Labor & Commerce or taken apart and apportioned into HB 146 as the legislature desires.

The proposed legislation is designed to produce greater efficiency in interviewing candidates for licensure, afford liability protection to the impaired physician program volunteers, close some loopholes in present license provisions, effectively define the difference between temporary and locum tenens licenses, and create categories for retired licensees and for those accompanying sporting teams, especially those accompanying Olympic athletes. It also seeks to prevent diversion of amphetamines (speed) into illegitimate channels and prevent improper prescribing. A strong feature of the proposal is a new definition of immunity, indemnity and protected communication that would apply to all boards [Section 1, revised AS08.02.020]. It is hoped this is a "bullet proof" definition in this important area. It is argued that it should carry a "no sum" fiscal note for though it promises indemnity the immunity grant is so complete as to preclude all but a madman from bringing an action. It is indeed sad to realize, but a clearly inescapable conclusion, that fear of liability is the brake on the whole enterprise and that there can be no cooperation expected in licensing and discipline from hospitals and physicians unless immunity and indemnity is absolute. We hope this language and subsidiary language in other sections, accomplishes this goal. In other sections this definition is applied to the protection of groups such as the impaired physician program and committees reviewing individual physician's competence, by making them agents of the board for the limited purpose of their assignment. Responses by the Attorney General to individuals inquiring into what protection is offered them by the state should they cooperate in good faith with the board in these areas has been quite chilling and the protection promised

flimsy to non-existent. The board is not surprised that we have been completely unable to get volunteers especially to fulfill the provisions of Sec. 08.64.336(c).

It will be helpful to review the bill by sections:

A. Section 1 is referred to above.

B. Sections 2 & 20 are to be read together. "Contract" is substituted for "coordinate" in the language to permit a legal bond between the board and the impaired professional program so that the program can be designated an agent of the board for purposes of immunity and indemnity under 08.02.020. The language adding identification and confrontation to the programs writ conforms to standard practice for such programs, strengthens their effectiveness and by defining such activity as normative and expected further strengthens protection against legal action.

C. Section 3 is adopted from the proposed substitute for HB 146 in Labor and Commerce.

D. Section 4 is similarly adopted from CS for HB 146 (L&C) with deletion of language referring to reporting of claims made. The board feels that the investigation of such reports would serve no useful purpose but would dramatically increase expenses and necessitate a substantial fiscal note for the bill.

E. Sections 5 & 6 are adopted from CS for HB 146 (L&C).

F. Section 7 takes language from CS for HB 146 (L&C), properly designates the agency that accredits medical schools and moves specification of exams into regulation. This latter reflects substantial change expected over the next two years as the ECFMG test is phased out and becomes unavailable and all graduates, US and foreign, become required to follow the same examination pathway to be administered conjointly by the Education Council on Foreign Medical Graduates, the National Board of Medical Examiners and the Federation of State Medical Boards. Putting the matter in regulation permits the board to respond to these changes expeditiously - the final result over several years will be a single national test sequence which we will as a matter of course require as will all jurisdictions (in any case nothing else will be available).

G. Section 8 is adopted from CS for HB 146 (L&C).

H. Section 9. This section closes a loophole. At present, persons who have surrendered a license in another jurisdiction while under investigation are free to apply in Alaska (if they have had the license revoked they are not so permitted). It seems sensible to require that they clear up their problem one way or another in the prior jurisdiction before

applying in Alaska.

I. Section 10. This section also clarifies that required examinations for licensure will appear in regulation.

J. Section 11 & 13 are to be read together.

In the past a temporary license was granted to an individual who had completed all the requirements for a permanent license including an interview and was waiting for the board to meet to confirm the material and grant permanent licensure.

The locum tenens license though statutorily designed to be used only by those substituting for another physician developed an expanded, and to the board, uncomfortable meaning. It was used as intended for substitute physicians but was also used to cover individuals who came to Alaska to work in seasonal jobs, emergency rooms, etc., and those coming up briefly to see if they wanted to relocate to Alaska. Often they were not actually substituting for an Alaskan physician but there seemed no other reasonable category in which to place them without requiring permanent licensure. Some individuals also seemed to acquire such permits on a regular basis and as it were, acquire sort of a permanent license at a cut rate.

By coordinating AS08.64.270 and AS08.275 the board hopes to create two categories.

- a) Temporary Permit - good for 6 months and requiring all the documentation required for a permanent license plus interview by a board member to be used
 - 1) While waiting formal board action at the next regular meeting at which point it is converted to a permanent license.
 - 2) By those filling a temporary slot in an emergency room, seasonal clinic, etc. but not substituting for an Alaskan physician.
 - 3) By those moving to the state who have not yet decided if they wish to stay permanently.
 - 4) Individuals in category 2 & 3 (or for that matter those who wish to get frequent locum tenens permits) can then move on to permanent licensure by paying the remnant 75% of the permanent licensure fee any time up to 6 months after

getting the temporary as they will have complied with all the requirements. The board would still have the discretion of putting a hold on this if the individual had gotten into trouble during the 6 month temporary period.

- b) Locum Tenens Permit - good for 60 days with one renewal and a limit of 240 days in any two years between new permits and renewals. It would require somewhat less documentation than a temporary (but demand a currently valid license in another jurisdiction and clearance by National Federation of State Medical Boards) plus an interview by either a board member or the board's executive secretary. It could be used only by one substituting for an Alaskan physician who would have to be specifically designated. An individual who chose to function repeatedly in the role (i.e. beyond 240 days in two years) would be expected to get a permanent license (either directly or through the temporary license route) in his own right, not as a substitute.

K. Sections 11, 12, 13, and 15 should be read together in reference to new Section 08.64.278. Present statute requires that all licensees and permittees be interviewed by at least one board member. Present policy requires that should the interviewer feel unsure about granting the license after the interview that an interview by the whole board and appropriate investigation by the division be carried out before licensure.

The interview requirement is one that was set by the legislature many years ago. What the legislative intent was is unclear to the board and my research through older versions of the statutes back to 1948 doesn't clarify the issue. Our practical experience is that it has some utility in determining that the applicant is indeed who he says he is (documents and pictures match, etc.), seems to be sober and not flagrantly psychotic, and seems to present a logical sequence of training. The board recognizes that the interview is of significantly less importance than careful review of notarized training, residency, hospital privilege, specialty board testing, and licensure (in other jurisdictions) documentation plus clearance by the DEA and National Federation of State Medical Boards.

Interviews are carried out by both physician and non-physician members of the board without distinction. There is no attempt to use the interview as a test of knowledge both for practical and statutory reasons.

The interviewing of permanent and temporary licensees (most of the latter are expected to go on to permanent license status) should appropriately remain with board members exclusively. It is being found however that interviewing residency and locum

tenens candidates is placing a severe burden on board members' time especially in Anchorage and Fairbanks and leading to delays and resentment on the part of both candidates and volunteer board members. It seems appropriate then that our executive secretary should take on part of that task. That individual is trained in statute and regulation and is familiar with training and testing cycles and the methods of acceptable identification.

L. Section 14. Retired License.

This provision seeks to do a number of things. It is recognized that there are a number of physicians who retain licensure beyond the time it is reasonable for them to practice out of the sense of pride licensure brings them and because of an oddity in statute that prohibits them from using the "M.D." after their name if not licensed. (The statute, 08.02.010, is designed to prevent the unlicensed from deluding the public as to their qualifications).

It is felt that a permanent retired license status will serve their purposes and protect the public health. Retired status should also appeal to those who are effectively retired and presently faced with CME requirements they cannot meet because of age and infirmity. The CME statutes at present make no provision for people in this status.

The proposed stature while not precluding reactivation of retired licenses would empower the board to make very certain that the individual was competent to resume such practice.

M. Section 15. Courtesy License.

This would permit the board to grant courtesy licensure, under appropriate restrictions, to medical practitioners accompanying sports teams (such as the Olympic teams if Anchorage gets the nod for Winter Olympics).

N. Section 17. Amphetamines.

It is clear that 99+% of all amphetamines prescribed are for weight reduction. It is clear that while they may be beneficial for 2-3 weeks, that after that they serve no purpose in that regard and lead to significant habituation. Amphetamine prescription in "weight reduction clinics" is the single most significant diversion point of these medications onto the illicit market.

The proposed legislation, adapted from Wisconsin statutes, recognizes the eight (8) valid uses of the medication (accounting for less than 1% of prescriptions) and makes other use subject to disciplinary sanction.

It will help us in slowing down diversion and will also help the ethical physician when importuned by individuals seeking such medications if he can inform those individuals that such prescribing is illegal.

Such provisions have proved quite useful in other states. From the personal experience of 15 years in a general practice in Ketchikan, I would remark that I have seen only two patients requiring amphetamines; one a patient with documented narcolepsy and one a patient with attention deficit disorder (hyperactivity) who was intolerant of Ritalin (Methylphenidate), the drug usually used for that condition along with Cylert (Pemoline). (Though hyperactivity is clearly over-diagnosed it is a real condition and occasionally requires drug therapy).

It is our suggestion that statutory language of a similar nature be inserted into the pharmacy statutes to further control amphetamine use. The Division along with the boards of pharmacy, nursing and medicine, the DEA, the ASMA and State Troopers are presently engaged in a cooperative effort known as PADS (prescription abuse data system) to try to reduce diversion. The present statute will help in that effort.

O. Section 18. Reports of Disciplinary Action or License Suspension or Surrender.

When this section was crafted for HB 70 in 1986-87, we neglected to insert the word permit. Since certain of our licenses (temporary, locum tenens) and our physician assistant authority are referred to as permits, it could be argued we are prevented from reporting disciplinary and other actions concerning these licenses and permits. We have considered that such reports fall under the legislative intent of the statute so have proceeded to submit reports when appropriate but feel it would be best to clean up the language.

P. Sections 19 & 20 should be read in conjunction with the introduction and Section 1 on immunity, indemnity and protected communication.

Q. Section 21. Preserving Sanctions of the Board.

The division, the board, and the National Federation of State Medical Boards regard medical licensure as a privilege granted to individuals by the state for the convenience and health of its citizens. It is not an inherent right of individuals any more than is a drivers license. Thus when there is good and sufficient reason for the board to believe an individual is not practicing safely and endangering the public health, it seems reasonable to permit sanctions imposed to stand unless and until a court of competent jurisdiction overrules the board on appeal. It must be remembered the board acts cautiously

and in full compliance with the administrative procedures act, assuring rights to a complete hearing, before acting on a license sanction. To then have a court stay the action for long periods of time while an appeal is heard seems to be significantly detrimental to the public's health and safety. In one particularly notorious case within the board's experience an incompetent practitioner who had caused a number of deaths was permitted to practice for seven years after the board revoked his license while he slowly pursued appeals all the way to the U.S. Supreme Court. The board's action was upheld at each level but the practitioner was permitted to endanger the public for an additional seven years after original revocation.

The present statute, with language which protects the licensee against arbitrary action by the board, seeks to correct this most unfortunate state of affairs.

Recognizing that there could be problems with this section if the courts rule that it arrogates to the board functions more proper to the court an alternate method of addressing the problem is presented in an addendum as a change in court rules. It would need to be reworked and properly placed in court rules by Legislative Drafting so there has been no attempt to number it as the committee lacks the expertise for the task.

R. Section 22.

The change is requested as the board finds itself spending inordinate amounts of time and state legal funds pursuing individuals who have earned the academic title M.D., but who are not licensed and who "display" the title in other settings than in seeking patients (i.e., teaching, journal articles, legal consulting, out of personal pride, etc.). The proposed change would permit us to ignore such trivial matters while still empowering the board to pursue those using the title M.D. to dupe the public into believing they can legally diagnose and treat the sick and injured.

Any questions concerning the proposals can be directed to:

Anchorage	Abigail Hensley, Secretary, State Medical Board	346-1802
Anchorage	Pamela Ventgen, Executive Secretary, State Medical Board	561-2878
Ketchikan	Thomas L. Conley, Member, State Medical Board	225-4483
Juneau	Randall Burns, Director, Division of Occupational Licensing	465-2534
Juneau	James Thompson, Chairman, State Medical Board	586-8447

CSHB 146 (HESS) "An Act limiting civil liability for damages relating to certain occupational licensing functions; authorizing temporary courtesy licenses for certain occupations; relating to powers and duties of the State Medical Board; requiring persons licensed by the State Medical Board to report medical malpractice civil actions; requiring the State Medical Board to make a report relating to the use of malpractice claims histories to determine medical competency and to impose sanctions on its licensees; and providing for an effective date."

This bill contains a number of provisions which would increase the effectiveness of the State Medical Board in the performance of its duties relating to 1) licensing and permitting medical professionals; 2) reviewing the malpractice claims histories of physicians already licensed in Alaska; and 3) creating a retired status license for physicians retired from active practice. In addition, the bill somewhat increases the immunity provisions for persons -- including witnesses -- assisting occupational licensing boards in general in carrying out their enforcement duties and functions, and creates a "courtesy" status permit for various professionals visiting Alaska.

Section 1 of the bill, amends AS 08.02.020 by extending and clarifying the "limitation of liability" provisions already in law to encompass witnesses, medical board convened physician review panels, and impaired practitioner program volunteers who assist the Medical Board through the provision of consultation and expert testimony services relative to Division of Occupational Licensing (hereinafter "division") disciplinary cases.

At the present time, various licensing boards and the division have experienced difficulty in identifying in-state licensed professionals willing to serve in advisory capacities to the boards on individual discipline cases or involve themselves in physician impaired practitioner programs. This reluctance flows from the professionals' legitimate personal liability fears that licensees ("respondents" in discipline cases) who are being investigated will decide to personally sue the professional or witness who is providing their services to a board or the division.

The department supports the protections this will provide to persons assisting the division and its regulatory boards in licensing actions. Without this language, the state's ability to turn to licensees or other witnesses to assist in disciplinary matters will continue to be severely impeded.

Section 2 of the bill would give the state's twenty-one (21) licensing boards and commissions the ability to issue a "courtesy" license to visiting professionals. This idea was originally conceived in order to accommodate Olympic team physicians when it was anticipated that the Olympics would be coming to Alaska.

In working up this proposal, it was discovered that there are many other occasions when a courtesy license would be helpful: visiting Iditarod veterinarians; international sporting teams playing in Anchorage accompanied by their team physician; visiting foreign delegations accompanied by a variety of professionals. This new provision would allow for the courtesy licensing of visiting professionals and would allow the boards to authorize limited practice restricted to the treatment of or professional assistance to members of their sports team or delegation while visiting in the state.

Section 3 amends AS 08.64.101 to clarify the Medical Board's (hereinafter "board's") authority to contract with a private professional organization to establish an impaired physician program. The word "contract" is a more accurate term for the relationship between the board, the division, and the private organization establishing such a program, and creates a legal bond between the state and the program in order that the program can be designated an agent of the board for purposes of liability limitations under AS 08.02.020. This section also adds language which more clearly states the range or scope of the impaired physician program, and requires that the board adopt regulations concerning the impaired medical professionals program.

Thus, this section extends immunity protections to physicians serving in a voluntary capacity on the impaired physician program committee. Currently, the physicians and intervenors serving on the impaired physician committee have done so with considerable personal risk, given their vulnerability to suit by an angry colleague.

Section 4 of HB 146 pertains to board records and adds two new subsections to AS 08.64.130. The first new subsection [subsection (b)] directs the board to maintain records on each licensed physician concerning civil malpractice actions and their outcomes. The second new subsection [subsection (c)] simply requires that the malpractice records received under new subsection (b) be available to the public, just as board records regarding the admission of licensed physicians are already available to the public.

Section 5 amends AS 08.64.190 to add to the list of application procedures the requirement that the applicant provide his or her medical work history. The board has, by policy decision, already begun independent verification of each applicant's medical school and internship program records. Section 5 amends AS 08.64.190 to place into statute the specific authority of the board to scrutinize the applicant's medical work history.

Section 6 of the bill amends board provisions concerning the qualifications of physician applicants. The bill adds language to AS 08.64.200 to require the physician applicant to provide an explanation of all negotiated settlements or judgments in claims or civil actions alleging medical malpractice against the applicant.

New language in this section also provides for the board, or the division on its behalf, to contact other licensing jurisdictions directly if an applicant for licensure in Alaska was licensed in a jurisdiction that does not report its disciplinary actions affecting physicians to the Federation of State Medical Boards. The Federation maintains the disciplinary data bank which is accessed by most jurisdictions for information on physician applicants.

Section 7 amends AS 08.64.205 which deals with qualifications for licensure of osteopathic physician applicants and merely makes these sections equivalent to the allopathic physician applicant requirements in AS 08.64.200, as amended in Section 6 of this bill.

Similarly, Section 8 makes parallel amendments for podiatry applicants.

Section 9 amends the statutory provisions affecting foreign medical graduates by clarifying the language for verification of foreign medical credentials. The proposed language more accurately identifies the national agency responsible for accrediting medical schools and moves the examination specifications into regulation. This action will accommodate substantial changes expected over the next two years as the Educational Commission for Foreign Medical Graduates (ECFMG) exam is phased out and all medical school graduates (U.S. and foreign alike) are required to follow the same examination pathway.

Sections 10 and 11 of the bill clarify the interview requirement for licensure.

Section 12 amends the grounds on which the board may refuse to grant a license. This amendment closes an existing loophole in the statute. Currently, persons who have surrendered a license in another jurisdiction while under disciplinary investigation by that jurisdiction are free to apply for licensure in Alaska. It then falls to the board to spend considerable time and money investigating the causes of the disciplinary problem in that other jurisdiction (in a sense, duplicating the actions of that jurisdiction) in order to determine whether it is appropriate to license the physician, deny the license, or place some conditions on the license.

It seems sensible from a public protection standpoint to require that the physician under disciplinary review in one jurisdiction resolve his or her discipline problem in that jurisdiction before being eligible to apply for licensure in Alaska.

Section 13 contains primarily housekeeping changes to recognize applicants from both the provinces and territories of Canada and to allow for flexibility concerning upcoming changes in the medical examination pathways by putting exam specifications into regulation.

Section 14 and 15 of HB 146 amends physician "temporary" permit provisions by changing the present nature of a temporary permit. Currently, a temporary permit is available to a physician who is applying for a permanent license in the state, has completed all of the documentation for application, and is merely awaiting the next medical board meeting to have his or her application reviewed by the board. The new provisions in this section would allow physicians to serve temporary "tours of duty" in Alaska or to come to Alaska for a brief period of time to determine whether or not they wish to relocate their practice to Alaska.

This section provides that physicians seeking temporary licensure must complete a full, permanent license application and would be issued a temporary permit for up to six months at a reduced fee. If, at the end of that period of time, the physician with the temporary license wishes to seek permanent licensure, he or she would merely pay the remainder of the licensing fees for the biennial licensing period. If the physician has decided not to stay, the temporary permit expires. A temporary license could not be renewed under the proposed amendment.

Section 16 contains primarily housekeeping changes to bring the requirements for intern and resident-in-training permits in line with requirements for other physician applicants, and providing for interviews by the medical board executive secretary or other board designated person.

