

LEGISLATIVE FINANCE-HOUSE / SENATE FINANCE COMM. FILES 8879

SB 277 cont. - SB 288 648 *239*

ALASKA OIL SPILL COMMISSION (7 MEMBERS)

June 1, 1989 to January 30, 1990 (8 months)

<u>Personal Services:</u>	<u>FY89</u>	<u>FY90</u>	<u>Total</u>
Coordinator - Range 22A	5.7	40.0	45.7
Accounting Technician I - Range 12A	3.0	21.5	24.5
Secretary - Range 12A	<u>3.0</u>	<u>21.5</u>	<u>24.5</u>
Total Personal Services	11.7	83.0	94.7
 <u>Travel:</u>			
Honorarium			
7 members X 12 days/month X 8 months X \$250.00 per day	21.0	147.0	168.0
Per Diem			
7 members X 12 days/month X 8 months X \$80.00 per day	6.8	47.0	53.8
Travel (including 5.0 for Coordinator)	<u>2.0</u>	<u>38.0</u>	<u>40.0</u>
Total Travel	29.8	232.0	261.8
 <u>Contractual:</u>			
Professional Services:			
Naval Architect	10.0	70.0	80.0
Naval Engineer	10.0	70.0	80.0
Chief Oil Spill Specialist	10.0	70.0	80.0
Chief Investigator	10.0	70.0	80.0
Investigators (3 @ 64.0)	19.0	173.0	192.0
Chief Writer/Editor	10.0	70.0	80.0
Writer (1 @ 64.0)	6.4	57.6	64.0
Secretarial	10.0	70.0	80.0
Legal - Attorneys	10.0	70.0	80.0
Hearing Officer	<u>4.0</u>	<u>36.0</u>	<u>40.0</u>
Total Professional Services	99.4	756.6	856.0

	<u>FY89</u>	<u>FY90</u>	<u>Total</u>
Communications:			
Phones, data lines, postage	3.0	24.0	27.0
Printing:	0	10.0	10.0
Rentals and Leases:			
Office Space	3.0	24.0	27.0
Equipment - - Copier, computers, FAX	<u>3.0</u>	<u>24.0</u>	<u>27.0</u>
Total Contractual	108.4	838.6	947.0
Supplies	<u>3.0</u>	<u>24.0</u>	<u>27.0</u>
TOTAL	152.9	1177.6	1330.5

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SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 7/20/89 *Received*  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 7/20/89

4/18/89  
Mr. President:

**FINANCE**

Committee considered

**SB 286**

disallowing under the Alaska Net Income Tax Act a deduction authorized by the Internal Revenue Code for certain oil discharge related expenditures; efd

and recommended:

- replace with CS \_\_\_\_\_  same title
- attached amendment(s) and  new title
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

<sup>DOR 10.0</sup>  
 fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

\_\_\_\_\_  
 Senator Pearce subsequently changed her recommendation to "do pass"  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
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*[Handwritten signature]*  
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 \_\_\_\_\_  
 Chair : signature and recommendation

Committee backup attached

R/O JFC 4-28-89

REVISED: 4/27/89

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 286

PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:  
Title: An Act Disallowing Oil Spill Cost  
Deductions Against Corp. Income Tax  
Sponsor: Sturqulewski, et al.  
Requestor:

Agency Affected: Revenue  
BRU: Income & Excise Audit

Components: Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 90	FY 91	FY 92	FY 93	FY 94	FY 95
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	10.0	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
<b>TOTAL OPERATING</b>	<b>10.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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  
Division: Income and Excise Audit

Phone: (907) 465-2320  
Date: April 26, 1989

Approved by Commissioner: Hugh Malone  
Agency: Department of Revenue

Date: April 26, 1989

Distribution (by preparer):

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

SB 286  
Prepared by:  
Steven E. Kettel  
Income and Excise Audit Division  
Department of Revenue  
April 27, 1989

### Bill Analysis

Section 1 would disallow, for Alaska Corporate Net Income Tax purposes a deduction for expenses incurred in containment, clean-up and the mitigating effects of a catastrophic oil spill.

This bill in effect would ensure that the general fund is not negatively impacted by a taxpayer deducting otherwise deductible oil spill clean-up expenses. Departmental concerns are expressed below:

1) line 14 should probably delete [162] and add secs. 1 -1399. This broadens the expense exclusion so that other expenses, such as interest, taxes, and penalties which are not covered in section 162 of the Internal Revenue Code cannot be deducted under the authority of another Code section.

2) The term taxpayer, as used on line 14 may be broadly interpreted to mean that any corporation engaged in the clean-up effort cannot deduct their expenses even though they shared no responsibility for the spill occurrence. We do not have language to recommend which would fix this defect.

3) Line 16 and 17 limit the entire provision to expenses incurred in cleaning up an Alaskan oil spill. This presents geographic inconsistencies into the statute and may cause the proposal to be unconstitutional.

(As a side note, we have had direct communication with EXXON tax personnel and understand that EXXON may have insurance coverage up to \$400 million. For tax purposes EXXON would only be able to deduct expenses not covered by insurance reimbursement.)

A rough estimate of the fiscal impact of the Bill (the amount of revenue protected) can be made using the following rule of thumb. Each \$100 million in additional deductions EXXON takes as a result of unreimbursed oil spill costs reduces State revenue by an amount greater than \$0 and less than \$1 million.

### Fiscal Cost

The Department would have to conduct an extensive audit of all taxpayer expenditures to ensure that those costs directly related to oil clean-up were not deducted. To do so will take extensive per diem and travel resources.

1 IN THE SENATE

BY STURGULEWSKI, KELLY,  
DUNCAN AND KERTTULA

2

SENATE BILL NO. 286

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act disallowing under the Alaska Net Income Tax

7

Act a deduction authorized by the Internal Revenue

8

Code for certain oil discharge related expenditures;

9

and providing for an effective date."

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

11 \* Section 1. AS 43.20.036 is amended by adding a new subsection to  
12 read:

13 (k) For purposes of determining the tax payable under this  
14 chapter, the taxpayer may not apply as a deduction under 26 U.S.C. 162  
15 expenses incurred to contain, clean up, and mitigate the effects of a  
16 catastrophic oil discharge, as that term is defined by AS 46.04.120,  
17 that constitutes a disaster emergency declared under AS 26.23.

18 \* Sec. 2. This Act is retroactive to January 1, 1989, and applies to  
19 taxes payable under the Alaska Net Income Tax Act (AS 43.20) after Decem-  
20 ber 31, 1988.

21 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1989

SUBJECT: Retrospective application of Senate  
Bills 286 and 299

TO: Senator Arliss Sturgulewski

FROM: Jack Chenoweth  
Legislative Counsel 

Each of the two above-captioned bills has a retroactivity feature. The state's net income tax is computed and paid on an annual basis. Senate Bill 286, amending the net income tax, applies the changes made in that bill back to income earned since the start of this calendar year. The oil and gas properties production (i.e. "severance") tax is due and payable monthly. 1/ Senate Bill 299, amending the chapter that imposes the severance tax, applies the changes made in that bill back to production from the first day of the month in which the Act takes effect.

Since retroactivity is common to both, let me discuss the common concept in the material that follows.