Section 17 limits a locum tenens permit to sixty (60) consecutive days from its current 120 days, and allows the executive secretary of the board to conduct interviews and issue permits to locum tenens physicians.

The board also wishes to restrict the use of the locum tenens permit to its intended statutory purpose, which is to allow a physician licensed in another state to substitute for an Alaska-licensed physician for a limited period of time. These amendments in Section 17-20 are companion to the changes made to the temporary permit in Sections 14 and 15 of the bill and would further clarify the distinction between those physicians coming to Alaska specifically to substitute for an Alaska licensed physician (locum tenens permit) and those coming to take a "look-see" to determine if they wish to pursue practice in Alaska (temporary permit).

Also in these sections are some housekeeping changes which would bring this section into line with the rest of the medical practice act relative to interviews and references to both the provinces and territories of Canada.

Sections 18 and 19 contain housekeeping changes similar to those in Section 16.

Section 20 limits the length of time a physician could work under a locum tenens permit. If a physician found it necessary to work more than 240 days during any consecutive 24 months, the physician would be required to meet the requirements for full licensure.

Section 21 of HB 146 creates a new section, AS 08.64.276, establishing a retired status license. There are a number of physicians who retain licensure far beyond the time it is reasonable for them to practice, mostly out of a sense of pride that licensure brings them and because of an oddity in statute that prohibits them from using the "M.D." after their name if not licensed. (That statute, 08.02.010, is designed to prevent the unlicensed from deluding the public as to their qualifications.)

It is felt that a permanent retired license status will both serve elderly physicians wishing to retain their M.D. title and protect the public. Retired status should also appeal to those physicians who are effectively retired and presently faced with CME requirements they cannot meet due to age and infirmity. The proposed language also empowers the board to make very certain the physician is competent, should a retired physician wish to return to active status.

Section 21 also creates a new section (AS 08.64.279) that authorizes the executive secretary or other designee of the board to conduct certain physician candidate interviews. This greatly enhances the efficiency and effectiveness of the board without compromising the standards for license and permit requirements. The executive secretary or board designee would conduct interviews for the variety of short-term licenses and permits that are issued by the Medical Board; however, this amendment does not remove the requirement that a physician getting permanently licensed in Alaska must be interviewed by a member of the board itself.

In recent years, individual board members have encountered severe difficulty in accommodating the requirement imposed on board members to interview locum tenens physicians. As a result, the board has, by policy, delegated to the executive secretary the authority to conduct these interviews where feasible. This language would put that authority into statute.

Section 22 amends the grounds for imposition of disciplinary sanctions in AS 08.64.326. The amendments are primarily very minor housekeeping changes, but do include a fairly controversial revision to the "professional incompetence" standard (page 11, lines 3 - 5). This section adds a qualifier stating that the board may not impose disciplinary sanctions "solely on the basis that a licensee's practice is unconventional or experimental."

The medical board considers this inclusion unnecessary and somewhat offensive because of its implication that the board has in the past based a finding of medical incompetence on the mere fact that a particular practice is "unconventional or experimental." The board and the division see this as special interest language supported by only one of two physicians to tie the board's hands in scrutinizing questionable medical therapies and practices that may place patients at risk.

Section 23 of the bill amends board statutes which address reports of disciplinary action to the Federation of State Medical Boards and the National Practitioner Data Bank. Present language specifies that disciplinary action taken against licensees is to be reported. The changes in this section broaden the reporting to include temporary, residency, locum tenens and physician assistant permit holders, as well. The board reports disciplinary actions against permit holders, considering that such reporting falls under the legislative intent of the statute, but we believe it would be best to have specific language in the statute authorizing such reporting.

Section 24 amends the "duty to report" provisions of the Medical Board's statute by strengthening the subsection having to do with peer review and physician assistance in investigatory cases, making clear that the limited liability provisions of amended AS 08.02.020 (Sec. 1 of this bill) apply to those persons assisting the board in determining the competency of a physician and his or her potential danger to the public. This section also specifically includes the impaired physician program volunteers in the immunity protections provided for in this section of the statute.

Section 25 amends the board statutes by creating a new section that requires licensed physicians to report to the board any civil malpractice actions filed against them. This is information currently not readily available to the board. It is conceivable that this additional information, combined with consumer complaints and investigatory information obtained independently by the division, could perhaps "tip the scales" in providing enough data to "make a case" against a physician who has been practicing "on the edge" of competency.

It would also allow the board to review such information and determine if there is cause for investigation and/or disciplinary action in those instances where the board/division had not received a complaint against the licensee the civil claim was filed against.

Although this section is controversial and not popular among the medical community, the department does not oppose this section of the bill at this time. We remain concerned, however, that this section -- while giving us more information than now required as a result of Federal Public Law 99-660 -- will engender opposition from the medical community and thus hinder passage of this bill. This concerns us because the bill contains many amendments to the board's statutes far more important to the consumer than this one section. Our belief is that only a reporting experience of some years will provide us with adequate data to determine the potential consumer protection value of collecting reports of malpractice claims.

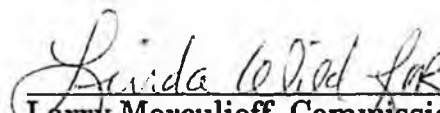
Section 26 amends the definitions section to clarify the issue of who may use the designation "physician," "M.D.," "D.O.," etc. There is presently a great deal of concern over this statute because it effectively prohibits a person who is trained as a physician and received an M.D. degree but who is not licensed or practicing medicine from using the designation M.D. in teaching, authoring books, or other types of activities. It is hoped that the proposed language will clarify this issue and allow persons to use the academic designations they earned without misleading the public that they are licensed to diagnose and treat patients.

Section 27 of HB 146 is related to proposed new AS 08.64.345. It directs the Medical Board to submit a report to the Legislature by January 30, 1992. The report would contain the board's recommendations for statutory changes necessary to implement policies regarding review of medical malpractice claim data.

Section 28 is the effective date clause.

The State Medical Board and the division have spent considerable time reviewing these proposed changes and feel that they would greatly enhance not only the effectiveness of all occupational licensing boards vis-a-vis their discipline cases, but that the provisions directly impacting the Medical Board would solve a great many existing licensing complications and substantially benefit Alaska's consumers of medical services.

For the reasons stated above, this department supports passage of CSHB 146 (HESS).



Larry Mercurieff, Commissioner

Date: 4/2/90

Commission investigating physicians

HB146

Times
10/10/88

MIAMI (AP) — The Federal Trade Commission is interviewing hundreds of Florida doctors and demanding minutes from medical societies' meetings in an investigation of emergency room boycotts last year, a newspaper reported.

"I don't see any smoking guns," said John Thrasher, general counsel for the Florida Medical Association. "My guess is had they had something, it would have developed by now and something would have been done about it."

The FTC is questioning doctors to determine if they acted as individuals or as a group when they began refusing emergency calls in response to a 33 percent to 42 percent hike in insurance premiums, The Miami Herald reported Sunday.

Federal antitrust laws prohibit businesses from acting together for financial gain.

"We're intimidated," said Dr. Charles Lipman, a thoracic surgeon in North Miami Beach. "It's kind of like you're up against the big boys and that's scary."

The FTC won't discuss the growing investigation, but Lipman and Dade County hospital officials said hundreds of doctors have been questioned, either voluntarily or after being subpoenaed.

Some doctors who canceled their insurance saw eliminating emergency room work as a way to reduce the risk of being sued. Their actions captured the attention of politicians who promised to do something about the cost of malpractice insurance in Florida.

Last spring, the Legislature passed a law making it harder to gain damages in lawsuits from doctors who deliver babies and work in emergency rooms. Injured people must now prove the doctor showed reckless disregard for their care, and all lawsuits involving brain-damaged babies are handled by a state compensation system instead of the courts.

The changes stabilized insurance premiums and brought some doctors back to emergency rooms.

But many more are refusing to return unless Florida voters approve Amendment 10 on the November ballot. The law would ease their malpractice insurance burden by capping non-economic damages or those a jury would give for pain and suffering at \$100,000.

The FTC began last year to investigate whether doctors were legally trying to change the state malpractice law, or illegally trying to pad their wallets.

The agency has forced some medical societies to hand over minutes from meetings and all written communication between its members. That includes identical letters the Palm Beach obstetricians sent to hospitals announcing the boycott.

FTC spokeswoman Dee Ellison said the agency will try to make doctors found to have violated antitrust laws to agree to stop refusing emergency room care.

FORUM

Remaining ill, with bodies that cannot heal

By DR. ROBERT JAY ROWEN

The Daily News has done a laudable job in recent months reporting on the extent of poisoning of the environment and the appalling content of the typical American diet. The health insurance cost crisis has been presented, yet the wisdom to tie it all together continues to be lacking.

Three years ago, the News published a four-part series on modern cardiology extensively reporting on the latest "wonders" of medicine, drugs and bypass surgery. Not a word was written on prevention or nutritional approaches extolled by many "alternative practitioners," but now, years later, articles are published on the reversibility of coronary disease by diet, nutrition and exercise.

Concurrently, articles are finally reaching the lay public about the gross abuse and failure of the \$50,000-plus bypass in America. Yet it and other surgeries continue.

In the '50s and '60s, the fad surgery was tonsillectomy. The

'70s gave us hysterectomy. The '80s — bypass. Through it all was the maiming radical mastectomy. Skyrocketing insurance costs are often blamed on high technology.

Yet what has all this wizardry given us? Of all the expensive CAT scans, X-rays, MRI's and procedures performed, how many are positive? Or better yet, how many give us information that will actually help the patient instead of creating an intellectual pursuit for the physician and dollars for the industry? In truth, very few.

Treatment is often little better. Aside from costly and dangerous surgery, a quick glance through the bible of medicine, the "Physicians' Desk Reference," reveals that almost every drug used by the doctor is an anti-hypertensive, anti-biotic, ant(i)-acid, anti-histamines, etc.

All of these drugs are designed to interfere with physiologic functions. Physicians are wooed by grand promotions for drugs that are not only costly (and long-term, since they do not cure), but are



often very dangerous. With the possible exception of antibiotics (which don't cure if you don't have an immune system), what other drugs cure any disease?

Are hyperactive children born with a deficiency of Ritalin? What has medicine done to promote or enhance natural healing functions instead of suppressing symptoms? A single nutrient deficiency or excess sugar is known to impair immune function.

Drug treatment of high blood pressure has been going on for years, yet most studies indicate that patients might be better off without the drugs. Further, most hypertensives (and those with high cholesterol) have moderate to severe nutritional deficiencies brought on by the typical American diet, which contributes to the blood pressure and is never ad-

ressed, but is easily, inexpensively and safely treated.

The logic of natural selection suggests that humans have self-healing mechanisms, or we would have died out. Logic further suggests the body must get basic building blocks (nutrients) to repair itself and, further, must avoid toxins or poisons that interfere with normal or repair processes.

It has been standard medical training (mine included) to offer perhaps two hours on these simple truisms and months on drugs and surgical education. Yet published U.S. Drug Administration studies confirm that at least 99 percent of Americans are malnourished in at least one essential nutrient.

The epidemic of malnutrition and chemical contamination in this country parallels the rise in "unexplained illnesses." Insurance pays for the "usual and customary" (expensive drugs, surgery and procedures).

Studies have shown that pa-

tients with metastatic cancer fare worse with their \$15,000 per year average chemical poison program (paid for by insurance and Medicare) than they would if they had done nothing!

Yet a \$10 nutrient that could correct the imbalance creating a disorder and obviate a surgery or illness is not covered. The lay press is full of information on self-help, nutrition and healing from basic science journals that rarely makes it into the mainstream medical journals, which rely heavily on drug promotion. So doctors are kept in the dark.

Until physicians and insurance companies alike give attention to the three basic causes of biological failures — malnutrition, toxic factors and stress — we will continue to pay more and get less as people remain ill with bodies that cannot heal.

□ Dr. Robert Jay Rowen is an Anchorage physician.

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that deals with the interview requirements for applicants for medical licenses and permits.

Present law requires that an applicant for a physician or osteopath license be interviewed by a member of the State Medical Board. These interviews allow the board to inquire into issues that cannot be effectively examined in written tests. They also help the board positively identify license applicants. The current law also contains some procedural safeguards that relate to license denials.

The bill also establishes a new interview requirement for medical permits that are issued by the board. This requirement does not provide the same procedural safeguards as for license applicants. This is because the minimal protection the safeguards would provide to permit applicants do not outweigh the administrative burden of giving written notice and explanation to them.




Section 5 of the bill creates the new requirement and says that either a member of the State Medical Board or its executive secretary may conduct the interview. Sections 3 and 4 say that an interview is a prerequisite for an intern or resident permit, or for a permit for temporary substitution, that is, for "locum tenens" practice.

Because this bill will help to ensure the competency of persons who receive medical licenses and permits, I urge your passage of it.


Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor



**ELEMENTS OF A
MODERN STATE
MEDICAL BOARD**



A PROPOSAL



**THE FEDERATION OF
STATE MEDICAL BOARDS
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6

DATE: August 15, 1989

TO: Distinguished State Officials and Legislators

FROM: Melvin E. Sigel, MD, Chairman, Federation Project Work Panel

ABOUT: Enclosed *Elements of a Modern State Medical Board: A Proposal*

Enclosed for your consideration is a copy of a document recently completed by a special task force of the Federation of State Medical Boards of the United States. Called the Project Work Panel, the task force has spent over a year developing the *Elements of a Modern State Medical Board: A Proposal* under a federal contract awarded by the Health Resources and Services Administration of the US Department of Health and Human Services. The document was first introduced during a meeting of the National Conference of State Legislatures' Health Committee at the NCSL's annual meeting in Tulsa on August 7. Its preparation and purpose are discussed succinctly in its preface and introduction, which I hope you will read before reviewing the full document. Let me point out here, however, that the *Elements* is not a policy or position statement by the Federation of State Medical Boards. It is the result of the Project Work Panel's study and discussion under the federal contract and will be evaluated as carefully by the Federation as by others interested in enhancing the effectiveness of state medical boards.

My colleagues and I on the Project Work Panel would be pleased to receive your comments on our effort, and we hope you will find it useful as you evaluate your own medical board. The *Elements* will achieve its purpose if it stimulates constructive discussion concerning the structure and function of state medical boards in this country.

Should you have any comments or should you like to have additional copies of the *Elements*, please write to me care of Mr Dale G Breaden, Associate Executive Vice President, Federation of State Medical Boards, 2630 West Freeway, Suite 138, Fort Worth, Texas 76102-7199.

Thank you for your time.

MES:lm

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PREFACE

To be of value, an idea must be challenging enough to concern us a bit. Certainly, the idea of attempting to specify the elements fundamental to the structure and function of a modern state medical board meets that criterion, given the diversity of the states and the differences among the medical boards now in place. Needless to say, in undertaking preparation of the document you hold in your hand, the Federation of State Medical Boards of the United States was more than aware it faced a challenging idea, but one with which it had to deal.

In early 1988, the Division of Medicine of the Bureau of Health Professions, Health Resources and Services Administration, US Department of Health and Human Services, requested proposals for the development of a document on board structure and function to be a complementary companion to the fifth edition of the Federation's *Guide to the Essentials of a Modern Medical Practice Act*. It was clear the Federation must respond: no other organization had the knowledge, experience, and resources required for the task. And no other could offer as responsible and informed an effort. If the project was to be undertaken at all, and it surely was, the Federation had to do it. The Federation's proposal was accepted and the organization was awarded HRSA Contract Number 240-88-0040 to develop the document and make it available for consideration by the public, the states, the state medical boards, medical organizations, and others.

The result is the *Elements of a Modern State Medical Board: A Proposal*. It is the product of over a year of research, inquiry, meetings, consultation, drafting, and redrafting by a special Federation task force called the Project Work Panel (PWP). The *Elements* is not a detailed model for a complete state medical practice act; it is focused only on the structure and function of a modern state medical board and on the powers, duties, and protections basic to that structure and function. In that context, it reflects the study, concepts, opinions, knowledge, and experience of the members and consultants of the PWP as officers, members, attorneys, and staff of state medical boards and as Federation leaders. It is not intended to be, and is not, a policy or position statement by the Federation of State Medical Boards. Though the outgrowth of a federally funded project conducted under the auspices of the Federation, it will be reviewed and evaluated by the Federation's Board of Directors and membership as carefully and critically as it should be by a wide range of interested and involved agencies, organizations, and individuals. Far from perfect, the *Elements* is simply the best effort of the PWP to develop a proposal for the structure and function of a modern state medical board consistent with the principles expressed in the Federation's formally approved *Guide to the Essentials of a Modern Medical Practice Act*. It is offered as a stimulus for discussion of a number of issues vital to improving the regulation of the medical profession in this country.

During the past year, the PWP carefully studied the basic structural and functional outlines of sixty-five medical boards, contacted fifty-six boards in telephone surveys on several specific issues, reviewed in detail the medical statutes of thirty-eight states, and analyzed the potential impact of the *Elements* if implemented in eighteen widely differing state settings. While developing the document, the PWP benefited greatly from the advice, insight, and counsel of twenty-six state medical board members, eighteen of whom were board presidents, and twenty-three state medical board

executives. They deserve much of the credit for what you may find agreeable in the *Elements* and none of the blame for what you may find disagreeable. They certainly earned the PWP's warmest thanks for their kind cooperation and thoughtful assistance.

The *Elements* is the responsibility of the members and consultants of the PWP, acting at the behest of the Federation to fulfill its federal contract. Whether the project achieved its true purpose or not, only you and time can judge. The idea, however, was worth the trying.

The Federation Project Work Panel

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Gerald J. Bechamps, MD

Virginia Board of Medicine

Leroy B. Buckler, MD

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Associate Executive Vice President, Federation of State Medical Boards

INTRODUCTION

The organization and activities of each of the more than sixty medical regulatory boards (allopathic, osteopathic, and composite) within the United States are determined by a unique state statute, usually referred to as a *practice act*. The differences among these statutes are related to the general administrative structure of each jurisdiction and to the needs of the public as they are perceived by each responsible legislative body.

The *Elements of a Modern State Medical Board: A Proposal* is not intended to encourage movement toward total uniformity among these statutes. Given the diversity of administrative structures and the variations in perceived needs, that would be a futile exercise. In any case, such differences have a positive creative value, allowing the evolution and testing of a range of new approaches in a number of jurisdictions at once. In light of the concepts and principles it offers for consideration, the *Elements* is intended to nurture that creativity by encouraging the public, state legislators, medical boards, medical societies, and others who have an interest in the regulation of the medical profession to reexamine existing practice acts as they relate to the composition, structure, functions, responsibilities, powers, and funding of medical boards. In doing this, however, the *Elements* does not address issues relating to standards for licensure, grounds for disciplinary action, or rules and regulations. It is not an effort to provide a pattern for a complete medical practice act. It includes only those portions of an act the authors believe focus most directly on the medical board itself.

It is axiomatic that state medical boards can most effectively discharge their important responsibilities to society only if they are properly organized and effectively empowered. The project that resulted in development of the *Elements* was conceived because of the growing realization that some medical practice acts remain inadequate to enable boards to respond to broad public needs. While not advocating total uniformity, which would have a stultifying effect, the Federation of State Medical Boards has, for over three decades, encouraged and facilitated the improvement of the various state medical practice acts through its official publication, *A Guide to the Essentials of a Modern Medical Practice Act*. Now in its fifth edition, *A Guide to the Essentials of a Modern Medical Practice Act* has served as a highly effective stimulus to medical boards and state legislatures for periodic review and revision of their statutes. The *Elements* builds on the foundation of *A Guide to the Essentials of a Modern Medical Practice Act* and is, in effect, an explication of the chapters in that publication relating to board structure and function. Unlike the broad recommendations of *A Guide to the Essentials of a Modern Medical Practice Act*, however, the *Elements of a Modern State Medical Board: A Proposal* is presented in language and detail readily adaptable to statutory formats.

The *Elements* reflects not only relevant characteristics of effective current practice acts but also a number of innovative concepts not yet widely implemented. The result is a document, eclectic in its content, that its authors believe is worthy of consideration for adaptation to the requirements of any jurisdiction. While it could hardly be expected that any one jurisdiction would accept the *Elements* in every particular, the principles of responsibility, empowerment, and accountability the proposal clearly affirms should lead each jurisdiction to assess its present board to

determine if it provides maximum potential for protection of the public interest. Though presented for consideration as an integrated whole, the *Elements* offers significant approaches to a variety of issues that concern and trouble many boards: issues involving funding and budgeting, confidentiality, board authority, personnel and staffing, administration, emergency powers, training of board members, immunity and indemnity, standards of evidence, and the public's right to know, among other things. Any one or a combination of these approaches could be extracted from the *Elements* and adapted to meet the needs of specific boards.

In some states, responsibility for licensing and disciplinary functions is divided between two separate boards. In others, boards are subject to supervision or, in some cases, complete control by larger administrative or umbrella agencies. In a few, the board is simply an advisory body. In most states, the board regulates both allopathic and osteopathic physicians; in others, separate boards exist. And in some states, narrow constitutional restrictions inhibit effective board funding. Clearly, the *Elements* proposes a true working board with real and effective power and support, a proposal some states are much better prepared to implement than others. But it is also a reflection of those principles the authors consider to be basic to the operation of any accountable medical board, regardless of the administrative structure of the state, the size or distribution of the physician population being regulated, the form of legislation required for funding, or the title of the body to which responsibility and power for regulation have been entrusted. It can be drawn upon by both MD and DO boards, making appropriate adaptations in the area of board membership. Larger administrative agencies can use it to better assess their own structures and functions and to explore the broader roles their medical boards might play in meeting public expectations. The *Elements* includes significant material on a wide range of issues, much of which has the potential to benefit any administrative structure.

Recognizing the differences between and among jurisdictions, the authors have designed the *Elements* with the flexibility to accommodate as many of those differences as possible while maintaining the integrity of their overall concept. Specific flexible factors are designated in the text by bracketed, italicized segments and are footnoted. In addition, some sections empower a board to adopt alternatives of its choice provided they are in accord with other state statutes. Finally, some sections, such as that relating to board committees, are phrased permissively or in order to allow a board needed discretionary authority. In a sense, the *Elements* can be seen, not as one proposal, but as various proposals. Each is applicable, in one form or another, to a diversity of settings and all are aimed at increasing or refining the ability of state medical boards to protect the health, safety, and welfare of the public.

The Federation Project Work Panel



**ELEMENTS OF A
MODERN STATE
MEDICAL BOARD**



A PROPOSAL

I. LEGISLATIVE FINDINGS AND DECLARATION

As a matter of public policy, the practice of medicine is a privilege granted by the people of this State acting through their elected representatives. It is not a natural right of individuals. Therefore, in the interests of public health, safety, and welfare, and to protect the people from the unprofessional, improper, and incompetent practice of medicine, it is the responsibility of the Legislature to enact laws regulating the granting and subsequent use of the privilege to practice medicine and to ensure, as far as possible, that only qualified and fit persons hold that privilege. The fundamental purpose of this statute is to protect the public, and any license, certificate, or other practice authorization issued pursuant to this statute shall be a revocable privilege and no holder of such a privilege shall acquire thereby any irrevocable right.

II. DEFINITIONS

License: any license, certificate, or other practice authorization granted by the State Medical Board pursuant to this or any other applicable statute.

Licensee: the holder of any license, certificate, or other practice authorization granted by the State Medical Board.

Statute: this statute or any other statute applicable to the State Medical Board.

III. STATE MEDICAL BOARD

A. Board Created

There is hereby created the State Medical Board (hereafter referred to as the Board) to regulate the practice of medicine in this State in accord with this statute and to otherwise enforce this statute.

B. Delegation of Duty

The duty of determining a person's initial and continuing qualification and fitness for the practice of medicine, of proceeding against the unlawful and unlicensed practice of medicine, and of enforcing this statute is hereby delegated to the Board. That duty shall be discharged in accord with this statute.

C. Interpretation of Powers

It is necessary that the powers conferred on the Board by this statute be liberally construed to protect the health, safety, and welfare of the people of this State.

D. Board Membership

1. Number

The Board shall consist of *[from twelve (12) to twenty-four (24)]* members, twenty-five percent (25%) of whom must be public members *[and at least one (1) of whom must be a doctor of osteopathic medicine]*.¹ The remaining members must be doctors of allopathic medicine. The membership of the Board shall be drawn from as many different regions of this State as possible.

2. Qualifications

- a. *Public members* must reside in this State and be persons of integrity and good reputation who have lived in this State for at least five (5) years immediately preceding their appointments, have never been authorized to practice a healing art, and have never had a substantial personal, business, professional, or pecuniary connection with a healing art or with a medical education or health care facility, except as patients or potential patients.
- b. *Physician members* must reside in this State and be persons of recognized professional ability, integrity, and good reputation who have lived and actively practiced medicine in this State with a full and unrestricted medical license granted by this State for at least five (5) years immediately preceding their appointments.
- c. Members must be citizens of the United States who have attained the age of majority as defined in the statutes of this State.
- d. Members must be selected without regard to sex, race, national or ethnic origin, creed, religion, or age above majority.
- e. No member shall be a registered lobbyist.
- f. No member shall be an officer, board member, or employee of a statewide or national organization established for the purpose of advocating

¹Flexible Factors: The size of a state's physician population should be considered in determining how many persons would be required, within this range (12-24), to accomplish the work of the Board as envisioned in this document. Similarly, should the Board regulate both MDs and DOs, DO representation should be required if the DO population is judged to be significant.

the interests of or conducting peer review of health care practitioners licensed under this statute.

3. Terms

The term of Board service shall be four (4) years. A person shall not serve as a member of the Board for more than two (2) consecutive full terms, but may be reappointed two (2) years after completion of such service. For the purpose of this paragraph, a person who serves more than two (2) years of an unexpired term shall be considered to have served a full term. Terms of service shall be staggered, one fourth of the Board's membership being appointed each year. The term[s] of no more than [one (1)/two (2)] public member[s] shall expire in any one year.²

4. Requirements

a. Before entering on the duties of office, each member of the Board shall take the constitutional oath or affirmation of office and shall swear or affirm he or she is qualified to serve under all applicable statutes.

b. The Board shall conduct and new members shall attend a training program designed to familiarize new members with their duties. A training program for new members shall be held annually.

5. Appointment of Members

a. The members of the Board shall be appointed by the Governor, who shall make each appointment at least thirty (30) calendar days prior to the beginning of the Board term being filled. The Governor shall fill an unexpired term within thirty (30) calendar days of the vacancy's occurrence. Should the Governor not act as required by this paragraph, the Board, by majority vote, shall select a qualified person to serve until such time as the Governor acts.

b. Any individual, organization, or group may suggest potential Board appointees to the Governor. Medical societies and associations in this State shall be specifically requested to recommend two or more potential physician appointees for each available physician Board seat.

6. Removal of Board Members

A Board member shall be automatically removed from the Board should he or she

a. cease to be qualified;

b. be found guilty of a felony or an unlawful act involving moral turpitude by a court of competent jurisdiction;

c. be found guilty of malfeasance, misfeasance, or nonfeasance in relation to his or her Board duties by a court of competent jurisdiction;

d. be found mentally incompetent by a court of competent jurisdiction;

e. fail to attend three successive Board meetings without just cause as determined by the Board, or, if a new member, fail to attend the new

members' training program without just cause as determined by the Board;

f. be found in violation of this statute.

²Flexible Factor. One (1) per year should the Board have up to four public members, two (2) per year should the Board have more than four public members.

7. Board Compensation/Reimbursement

a. Compensation: Each Board member shall receive compensation equivalent to three-quarters (3/4) the daily rate paid the State Commissioner of Health [or equivalent State officer]³ for each day or part of a day spent in Board or Board-related meetings. Other Board-related services shall be compensated at the same level on a pro-rata basis as determined by the Board.

b. Expenses: Each Board member's travel and expenses for active Board service shall be paid at the State's current approved rate.

c. Education/Training: Travel, expenses, and daily compensation shall also be paid for each Board member's attendance, in or out of State, at up to ten full days of education or training per year directly related to Board duties and approved by the Board, except that daily compensation shall not be paid to physicians eligible for continuing medical education credit for such education and training.

E. Board Structure

1. Officers

The Board shall elect annually from its members a president, a vice president, a secretary-treasurer, and those other officers it determines are necessary to conduct its business. The officers shall serve for a one (1) year term. No person shall serve more than two (2) years in the same Board office during a single four (4) year Board term.

2. Duties of Officers

a. The president shall preside at Board meetings, arrange the Board agenda, sign Board orders and other required documents, appoint Board committees and their chairmen, coordinate Board activities, represent the Board before legislative committees, and perform those other duties assigned by the Board and this statute.

b. The vice president shall assist the president in all that officer's duties as requested by the president and shall perform the duties of the president in that officer's absence.

c. The secretary-treasurer shall be responsible for the keeping of Board minutes and records, for development of the Board budget, and for authorizing the expenditure of Board funds as directed by the Board and this statute.

3. Committees

To effectively facilitate its work, fulfill its duties, and exercise its powers, the Board may establish standing committees, including, but not limited to, licensing, investigation, finance, administration, personnel, rules, legislative communications, and public information committees. Ad hoc committees may be named as required. Committees shall be comprised of Board members only; and, except as otherwise noted in this statute, the president shall appoint members and chairmen of committees, who shall serve one (1) year terms and

³The highest ranking health official in the State's executive branch.

may be reappointed. In the absence of regular committee members and when necessary to provide a quorum for the conduct of committee business, the president may appoint from the Board temporary members to a committee. Changes in membership shall not be deemed to affect or hinder the continuing business or activity of any committee.

If established, committees of the Board shall conform with the following.

a. A licensing committee shall be comprised of at least one-quarter (1/4) of the Board's members and shall be responsible for reviewing or directing the review of the qualifications of applicants for licensure in accord with this statute and Board policy and rules. It shall recommend to the Board the issuance or denial of licenses to applicants. A licensing committee may also be responsible for recommending or preparing for the Board's consideration and approval those examinations to be used in meeting the examination requirements set by this statute for medical licensure, and for other evaluative purposes. It may also administer or direct administration of all examinations in keeping with this statute and Board policy and rules.

b. An investigation committee shall be comprised of at least three (3) members of the Board, one (1) of whom must be a public member. An investigation committee shall be responsible for reviewing any complaint or charge referred to it in accord with written Board policy, for conducting an investigation to determine if there is a reasonable basis for the complaint or charge, for determining if a hearing is required, and for referring the matter to the appropriate prosecuting authority for presentation to the Board or, if directed to do so by the Board, to a Board designated hearing officer. In performing its duties, it shall have all the powers granted the Board in this statute to compel cooperation and the provision of information by individuals and institutions. The Board shall act in the capacity of the hearing and adjudicatory body, and no member of an investigation committee shall sit with the Board to hear or adjudicate a matter considered by his or her investigation committee nor shall he or she be counted as part of the Board in determining a quorum for the conduct of business during such a hearing or adjudication. Should the volume of complaints and charges require it, more than one investigation committee may be named at the Board's discretion.

c. A finance committee shall be comprised of the secretary-treasurer, acting as chairman, the president and vice president, and one public member of the Board. It shall be responsible for gathering budget information and proposing a budget to the Board for its consideration. It shall also arrange for annual audit of the Board's accounts by the State Auditor's Office [or equivalent State office]⁴. Budgets shall be prepared and adopted sufficiently in advance of the fiscal year to allow reasonable notice for increases or decreases in the fees and charges set by the Board.

d. Other committees created by the Board shall have those responsibilities,

⁴That office or authority charged by law with primary responsibility for auditing the State's accounts.

consistent with this statute, delegated to them by the Board.

4. *Advisory Councils*

To assist the Board in the performance of its duty relating to the regulation of health care professionals other than physicians, the president, with advice and approval of the Board, shall appoint a separate Advisory Council for each of the health care fields for which the Board has responsibility under this statute. Each Advisory Council shall be chaired by a member of the Board appointed by the president and shall have four other members. Each of those four other members shall meet the same requirements and be subject to the same limitations and causes for removal as a physician member of the Board, the requirement for medical licensure being replaced by that for full and unrestricted authorization to practice in the particular health care field of the Advisory Council to which he or she is appointed. Terms and limitations of service on an Advisory Council shall be the same as for the Board. The chairman of an Advisory Council shall be compensated and reimbursed as a Board member. The other four members of an Advisory Council may be compensated at an appropriate and reasonable level as determined by the Board and shall be reimbursed for meeting-related travel and expenses at the State's current approved rate. Advisory Councils shall meet at least once each year to review the regulation of their health care fields and to advise the Board on policy and rules relating to that regulation. The Board may also consult them or their members for advice on particular issues or disciplinary matters. The Board shall determine the specific functions of the Advisory Councils in keeping with this statute.

F. Funding

1. *Revenues*

The Board shall be fully supported by the revenues generated from its activities, including fees, charges, and reimbursed costs. All such revenues, with the exception of fines, shall be deposited in the State Treasury to the credit of the State Medical Board Account, which is hereby established and which shall also receive all interest earned on the deposit of such revenues. Such funds are appropriated continuously and shall be used by the Board only for administration and enforcement of this statute. All fines levied by the Board shall be deposited in the State General Fund.

2. *Budget*

The Board shall develop and adopt its own budget reflecting revenues, including the interest thereon, and costs associated with each health care field regulated. Revenues, and interest thereon, from each health care field regulated shall fully support Board regulation of that field. The budget shall include allocations for establishment and maintenance of a reasonable reserve fund.

3. *Setting Fees and Charges*

All Board fees and charges shall be set by the Board pursuant to its proposed budget needs. Reasonable notice shall be provided for all increases or decreases in fees and charges.

4. Fiscal Year

The Board shall operate on the same fiscal year as the State.

5. Secretary-Treasurer

The secretary-treasurer of the Board, at the direction of the Board, shall oversee the collection and disbursement of funds. That officer shall be bonded by the Board in an amount to be fixed by the Board.

6. Audit

The State Auditor's Office [or equivalent State office]⁵ shall audit the financial records of the Board annually and report to the Board and the Legislature.

G. Board and Committee Meetings

1. Location

The Board and its several committees shall meet in the Board's offices or other appropriate facilities in the same city as those offices. At their discretion, however, they may meet from time to time in other areas of the State to facilitate their work or to enhance communication with the regulated professions.

2. Frequency; Duration

a. The Board shall meet at least bimonthly [quarterly]⁶ for a period sufficient to complete the work before it at that time.

b. Committees shall meet as directed by the Board. However, each standing committee shall meet at least once per year to review its area of responsibility and to prepare a formal annual report for presentation to the Board.

3. Special Meetings; Conferences

a. Emergency meetings of the Board may be called at any time by the president or at the request of an officer and two (2) Board members if required to enforce this statute. The Board may establish procedures by which its committees may call emergency meetings.

b. Informal conferences of an investigation committee may be called by the chairman of the committee for the purpose of holding discussions with licensees, accused or otherwise, who seek or agree to such conferences. Any disciplinary action taken as a result of such a conference and agreed to in writing by the Board and licensee shall be binding and a matter of public record. The holding of an informal conference shall be at an investigation committee's discretion and shall not preclude formal disciplinary investigation, proceedings, or action.

c. A telephone or other telecommunication conference shall be an acceptable form of Board meeting for the purpose of taking emergency action to enforce this statute if the president alone or another officer and two (2) Board members believe the situation precludes another form of meeting. The Board may establish procedures by which its committees may meet by

⁵That office or authority charged by law with primary responsibility for auditing the State's accounts.

⁶Flexible Factor: Bimonthly meetings may not be required in states with small physician population. One meeting per quarter may be sufficient in such cases.

telephone or other telecommunication conference to take emergency action.

4. Notice

a. The Board shall establish a system for giving all Board and committee members reasonable advance notice of all Board and committee meetings.

b. The Board shall establish a system for giving the public, including its regulated professions, reasonable advance notice of all open Board and committee meetings. Emergency meetings, including telephone or other telecommunication conference meetings, shall be exempt from this public notice requirement.

5. Quorum

a. A majority of members shall constitute a quorum for the transaction of business by the Board or any committee of the Board.

b. Notwithstanding any provision of law to the contrary, the business of the Board and its committees shall be conducted in accord with this statute and with rules of parliamentary procedure adopted by the Board.

6. Conflict of Interest

No member of the Board, acting in that capacity or as a member of any Board committee, shall participate in the making of any decision or the taking of any action affecting his or her own personal, professional, or pecuniary interest, or that of a known relative or of a business or professional associate. With advice of legal counsel, the Board shall adopt and annually review a conflict of interest policy to enforce this section.

7. Records

Minutes of all Board and committee meetings and proceedings, and other Board and committee records, shall be prepared and kept in accord with the Board's adopted rules of parliamentary procedure and other applicable State statutes.

8. Open Meetings; Confidentiality

a. All meetings of the Board and its committees shall be open to the public, with the following exceptions:

(1) meetings or portions of meetings of the Board devoted to consideration of personnel and staff employment or evaluation issues, to consultation with legal counsel, to business or contract matters the premature public knowledge of which would adversely affect the financial interests of the Board or the State, and to matters the Board is required to keep confidential by contract or statute;

(2) meetings or portions of meetings of the Board, acting in its capacity as a hearing or adjudicatory body, held to receive testimony or evidence the public disclosure of which the Board determines would constitute an unreasonable invasion of personal privacy, to consult with legal counsel, to deliberate issues, and to arrive at disciplinary judgments;

(3) meetings of an investigation committee;

(4) meetings of a licensing committee.