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1/ Under AS 43.55.020(a):

The gross production tax on oil or gas shall be paid monthly. The tax is due on the 20th day of each calendar month on oil or gas produced from each lease or property during the preceding month. If the tax is not paid before the end of the month in which it becomes due, the tax becomes delinquent.

Thus, tax liability is incurred and remitted on a monthly, not an annual basis. For oil production during December, 1988, the tax became due and payable January 20, 1989, and tax liability for oil production during January, 1989, becomes due and payable February 20, 1989.

A retroactive tax adjustment will apply if there is a valid public purpose served by giving retrospective effect to that adjustment. Here, the committee's deliberations may be critical. As the bills are considered, it would, in my judgment, be important to develop a record on which a court, if called upon to consider an argument, would conclude that there was a public purpose served by giving the amendments a retrospective effect.

A reasonable retrospective application will be sustained. The farther back the retroactive provision is given effect, the less likely a court would be to sustain the provision without a clear showing of public purpose. (To foreclose a claim altogether, in other legislation I have discouraged retrospective application of severance tax adjustments, for example, beyond the narrow period recognized under AS 43.55.-020(a), that is, a change amending the economic limit factor to be made retroactive only to the beginning of the month in which the bill is to take effect. That approach should not create any problems of retrospective applications since the tax liability would not have become due on that date.)

#### RETROSPECTIVE APPLICATION OF THE BILLS:

Tax statutes may be made retroactive. 2/ The threshold

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2/ This office has also recently considered proposed retrospective application of severance tax adjustments, specifically relying on the federal and state constitutional prohibitions against passage of ex post facto laws. There are two ex post facto law prohibitions of the federal constitution. Article I, section 9, clause 3 is a limitation on the federal government, while article I, section 10, clause 1 imposes a similar limitation on the states. Alaska's constitution also contains a limitation in section 15 of article I.

Our previous conclusion that federal and state constitutional prohibitions against enactment of ex post facto laws would support a challenge to the amendment's retrospective application was surely in error. Federal court decisions have limited the application of the limitations to criminal or penal

consideration is that the retrospective application of the measure must not impair an obligation of contract. The impairment of contract consideration appears to be inapplicable in this instance. Retrospective application of a newly-enacted statute may, in some instances, impair obligations of contract, in violation of article I, section 10 of the United States Constitution and article I, section 15 of the State Constitution. However, the Alaska Supreme Court appears to have cut off an impairment of contract argument applicable to retrospective application of a tax amendment in Atlantic Richfield Co. v. State, 705 P.2d 418 (Alaska, 1985). To the argument that the oil and gas corporate income tax then in litigation impaired the obligation of the state's underlying lease contracts, the court concluded that "[the] argument [was] without merit":

. . . No lease provision has been impaired. In entering into the leases the state could not, and did not, contract away its power as a sovereign to tax income earned in the state. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 102 S.Ct. 894, 71 L.Ed.2d 21 (1982) disposes of this issue:

Contractual arrangements remain subject to subsequent legislation by the presiding sovereign. Even where the contract at issue requires payment of a royalty for a license or franchise issued by the government entity, the government's power to tax remains unless it "has been specifically surrendered in terms which admit of no other reasonable interpretation." St. Louis v. United R. Co., 210 U.S. 266, 280, 28 S.Ct. 630, 634, 52 L.Ed. 1054 (1908).

455 U.S. at 148, 102 S.Ct. at 907, 71 L.Ed.2d at 36 (citations omitted); see also Exxon v. Eagerton, 462

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statutes, concluding that retrospective tax legislation is not prohibited by the ex post facto clause. Personal Finance Co. v. United States, 86 F. Supp. 779 (D.Del., 1949). See 16A Am. Jur. 2d secs. 636, 677. Decisions in other state courts have similarly concluded. Parlato v. McCarthy, 69 A.2d 648 (Ct., 1949), Walker v. Commonwealth, 130 S.W.2d 27 (Ky., 1939). The Alaska Supreme Court has not extended application of the state constitutional ex post facto prohibition beyond penal or criminal matters. Danks v. State, 619 P.2d 720 (Alaska, 1980); Creekpaum v. State, 753 P.2d 1139 (Alaska, 1988).

U.S. at 187-94, 103 S.Ct. at 2304 - 2307, 76 L.Ed.2d at 508-12.

705 P.2d 418, at 438.

\*

If legislation acts retrospectively, the nature and duration of its retrospective application should be reasonable. The arguments favoring a reasonable retrospective operation arise out of the equal protection and due process clauses of the state and federal constitutions.

Federal equal protection considerations:

State legislation retroactively imposing a tax is not necessarily and certainly invalid under the equal protection clause of the Fourteenth Amendment to the federal constitution. The inquiry to be made is one of whether the retroactivity impairs substantial, vested rights, and is reasonable in the circumstances. As to retroactively imposed new taxes, the courts have been reluctant to find a violation because of the impairment of a vested right. Welch v. Henry, 305 U.S. 134, 83 L.Ed. 87, 59 S.Ct. 121 (1938), rehearing denied 305 U.S. 675, 83 L.Ed. 437, 59 S.Ct. 250 (1938). 3/ Several state courts have agreed. See Garrett

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3/ In Welch, the United States Supreme Court concluded that a Wisconsin state statute, enacted in 1935 and operating retrospectively to tax corporate dividends earned in 1933 which, when received, were deductible from gross income, did not violate the equal protection clause. The tax rates applied to the dividends differed from the rates applicable to other types of taxable income. As to the retrospective application of the new tax to dividends that were, when earned, exempt from tax, the court noted that:

The equal protection clause does not preclude the legislature from changing its mind in making an otherwise permissible choice of subjects of taxation. The very fact that the dividends were relieved of tax [in 1933], when the need was less, is basis for the legislative judgment that they should bear some of the added burden when the need is greater.

Freight Lines v. State Tax Commission, 135 P.2d 523, at 526, 527 (Utah, 1943); Colonial Pipeline Co. v. Commonwealth, 145 S.E.2d 227 (Va., 1965), reh. den. (1966), app. dismissed, 384 U.S. 268, 16 L.Ed.2d 523, 86 S.Ct. 1476 (1966). 4/

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Numerous retroactive revisions of the federal and Wisconsin revenue laws . . . have imposed taxes on subjects previously untaxed and shifted the burden of old taxes by changes in rates, exemptions, and deductions. It has never been thought that such changes involve a denial of equal protection if the new taxes could have been included in the earlier act when adopted. If some retroactive alteration in the scheme of a tax act is permissible, as is conceded, it seems plain that validity, so far as equal protection is concerned, must be determined, as in the case of any other tax, by ascertaining whether the thing taxed falls within a distinct class which may rationally be treated differently from other classes. If such changes are forbidden in the name of equal protection, legislatures in laying new taxes would be left powerless to rectify to any extent a previous distribution of tax burdens which experience had shown to be inequitable, even though constitutional.

83 L.Ed. 87, at 92.

4/ In Garrett Freight Lines v. State Tax Commission, 135 P.2d 523 (Utah, 1943), the Utah Supreme Court, called upon to determine whether an excise tax levied on the use of diesel motor fuel that was used prior to the date the legislative act became law, found no equal protection violation:

It is well settled that a tax does not necessarily violate the Federal Constitution merely because it contains retroactive features. Milliken v. United States, 283 U.S. 15, 21, 51 S.Ct. 324, 75 L.Ed. 809 [(U.S., 1931)]; Billings v. United States, 232 U.S. 261, 34 S.Ct. 421, 58 L.Ed. 596 [(U.S., 1914)]; Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 125, 83 L.Ed. 87 [(U.S., 1938)] . . . .