Recommendations or decisions made in non-public meetings shall be ratified in public and shall be matters of public record.

b. The minutes and all records of non-public meetings are privileged and confidential and shall not be disclosed except to the Board or its designees

for the enforcement of this statute, except that all licensing decisions made by the Board and all disciplinary orders, with the associated findings of fact and conclusions of law, issued by the Board shall be matters of public record.

c. The following shall be privileged and confidential:

(1) application and reregistration forms and any evidence submitted in proof or support of an application to practice, except that the following items of information about each applicant or licensee included on such forms shall be matters of public record:

- (a) full name;
 - (b) date and place of birth;
 - (c) name(s) and location(s) of professional schools attended;
 - (d) school awarding professional degree, date of award, and designation of degree;
 - (e) site(s) and date(s) of graduate professional training;
 - (f) Board recognized specialty certification(s) held and date(s) granted;
 - (g) specialty and professional society memberships;
 - (h) year of initial licensure in this State;
 - (i) other states in which licensed to practice in the same field; and
 - (j) current office address and telephone number;
- (2) all investigations and records of investigations;
- (3) any report from any source concerning the fitness of any person to receive or hold a license;
- (4) any communication between or among the Board and/or its committees, staff, advisors, attorneys, employees, hearing officers, consultants, experts, investigators, and panels occurring outside public meetings;
- (5) the identity of that individual or entity filing an initial complaint with the Board.

d. Notwithstanding the foregoing provisions, the Board may cooperate with and provide documentation to other boards, agencies, or law enforcement bodies of this State, other states, other jurisdictions, or the United States upon written official request by such an entity.

e. Nothing herein shall be construed as prohibiting a respondent or his or her legal counsel from exercising the respondent's right of due process under the law.

H. Offices; Administration

1. Offices

The Board shall maintain offices it determines are adequate in size, staff, and equipment to effectively carry out the provisions of this statute. At its discretion, it may establish branch offices, staffed and equipped as it finds necessary, in as many areas of the State as it believes require such branch offices to facilitate the work of the Board.

2. Administration

The Board, in keeping with applicable State statutes, shall set out the function, operation, and administrative structure of its offices.

I. Staff; Special Personnel

1. Board Authority

The Board is hereby empowered to determine its staff needs and to employ, fix compensation for, evaluate, and remove its own full-time, part-time, and temporary staff in accord with the statutory requirements of this State. It shall define the duties of and qualifications for staff positions and shall bond those members of staff charged with the handling of funds. Staff benefits shall be provided in accord with the statutes of this State.

2. Staff Positions

The Board's staff may include, but need not be limited to, the following:

- a. an executive director*, who, among administrative and other delegated responsibilities, may assist, at the Board's discretion, in the discharge of the duties of the secretary-treasurer;
- b. one or more assistant executive directors*;
- c. one or more medical consultants*, who shall be licensed to practice medicine in this State without restriction;
- d. office and clerical staff*;
- e. one or more attorneys*, who may be full-time employees of the Board, or assigned from the Office of the State Attorney General by agreement between the Board and that office, or in private practice;
- f. one or more hearing officers*, who shall be trained to conduct hearings according to law and vested with full authority to do so on the Board's behalf and in its name, but whose decisions shall be reviewed and approved, modified, or disapproved by the Board;
- g. one or more investigators*, who shall be trained in and knowledgeable about the investigation of medical and related health care practice;
- h. experts and consultants*; and
- i. special agents.*

3. Special Support Personnel

The Board may, at its discretion, and in accord with the statutes of this State, enlist the services of experts, advisors, consultants, and others who are not part of its staff to assist it in more effectively enforcing this statute. Such persons may serve voluntarily, be reimbursed for expenses in accord with State law and policy, or be compensated at a level commensurate with services rendered in accord with State law and policy. When acting for or on behalf of the Board, such persons shall benefit from the same immunity and indemnification protections afforded by this statute to the members and staff of the Board.

J. Immunity; Indemnity; Protected Communication

1. Immunity

There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, witness, or any other person serving or having served the Board, either as a part of the Board's operation or as an individual, as a result of any act, omission, proceeding, conduct, or decision related to his or her duties undertaken or performed in good faith and within the scope of

the function of the Board.

2. *Indemnity*

If a current or former member, officer, administrator, staff member, committee member, examiner, representative, agent, employee, consultant, or any other person serving or having served the Board requests the State to defend him or her against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to his or her duties undertaken or performed in good faith and within the scope of the function of the Board, and if such a request is made in writing at a reasonable time before trial, and if the person requesting defense cooperates in good faith in the defense of the claim or action, the State shall provide and pay for such defense and shall pay any resulting judgment, compromise, or settlement.

3. *Protected Communication*

a. Every communication made by or on behalf of any person, institution, agency, or organization to the Board or to any person(s) designated by the Board relating to an investigation or the initiation of an investigation, whether by way of report, complaint, or statement, shall be privileged. No action or proceeding, civil or criminal, shall be permitted against any such person, institution, agency, or organization by whom or on whose behalf such a communication was made in good faith.

b. The protections afforded in this provision shall not be construed as prohibiting a respondent or his or her legal counsel from exercising the respondent's constitutional right of due process under the law.

K. Duties of the Board

In addition to any other duties placed on the Board by this statute, the Board, acting in accord with this statute, shall:

1. enforce the provisions of this statute;
2. adopt and enforce rules to carry into effect the provisions of this statute and to fulfill its duties thereunder;
3. develop and use application and other necessary forms and related procedures it finds appropriate for purposes of this statute;
4. prepare or select, conduct or direct the conduct of, set passing requirements for, and assure security of licensing and other required examinations;
5. acquire information about and evaluate the professional education and training of applicants;
6. issue or deny licenses;
7. accept or deny applications for license reregistration based on the evaluation of adverse information, if any, relating to applicant fitness, performance, or practice;
8. review and investigate complaints and adverse information about licensees;
9. establish by rule a mechanism, which, at the Board's discretion, may involve cooperation with and/or participation by one or more Board approved professional organizations, for the identification and monitored treatment of licensees who abuse or are dependent on or addicted to alcohol or other addictive chemical substances;

10. establish by rule a mechanism by which licensees who believe they abuse or are or may be dependent on or addicted to alcohol or other addictive chemical substances, and who have not been identified by the Board through other sources of information, will be encouraged to report themselves voluntarily to the Board and/or, at the Board's discretion, to a professional organization approved by the Board to seek assistance and monitored treatment;
11. conduct hearings in accord with this statute;
12. adjudicate those matters that come before it for judgment under this statute and issue final decisions on such matters;
13. discipline licensees;
14. report all final disciplinary actions, license denials, and voluntary license limitations or surrenders related to physicians, with any accompanying Board orders, findings of fact and conclusions of law, to the Board Action Data Bank of the Federation of State Medical Boards of the United States and to any other data repository required by law, and report all such actions, denials, and limitations or surrenders related to other licensees, with the same supporting documentation, to the appropriate national practitioner data repositories recognized by the Board or required by law;
15. act to halt the unlicensed or illegal practice of medicine and to seek penalties against those engaged in such practice;
16. institute proceedings in courts of competent jurisdiction to enforce its orders and the provisions of this statute;
17. establish appropriate fees and charges to ensure active and effective pursuit of its responsibilities;
18. employ, direct, reimburse, evaluate, and dismiss staff in accord with State procedures;
19. establish policies for Board operations; and
20. recommend to the Legislature those changes in or amendments to this statute that it determines would benefit the health, safety, and welfare of the public.

L. Powers of the Board

In addition to any other powers provided the Board herein, the Board, when acting in accord with this statute, shall have those powers necessary to fulfill its duties under this statute. Those powers shall include, but not be limited to, the following:

1. to employ or contract with one or more organizations or agencies known to provide acceptable examinations for the preparation and scoring of required examinations, and to employ or contract with one or more organizations or agencies known to provide acceptable examination services for the administration of required examinations;
2. to prescribe the time, place, method, manner, scope, and subjects of examination;
3. to impose sanctions, deny licensure, levy fines, seek appropriate civil and/or criminal penalties, or any combination of these, against those who violate or attempt to violate examination security, those who obtain or attempt to obtain licensure by fraud or deception, and those who knowingly assist in

such activities;

4. to determine which professional schools, colleges, universities, training institutions, and educational programs are acceptable in connection with licensure under this statute, and to accept the approval of such facilities and programs by Board recognized accrediting bodies in the United States;

5. to require supporting documentation or other acceptable verifying evidence of any information provided the Board by an applicant or licensee;

6. to require information on an applicant's or a licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including, but not limited to, the Federation of State Medical Boards' Board Action Data Bank, other national data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies;

7. to require the self-reporting by applicants or licensees of any information the Board determines may indicate possible deficiencies in practice, performance, fitness, or qualification;

8. to require all licensees to report to the Board information that appears to show another licensee is or may be professionally incompetent, guilty of unprofessional conduct, or mentally or physically unable to engage safely in licensed practice, and to report to the Board and/or to an agency designated by the Board a licensee's possible dependence on alcohol or other addictive chemical substances;

9. when deemed appropriate by the Board to do so, to require professional competency, physical, mental, or chemical dependency examination of any applicant or licensee, including withdrawal and laboratory examination of bodily fluids;

10. in establishing mechanisms for dealing with licensees who abuse or are dependent on or addicted to alcohol or other addictive chemical substances, to conclude agreements, at its discretion, with professional organizations, whose relevant procedures and techniques it has evaluated and approved, for their cooperation and/or participation;

11. to issue cease and desist orders, and to obtain court orders and injunctions to halt unlicensed practice, violation of this statute, or the rules of the Board;

12. to act on its own motion in disciplinary matters, administer oaths, issue notices, issue subpoenas in the name of the State, including subpoenas for patient records, hold hearings, institute court proceedings for contempt to compel testimony or obedience to its orders and subpoenas, take evidentiary depositions, and perform such other acts as are reasonably necessary under law to carry out its duties;

13. to use preponderance of the evidence as the standard of proof and to issue final decisions when acting as trier of fact in the performance of its adjudicatory duties;

14. to present to the proper authorities information it believes indicates an applicant or licensee may be subject to criminal prosecution;

15. to issue conditional, restricted, or otherwise circumscribed licenses as it determines necessary;

16. to take the following actions, alone or in combination, against those found in violation of this statute:

- a. revoke, suspend, restrict, and/or otherwise circumscribe the license;
- b. place the licensee on probation with conditions;
- c. levy fines and/or assess the costs of proceedings against the licensee;
- d. censure, reprimand, and/or otherwise chastise the licensee;
- e. require the licensee to provide monetary redress to another party, and/or provide a period of free public or charitable service;
- f. require the licensee to satisfactorily complete an educational, training, and/or treatment program or programs;
- g. require the licensee to successfully complete an examination or examinations designated by the Board;

17. to summarily suspend a license if it has cause to believe such action is required to protect public health and safety prior to hearing and final adjudication, and no court shall act to lift or otherwise interfere with such suspension while the Board proceeds in a timely fashion;

18. to determine and direct Board operating, administrative, personnel, and budget policies and procedures in accord with applicable State statutes;

19. to set necessary fees and charges, employ, evaluate, and dismiss personnel, and otherwise administer or direct administration of the Board in accord with applicable State statutes.

M. Board Reports

1. Annual Report

The Board shall present to the Governor, the Legislature, and the public, at the end of each fiscal year, a formal report summarizing its licensing and disciplinary activity for that year. The report shall include, but need not be limited to, the following information about each of the Board's regulated professions:

- a. the total number of persons fully licensed by this State and the number of those persons resident in this State;
- b. the number of persons holding each form of limited license authorized by this statute;
- c. the number of persons granted a full license by this State for the first time in the past year, the number of those persons resident in this State, and the number of full licenses denied in the past year;
- d. the number of resident licensees about whom a complaint, a charge, or an adverse item of information required by law was received in the past year;
- e. the number and the sources, by category, of complaints, charges, and adverse items of information required by law received about resident licensees in the past year, and the number of these found not to warrant action under this statute and the rules of the Board;
- f. the number of disciplinary investigations conducted by the Board or its representatives concerning resident licensees in the past year;

- g.** the number of disciplinary actions, by category, taken by the Board in the past year against resident and non-resident licensees;
- h.** a ranking, by frequency, of primary causes for disciplinary action against resident and non-resident licensees in the past year;
- i.** the number of actions taken or instigated by the Board to halt the unlawful practice of medicine in the past year;
- j.** a review of disciplinary activity related to holders of limited forms of license in the past year;
- k.** a review of the operations of the Board's current mechanisms for dealing with licensees dependent on or addicted to alcohol or other addictive chemical substances;
- l.** a schedule of all current fees and charges;
- m.** a revenue and expenditure statement for the past year indicating the percentage of revenue from and expenditures for each regulated profession;
- n.** a summary of other Board activities and a schedule of days met by the Board and each of its committees during the year.

2. *Public Record; Action Reports*

Each of the Board's license denials and final disciplinary orders, including any associated findings of fact and conclusions of law, shall be matters of public record. Voluntary surrenders of or limitations on licenses shall also be matters of public record. All such denials, orders, surrenders, and limitations shall be promptly reported by the Board to the public, all health care institutions in this State, appropriate State and federal agencies, related professional societies or associations in this State, and any data repository required by Board rules or policy, the laws of this State, or the laws of the United States.

3. *Required Response to Complainants and Others Providing Information*

Persons or entities reporting to the Board adverse information about licensees or instances of possible unlicensed practice shall receive prompt acknowledgment of their reports from the Board. The Board shall also inform them of the final disposition of the matters reported.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to occupational
licensing: . . .
Sponsor: House Rules Committee/Governor
Requestor: House HESS Committee

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	22.1	22.1	22.1	22.1	22.1	22.1
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	22.1	22.1	22.1	22.1	22.1	22.1
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER GF/PR	22.1	22.1	22.1	22.1	22.1	22.1
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME	1	1	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)
No fiscal impact for FY 90.

SEE ATTACHED

Prepared by: Jennifer Strickler, Administrative Officer
Division: Occupational Licensing

Phone: 465-2144
Date: 4/2/90

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Date: 4/2/90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

FISCAL NOTE ANALYSIS

CSHB 146 (HESS)

The bill repeals and reenacts AS 08.02.020, Immunity and Indemnity Related to Licensing Functions. The bill also makes several amendments to AS 08.64 regarding the State Medical Board. Section 3 adds a new provision to the medical statutes requiring the board to maintain records on licensees concerning malpractice actions and the outcome of each action.

The board is also required to periodically review the records and determine if the licensee should be found professionally incompetent. To assist the board in determining whether a licensee is professionally incompetent and to ensure that licensees report malpractice claims and the outcome to the board as required in Section 25, this fiscal note provides costs of personal services only for a seasonal Investigator II position, six months, Range 16A.

H B

1 4 7

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 31, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/4/89

The FINANCE Committee considered:

HB 147

HOUSE BILL NO. 147

[UNEMPLOYMENT INSURANCE]

"An Act relating to unemployment insurance and unemployment insurance contribution overpayments; establishing a priority for payment; and providing for an effective date."

RECOMMENDATIONS:

- be replaced with CS HB 147 (Judiciary) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact Labor
- zero fiscal note _____
- zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approp. column)

Do Not
Pass No Rec Amend

Ronald J. Larson LARSON
Ray Wallis WALLIS
Bob Swack SWACK
Heena Koponen KOPONEN
Tom Ulmer ULMER

<u>Jan Brown</u> BROWN		X	
<u>Barbara Barnes</u> BARNES		X	
<u>Rod Phillips</u> PHILLIPS		✓	
<u>Don Shultz</u> SHULTZ		X	
<u>John Heffner</u>		X	

Ronald J. Larson
CO-chairman's Signature

**STATE OF ALASKA
1989 LEGISLATIVE SESSION**

BILL VERSION : CSHB 147 (Jud)

PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: All
 Title: " An Act relating to
unemployment insurance..." BRU: All
 Sponsor: Rules Committee Components: All
 Requestor: House Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0.0	44.0	44.0	44.0	44.0	44.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	44.0	44.0	44.0	44.0	44.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE	0.0	150.0	150.0	150.0	150.0	150.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	30.8	30.8	30.8	30.8	30.8
FEDERAL FUNDS						
OTHER	0.0	13.2	13.2	13.2	13.2	13.2
TOTAL	0.0	44.0	44.0	44.0	44.0	44.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Judy Knight, Deputy Director Phone : 465-2712
 Division: Employment Security Division Date : 4/3/89

Approved by Commissioner: Jim Sampson Date: 4/3/89
 Agency: Department of Labor

Distribution (by preparer) :
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Adopted

Fiscal Note Analysis
for

"An Act relating to Unemployment Insurance..."

Three sections of this bill carry expenditure impact; one section will generate revenue.

Section 11 requires the department to adopt regulations to follow the notice and publication provisions of the Unclaimed Property Act. The minimal costs associated with this requirement will be paid for out of currently budgeted federal operating funds.

Section 18 would pay unemployment benefits to individuals who attend school if they became laid off while both attending school and working at least thirty hours a week.

There would be a cost to the State if state employees were laid off and qualified under this bill for unemployment benefits. Under existing law, the State reimburses the Unemployment Insurance Trust Fund for benefits paid to its employees. We estimate that 7 employees a year would qualify for benefits. At an average benefit of \$2,000 each, this would equate to \$14,000 a year.

Section 26 would change the provisions for dependent allowance. Both parents would receive the allowance if they are unemployed at the same time. We estimate this would cost the State \$30,000 per year in benefits to ex-state employees.

The total impact of these two provisions would be \$44,000 per year. However, since approximately 70% of the state operating budget is general funds, we estimate that \$30,800 (70% of \$44,000) of general fund money would be used while \$13,200 would be other funds. Other funds include federal, inter-agency, user fees, etc.

Section 22 of this bill provides for a penalty of 50% to be assessed claimants who are disqualified for fraudulent receipt of UI benefits. When collected, this penalty will be deposited in the General Fund as unrestricted revenue. The calculations used to arrive at estimated anticipated revenues are as follows:

- | | |
|---|------------|
| 1. Total detected fraudulent payments made per year | \$500,000. |
| 2. 50% penalty on detected fraudulent payments | \$250,000. |
| 3. A 60% collection rate on the established penalties | \$150,000. |

Assumptions:

1. An effective date for sections 18, 22, and 26 of July 2, 1989.
2. Detected fraudulent overpayments will remain at about \$500,000/year through 1994.
3. The fraud penalty must be collected in cash, therefore we have assumed a 60% collection rate on established penalties. The penalty cannot be collected by reducing a claimants future benefit entitlement due to a conflict with federal law.

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 147 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL
6 For an Act entitled: "An Act relating to unemployment insurance and to
7 unemployment insurance contribution overpayments;
8 establishing a priority for payment; relating to
9 disclosure of certain wage and unemployment compensa-
10 tion information; and providing for an effective
11 date."