. . . .

Neither the Federal Constitution nor the Utah

Federal due process considerations:

Retroactive imposition of a tax is not necessarily a violation of the due process clause of the Fourteenth Amendment to the federal constitution. The leading case is Welch, cited earlier, in which the United States Supreme Court determined:

The objection chiefly urged to the taxing statute is that it is a denial of due process of law because in 1935 it imposed a tax on income received in 1933. But a tax is not necessarily unconstitutional because retroactive. Milliken v. United States, 283 U.S. 15, 21, 75 L.Ed. 809, 814, 51 S.Ct. 324 [(1931)], and cases cited. Taxation is neither a penalty imposed on the taxpayer nor a liability which he assumes by contract. It is but a way of apportioning the cost of government among those who in some measure are privileged to enjoy its benefits and must bear its burdens. Since no citizen enjoys immunity from that burden, its retroactive imposition does not necessarily infringe due process, and to challenge the present tax it is not enough to point out that the taxable event, the receipt of income, antedated the statute.

83 L.Ed. 87, at 93. But the assertion that due process is not violated is not absolute and, the court has said that

In each case it is necessary to consider the nature of the tax and the circumstances in which it is laid before it can be said that its retroactive application is so harsh and oppressive as to transgress the constitutional limitation.

Id.

Similarly, in Garrett Freight Lines, earlier cited, the Utah Supreme Court determined that the due process clause is not

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Constitution has any provision in terms prohibiting retroactive legislation -- excepting that which forbids the enactment of ex post facto laws. [Citations omitted.] That clause relates to criminal and penal matters and does not affect legislation such as the statute here involved. Calder v. Bull, 3 Dall. 386, 390, 1 L.Ed. 648, 1 Kent Commentaries 409; 3 Story on Constitution 212; 18 C.J.S. Constitutional Law, sec. 435, p. 886.

a limitation on the state's ability to retrospectively impose a tax:

Although basing its case upon the due process clause, appellant does not show wherein the tax constitutes any arbitrary and oppressive discrimination except to assert that a tax based upon a transaction consummated prior to passage of the act amounts to a taking of property without due process. It has many times been questioned whether the due process clause constitutes any limitation upon the taxing power. In this connection we quote from Mr. Justice Sutherland of the United States Supreme Court in an opinion upholding the validity of a statute of the State of Washington levying a tax upon the sale of oleomargarine:

Except in rare and special instances, the due process of law clause contained in the Fifth Amendment is not a limitation upon the taxing power conferred upon Congress by the Constitution. \* \* \* And no reason exists for applying a different rule against a state in the case of the Fourteenth Amendment. \* \* \* That clause is applicable to a taxing statute such as the one here assailed only if the act be so arbitrary as to compel the conclusion that it does not involve an exertion of the taxing power, but constitutes, in substance and effect, the direct exertion of a different and forbidden power, as, for example, the confiscation of property. \* \* \* Collateral purposes or motives of a Legislature in levying a tax of a kind within the reach of its lawful powers are matters beyond the scope of judicial inquiry. \* \* \* Nor may a tax within the lawful power of a state be judicially stricken down under the due process clause simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses, \* \* \* unless, indeed, as already indicated, its necessary interpretation and effect be such as plainly to demonstrate that the form of taxation was adopted as a mere disguise, under which there was exercised, in reality, another and different power denied by the Federal Constitution to the state.

A. Magnano Co. v. Hamilton, 292 U.S. 40, 54 S.Ct. 599, 601, 78 L.Ed. 1109.

Garrett Freight Lines, 135 P.2d 523, at 527.

Courts have, however, considered retrospective tax legislation unconstitutional as a violation of the due process clause when, as Welch concludes, in light of "the nature of the tax and the circumstances in which it is laid," the legislation is "so harsh and oppressive as to transgress [that] constitutional limitation." Welch v. Henry, 305 U.S. 134, 59 S.Ct. 121, 83 L.Ed. 87, at 93. The question is typically one of the degree of harshness, based upon consideration of factors such as (1) the effect of the retroactive application of legislation amending a tax on a taxpayer's voluntary act that was influenced by the taxpayer's understanding of tax incidence or consequence at the time of that act, especially if the tax to be imposed or amended is "novel," (2) the sufficient certainty of the taxpayer's expectation of money that is jeopardized by the retroactive legislation, (3) the length of the period of the legislation's retrospective application, and (4) the importance of the public purpose to be served by the action. The first three elements are, to some degree, based on the taxpayer's expectations, while the fourth involves a determination of a public interest that necessitated the actual enactment.

Computation and payment of the severance tax is not greatly determinative of taxpayers' taxable activities that generate the tax liability, nor does this proposed legislation seem to strike at activities of a taxpayer that reasonably relied on the current severance tax rates before this bill proposed amendment of that tax. It is the length of the period of the legislation's retrospective application and the importance of the public purpose to be served that need be most carefully considered.

State due process and equal protection considerations:

Nothing in my quick research suggested that an analysis under the state's "due process" clause, article I, section 7, would reach a conclusion at variance with the decisions based on the comparable federal provision discussed above.

State "equal protection" analysis differs, though the conclusion reached under that analysis is consistent with the conclusions reached under the analysis applicable to the federal provisions. In State v. Erickson, 574 P.2d 1 (Alaska, 1976), the court established a "single test"

Senator Arliss Sturgulewski  
Page 9  
April 21, 1989

approach for state-constitution based equal protection analysis, essentially requiring that the court (1) ascertain the purposes of the legislation to determine whether they are legitimate; (2) determine whether the means chosen to accomplish the objectives actually do so; and (3) balance the importance of the state's interest against the constitutional right involved. The state has plenary authority to tax. Assuming an adequate record, adding to tax liability on the income and severance taxes payable by major producers seems to bear a strong correlation to the state's efforts to impose a tax burden on those who are principally responsible for conducting marine operations in a way that is environmentally safe. By that analysis, if the retrospective application of the change is reasonable, the court should reject any state constitutional equal protection-based claim.

JC:gc  
WKG9/099

Enclosure

*Offered by Sen. Uebli*

A M E N D M E N T

OFFERED IN THE SENATE

TO: SENATE BILL 286

Page 1, lines 13 - 17:

Delete all material and insert:

"(k) For purposes of determining the tax payable under this chapter, a taxpayer who is wholly or partially responsible for a catastrophic oil discharge that constitutes a disaster emergency declared under AS 26.23 may not apply as a deduction under 26 U.S.C. 162 and damages, penalties and expenses incurred by the taxpayer to contain, clean up, and mitigate the effects of that catastrophic oil discharge. In this subsection, "catastrophic oil discharge" has the meaning given by AS 46.04.120.

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300  
TELEFAX: (907) 465-2389

April 28, 1989

The Honorable Rick Uehling  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

RE: Senate Bill 286  
Senate Bill 299

Dear Senator Uehling,

Thank you for the opportunity to comment briefly on Senate Bills 286 and 299, which would amend the corporate income tax and the severance tax to deal with spill-related costs. I appreciate the concern that is addressed by both bills -- the effect on the general fund of the recent disaster in Prince William Sound. However, I believe it would be unwise to proceed on either of these bills without a fair amount of further study.