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

13 * Section 1. AS 16.10.290(a) is amended to read:

14 (a) A person applying for a license as a fish processor or
15 primary fish buyer shall file with the commissioner of labor a surety
16 bond running to the State of Alaska conditioned upon the promise to
17 pay (1) all persons furnishing labor to a fish processor or primary
18 fish buyer, including contractual employee benefits; [AND] (2) in-
19 dependent registered commercial fishermen for the price of the raw
20 fishery resource purchased from them; and (3) unemployment insurance
21 contributions. If the surety bond is insufficient to satisfy all
22 obligations under this subsection, the obligations to persons furnish-
23 ing labor and to independent registered commercial fishermen shall be
24 paid before unemployment insurance contributions are paid. The surety
25 or sureties must [SHALL] be satisfactory, in the determination of the
26 commissioner.

27 * Sec. 2. AS 23.20.110 is amended by adding a new subsection to read:

28 (k) If an individual who is applying for or participating in a
29 housing assistance program administered by the United States

1 Department of Housing and Urban Development gives authorization, the
2 department shall disclose, to the United States Department of Housing
3 and Urban Development or to representatives of the housing assistance
4 program operating the program, wage information and unemployment com-
5 pensation information. The authorization shall be made by the indi-
6 vidual on a consent form approved by the department. The form must
7 state the information authorized to be released and require the signa-
8 ture of the individual. In this subsection,

9 (1) "unemployment compensation information" means whether
10 the individual is receiving, has received, or has applied for unem-
11 ployment compensation, and the amount of unemployment compensation
12 that the individual is receiving or will receive;

13 (2) "wage information" means the social security number, or
14 numbers if there are more than one, and quarterly wages of an em-
15 ployee, and the name, address, state, and, if known, federal employer
16 identification number of an employer reporting wages under this chap-
17 ter.

18 * Sec. 3. AS 23.20.145(f) is amended to read:

19 (f) Money credited to the account of this state in the unemploy-
20 ment trust fund by the Secretary of the Treasury of the United States
21 under 42 U.S.C. 1103 (Sec. 903, Social Security Act) may not be requi-
22 sitioned from this state's account or used except for the payment of
23 benefits and for the payment of expenses incurred for the adminis-
24 tration of this chapter. This money may be requisitioned under (b) of
25 this section for the payment of benefits. This money may also be
26 requisitioned and used for the payment of expenses incurred for the
27 administration of this chapter but only under a specific appropriation
28 by the legislature and only if the expenses are incurred and the money
29 is requisitioned after the enactment of an appropriation law that

1 [WHICH]

2 (1) specifies the purpose for which the money is appropri-
3 ated and the amount appropriated;

4 (2) limits the period within which the money may be ob-
5 ligated to a period ending not more than two years after the date of
6 the enactment of the appropriation law; and

7 (3) limits the amount that [WHICH] may be obligated during
8 a fiscal year to an amount that [WHICH] does not exceed the amount by
9 which [(A)] the aggregate of the amounts credited to the account of
10 this state under 42 U.S.C. 1103 (Sec. 903, Social Security Act) during
11 that fiscal year and the 34 [24] preceding fiscal years exceeds [(B)]
12 the aggregate of the amounts obligated for administration and paid out
13 for benefits and charged against the amounts credited to the account
14 of this state during those 35 [25] fiscal years.

15 * Sec. 4. AS 23.20.145(g) is amended to read:

16 (g) Amounts credited to this state's account in the unemployment
17 trust fund under 42 U.S.C. 1103 (Sec. 903, Social Security Act) that
18 [WHICH] are obligated for administration or paid out for benefits
19 shall be charged against equivalent amounts that [WHICH] were first
20 credited and that [WHICH] are not already so charged. However, an
21 amount obligated for administration during a fiscal year specified in
22 this section may not be charged against any amount credited during
23 [SUCH] a fiscal year earlier than the 34th [24TH] preceding fiscal
24 year.

25 * Sec. 5. AS 23.20.195(a) is amended to read:

26 (a) If the contributions are unpaid after 30 days from the date
27 of mailing or personal delivery of a written demand for payment, the
28 department may [SHALL] assess and collect in the same manner as con-
29 tributions a penalty equal to the greater of 10 percent of the

1 contributions due or \$10. [IN NO EVENT MAY THE PENALTY BE LESS THAN
2 \$1.]

3 * Sec. 6. AS 23.20.205(a) is amended to read:

4 (a) If the department finds that a contribution including inter-
5 est or penalty on the contribution is delinquent, the department may
6 issue a notice of assessment specifying the amount due and may serve
7 it on the delinquent employer. The notice must inform the employer of
8 the department's rights under (c) of this section. A peace officer or
9 an authorized representative of the department may serve the notice
10 personally or the department may mail the notice by certified or
11 registered mail with return receipt requested.

12 * Sec. 7. AS 23.20.205(c) is amended to read:

13 (c) Unless an appeal is filed under AS 23.20.220, if [IF] the
14 amount assessed is not paid within 30 days after personal service or
15 mailing of the notice as required by (a) of this section, the depart-
16 ment may [, SUBJECT TO AS 23.20.220,] collect the amount stated in the
17 assessment by the distraint, seizure, and sale of the property, goods,
18 chattels, and effects of the delinquent employer. Goods and property
19 exempt from execution under the laws of this state are exempt from
20 distraint and sale under this section.

21 * Sec. 8. AS 23.20.220(a) is amended to read:

22 (a) When a notice of assessment is delivered or mailed to a
23 delinquent employer, the employer may within 30 days file an appeal [A
24 PETITION] in writing with the department, stating that the assessment
25 is unjust or incorrect and requesting a hearing on it. The period for
26 filing an appeal may be extended for a reasonable period for good
27 cause. The appeal must [PETITION SHALL] set out the reasons the
28 assessment is objected to and the amount of contributions that [WHICH]
29 the employer admits is due, and must be accompanied by a bond or

1 deposit of other security in the amount of the assessment to ensure
2 [INSURE] collection. The department may waive the security require-
3 ment if the employer submits proof of solvency or reasonable assur-
4 ance, as prescribed by regulations, that the contributions, interest,
5 and penalties due are not in jeopardy. If [NO PETITION IS FILED
6 WITHIN THE TIME PRESCRIBED, OR IF] the employer fails to provide the
7 required security, the collection under AS 23.20.205(c) is not stayed
8 [THE ASSESSMENT IS PRIMA FACIE CORRECT]. The department shall adopt
9 regulations for procedures for an appeal under this subsection [HOW-
10 EVER, THE DEPARTMENT MAY ENTERTAIN A SUBSEQUENT APPLICATION FOR
11 REFUND, AND, IF DENIED A REFUND, A HEARING ON THE APPLICATION IN
12 ACCORDANCE WITH AS 23.20.225].

13 * Sec. 9. AS 23.20.220(b) is amended to read:

14 (b) If the appeal is accompanied by the required security or the
15 department has waived the security requirement, filing an appeal
16 [FILING A PETITION] on a disputed assessment with the department stays
17 the sale provided for in AS 23.20.210 until a final decision on the
18 assessment is made. However, the filing of an appeal [A PETITION]
19 does not affect the right of the department to perfect a lien as
20 provided in AS 23.20.200.

21 * Sec. 10. AS 23.20.220(c) is amended to read:

22 (c) After granting the appellant [PETITIONER] reasonable oppor-
23 tunity for fair hearing, the department shall make a decision on the
24 appeal [PETITION]. The department's decision is final unless the
25 appellant [PETITIONER] initiates a proceeding for judicial review in
26 the manner provided by AS 23.20.445.

27 * Sec. 11. AS 23.20.225 is amended by adding a new subsection to read:

28 (e) The department shall adopt regulations providing for the
29 disposition of excess contributions paid to the unemployment

1 compensation fund under AS 23.20.130. The regulations must be sub-
2 stantially similar to the provisions of AS 34.45.110 - 34.45.430.

3 * Sec. 12. AS 23.20.240(a) is amended to read:

4 (a) If after notice an employer defaults in the payment of
5 contribution or interest, the amount due may be collected by a person
6 authorized by law and authorized by the department, by civil action in
7 the name of the state, or by both methods. The department shall
8 include in the amount due the fees or costs charged the department by
9 the person for the collection of the delinquent amount. An [AND THE]
10 employer who is [IF FOUND] liable shall pay the cost of the collec-
11 tion, including collection fees charged, and the costs of legal
12 action.

13 * Sec. 13. AS 23.20 is amended by adding a new section to read:

14 Sec. 23.20.242. APPEALS BY OFFICER, MEMBER, OR EMPLOYEE. The
15 department shall permit each officer or employee of a corporation or a
16 member or employee of a partnership who is required to pay the contri-
17 butions and interest owed by the corporation or partnership under
18 AS 23.20.165 - 23.20.278 to appeal individually their duty to pay
19 under those sections.

20 * Sec. 14. AS 23.20.277(b) is amended to read:

21 (b) At the end of each calendar quarter, or at the end of any
22 other period as determined by the department, the department shall
23 bill each government entity, nonprofit organization, or group of
24 nonprofit organizations that [, WHICH] has elected to make payments in
25 place of contributions, for benefits paid during the quarter or other
26 prescribed period that are attributable to service in the employ of
27 the government entity, nonprofit organization, or group. In the case
28 of nonprofit organizations and groups of nonprofit organizations, the
29 amount billed is an amount equal to the full amount of regular

1 benefits plus [ONE-HALF OF THE AMOUNT OF] extended benefits that are
2 not reimbursable by the federal government. In [AND IN] the case of
3 a government entity the amount billed is [WHICH HAS ELECTED TO MAKE
4 PAYMENTS UNDER THIS SECTION] an amount equal to the full amount of the
5 regular benefits plus the full amount of the extended benefits paid
6 [DURING THE QUARTER OR OTHER PRESCRIBED PERIOD THAT IS ATTRIBUTABLE TO
7 SERVICE IN THE EMPLOY OF THE NONPROFIT ORGANIZATION].

8 * Sec. 15. AS 23.20.277(e) is amended to read:

9 (e) At the end of each taxable year, the department shall deter-
10 mine whether the total of payments for the year made by a nonprofit
11 organization or group of nonprofit organizations is less than, or in
12 excess of, the total amount of regular benefits plus [ONE-HALF OF THE
13 AMOUNT OF] extended benefits not reimbursable by the federal govern-
14 ment paid to individuals during the taxable year based on wages attri-
15 butable to service in the employ of the nonprofit organization or
16 group. In [; AND IN] the case of a government entity that has elected
17 to make payments under this section, the department shall determine
18 whether the total of payments for the year is less than, or in excess
19 of, the total amount of regular benefits plus the total amount of
20 extended benefits as determined in this subsection. Each organization
21 or group whose total payments for the taxable year are less than the
22 amount so determined is liable for payment of the unpaid balance to
23 the fund in accordance with (f) of this section. If the total pay-
24 ments exceed the amount so determined for the taxable year, all or
25 part of the excess may, at the discretion of the department, be
26 refunded from the fund or retained in the fund as part of the payments
27 that [WHICH] may be required for the next taxable year.

28 * Sec. 16. AS 23.20.277(1) is amended to read:

29 (1) Each employer that is liable for payments in place of

1 contributions shall pay to the department for the fund the amount of
2 regular benefits plus the [AMOUNT OF ONE-HALF OF] extended benefits
3 not reimbursable by the federal government paid to individuals that
4 are attributable to service in the employ of that employer. However,
5 a government entity that [WHICH] has elected to make payments under
6 this section is liable for the amount of regular benefits plus the
7 full amount of extended benefits that [WHICH] are attributable to
8 service in the employ of that entity. If benefits paid to an indi-
9 vidual are based on wages paid by more than one employer and one or
10 more of these employers is [ARE] liable for payments in place of
11 contributions, the amount payable to the fund by each employer that is
12 liable for payments shall be determined by the department in accor-
13 dance with regulations adopted by the department.

14 * Sec. 17. AS 23.20.340(b) is amended to read:

15 (b) Within one year from the date of the initial determination
16 of the weekly benefit amount and the maximum potential benefit amount
17 established under AS 23.20.350, the department shall reconsider only
18 the determination of the monetary amounts and shall issue a redeter-
19 mination amending the initial determination if it finds that an error
20 in computation or identity has been made or that additional wages
21 pertinent to the claimant's insured status have become available, or
22 that the initial determination resulted from a nondisclosure or mis-
23 representation of a material fact concerning the determination of
24 monetary amounts.

25 * Sec. 18. AS 23.20.378(c) is amended to read:

26 (c) An insured worker is disqualified for waiting-week credit or
27 benefits for a week of unemployment while the insured worker is pursu-
28 ing an academic education [ATTENDS AN ESTABLISHED SCHOOL IN A COURSE
29 OF STUDY PROVIDING ACADEMIC INSTRUCTION OF 10 OR MORE CREDIT HOURS PER

1 WEEK, OR THE EQUIVALENT]. A disqualification under this subsection
2 begins with the first week of academic instruction and ends with the
3 week immediately before the first full week in which the insured
4 worker is no longer pursuing an academic education. However, an
5 insured worker who has been pursuing an academic education for at
6 least one school term and who was working at least 30 hours a week
7 during a significant portion of the time that the worker was pursuing
8 an academic education is not disqualified for waiting-week credit or
9 benefits under this subsection if the worker's academic schedule does
10 not preclude full-time work in the worker's occupation and if the
11 insured worker became unemployed because the worker was laid off or
12 the worker's job was eliminated [ATTENDING CLASSES IF THE INSURED
13 WORKER CERTIFIES THAT THE PERIOD OF NONATTENDANCE WILL LAST AT LEAST
14 60 DAYS]. In this subsection,

15 (1) "pursuing an academic education" means attending an
16 established school in a course of study providing academic instruction
17 of 10 or more credit hours per week, or the equivalent;

18 (2) [THE TERM] "school" includes primary schools, secondary
19 schools, and institutions of higher education.

20 * Sec. 19. AS 23.20.382(b) is repealed and reenacted to read:

21 (b) An otherwise eligible individual may not be denied benefits
22 or waiting-week credit for any week because the individual is in
23 training approved under 19 U.S.C. 2296(a)(1) (sec. 236(a)(1), Trade
24 Act of 1974), if

25 (1) while attending the training, the individual is not
26 available for work, fails to seek work, or refuses work; or

27 (2) the individual left work that was not suitable employ-
28 ment to enter training.

29 * Sec. 20. AS 23.20.382 is amended by adding a new subsection to read:

1 (d) An otherwise eligible individual may not be denied benefits
2 or waiting-week credit for any week because the individual is in any
3 training approved under 29 U.S.C. 1651 - 1658, as amended by P.L.
4 100-418, and, while attending the training, is not available for work,
5 fails to seek work, or refuses work.

6 * Sec. 21. AS 23.20.387(a) is amended to read:

7 (a) An insured worker is disqualified for benefits for the week
8 with respect to which the false statement or misrepresentation was
9 made and for an additional period of not less than six weeks or more
10 than 52 weeks if the department determines that the insured worker has
11 knowingly made a false statement or misrepresentation of a material
12 fact or knowingly failed to report a material fact with intent to
13 obtain or increase benefits under this chapter. The length of the
14 additional [THIS] disqualification and the beginning date of that
15 [THE] disqualification shall be determined by the department according
16 to the circumstances in each case.

17 * Sec. 22. AS 23.20.390 is amended by adding a new subsection to read:

18 (f) In addition to the liability under (a) of this section for
19 the amount of benefits improperly paid, an individual who is disqual-
20 ified from receipt of benefits under AS 23.20.387 is liable to the
21 department for a penalty in an amount equal to 50 percent of the
22 benefits that were obtained by knowingly making a false statement or
23 misrepresenting a material fact, or knowingly failing to report a
24 material fact, with the intent to obtain or increase benefits under
25 this chapter. The department may, under regulations adopted under
26 this chapter, waive the collection of a penalty under this section.
27 The department shall deposit into the general fund the penalty that it
28 collects.

29 * Sec. 23. AS 23.20.530(a) is amended to read:

1 (a) In this chapter, "wages" means all remuneration for service
2 from whatever source, including, but not limited to, insured work,
3 noninsured work, or self-employment; commissions, bonuses, back pay
4 and the cash value of all remuneration in a medium other than cash
5 shall be treated as wages; gratuities customarily received by an
6 individual in the course of service from persons other than the indi-
7 vidual's employing unit may be treated as wages received from the
8 employing unit only to the extent the individual reports the gratu-
9 ities to the employing unit. The reasonable cash value of remunera-
10 tion in a medium other than cash, and the reasonable amount of gratu-
11 ities, shall be estimated and determined in accordance with regula-
12 tions adopted by the department; notwithstanding AS 23.20.350(a), back
13 pay awards shall be allocated to the weeks or quarters with respect to
14 which the pay was earned. If the remuneration of an individual is not
15 based upon a fixed period of time or if the individual's wages are
16 paid in irregular intervals or in a manner that [WHICH] does not
17 extend regularly over the period of employment, the wages shall be
18 allocated to weeks or quarters in accordance with regulations adopted
19 by the department. The regulations must [SHALL], so far as possible,
20 produce results reasonably similar to those that [WHICH] would prevail
21 if the individual's wages were paid at regular intervals. When an
22 employer has filed for bankruptcy, unpaid wages earned for services
23 performed for the employer are considered wages for the quarter in
24 which they were earned.

25 * Sec. 24. AS 23.20 is amended by adding a new section to read:

26 Sec. 23.20.533. APPLICATION FOR DEMONSTRATION PROJECT. (a) The
27 Department of Labor shall pursue application with appropriate agencies
28 to qualify this state as a pilot state for demonstration programs
29 related to helping unemployed Alaskans regain employment, if

1 administrative money is available to operate the project.

2 (b) The Department of Labor may waive provisions of this chapter
3 for individuals who participate in a demonstration project, to the
4 extent required for the state to participate in the project.

5 * Sec. 25. AS 34.45.760(10) amended to read:

6 (10) "intangible property"

7 (A) includes

8 (i) money, checks, drafts, deposits, interest,
9 dividends, and income;

10 (ii) credit balances, customer overpayments, gift
11 certificates, security deposits, refunds, credit memos,
12 unpaid wages, and unidentified remittances;

13 (iii) stocks and other intangible ownership inter-
14 ests in business associations;

15 (iv) money deposited to redeem stocks, bonds,
16 coupons, and other securities, or to make distributions;

17 (v) amounts due and payable under the terms of
18 insurance policies; and

19 (vi) amounts distributable from a trust or custo-
20 dial fund established under a plan to provide health, wel-
21 fare, pension, vacation, severance, retirement, death, stock
22 purchase, profit-sharing, employee savings, supplemental
23 unemployment insurance, or similar benefits;

24 (B) does not include

25 (i) unused airline tickets; [OR]

26 (ii) shares of stock issued by a corporation
27 organized under 43 U.S.C. 1601 - 1629a (Alaska Native Claims
28 Settlement Act) or unclaimed dividends payable on the
29 shares of stock; or

1 (iii) overpaid contributions by employers to the
2 unemployment compensation fund under AS 23.20.130;

3 * Sec. 26. AS 23.20.175(a), 23.20.175(b), 23.20.175(c)(1), 23.20.350-
4 (f)(4), and 23.20.350(f)(5) are repealed.