Senate Bill 286 would amend the corporate income tax law (AS 43.20) to prohibit the deduction of spill related costs. I have attached a revised fiscal note, which contains an analysis that touches on some of the difficulties in this seemingly simple bill. For example, the bill might inadvertently prohibit the deduction of expenses to a fisherman who chartered his boat to help in the clean-up effort. And, the limitation of the deduction denial to Alaska spills raises constitutional problems. Further, since our corporate income tax is based on a share of worldwide income, the denial of deductions is very severely diluted in the case of a multinational taxpayer. Thus, the fiscal savings for the general fund are small.

Senate Bill 299 would amend the severance tax (AS 43.55) to limit costs of transportation allowable in the net back process to determine wellhead value. The taxpayer may not use costs of repairing vessel damage associated with a spill, or any extra cost incurred in substituting other vessels, or costs of vessels and equipment used in clean-up. It is my view that most of these costs are not currently permitted as reasonable costs of transportation, and that the department can meet most of these concerns by regulation. We are currently studying the need for regulations in this area. I am concerned that section (c)(3) of this legislation might imply that the costs listed are currently allowable, giving the oil industry an argument it does not now have.

Senator Rick Uehling  
Page 2  
April 28, 1989

In sum, I hope that the legislature goes slowly in this area. My department will be pleased to work with you and other interested legislators. I do not believe that precipitous action is either necessary or advisable.

Sincerely,

A handwritten signature in cursive script that reads "Hugh Malone". The signature is written in dark ink and is positioned above the printed name and title.

Hugh Malone  
Commissioner

HM:m11  
89-146

Department of Revenue  
Amendment  
April 28, 1989

SB 299

AMENDMENT

Section 1, lines 27 - 29

Delete Subsection (c)(3)

*Roger W. W.*

S

B

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SENATE COMMITTEE REPORT

FURTHER

5/3/89

DATE TURNED INTO OFFICE 5/4/89

Mr. President:

Finance

Committee considered SB 287

naming the Bethel Airport road the Chief Eddie Hoffman Road

and recommended

- replace with \_\_\_\_\_ CS \_\_\_\_\_ )  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_ )  new title
- attached amendment(s) and  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

~~do pass~~

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

- FISCAL NOTE(S)  <sup>DOT/FF</sup> zero  fiscal impact  appropriation no FN
- new  updated  previous
- same as previous fiscal note(s) published \_\_\_\_\_

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

*[Signature]*

*[Signature]*

*[Signature]*

*Paul Frank*

*[Signature]*

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

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*[Signature]* (NO PASS)

Chair signature and recommendation

Committee Backup attached

FISCAL NOTE

Revision Date:  
Title: An Act naming the Bethel Airport Road the  
Chief Eddie Hoffman Road

Agency Affected: DOT&PF

BRU: M&O

Sponsor: Binkley  
Requestor: Binkley

Components:

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & 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: W. Keith Gerken, Deputy Commissioner, Operations  
Division:

Phone: 465-3900  
Date: 5/03/89

Approved by Commissioner: Mark S. Hickey  
Agency: Department of Transportation and Public Facilities

Date: 5/3/89

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

RECEIVED  
MAY 3 1989

1 IN THE SENATE

BY BINKLEY

2

SENATE BILL NO. 287

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act naming the Bethel Airport road the Chief  
7 Eddie Hoffman Road."

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

9 \* section 1. LEGISLATIVE FINDINGS. The legislature makes the following  
10 findings:

11 (1) Edward Hoffman, Sr., was born April 9, 1917, in Napaimute,  
12 Alaska, spending a lifetime in the Kuskokwim Delta region;

13 (2) Edward Hoffman, Sr., moved to Bethel and started Hoffman  
14 Fuel Service after serving in the Alaska Territorial Guard;

15 (3) in 1957 when Bethel was incorporated, Edward Hoffman, Sr.,  
16 was elected to the city council, served for more than 20 years, and was  
17 then elected the city's mayor;

18 (4) Edward Hoffman, Sr., was a founder and the lifetime tradi-  
19 tional chief of the Association of Village Council Presidents;

20 (5) Edward Hoffman, Sr., also served as the president of the  
21 Bethel Native Corporation, and as a board member of Calista Corporation,  
22 Bethel Broadcasting, Yutgak Corporation, and Yukon Kuskokwim Health Corpo-  
23 ration;

24 (6) Edward Hoffman, Sr., also served as the chair of the  
25 Orutsaramuit Native Council and was a founding member of the Kuskokwim  
26 Valley Association;

27 (7) it would be fitting to remember and honor Edward Hoffman,  
28 Sr.'s tireless efforts on the part of the people of the Kuskokwim Delta by  
29 naming the Bethel Airport road the Chief Eddie Hoffman Road.

1     \* Sec. 2. AS 35.40 is amended by adding a new section to read:  
2             Sec. 35.40.035. CHIEF EDDIE HOFFMAN ROAD. The Bethel Airport  
3             road is named the Chief Eddie Hoffman Road.

May 3, 1989

Dear John Binkley,

I am writing this letter to you in support of renaming the State highway that runs through Bethel, "Chief Eddie Hoffmann Highway."

Chief Hoffmann is still alive in the memories of residents of Bethel. He was outspoken in his sense of right and wrong toward the people's welfare in the town of Bethel and for that matter the entire Delta. This strong man deserves to be honored and I feel bestowing his name upon the new highway would give him honor that would be appreciated by all who knew him and those that only knew of him.

Leslie E. Pareok	Paul Chief
Sarah Kongs	Robert C. Kongs
Juanita M. Sreat	Pete J. Charles
Margaret M. Reel	Fritz Albert
Emma Aloysius	Ronald Egook
Karla Siskay	ARM HALLMAN
Eula David	Debra Outh
Carl Ail	
Fred Cheney	

Sincerely yours,  
 Carol M. Roper  
 Annette Dorelle  
 Catherine A. Dick  
 Hannal L. Broussard  
 Inli D. Bury  
 C. F. Charles  
 Chris J. Keen  
 Henry Cold

ASSOCIATION OF VILLAGE COUNCILS  
Pouch 219 \* Bethel, Alaska 99559 \* (907) 543-3521

April 28, 1989

Honorable Senator Johnne Binkley  
P.O. V, Mail Stop 3100  
Juneau, Alaska 99811

Dear Senator Binkley:

The Association of Village Council Presidents fully and emphatically endorses Senate Bill 287, which would change the name of the Bethel Airport Road to the Chief Eddie Hoffman Road.

As you are aware, Chief Eddie Hoffman, or "Tugkar" as he was called by his own people, was very well respected throughout the Region and the State. He was on a first name basis with politicians at all levels of government, and was sought out for advise and assistance constantly.

No problem was too large or too small for Chief Eddie Hoffman's personal attention, and his phone rang day and night with people from all walks of life seeking help.

At one time or another, he served on virtually every regional board of directors in the Yukon-Kuskokwim delta region of the State--including Calista Corporation and AVCP since their formation. He served on the Bethel City Council for more than twenty years, and several times was elected mayor.