5 * Sec. 27. Section 25 of this Act is retroactive to September 7, 1986.

6 * Sec. 28. Sections 11, 25, and 27 of this Act take effect immediately
7 under AS 01.10.070(c).

8 * Sec. 29. Sections 1 - 10, 12 - 24, and 26 of this Act take effect
9 July 2, 1989.

SECTION-BY-SECTION ANALYSIS
CS for House Bill 147 (Jud)

Section 1:

The proposed amendment of AS 16.10.290(a) enhances the Department's ability to collect delinquent unemployment insurance contributions from fish processors and fish buyers. The Department's figures indicate that, as of December 1987, about 25 percent of all fish processors and buyers were delinquent in their contributions. Those delinquencies resulted in a loss to the unemployment trust fund of about \$610,000 as of that date. Under the proposed amendment, the Department may assert claims for contributions against the fish processors' and buyers' surety bonds, such claims having next priority after claims for wages and payments for raw fish.

Section 2:

The Stewart B. McKinney Homeless Assistance Amendments Act of 1988 requires, as a condition of receiving administrative grants under Title III of the Social Security Act, that states must disclose certain information contained in employment security records, upon request, to HUD and representatives of a public housing agency. It also provides for reimbursement of costs and appropriate safeguards of the information. The proposed amendment to AS 23.20.110 would allow the Department of Labor to comply with these federal requirements. This is a federal conformity issue and passage is required by September 30, 1989. The U.S. Secretary of Labor may withhold administrative funding for the Employment Security Division if this disclosure provision is not timely enacted.

Sections 3 and 4:

These sections provide for extension of the Reed Act for ten years. Title IX of the Social Security Act makes excess funds collected under the Federal Unemployment Tax Act (FUTA) available to pay benefits or for administration of employment security programs. Federal law extended the time limits in which the funds may be used by ten years. Unless Congress increases the maximum allowable levels in these funds, we anticipate that there will be excess funds to distribute back to the states in the near future. Current statute does not permit the Employment Security Division to receive or use these funds. This proposal, by extending the Reed Act, would allow Alaska to accept its share of the funds.

Section 5:

The amendment of AS 23.20.195(a) in this section provides that the ten percent penalty on delinquent employer reports and taxes may be discretionary instead of mandatory. It also increases the minimum penalty to \$10 from \$1. A discretionary penalty would remove the requirement for the Department to assess and collect penalties when it was not cost effective to do so.

Section 6:

This section requires the Department to inform an employer, at the time a notice of assessment for delinquent contributions is served on the employer, of the Department's rights. This includes the right to collect the amount stated in the assessment by distraint, seizure and sale of the property or, goods of the delinquent employer.

Sections 7, 8, 9 and 10:

The amendments to AS 23.20.205(c) and AS 23.20.220(a), (b) and (c) in these sections clarify the procedures for the appeal by an employer of the Department's assessment against the employer for unemployment contributions. The Department may extend the 30-day appeal filing deadline for good cause. Also, the amendments clarify that if the employer files security with the appeal, the collection of the assessment will be stayed pending determination of the appeal.

In addition, extraneous language in AS 23.20.220 is being deleted.

Section 11:

This section provides for the Department to adopt regulations for the disposition of excess contributions paid to the unemployment compensation fund. Section 25 of this bill exempts these funds from the Unclaimed Property Act, instead, retaining the funds in the Unemployment Trust Fund. Section 11 directs the Department to adopt regulations substantially similar to the provisions of the Unclaimed Property Act to address the handling of these unclaimed funds.

Section 12:

This amendment to AS 23.20.240 would allow the Department to use private collection facilities (or individuals) to collect outstanding employer contributions from employers. The Department is owed large amounts of contributions, especially by out of state employers, that are difficult to collect. This would provide a means to collect these delinquent contributions. The amendment provides for adding the collection fee to the amount of the debt owed, as Federal law prohibits the use of trust fund (or employer contributions) to pay collection costs. This provision would provide the Department a means, not currently available, to collect delinquent contributions.

Section 13:

Under current law, an officer or employee of a corporation, or partner or employee of a partnership may be liable for delinquent unemployment contributions in a civil action if they have been determined to have the duty to pay the contributions. These individuals have no prior appeal rights regarding the determination of their duty to pay the contributions. This section provides a new section, AS 23.20.242, that allows these individuals to appeal, at an administrative level, the determination of "duty to pay," prior to civil action.

Sections 14, 15 and 16:

Under current law, nonprofit organizations pay 50 percent of extended benefits (which is the amount not reimbursable by the federal government). Under the Gramm-Rudman-Hollings Act (the Federal Balanced Budget and Emergency Deficit Control Act of 1985), the reimbursable share of extended benefits payments may decrease because it is subject to sequestration. This action will increase the amount of extended benefits payments not reimbursable by the U.S. Department of Labor. To offset the anticipated loss of some portion of the federal money, nonprofit organizations that choose to reimburse the Department for benefits paid to their former employees, instead of paying contributions under AS 23.20.165, will, under the amendments to AS 23.20.277(b), (e) and (l), be required to reimburse the Department the full amount of extended benefits paid to their former employees that is not reimbursable. The amount charged government entities will not change because they currently reimburse 100 percent of extended benefits paid.

Section 17:

This section clarifies the intent of the law that the proviso for redetermining an initial claim applies only to the weekly benefit amount and the maximum potential benefit. This monetary redetermination will take place if the Department finds that an error in computation or identity was made, additional wages for a claimant have become available or the initial determination resulted from the nondisclosure or misrepresentation of a material fact.

Section 18:

This amendment provides for the payment of benefits to individuals who have been working full time while attending school and who are laid off from work. Under present law, a person who is taking ten (10) or more credit hours of classes in an academic program is not eligible for unemployment insurance benefits, with no exceptions. Current law unfairly penalizes individuals who have demonstrated that they can attend school without affecting their availability to work full time.

Section 19:

This amendment would correct the language in AS 23.20.382 so the restrictions would apply only to claims under the Trade Act, as intended. Current language applies restrictions to all claimants that were only intended to apply to Trade Act claimants.

Section 20:

Federal law precludes states from denying benefits to individuals because they are in training approved under Title III of the Job Training Partnership Act (JTPA). This amendment provides that all individuals who are attending training approved under JTPA will not be denied their unemployment insurance benefits. This conforming legislation is needed to pay benefits to those individuals, regardless of whether their training is academic or vocational.

Section 21:

This provision disqualifies the week in which a fraudulent act occurs in addition to the period of disqualification currently imposed. Under current law, an individual can be paid for a week in which he commits fraud, because the disqualification begins the week the fraud decision is issued.

Section 22:

Under proposed AS 23.20.390(f), individuals who fraudulently obtain benefits incur an additional monetary penalty of 50 percent of the amount improperly received, unless the Department waives the penalty, with any penalties collected to go to the general fund. Currently, under AS 23.20.387, a person who fraudulently receives benefits is disqualified from receiving benefits for a specified period of time, and, under AS 23.20.390(a), must repay the benefits fraudulently received (a situation similar to an interest-free loan). As a further disincentive for fraud, the 50 percent penalty is proposed.

Section 23:

Under current law, an individual's eligibility for unemployment insurance benefits is based upon wages paid to the individual. Thus, if an individual works for an employer who files for bankruptcy and does not pay its employees, the individual does not qualify for unemployment benefits. The proposed amendment to AS 23.20.530(a) in this section rectifies this situation. This section expands the definition of "wages" to include earnings for work that an employee performs but is not paid when the employer files for bankruptcy.

Section 24:

This provision allows the Department to participate in demonstration or pilot projects with the U.S. Department of Labor (USDOL) that test innovative ways to assist unemployed individuals to return to work. The Department may waive eligibility requirements if needed. Participation in these projects will be incumbent upon availability of administrative funds for operating the project.

Section 25:

This amendment provides for employer overpayments of unemployment insurance contributions that are not claimed by the employer to remain in the Unemployment Trust Fund. The Unclaimed Property Act (AS 34.45) requires state agencies to transfer unclaimed property to the Department of Revenue. Since expenditures from the Unemployment Trust Fund are automatically replaced by employers in the state under the contribution formula, employers should receive the indirect benefit (through lower contribution rates) of the unclaimed overpayments. This exemption from the Unclaimed Property Act would permit these funds to remain in the Unemployment Trust Fund if not claimed.

Section 26:

This section modifies the provisions covering dependents' allowance payments. Currently, a dependent claimed by one parent cannot be claimed by another parent until the first person's benefit year has expired (even if the first parent is not claiming benefits or has no remaining benefits to receive). A portion of every parent's wages goes to support their children. UI is for temporary, partial wage replacement of every eligible claimant. It is, therefore, inequitable for any parent with children to support to be denied dependents' allowance. This proposal allows each unemployed parent in a family unit to claim dependent children. Three dependents would still be the most that could be claimed by any claimant.

It also repeals outdated subsections of AS 23.20.175.

Sections 27, 28 and 29 provide for effective dates.

The Unemployment Insurance System: It Works for Alaskans When Alaskans Cannot Work

by Michael Hurst

The recession that began in late 1985 had a serious impact on almost every sector of the Alaskan economy. It was the individual Alaska worker, though, who was among the most gravely affected and also was among the first affected. More than 20,000 workers' jobs disappeared from the economy in two short years, 1986 and 1987. Average yearly earnings per job declined by 3% during the same period. Many workers were forced to move south. More than 10,000 properties went into foreclosure.

The 1980s recession eventually touched nearly every industry, occupation, and geographic area. Among industries, construction was hit first and hardest, actually starting to decline in 1984. The transportation, communications and utilities sector followed close behind. The services, trade, finance and real estate industries began to sustain losses in 1987 when the recession's secondary effects — loss of wages — were triggered. In all, over \$750 million in Alaska payroll was lost between 1985 and 1987.

More than 20,000
workers' jobs
disappeared from the
economy in 1986 and 1987.

UI System: Alaska's 3rd Largest Employer' During Recession

If it hadn't been for Alaska's Unemployment Insurance (UI) system, the impact of the recession would have been much more severe on both unemployed workers and on Alaska's economy in general. Between 1985 and 1988 more than 138,000 unemployed workers received unemployment compensation totalling over \$578 million. Over \$111 million more was paid out in benefits between November 1985 and April 1988 than was collected in taxes and reimbursements in that same period. This provided a direct stimulus to the economy. If the UI system's benefits were considered payroll, the system would have been the third largest employer in the state during this period.

Why Employers' Tax Rates Are Fluctuating Drastically

Both employees and employers benefit from the UI system. It is self-financed, primarily through employer and employee taxes. The financing method is automatic and is designed to be countercyclical. The countercyclical design explains why average employer tax rates are still fluctuating drastically. Evidence of this wild fluctuation is the fact that in 1985 the average employer tax rate amounted to 2.17%. In the present calendar year, the average tax rate on employers will be 4.14%, the highest in history. What are the reasons for the hike? Alaska employers are paying in 1989 for the increased benefit payments disbursed during the past recessionary year, and they are rebuilding the UI savings account as a buffer against future recessions.

Purpose of the Unemployment Compensation System is Twofold

The Alaska Employment Security Act was enacted by the territorial legislature in 1937 because state lawmakers recognized that "...involuntary unemployment is a serious menace to the health, morale, and welfare of the people of the state." With this legislative mandate in mind, there is a twofold purpose of the unemployment compensation system. The system is designed to: 1) Ease the

steadiness of the claimant's work history during his base period. The maximum number of weeks that a claimant can receive regular benefits is 26 weeks, presuming he received his earnings equally over four quarters. The minimum number of weeks is 16, presuming he received all of his earnings in one quarter.

Extended Benefits Payable Only When Statewide Insured Unemployment Rate is 6%

When a claimant exhausts all of the regular benefits to which he is entitled, he becomes eligible for an additional benefit program called 'extended benefits'. He may claim up to one-half of the amount of regular benefits for which he was found eligible. There is an additional eligibility restriction, however. Extended benefits are only payable when Alaska's statewide unemployment is above a certain level. Specifically, the statewide 'Insured Unemployment Rate' (IUR) must be at least 6.0%. The statewide IUR is a weekly ratio of:

$$\frac{\text{Claims Actually Filed}}{\text{Average Employment}}$$

In Alaska, extended benefits are usually payable beginning in January; they usually end in July or August. Figure 1 shows the insured unemployment rates for 1986 and 1988. Note that in 1986 the IUR never fell below 6.0%. This means that extended benefits were payable year-round in 1986.

Benefit Adequacy: A Critical Measure of the UI System's Success

A critical function of the UI system is to partially replace an individual's lost income while he is unemployed. An important measure of the system's success is determined by the percentage of earned income replaced by UI. This is often referred to as 'benefit adequacy.' In 1988 the average weekly benefit amount for regular benefits was \$156.57. In that same year, the average weekly earnings for UI recipients were \$366. Thus, the average UI benefit replaced about 43% of the average earned income for UI claimants.

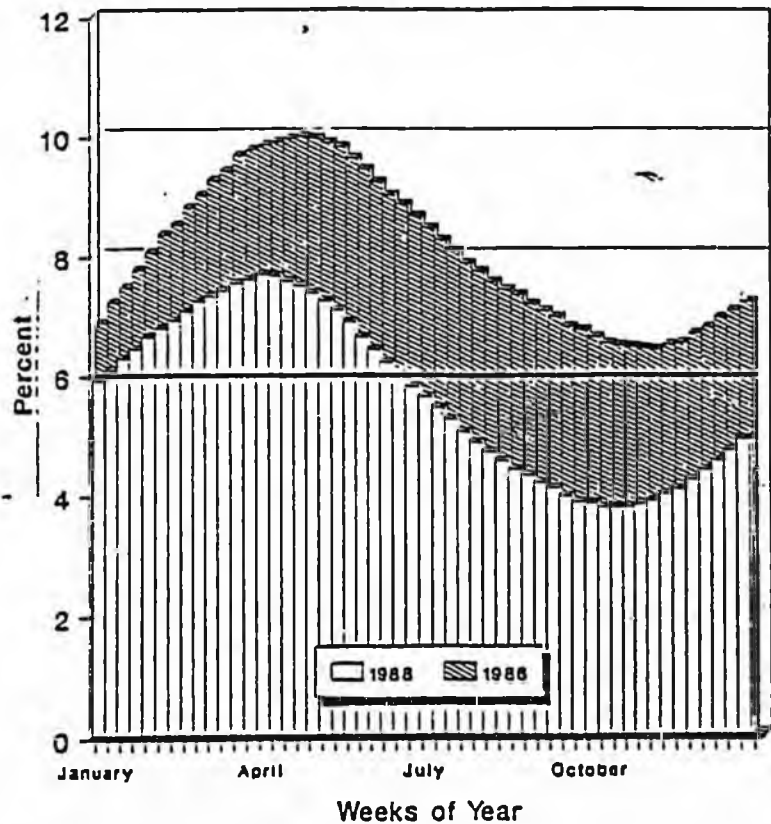
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Figure 1

Insured Unemployment Rate - 1986 and 1988



Extended Benefits payable when IUR is at least 6.0%

Source: Alaska Department of Labor, Research & Analysis

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

The Unemployment Insurance System: It Works for Alaskans When Alaskans Cannot Work

by Michael Hurst

The recession that began in late 1985 had a serious impact on almost every sector of the Alaskan economy. It was the individual Alaska worker, though, who was among the most gravely affected and also was among the first affected. More than 20,000 workers' jobs disappeared from the economy in two short years, 1986 and 1987. Average yearly earnings per job declined by 3% during the same period. Many workers were forced to move south. More than 10,000 properties went into foreclosure.

The 1980s recession eventually touched nearly every industry, occupation, and geographic area. Among industries, construction was hit first and hardest, actually starting to decline in 1984. The transportation, communications and utilities sector followed close behind. The services, trade, finance and real estate industries began to sustain losses in 1987 when the recession's secondary effects — loss of wages — were triggered. In all, over \$750 million in Alaska payroll was lost between 1985 and 1987.

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UI System: Alaska's 3rd Largest Employer' During Recession

If it hadn't been for Alaska's Unemployment Insurance (UI) system, the impact of the recession would have been much more severe on both unemployed workers and on Alaska's economy in general. Between 1985 and 1988 more than 138,000 unemployed workers received unemployment compensation totalling over \$578 million. Over \$111 million more was paid out in benefits between November 1985 and April 1988 than was collected in taxes and reimbursements in that same period. This provided a direct stimulus to the economy. If the UI system's benefits were considered payroll, the system would have been the third largest employer in the state during this period.

Why Employers' Tax Rates Are Fluctuating Drastically

Both employees and employers benefit from the UI system. It is self-financed, primarily through employer and employee taxes. The financing method is automatic and is designed to be countercyclical. The countercyclical design explains why average employer tax rates are still fluctuating drastically. Evidence of this wild fluctuation is the fact that in 1985 the average employer tax rate amounted to 2.17%. In the present calendar year, the average tax rate on employers will be 4.14%, the highest in history. What are the reasons for the hike? Alaska employers are paying in 1989 for the increased benefit payments disbursed during the past recessionary year and they are rebuilding the UI savings account as a buffer against future recessions.

Purpose of the Unemployment Compensation System is Twofold

The Alaska Employment Security Act was enacted by the territorial legislature in 1937 because state lawmakers recognized that "...involuntary unemployment is a serious menace to the health, morale, and welfare of the people of the state." With this legislative mandate in mind, there is a twofold purpose of the unemployment compensation system. The system is designed to: 1) Ease the

Many Alaskans were able to remain in the state during the last recession largely because of the unemployment insurance compensation they received while out of work.

financial distress of lost income to unemployed workers and their families, and 2) Maintain purchasing power to help stabilize the state's economy.

Focuses of this article:

Having briefly sketched out an overview of the Alaska Unemployment Insurance system and its recent effects on the state's economy, it's now pertinent to outline where this article is going. This commentary will focus primarily on the recessionary years of 1985 through 1988, and this article will —

— Evaluate the support that UI gave to unemployed workers.

— Examine how the Unemployment Insurance system in Alaska successfully achieved its goals during the recent recession.

— Show how the UI trust fund helped stabilize the economy.

— Explain why UI employer tax rates are so high in 1989, and

— Explain why the rates will decline in 1990 and 1991.

George and Jean — A typical, fictitious case

George had worked as a heavy equipment operator at a Fairbanks concrete plant since moving to Alaska in 1974. His wife Jean had been a loan officer at the local bank for six years. When the price of oil fell in late 1985, the concrete plant operation was closed and George was laid off. Jean was not affected immediately. But, eventually, the loss of wages in Fairbanks forced many residents to move south; many defaulted on their home loans. The bank began to lose assets and was forced to cut back. In late 1986 Jean was laid off.

George and Jean's story was a common one in Alaska between late 1985 and early 1988. About 20,000 jobs disappeared from the Alaska economy in 1986 and 1987. Many workers were indeed forced to move south. Home foreclosures and bankruptcies were a common occurrence.