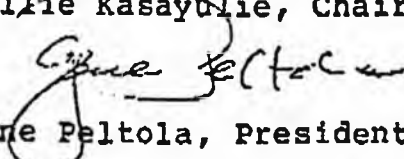
Eddie was elected the first Traditional Chief of the AVCP Region in the mid-seventies. It was a life-long appointment by the full Board of Directors of AVCP, and Mr. Hoffman wore the title well.

He continued to live his life serving the people of the region until his death in December of 1987.

We feel that the re-naming the State highway from the Bethel Airport to Brown Slough the "Chief Eddie Hoffman Road" would be a fitting tribute and honor to a man who spent his life helping and serving the people of the Kuskokwim-Yukon Delta Region of Southwestern Alaska.

Thank you, Johnne, for introducing this bill.

Sincerely,  
ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS  
Willie Kasayulie, Chairman

  
Gene Peltola, President

I support this proposal +  
would like to see it passed

1) Robert L. John L.

Bethel, 4-28-89

2) Cary Anderson 4-28-89 (Bethel)

3) Sharon A. Samuelson 4-28-89 Bethel

4) Joann Hawk 4-28-89 (Bethel)

April 28, 1989

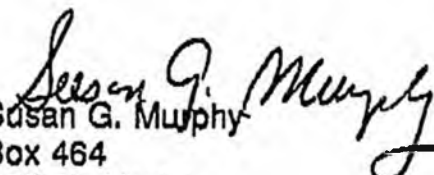
Senator John Binkley  
Alaska State Senate  
P. O. Box "V"  
Juneau, Alaska 99811

Dear Senator Binkley,

I am writing in support of your proposed legislation to change the name of the Bethel Airport Highway to the Chief Eddie Hoffman Highway. As you are aware, Chief Eddie served his people well during his lifetime, as a member of the Bethel City Council, the Bethel Native Corporation, the Kuskokwim Valley Native Corporation, the Association of Village Council Presidents, the Calista Board of Directors, the RuralCap Board of Directors (to name a few) and as the first traditional chief of the AVCP region. While serving as a member of these organizations, Eddie was not silent, but vigorously and continuously advocated for his people even when his stand was not popular.

It would be a fitting memorial to Chief Eddie to name the airport highway after him.

Sincerely,

  
Susan G. Murphy  
Box 464  
Bethel, Alaska

April 28, 1989

Senator John Binkley  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Binkley:

Thank you for introducing Bill # 287 to change the Bethel Airport Highway to Chief Eddie Hoffman Highway.

In the hearts of the Yup'k peoples of this area, Chief Hoffman was a great native leader and is still sorely missed. Yes, Bethel has been very quiet since his passing.

For years the Chief, even as a young man, gave of himself tirelessly and unselfishly to service his people. Many times giving up his own personal and family life to pursue better "ways" to improve the life style, the culture and was a strong advocate for the rights of his people. I know, personally, the Chief helped many, many people not only giving them money when they need it or food when there was nothing on the table for the children to eat. His people came first and therefore I am in full support of Bill #287.

Thank you again, not only for introducing this bill, but also for taking care of this area.

Sincerely,

*Bea Kristovich*  
Bea Kristovich  
940 Front Street  
P.O. Box 568  
Bethel, Alaska 99559

Honorable Senator John Binkley  
P. O Box V  
Bethel, Alaska 99559

APRIL 28 1989

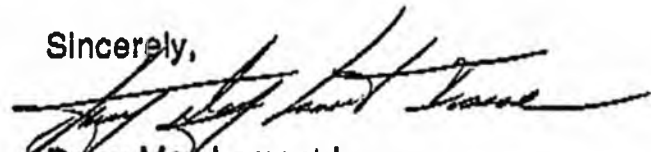
Dear Senator Binkley:

I Daisy May Lamont Isaac am in full support of the Bill # SB 287 to change the Bethel Airport Highway to Chief Eddie Hoffman.

It is only fitting and proper that official recognition and tribute be paid to Chief Hoffman and his family for the many years he served so tirelessly and unselfishly for the people in the Delta. This is the least that we can do.

Thank you for your introduction of this bill. Keep up your good work!

Sincerely,



Daisy May Lamont Isaac

PO. Box 1882  
Bethel, Alaska  
April 28, 1989

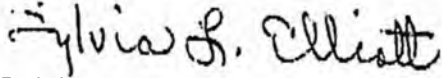
Honorable Senator John Binkley  
P. O Box V  
Bethel, Alaska 99559

Dear John:

I'm writing to express my full support of SB#287 to change the Bethel Airport Highway to Chief Eddle Hoffman Highway. This is one small way that we can pay official tribute to Chief Eddle who worked long and hard on behalf of all of us who have the privilege of living in the Delta.

Please do not hesitate to contact me personally if I can be of additional assistance in providing support of SB#287.

Cordially,

  
Sylvia Elliott

AS YOU ARE AWARE, SENATOR BINKLEY IS TRYING TO PASS BILL #SB 287 TO CHANGE THE BETHEL AIRPORT HIGHWAY TO CHIEF EDDIE HOFFMAN HIGHWAY. HE IS IN NEED OF WRITTEN TESTIMONY FROM EVERYONE WHO WISHES AND SUPPORTS THIS CHANGE.

IF YOU ARE IN AGREEMENT WITH THIS PURPOSAL:

SENATOR JOHNE BINKLEY  
P.O. BOX V  
BETHEL, ALASKA 99559

THIS WILL BE COMING UP TUESDAY MORNING, MAY 2, 1989 IN JUNEAU, THEREFORE, HE IS ASKING A COPY BE BROUGHT TO HELEN EDGE IN THE LEGISLATIVE OFFICE AND SHE WILL FAX IN YOUR LETTER OF SUPPORT.

Senator Binkley:

I support Bill #SB 287 to have the Bethel Airport Highway until the highway is complete before re-naming it. Uncle Eddie wouldn't have anything pleasant to say to us if we renamed the highway in honor of his hard work and dedication to our community - in the condition it is now!

Good luck!

Shelly P. Kristovich  
Bethel, Alaska

I am in support of SB287 to  
rename the Highway to Chief  
Eddie Hoffman Highway.

Alon Anaisii - Bethel

---

Changing the name of the Airport Highway  
to the Chief Eddie Hoffman <sup>highway</sup> sounds like  
a good gesture. My recommendation  
would be to repair it first, before  
the name change.

Betty Huffman  
Betty Huffman  
L.K.S.D.  
Bethel.

April 28, 1989

Senator John Binkley  
P.O. Box V  
Juneau, Alaska 99802

Dear Mr. Binkley

Eddie Hoffman Sr. did alot for the people of the Delta, alot more than I myself could only dream about. He had helped us in so many ways, both the young and old, rich or poor. In naming the Bethel road, we would only be naming a small part of our Delta. He deserves alot more then what we are now asking, in naming the Bethel road after him.

I fully support Bill #287 to change the Bethel Airport Highway to Chief Eddie Hoffman Highway.

Sincerely,

*Cynthia Nicori*  
Cynthia Nicori  
Bethel, Alaska

**STATE OF ALASKA  
1989 LEGISLATIVE SESSION**

**BILL VERSION:** SR 287  
**PUBLISH DATE:** 5/3/89

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: DOT&PF  
Title: An Act naming the Bethel Airport Road  
the Chief Eddie Hoffman Road BRU: Maintenance & Operations  
Sponsor: Binkley Components: \_\_\_\_\_  
Requestor: McHugh

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SVCS.	-0-	.5	-0-	-0-	-0-	-0-
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	-0-	.5	-0-	-0-	-0-	-0-
EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
LAND & STRCTRS	-0-	-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS	-0-	-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING	-0-	1.0	-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-	1.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	1.0	-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)**

SEE ATTACHED

Prepared by: William R. Smith Phone: 266-1440  
Division: Executive Director Date: 3/11/89  
Approved by Commissioner: [Signature] Date: 5/2/89  
Agency: DOT&PF

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor

Office of Management and Budget  
Impacted Agency(ies)

## FISCAL NOTE ANALYSIS SB 287

### ASSUMPTIONS

Renaming the Bethel Airport Road to "Chief Eddie Hoffman Road" would require the replacement of 15 road signs.

### PROGRAM SUMMARY

1. Positions: None required.
2. Other Expenditures: The cost for labor and materials to replace 15 road signs would be \$1,000.
3. Funding: General Funds only.
4. Section Cost Analysis: Not applicable.

### COMPUTATIONS

Each new road sign is estimated to cost approximately \$30 multiplied by 15 equals \$450. Labor to install the new road signs is estimated to cost \$550. Total estimated cost of the project is \$1,000.

### ECONOMIC IMPACT

No significant impact.

### IMPACT ON LOCAL GOVERNMENT

None.

### ATTACHMENTS

None.

S B

L 8 8

# SENATE FINANCE COMMITTEE REPORT

DATE: 2/22/90

FURTHER:

DATE TURNED INTO OFFICE: 3/8/90

The Finance Committee considered SSSB 288

Act relating to the Real Estate Commission; efd.

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title
- attached amendment(s)  technical title change (HB only)
- \_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

zero fiscal note(s) SFC: DCEED 3/8/90

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature]*

*[Handwritten signature: Jim Dunne - No Rec]*

*[Handwritten signature: ... Rec]*

*[Handwritten signature]*

1. *[Handwritten signature]* No Rec -- 2. *[Handwritten signature]* (No Pass)

## FISCAL NOTE

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
 Title: Act relating to the real  
estate commission  
 Sponsor: Sen. Sturgulewski  
 Requestor: Senate Finance

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						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
----------------	---	---	---	---	---	---

<b>REVENUE</b>	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
<b>TOTAL</b>	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: Senator Rick Uehling, Co-chairman Phone: 465-4821  
 Division: Senate Finance Committee Date: March 8, 1990

Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Agency: \_\_\_\_\_

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

BY SEN. STURGULEWSKI

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission; and  
7 providing for an effective date."

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

9 \* Section 1. AS 08.88.081 is amended to read:

10 Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall  
11 adopt regulations necessary to carry out the purposes of this chapter  
12 [PERTAINING TO THE RESPONSIBILITIES OF PERSONS LICENSED UNDER THIS  
13 CHAPTER AND THE GROUNDS FOR REVOKING OR SUSPENDING A LICENSE].

14 \* Sec. 2. AS 08.88.091 is amended by adding new subsections to read:

15 (b) An applicant for licensure under AS 08.88.171(c) must com-  
16 plete 20 hours of education approved by the commission before the  
17 person may be licensed under that subsection.

18 (c) An applicant for licensure under AS 08.88.171(a) or (b) must  
19 complete 15 hours of education approved by the commission before the  
20 person may be licensed under either of those subsections.

21 (d) A person who is licensed under this chapter must complete 20  
22 hours of continuing education approved by the commission before the  
23 person's license may be renewed.

24 (e) The commission may not approve an education or continuing  
25 education course required under this section unless the commission  
26 certifies the course outline and approves the instructor of the course  
27 before the course is conducted.

28 \* Sec. 3. AS 08.88.171(a) is amended to read:

29 (a) A person is eligible for [ENTITLED TO] a real estate broker

1 license if the person passes the real estate brokers examination, if  
2 the person applies for a license within six months after the person  
3 has taken the real estate brokers examination, if the person furnishes  
4 satisfactory proof of successful completion of the education require-  
5 ments of AS 08.88.091, if the person has had at least 24 months of  
6 active and continuous experience as a licensed real estate salesman,  
7 if the person is not under indictment for, or seven years have elapsed  
8 since the person has completed a sentence imposed upon conviction of,  
9 forgery, theft, extortion, conspiracy to defraud creditors, or any  
10 other felony involving moral turpitude, and if the person is an owner  
11 of a real estate business or employed as a real estate broker by a  
12 corporation or a partnership, and if that corporation or partnership  
13 does not have an existing licensed broker. Unless the broker fails to  
14 pay the biennial renewal fee or unless the broker's license is sus-  
15 pended or revoked under AS 08.88.071(a)(3), the real estate broker's  
16 license continues in effect so long as the broker is an owner of a  
17 real estate business, or the broker is employed as a real estate  
18 broker by a corporation or a partnership. If the broker stops being  
19 an owner of a real estate business, or stops being employed as a real  
20 estate broker by a corporation or partnership, the broker's license is  
21 suspended from the time the broker stops until

22 (1) the broker again becomes an owner of a real estate  
23 business or is again employed as a real estate broker by a corporation  
24 or a partnership; or

25 (2) the broker is employed by a licensed real estate broker  
26 as an associate real estate broker, in which case the real estate  
27 broker license is returned to the commission, and the commission  
28 issues the broker an associate real estate broker license.

29 \* Sec. 4. AS 08.88.171(b) is amended to read:

1           (b) A person is eligible for [ENTITLED TO] an associate real  
2 estate broker license if the person passes the real estate brokers  
3 examination, if the person applies for a license within six months  
4 after the person has taken the examination, if the person submits  
5 satisfactory proof of successful completion of the education require-  
6 ments of AS 08.88.091, if the person has had at least 24 months of  
7 active and continuous experience as a licensed real estate salesman,  
8 if the person is not under indictment for, or five years have elapsed  
9 since the person has completed a sentence imposed upon conviction of,  
10 forgery, theft, extortion, conspiracy to defraud creditors, or any  
11 other felony involving moral turpitude, and if the person is employed  
12 by a licensed real estate broker as an associate real estate broker.  
13 Unless the associate broker fails to pay the biennial renewal fee or  
14 unless the associate broker's license is suspended or revoked under  
15 AS 08.88.071(a)(3), the associate real estate broker's license contin-  
16 ues in effect so long as the associate broker is employed by a li-  
17 censed real estate broker as an associate broker. If the associate  
18 broker stops being employed by a licensed real estate broker, the  
19 associate broker's license is suspended from the time the associate  
20 broker stops until

21           (1) the associate broker again is employed by a real estate  
22 broker as an associate broker; or

23           (2) the associate broker becomes an owner of a real estate  
24 business, in which case the associate broker's associate real estate  
25 broker license is returned to the commission, and the commission  
26 issues the associate broker a real estate broker license.