Yet like many others who were laid off

during the recession, George and Jean chose to remain in Fairbanks. Luckily, George was rehired after a few months of being out of work. He went back to work at the Fairbanks concrete plant after new military-related construction projects allowed the plant to reopen. Jean also returned to work after a few jobless months, having been hired by owners of a local tourism business.

The Fairbanks couple survived financially and were able to remain in the state largely because of the unemployment insurance compensation they received while out of work.

In order to better understand how the UI system helped George and Jean during their time of joblessness, and how it has helped thousands of other couples like them, it's pertinent to briefly explain UI's major programs. The system has two major programs — regular and extended benefits. Also important in coming to understand the UI benefits program are questions regarding adequacy of the benefits, and how much compensation individual claimants are entitled to receive.

Regular Benefits: \$260 Per Week for 26 Weeks Is Maximum

The chief type of unemployment insurance benefits paid in the U.S. is called simply 'regular benefits'. How much a claimant receives in total regular benefits is determined by two elements: the claimant's weekly benefit amount and the number of weeks that the claimant receives benefits.

In Alaska, the claimant's weekly benefit amount is determined by his earnings in his 'base period'. (The base period is defined as the first four of the prior five complete calendar quarters.) The minimum benefit amount is \$38 per week for total earnings of \$1,000. The maximum is \$188 per week for total earnings of \$19,750 and over. A claimant may also receive dependents benefits, allowing him \$24 for each dependent — up to three dependents. In all, therefore, it's possible for a claimant to receive up to \$260 per week in benefit payments.

The number of weeks that a claimant can receive benefits depends upon the

steadiness of the claimant's work history during his base period. The maximum number of weeks that a claimant can receive regular benefits is 26 weeks, presuming he received his earnings equally over four quarters. The minimum number of weeks is 16, presuming he received all of his earnings in one quarter.

Extended Benefits Payable Only When Statewide Insured Unemployment Rate is 6%

When a claimant exhausts all of the regular benefits to which he is entitled, he becomes eligible for an additional benefit program called 'extended benefits'. He may claim up to one-half of the amount of regular benefits for which he was found eligible. There is an additional eligibility restriction, however. Extended benefits are only payable when Alaska's statewide unemployment is above a certain level. Specifically, the statewide 'Insured Unemployment Rate' (IUR) must be at least 6.0%. The statewide IUR is a weekly ratio of:

$$\frac{\text{Claims Actually Filed}}{\text{Average Employment}}$$

In Alaska, extended benefits are usually payable beginning in January; they usually end in July or August. Figure 1 shows the insured unemployment rates for 1986 and 1988. Note that in 1986 the IUR never fell below 6.0%. This means that extended benefits were payable year-round in 1986.

Benefit Adequacy: A Critical Measure of the UI System's Success

A critical function of the UI system is to partially replace an individual's lost income while he is unemployed. An important measure of the system's success is determined by the percentage of earned income replaced by UI. This is often referred to as 'benefit adequacy.' In 1988 the average weekly benefit amount for regular benefits was \$156.57. In that same year, the average weekly earnings for UI recipients were \$366. Thus, the average UI benefit replaced about 43% of the average earned income for UI claimants.

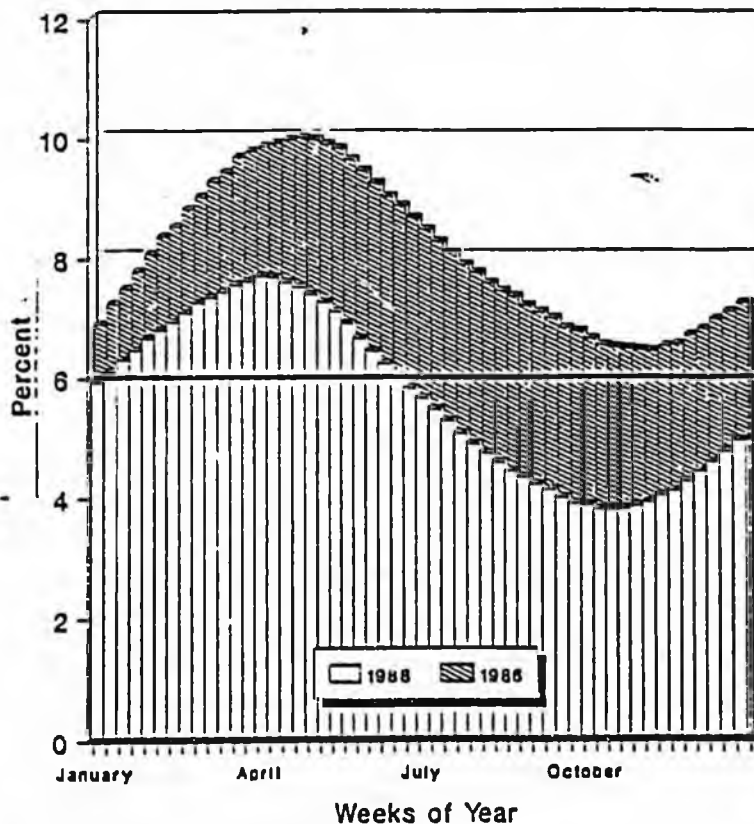
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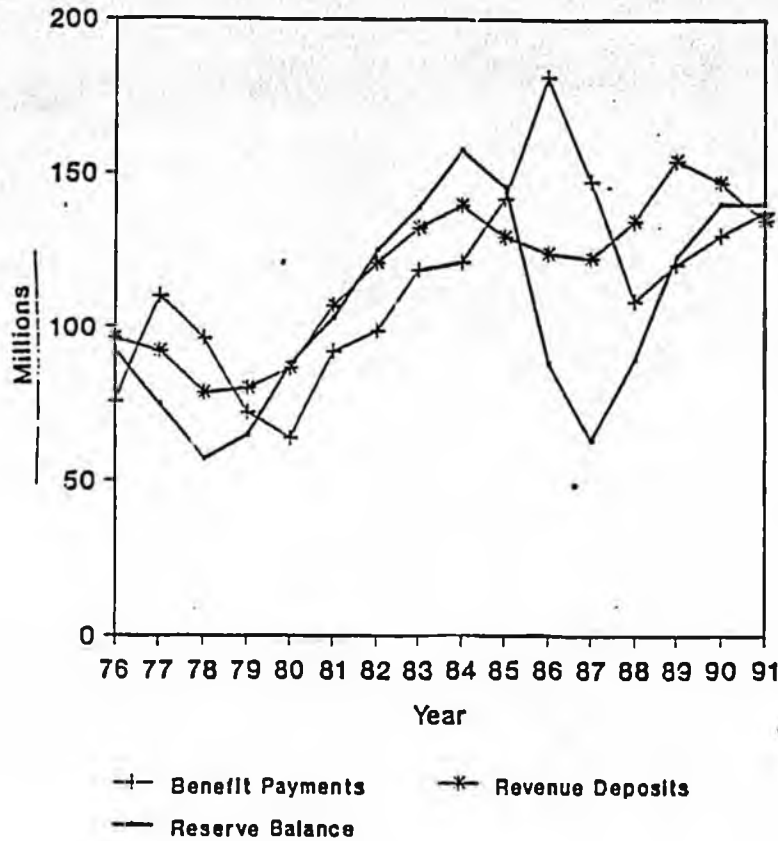


Extended Benefits payable when IUR is at least 6.0%

Source: Alaska Department of Labor, Research & Analysis

Figure 2

UI Trust Fund Cash Flow
Payments, Revenues, Reserve Balance



Source: Alaska Department of Labor, Research & Analysis

actual total claims began to decline after 1986, those who remained unemployed were out of work for a longer period of time. Even though there were fewer total recipients in 1987, the situation was worse in 1987 than 1986 for the individual UI recipient.

UI Disbursements
Reduces Negative
Income Multiplier Effect

When George lost his job his wages were not lost to just him. His wages were lost to the entire Fairbanks community because of his lost ability to purchase goods and services. This loss of demand for goods and services often results in further job layoffs. This turn of events is commonly known as a negative 'multiplier effect'. Using the multiplier effect, most economists estimate that no less than two jobs are lost for every initial layoff.

Part of UI's purpose is to diminish the negative multiplier's effect in causing additional lost jobs or wages. The UI system performed this function well during the past recession. More than \$750 million was lost in total payroll in Alaska in 1986 and 1987. Much of this loss had already been induced by the multiplier effect. Yet at the same time unemployment compensation was pumping back into unemployed Alaska workers' hands more than \$257 million.

Table 1

UI Recipients and Payments, 1984-1988

Year	First Payments	Weeks Paid	Amount Paid (\$)	Final Payments (Exhausts)	Exhaust Rate	Average Duration (Weeks)
<u>Regular Benefits</u>						
1984	45,453	662,704	96,612,962	20,704	0.46	14.6
1985	49,348	767,652	123,967,863	24,291	0.49	15.6
1986	55,514	911,807	147,359,435	30,148	0.54	16.4
1987	45,345	770,406	123,528,576	26,496	0.58	17.0
1988	36,090	579,422	92,974,600	18,670	0.52	16.1
<u>Extended Benefits</u>						
1984	9,736	52,056	7,403,330	2,712	0.28	5.3
1985	12,158	69,368	10,715,479	3,749	0.31	5.7
1986	20,678	136,180	21,946,702	8,486	0.41	6.6
1987	13,145	94,773	15,230,837	6,246	0.48	7.2
1988	8,281	51,385	8,158,738	2,806	0.34	6.2

Source: ETA 5-159 report to the U.S. Department of Labor.

(Another \$72 million was paid to former Alaska workers living outside of the state.) Altogether, the four years 1985-through-1988 the UI system accounted for over \$451 million of income in Alaska. (In those same years, another \$127 million was paid to former workers living out-of-state.)

UI Trust Fund Account Dropped Dangerously Low in 1987-88

The UI Trust Fund is designed to act as a savings account which can be drawn down during difficult economic times and built up when times have improved. As mentioned earlier the trust fund paid out \$111 million more in benefits than it received in revenue between November 1985 and April 1988. This very large outflow of funds would not have been possible without adequate reserves in the UI Trust Fund. At the end of November 1985 the balance in the state's trust fund account was \$157 million. The account hit bottom in late April 1988, falling to \$46 million. (Figure 2 shows benefit disbursements, revenue deposits, and the reserve balance of the trust fund from 1976 to 1988. Figure 2 also depicts forecasts for 1989-91.)

One of the main obligations of all states' financing mechanisms is maintaining the solvency of the trust fund. Alaska's system is designed to remain perpetually solvent by way of a formula that automatically raises tax rates when benefits are high or when the trust fund is low. Yet in 1987 it appeared that the system's solvency might fail. To cope with that unexpected possibility, legislation was passed that year enabling the state to borrow money (and pay interest on the borrowed funds) to maintain the fund's solvency. The main reason for the falling trust fund balance was a massive rise in benefit payment outlays — from \$121 million in 1984 to \$142 million in 1985 and \$182 million in 1986. In 1987, payments declined to \$147 million; that outlay, though, still amounted to \$25 million over revenues for 1987.

The trust fund did not go broke, though, and no money actually was borrowed to maintain its solvency. It was in April 1988 that the fund's steady negative momentum was finally halted. This past calendar year of 1988 saw a

continuing decline in benefit payment outlays (to \$108 million), and an increase in revenue (to \$137 million). The increase can be attributed to higher UI taxes. At the end of 1988 the fund had recovered to a balance of about \$89 million. By the end of 1989 it is expected to reach \$120 million. And by the end of 1990 it is expected to reach \$140 million. Alaska's UI trust fund hasn't been forced to borrow money since 1960. Barring any future recession of the same magnitude as that which occurred between 1985 and 1987, the fund should never have to borrow any funds. This likelihood is due to the state's automatic financing mechanism, which is the next subject of this article.

Current UI Rates: Why They Are Now So Historically High

George's employers were hard hit by the drop in oil prices just as were many other businesses throughout Alaska. They had to cut back to a skeleton crew, sell some of their equipment, and restructure some of their loans. For a couple of years they were constantly on the verge of bankruptcy. To make matters worse, the owners feared that George and their other best employees would leave the Fairbanks area. If those fears proved true, they would have had to pay additional expense to train new employees when their business revenues improved.

Fortunately, the concrete plant's unemployment insurance taxes were reasonably low during the time when the owners were on the verge of bankruptcy. In 1985 the owners' rates were 2.17% of each employee's taxable wages — about \$473 per year per employee. By 1986 taxes had increased to \$555 per employee. But in 1987 the taxes that the plant paid per employee rose to \$866. And in 1988 the UI taxes soared to \$1,097. Finally, the 1989 taxes that the concrete plant owners have been assessed are the highest they have ever been, \$1,137.

What caused the tax rates to rise so much? And why such a rapid increase over the past three years? Two factors influenced the rates for the concrete plant. First, the plant's unique unemployment problems placed them in a higher 'tax bracket'. Second, and more important, average rates for all Alaska employers rose over the past

Alaska's UI system is designed to remain perpetually solvent by way of a formula that automatically raises tax rates when benefits are high or when the trust fund is low.

three years. All rates rose automatically to help the system recover from the 'benefits shock' of 1985 and 1986.

Before we examine in detail why rates are so high in this calendar year, it's relevant to understand how UI tax rates—both individual employers' and average UI tax rates—are calculated in the first place.

An Explanation of Individual Employers' Business Rates:

As Figure 3 shows, the greatest proportion of revenue flowing into the UI trust fund comes from employer and employee 'tax contributions'. In fact, tax contributions are the only source of revenue that significantly affects the balance of the trust fund; all other deposits are direct reimbursements. These revenues are tax contributions because they are assessed on employers by the state Department of Labor in advance of future UI payments to their employees.

Each employer is assigned to one of 21 different rate classes, each of which has a different tax rate. The assignment decision is linked to a couple of factors: If the employer has been operating a business for at least one year, the business' individual rate class is based

on the employer's own individual experience with unemployment. If the business has been in operation for less than one year, it is assigned the average rate class shared by other employers in the same industry. This process is termed 'experience rating'.

In Alaska, an employer's experience rating is first determined by measuring declines in payroll from one quarter to the next. This figure is averaged over three years' time. (This method of measurement is used because declines in payroll are primarily caused by reductions in the business' work force. Reductions in the work force cause a rise in UI payments.) Employers with a low payroll decline receive a more favorable UI tax experience rating than employers showing high declines in payroll.

Each of every 21 rate classes is assigned a tax rate that is a percentage of the 'average'—or base—tax rate. The percentages range from 40% (for Rate Class 1) to 165% (for Rate Class 21). (The percentage for the average rate—which comes in at rate classes 10 and 11—is 100%.) These percentages are actually called 'experience factors'. Table 2 shows the 21 different rate classes, the experience factors, and the 1989 tax rates for each rate class.

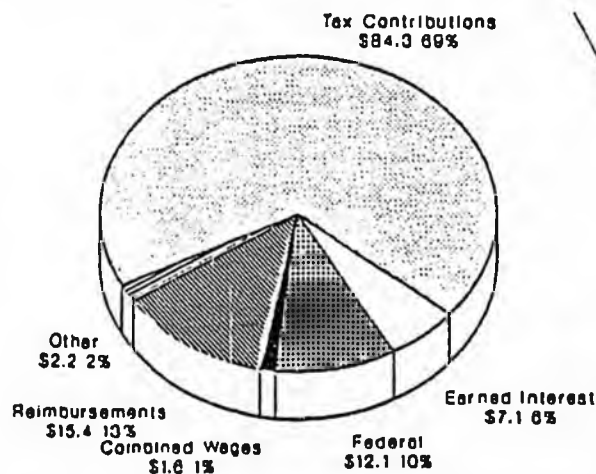
For the employer to determine the business' maximum UI contribution paid on each employee, the employer can take the business' assigned tax rate and multiply it by each employee's taxable wages. (Taxable wages are determined by each state's UI tax base; Alaska's UI tax base is equal to 75 percent of the statewide average annual wage.) For 1989, the state's tax base is \$20,900, down from \$21,800 in 1985. Thus, in 1989, the maximum tax an employer will be required to pay per employee—for an employer in the 'average rate class' (rate classes 10 or 11)—will be \$865.26, or 4.14% of \$20,900.

How Average UI Tax Rates Are Calculated:

Although this article has first addressed individual employers' business rates, it is the average tax rate which is first computed and determined by the Alaska Department of Labor according to Alaska statutes.

Figure 3

UI Trust Fund Revenue Sources 1987, Total and Percentage of Total (\$ = Millions)



'Combined Wages' are reimbursements from other states for shared UI, due to wages earned both in Alaska and other states.

Source: Alaska Department of Labor, Research & Analysis

Indeed, it is the average tax rate which is the real substance of Alaska's UI financing system. The level of the average tax rate determines how much total tax contributions are collected each year. Individual employers either pay lesser or greater percentages of this average rate.

Guts of the UI: Benefit Costs and the Benefit Cost Ratio

In order to understand how the average UI tax rates are calculated, it is first important to understand the 'guts' of the UI system, benefit costs and the 'benefit cost ratio'. Benefits paid to claimants are called 'benefit costs' because they are a cost to the system. (UI benefits have also been considered a cost of doing business to all U.S. employers ever since the Social Security Act was enacted in 1935.) Benefit costs

do not include all benefits paid; instead, benefit costs are that portion of benefits paid to employees by taxable employers.

Benefit cost data alone are insufficient to determine the financial condition of the UI system. Wages paid are also a critical element because the total amount of wages paid in the state determines the amount of taxes being collected and the amount of potential future benefits for which the system might be liable. The fundamental driving force, then, of average UI tax rates, is what is known as the 'benefit cost rate' (BCR). The BCR is computed as: benefits paid in the current year divided by wages paid in the prior year.

Since the Unemployment Insurance system is self-financing, taxes collected in the long run must be equal to benefits paid in the long run. This is achieved when the long-run average tax rate is

equal to the long-run benefit cost rate. (In 1980, the Alaska Legislature recognized the need to balance these two factors. As a result, lawmakers adopted it as the prime equation for determining tax rates.) Average UI tax rates are designed to be — in their most fundamental form — equal to the benefit cost rate.

Alaska UI System Designed to be Countercyclical and to Respond Rapidly to Economy's Changes

However, Alaska's UI system is not so simple. The design of this state's system has been devised so that it can respond quickly to changes in the economy and so that it can work in a countercyclical fashion. The system is designed to delay tax increases so that employers are not hit by the tax hikes during the worst part of a recession.