27 \* Sec. 5. AS 08.88.171(c) is amended to read:

28           (c) A person is eligible for [ENTITLED TO] a real estate sales-  
29 man license if the person passes the real estate salesman examination,

1 if the person applies for a license within six months after the person  
2 has taken the examination, if the person submits satisfactory proof of  
3 successful completion of the education requirements of AS 08.88.-  
4 091, if the person is at least 19 years old, if the person is not  
5 under indictment for forgery, theft, extortion, conspiracy to defraud  
6 creditors, or any other felony involving moral turpitude, or, if  
7 convicted of such an offense, the person has completed the sentence  
8 imposed upon conviction, and if the person is employed by a real  
9 estate broker. Unless the salesman fails to pay the biennial renewal  
10 fee or unless the real estate salesman's license is suspended or  
11 revoked under AS 08.88.071(a)(3), a real estate salesman's license  
12 continues in effect so long as the salesman is employed as a salesman  
13 by a licensed real estate broker. If the salesman stops being employ-  
14 ed as a real estate salesman, the real estate salesman's license is  
15 suspended from the time the salesman stops until the salesman again is  
16 employed as a salesman by a licensed real estate broker.

17 \* Sec. 6. AS 08.88.251(c) is amended to read:

18 (c) A person who is inactive may become active by applying for  
19 an active license and paying the required fees. In the application  
20 form the person shall state the date on which the person intends to  
21 become active. The person's active status begins on the date stated.  
22 The commission shall send the person a license certificate. A person  
23 is eligible for [ENTITLED TO] change from an inactive to an active  
24 status without examination if the person has not been inactive more  
25 than two [THREE] years. If the person has been inactive more than two  
26 [THREE] years, the person is required to take an examination.

27 \* Sec. 7. AS 08.88.261 is repealed.

28 \* Sec. 8. AS 08.88.091(b), as enacted by sec. 2 of this Act, and secs.  
29 3 - 5 of this Act take effect January 1, 1991.

1       \* Sec. 9. AS 08.88.091(c), as enacted by sec. 2 of this Act, takes  
2 effect July 1, 1991.

3       \* Sec. 10. AS 08.88.091(d), as enacted by sec. 2 of this Act, takes  
4 effect January 1, 1992.

5       \* Sec. 11. Except as provided in secs. 8 - 10 of this Act, this Act  
6 takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 5, 1990

SUBJECT: Sectional Summary  
(SSSB 288)

TO: Senator Arliss Sturgulewski

FROM: Terri Lauterbach *TL*  
Legislative Counsel

Following is a brief sectional summary of SSSB 288:

Sec. 1. Clarifies the authority of the Real Estate Commission to adopt regulations.

Sec. 2. Establishes various education and continuing education requirements for licensure in real estate occupations. As noted in secs. 8 - 11 of the bill, subsection (b) would take effect January 1991, subsection (c) would take effect July 1991, subsection (d) would take effect January 1992, and subsection (d) would take effect immediately.

Sec. 3. Pertains to real estate broker licensing.

Sec. 4. Pertains to associate broker licensing.

Sec. 5. Pertains to real estate salesman licensing.

Sec. 6. Changes requirements for converting licenses from inactive to active status.

Sec. 7. Repeals a section relating to licensure of persons who were licensed in another jurisdiction. AS 08.88.263, which is not repealed, offers an avenue for licensure of persons licensed in other jurisdictions.

Secs. 8 - 11. Effective dates.

Please let me know if you have further specific questions about the bill.

TL:mi  
wkmi6/039

**SSSB 288: "An Act relating to the Real Estate Commission; and providing for an effective date."**

The Department of Commerce and Economic Development supports passage of SSSB 288. The bill, as revised, beefs up present real estate licensing requirements by adding consumer protection provisions which the Real Estate Commission and the Division of Occupational Licensing wholeheartedly support. What follows is a sectional analysis of the proposed amendments to AS 08.88.

Section 1 of the bill amends AS 08.88.081 to clarify the ability of the Real Estate Commission (hereinafter "commission") to adopt appropriate administrative regulations. AS 08.01.080 gives broad authority to the department to adopt "regulations necessary to implement the licensing statutes." Most of the individual board statutes reiterate this authority, but the commission's existing language limits its authority to adopting "regulations pertaining to the responsibilities of licensees." The proposed amendment would bring the real estate license law into conformity with the centralized licensing statute and give the commission authority parallel to that granted other boards.

Section 2 of the bill amends AS 08.88.091 by establishing a variety of education requirements. Every other licensing jurisdiction in the United States and Canada requires either prelicensing or continuing education. Most require both. Only four (4) other states have no prelicensing educational requirements and only ten (10) other states have no continuing educational requirements. Nationally, prelicensing requirements average fifty-eight (58) hours while continuing education requirements average twenty-five (25) hours over a two-year licensing period. Alaska needs to join the rest of the country by setting some minimum education standards for its applicants and licensees.

Although SB 288 is not specifically modeled after other state legislation, the statutory requirements of other jurisdictions were reviewed before formulating the additions proposed in this section of the bill. The primary objective is to ensure that applicants for initial licensure, salespersons, and salespersons seeking to upgrade their licenses to broker or associate broker have the appropriate level of knowledge. Licensees and applicants should thoroughly understand the complexities of holding title, financing, agency, and representation and disclosure, and should be sensitive to the expectations which the public has of real estate professionals.

The various educational requirements contained in this section were drafted to require: (1) a broader base of knowledge before issuance of an initial license to an applicant for a real estate license; (2) a minimum number of continuing education hours for licensed salespersons and brokers in order to ensure licensees are keeping up-to-date on important industry changes; and (3) specific additional classroom training for persons seeking to become brokers and associate brokers because the responsibilities of these positions are great and not always fully appreciated by those seeking or holding the license.

The number of hours required by this section has been tempered by an appreciation for the complexities of providing real estate education courses to licensees across all areas of the state. The geographic distribution of licensees is a factor that must be considered. As proposed, the Real Estate Commission would not be a provider of classes, but would control course quality by recognizing for credit only those courses and instructors which were approved by the commission prior to presentation [AS 08.88.091(e)].

The increasing complexity of real estate transactions requires that a greater degree of competency and skill be attained in order to adequately protect the public. For example, requiring a minimum number of classroom hours prior to licensure will help to protect prospective home buyers from errors made by the inexperienced licensee [AS 08.88.091(b)]. Requiring additional training focused on office supervisory responsibilities and trust account management prior to being licensed as a broker or associate broker will address the most common causes for complaints received by the division against real estate brokers [AS 08.88.091(c)]. Finally, requiring continuing education during each biennial licensing period should assist in ensuring that all real estate professionals are periodically updated on current real estate laws and practices [AS 08.88.091(d)].

In addition to attaining a new level of credibility and professional respect from other licensing jurisdictions, adoption and implementation of these requirements as an integral part of Alaska's real estate licensing program will enhance the degree of public protection and service available to consumers in the state.

Sections 3 through 5 of SB 288 simply make the amendments necessary to applicant, licensee, and broker provisions of the statute to require proof of having complied with the education requirements set out in Section 2 of the bill. In addition, these sections replace existing language that states a person is "entitled" to a license with language stating that a person is "eligible" for a license, thus allowing the Real Estate Commission some discretion in determining whether an applicant's qualifications meet the intent as well as the letter of the law.

Section 6 amends AS 08.88.251(c) to shorten the maximum time a license may be held inactive. The purpose of limiting the amount of time a person may hold a license in an inactive status and still reactivate without retesting is to protect the public from licensees who have been out of touch with real estate practices for an extended period of time. The current three-year limit does not serve this purpose in today's rapidly changing marketplace. In addition, the need to "renew inactive" in order to prevent the license from lapsing at the end of each licensing biennium is extremely confusing to licensees who assume that the inactive status prevails for a three-year period with nothing required from them during that time.