Table 2

UI Employer and Employee Contribution Rates, 1989

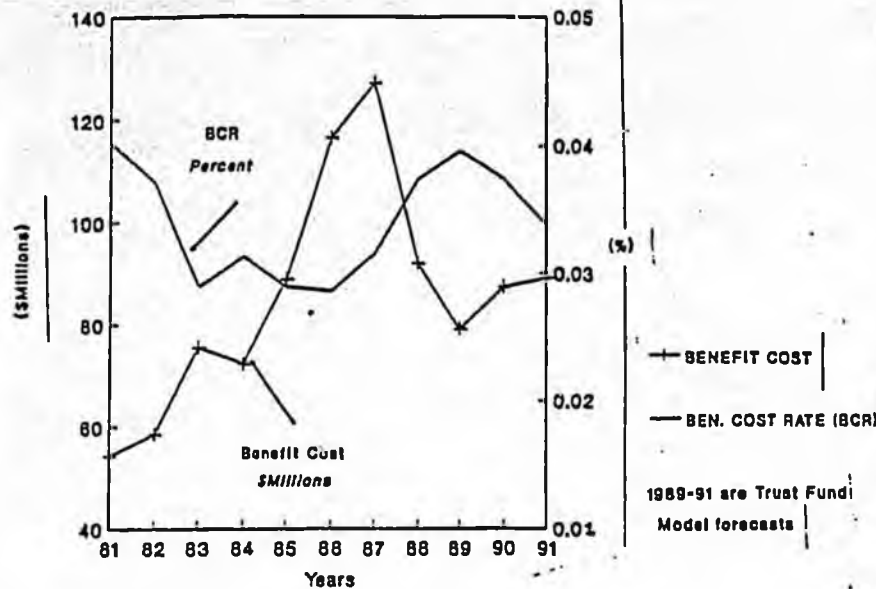
Rate Class	Experience Factor	Employee Contribution Rate	Employer Contribution Rate	Total Contribution Rate
1	0.40	0.7%	2.20%	2.90%
2	0.45	0.7	2.36	3.06
3	0.50	0.7	2.52	3.22
4	0.55	0.7	2.68	3.38
5	0.60	0.7	2.85	3.55
6	0.65	0.7	3.01	3.71
7	0.70	0.7	3.17	3.87
8	0.80	0.7	3.50	4.20
9	0.90	0.7	3.82	4.52
10	1.00	0.7	4.14	4.84
11	1.00	0.7	4.14	4.84
12	1.10	0.7	4.47	5.17
13	1.20	0.7	4.79	5.49
14	1.30	0.7	5.12	5.82
15	1.35	0.7	5.28	5.98
16	1.40	0.7	5.44	6.14
17	1.45	0.7	5.60	6.30
18	1.50	0.7	5.77	6.47
19	1.55	0.7	5.93	6.63
20	1.60	0.7	6.09	6.79
21	1.65	0.7	6.25	6.95

Average Benefit Cost Rate (ABCR) =	0.039558
.82 x ABCR =	0.032438
Trust Fund Solvency Adjustment (TFSA) =	0.009
Employee Tax Rate = 0.18 (ABCR) =	0.7%
Average Employer Tax Rate = 0.82 (ABCR)	
+ TFSA =	4.14%
Individual Employer Tax Rates = 0.82 (ABCR) (Experience Factor) + TFSA	

Sources: Alaska Statutes 23.20.290. Alaska Department of Labor, 1988. Table 1, UI Tax Rate Calculations, 1989.

Figure 4

UI Benefit Costs and Rate (BCR) State Fiscal Years 1981 - 1991



Source: Alaska Department of Labor, Research & Analysis

In theory, a system that is strictly countercyclical is one which has a single tax rate year after year. In contrast, a system that is not countercyclical — but instead responds rapidly to changes — computes rates according to benefit payments of the prior year.

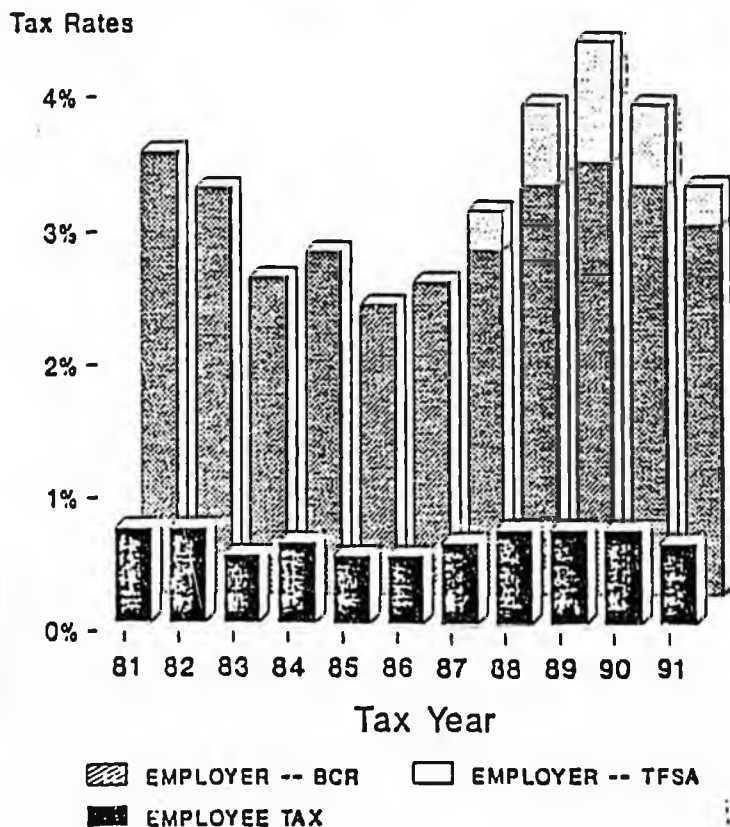
Alaska's UI system, as mentioned beforehand, is a compromise between a state's need to respond quickly to changes in its economy and the need for the system to work in a countercyclical fashion. Rather than using a one-year formula to compute the benefit cost rate, Alaska uses an average of the three prior years. (Figure 4 depicts benefit costs and the three-year benefit cost rate for state fiscal years 1981 through 1988. Figure 4 also depicts forecasts for 1989 through 1991).

Employers Pay 82% of Benefit Cost Rate, Employees 18%

Once the three-year benefit cost rate is determined, employers are assigned 82% of that rate, employees the other 18%. All employees' taxes are equal. The average employer tax varies, however. The employer's tax rate is a result of the average employer tax multiplied by the individual employer's experience factor. In a stable economy, this is all there is to the computation of tax rates.

Figure 5

Components of Average UI Tax Rate Employer and Employee Taxes



Employer taxes are sum of BCR and TFSA

Source: Alaska Department of Labor, Research & Analysis

Additional Surtax Ensures Trust Fund's Solvency

However, in a severe recession like the state has experienced over the past few years, this system — as designed so far — is unlikely to recover quickly enough to ensure a solvent trust fund. In order then to ensure trust fund solvency during recessionary years, an additional 'surtax' is added to employer tax rates. This surtax is called the Trust Fund Solvency Adjustment (TFSA). The TFSA is determined by a schedule dictated by Alaska statutes. It ranges from -0.4% (when the trust fund balance is excessively high) to 1.1% (when the trust fund balance is dangerously low). The TFSA also acts in a countercyclical fashion; it cannot rise or drop by more than 0.3% from one year to the next. In 1985 the TFSA

was -0.2%. In 1987 and 1988, it was 0.3% and 0.6%. In this calendar year, 1989, the TFSA is 0.9%.

Altogether, George's employers' tax rate is calculated this way: It is the total of two computations; that is, 82% of Alaska's three-year benefit cost rate is multiplied by the plant's own experience factor. And added to this sum is the Trust Fund Solvency Adjustment.

Now, after having gained a basic understanding of the formula which determines the UI tax rate, it's possible to comprehend why the tax rates were so high in 1988 and continue to be high in 1989. It's also possible to perceive why UI tax rates in Alaska are expected to decline in 1990 and 1991.

Average Tax Rates Tracked Between 1981 and 1991

Figure 5 illustrates the components of employee and employer tax rates; the rates are depicted as a percent of taxable wages. The employer tax rates include both portions attributable to the benefit cost rate, as well as the Trust Fund Solvency Adjustment.

(The sum of these two elements is the total average employer tax rate.) These employer rates are the average tax rates for each year listed. The figure includes data as far back as 1981, the first year of Alaska's current financing system. The 1989 tax rates are actual rates, having already been assigned. The 1990 and 1991 rates are forecasts generated by DOL Research & Analysis economists using the department's UI Trust Fund Model.

We can see from Figure 5 that tax rates declined steadily through the early 1980s, then began to rise in 1986. Over the last 20 years, the average tax rate has been about 3.2%. This tells us that the rates between 1983 and 1986 were substantially lower than average. Figure 5 also points out, though, that benefit costs were actually increasing during these same years, and that they nearly peaked in 1986. During this time, benefit cost rates were declining while benefit costs were rising. This apparent contradiction can be explained via two factors: total wages were rising faster than benefit costs, and the benefit cost rate is a three-year average.

The Surtax (TFSA) and Rising Benefit Costs Are the Causes of Higher UI Taxes

It is pertinent to note in Figure 5 that the benefit cost rate portion of employer taxes is about the same for SFY 1989 as it was for SFY 1981. The reason that total taxes are higher is due to the TFSA. Figure 2 demonstrates the fact that rising UI Trust Fund revenues (caused by lower tax rates, coupled with higher employment and payroll) kept pace with rising benefits until 1984. Between 1985 and 1987 trust fund reserves plunged sharply. This sudden plunge caused the first positive TFSA — amounting to +0.3% — to be added to 1987 tax rates. Through this calendar year, 1989, the TFSA has risen to 0.9%

By adding together the two portions of employer tax rates — the benefit cost rate and the TFSA — it's possible to come to two conclusions: 1) That the higher tax rates of 1987 through 1989 represent a delayed reaction to the rapidly rising benefit costs amassed between 1984 and 1987, and 2) That the higher tax rates of 1987 through 1989 represent a move to recapture UI trust funds lost during the precipitous decline of its reserve balance between 1985 and 1988.

It's worthy to again note that if a countercyclical financing system did not exist, the highest tax rates would have occurred in 1986 and 1987, the two worst years of the recession.

Thus, higher tax rates are being levied this year so that prior benefit payments can be adequately covered. Further, the higher tax rates are being levied so that the trust fund can be rebuilt to cover any possible, future recession.

UI Tax Rates To Drop In 1990 and 1991, and Possibly in 1992

It's encouraging to point out that the same elements that have caused tax rates to increase (benefit costs and TFSA) will combine to produce lower tax rates in 1990 and 1991. It's likely, too, that 1992 will also be a year marked by lower UI taxes. Here are the reasons: Benefit costs began to decline in the

If the countercyclical financing system did not exist, the highest tax rates would have occurred in 1986 and 1987, the two worst years of the recession.

**These projections
- that UI tax rates
will drop in 1990
and 1991, and
possibly in 1992 -
could prove
overly optimistic if
the state's current
budget shortfall
results in added
job losses in 1989.**

latter half of 1987 and should continue to decline until mid-1989. So that portion of tax rates attributed to benefit costs will begin to decline in 1989 and continue to decline through 1991. Meanwhile, the UI trust fund reserve began to recover in 1988 and will continue to recover through 1991. So the Trust Fund Solvency Adjustment will begin to decline in 1990.

These projections are based on current estimates of future employment and unemployment by the state Department of Labor. These projections could prove overly optimistic if the state's current budget shortfall results in added job losses in 1989. Added unemployment in 1989 could reduce the rate of decline of employer tax rates. But because UI tax rates are calculated upon past data, new job layoffs are unlikely to alter the fact that declining tax rates will occur.

Conclusion

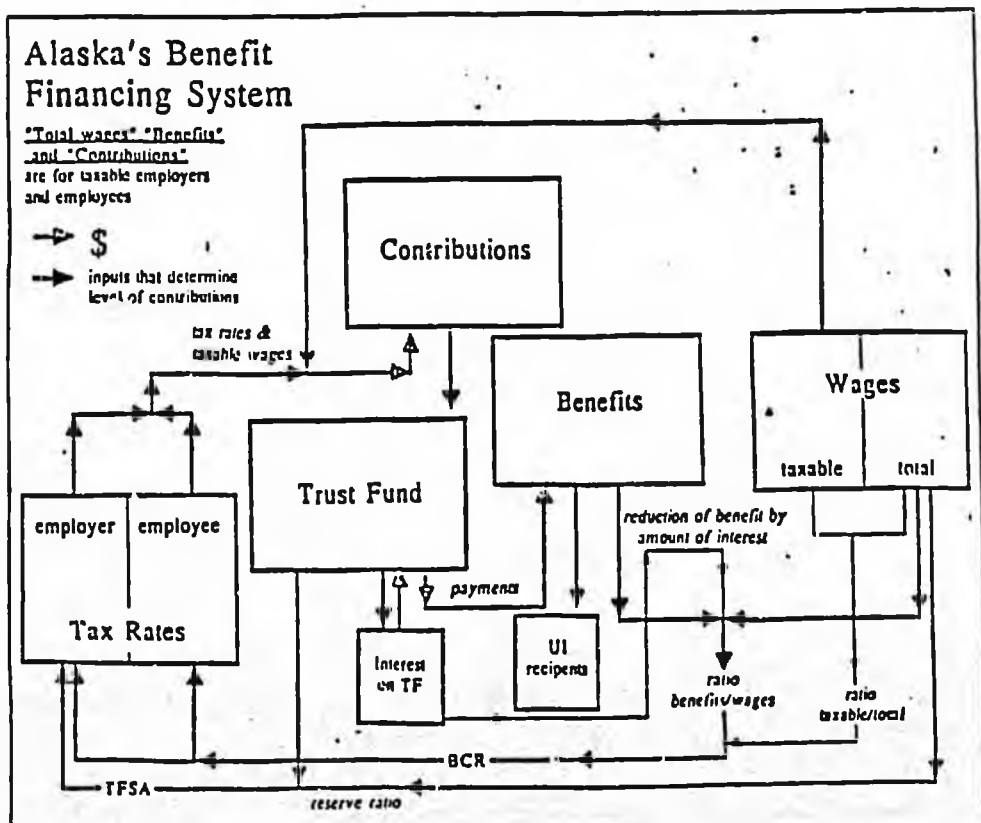
The Alaska Unemployment Insurance system is just that — an insurance system — and not a social welfare system. It is only available to persons who have worked and are temporarily unemployed. There is a limit to the

amount of benefits that can be claimed. It is financed through the payment of premiums — in this case, employer and employee taxes and reimbursements. As with other forms of insurance, these 'premiums' are often a bitter pill for employers to swallow especially when the rates rise to exceptionally high levels. As with other forms of insurance, though, when the benefits are needed they provide vital support to the recipients.

Unemployment insurance has the dual purpose of providing temporary income support for unemployed workers and providing a measure of stability to the economy. During the recession that began in late 1985, Alaska's Unemployment Insurance system has performed well. Many thousands of workers received hundreds of millions of dollars in compensation. This allowed many of the workers to stay in Alaska. Without the compensation they would have been forced to leave the state. Furthermore, the reserves in the UI trust fund account provided a critical buffer to a flagging economy. The system is now in the process of rebuilding its reserves. And barring any major economic catastrophe, the UI system will continue serving Alaska workers when called upon in the future.

About the Author:

Michael Hurst is a labor economist employed for five years with the Research & Analysis Section, Administrative Services Division, Alaska Department of Labor. Hurst is also the actuary for the Alaska Unemployment Insurance System. He is based in Juneau.



STEVE COWPER
GOVERNOR



cc
HB 147

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 3, 1989

The Honorable Sam Cotten
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

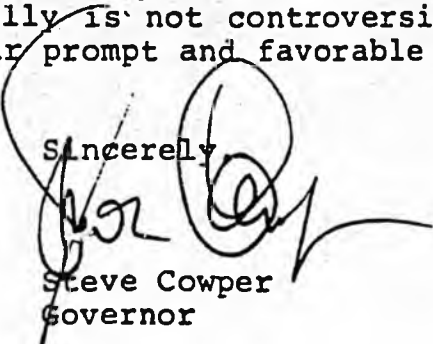
Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to unemployment insurance and unemployment insurance contribution overpayments. Passage of the bill will bring Alaska's law into conformity with recent amendments of federal law, as well as improve efficiency in the administration of the unemployment insurance program in the state.

Many of the provisions of the bill were in last session's SCS HB 384(L&C), and one, sec. 12, was in last year's CSHB 287(Fin) am. The attached bill contains nine additional sections for your consideration. These are: required sharing of information with federal public housing programs (sec. 2); extension of the Reed Act authorization (sec. 3); a provision for use of private collection agencies for employer contributions (sec. 9); clarification that redetermination of an initial claim applies only to the monetary determination (sec. 14); correction of current law to allow for eligibility under certain conditions while an individual is in certain training programs (sec. 16); restriction of denial of benefits or waiting-week credit for individuals in certain training programs (sec. 17); correction of current law to allow an immediate disqualification for fraudulent act (sec. 18); exempting employer overpayments of contributions for unemployment insurance from the provisions of the Uniform Unclaimed Property Act (retroactive to September 7, 1986) (secs. 24 and 26); and modification of the dependent's allowance by allowing each unemployed parent in the family unit to claim dependent children (repeal of AS 23.20.350(f) (4) and (5); sec. 25).

Many of these changes are detailed and technical in nature. Department of Labor staff will be available to testify before legislative committees to answer any questions that legislators might have. Due to the extensive review of many of the sections of this bill during last session, I am confident that the bill generally is not controversial in nature. Therefore, I urge your prompt and favorable action on this measure.

Sincerely



Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to unemployment insurance BRG Insurance
and unemployment insurance contribution overpayments
 Sponsor: Rules Committee by request of Governor Components: Operations
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

No fiscal impact on the Division of Insurance.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 2-7-89

Approved by Commissioner: Larry Mercurieff Date: 2/7/89
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

RECEIVED

FEB 8 1989

page 1 of 1

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LEGISLATIVE FINANCE

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STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CE HB 147 (JJD)
PUBLISH DATE: HOUSE 2/3/89

No. 2

FISCAL NOTE

REQUEST:

Revision Date: January 13, 1989
Title: Unemployment Insurance

Agency Affected: Revenue
BRU: Income & Excise Audit

Sponsor: Rules Committee
Requestor: Governor

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Steven E. Kettel *Steven E. Kettel* Phone: (907) 465-2320
Division: Income and Excise Audit Date: January 13, 1989

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: January 13, 1989
Agency: Revenue

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

Prepared by: Steven E. Kettel
Income and Excise Audit Division
Department of Revenue
January 13, 1989

Fiscal Note Analysis

The uniform unclaimed property act (AS34.45) requires agencies, such as the Department of Labor(DOL), to report and pay over to the Department of Revenue (DOR), all funds which are represented by a valid claim, but where the claimant cannot be located. DOR then advertises the names of the missing claimants and takes other steps to reunite the owner with the funds. DOR holds the funds in trust for the missing owner forever.

This legislation exempts from the reporting requirements of AS34.45 overpayments of unemployment insurance. Employers occasionally overpay the state unemployment insurance contributions and are sent a refund check. If an employer has changed addresses and not notified DOR or the USPS, the check is returned and held by DOL in the unemployment compensation fund under AS23.20.130. This bill will continue DOL practice and remove these funds from the reporting requirements of AS34.45.

HB

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