Section 7 of the bill amends AS 08.88.261 to repeal statutory provisions providing for reciprocity. As it now exists, AS 08.88.261 is operative only when there are reciprocal agreements with other states.

Presently, no state has signed an agreement with Alaska because of the absence of educational requirements. Among states that do have reciprocal agreements, the agreement itself usually contains a clause that requires the applicant to demonstrate familiarity with that state's license law by passing the state law portion of the examination. Assuming SB 288 passes and the educational requirements become necessary, it is anticipated that the requirement to pass the state portion of the Alaska exam would remain.

However, another section of the real estate statute -- AS 08.88.263 (entitled "License by Endorsement") -- presently authorizes the commission to recognize the license and experience of a real estate professional from another state seeking licensure here in Alaska. This existing provision also contains language allowing the commission to ensure that the applicant from another state is familiar with Alaska's license law before issuing him or her an Alaska license.

To have both AS 08.88.261 and 263 in their present form in the statute is confusing to present and potential licensees. Because AS 08.88.263 is the only section currently applicable and would continue to be so following passage of SB 288, this bill repeals the inoperative AS 08.88.261.

Finally, Sections 8-10 of the bill establish varying effective dates. The effective dates of the various educational requirements would allow the Real Estate Commission staff to gradually approve course outlines and instructors on a realistic basis, and still implement the overall program in a timely manner. The first continuing education requirement would coincide with the next biennial renewal (January, 1992).

This bill establishes some very necessary education requirements for the real estate industry and brings Alaska into step with the other licensing jurisdictions. The provisions of the bill have been discussed and debated by the real estate industry and the commission. It reflects a compromise that will benefit Alaskan consumers and ensure better trained and qualified real estate professionals. For these reasons, the department urges passage of the bill.



\_\_\_\_\_  
Larry Merculieff, Commissioner

Date: 11/30/90



ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133

January 17, 1990

Senator Arliss Sturgulewski  
P.O. Box V (MS 3100)  
Juneau, AK 99811

Attn: Frank Homan

Re: SB 288

Dear Mr. Homan:

During the past several years, members of the Alaska Association of Realtors® have been studying the question of mandatory pre-licensing education and mandatory continuing education requirements for real estate licensees. These members have served on several task forces in cooperation with the Alaska Real Estate Commission and special study groups as part of AAR's Legislative Committee. The conclusions of these studies have resulted in our recommending legislation to require both pre-license and continuing education for all real estate licensees in Alaska.

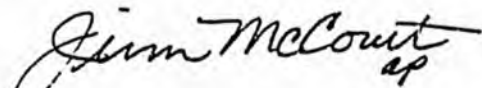
The rationale for these conclusions is, first, Alaska is the only state which has no education requirements. Second, consumers have the right to expect a high degree of knowledge from those who advise them on (in some cases) the largest investment they may make during their lifetime. Third, the field of real estate is constantly changing with its multitude of financing and tax implications. It is imperative that real estate practitioners remain current on taxes, financing, zoning, equal housing laws, hazardous waste, and a myriad of topics to best advise their clients and customers.



January 17, 1990  
Page Two

For these reasons, the Alaska Association of Realtors® urges passage of SB 288 during this legislative session. AAR stands ready to testify in support of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Jim McCourt" with a small flourish at the end.

Jim McCourt  
President



ALASKA ASSOCIATION OF REALTORS, INC.  
741 Sesame Street, Suite 100 • Anchorage, Alaska 99503  
Telephone 907-563-7133

January 12, 1990

Senator Arliss Sturgulewski  
P.O. Box V  
Juneau, AK 99811

Attn: Frank M. Homan

Re: S.B. 288

Dear Senator:

The enclosed background paper and attachments are by way of information in reference to S.B. 288. The background paper is a brief statement describing the rationale for the bill's introduction and the goals it would accomplish. The attachment is the most recent NARELLO report on real estate prelicensing and continuing education requirements throughout the U.S. and Canada.

If I can be of further assistance, please do not hesitate to contact me.

Sincerely,

Dea Turner  
Executive Vice President

Attachment

cc: Joe Hayes



Every other licensing jurisdiction in the US and Canada requires either pre-licensing or continuing education. Many require both. Only four other states have no pre-licensing educational requirements and only 10 other states have no continuing educational requirements. Pre-licensing requirements average 58 hrs; continuing average 25 hours/2-year licensing period.

Although SB288 is not modeled after any other state's legislation, the statutory requirements of other jurisdictions were reviewed. This legislation was drafted in an attempt to amend Alaska's real estate license law (AS 08.88) to provide a higher level of competency and professionalism for present and future licensees in Alaska. In turn, this will enhance the degree of public protection and service available to consumers.

The increasing complexity of real estate transactions requires that this greater degree of competency and skill be attained in order to adequately protect the public.

Requiring minimum educational hours prior to licensure helps to protect consumers from suffering because of the inexperience of new licensees.

Requiring continuing education is a means of ensuring that all licensees have periodic update on current real estate laws and practices each renewal period.

AS 08.88.

**Section 261 repeal:**

As it now exists, Section 261 is operative only when there are reciprocal agreements with other states.

No other state has been willing to sign an agreement with Alaska because of the absence of educational requirements.

Section 263 allows the Commission to recognize the license and experience of a person coming from another state and to also ensure that they are familiar with Alaska's license law before issuing them an Alaska license.

Among states that do have reciprocal agreements, the agreement itself usually contains a clause that requires the applicant to demonstrate familiarity with the state's license law by passing that portion of the examination.

Assuming SB288 passes and the educational requirements become necessary, it is anticipated that the requirement to pass the state portion of the Alaska exam would remain.

To have both sections 261 and 263 in their present form is confusing to both present and potential licensees. Since Section 263 is the only operative section currently, and would continue to be satisfactory with the passage of the remainder of SB288, the recommendation is to repeal Section 261.

SB 288

# Alaska State Legislature



SENATOR  
ARLISS STURGULEWSKI  
Senate President Pro Tempore  
Chairman, Senate Rules Committee

2957 SHELDON JACKSON STREET  
ANCHORAGE, ALASKA 99508


While in Juneau  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3818

## Senate

M E M O R A N D U M

February 28, 1990

TO: Senator Rick Uehling, Co-Chairman  
Senate Finance Committee

FROM: Senator Arliss Sturgulewski 

RE: Hearing request for SB 288 "An Act relating to the Real Estate Commission; and providing for an effective date."

This legislation was requested by the Alaska Association of Realtors. It would require minimum education standards for prelicensing of real estate agents and for continuing education. Every other licensing jurisdiction in the United States and Canada requires either prelicensing or continuing education.

The legislation is supported by the Alaska Association of Realtors, the Alaska Real Estate Commission, and the Department of Commerce and Economic Development.

It has a minor fiscal note.

A packet of background information is attached. If there are any questions, please contact Frank Homan in my office.

Thank you for your consideration of this legislation. I hope you will be able to schedule it for a hearing at an early date.

Enclosure

SB 288

3/6/90

*Barbara Craig Realty*

(Formerly Barbara Jaye Realty)

P.O. Box 02-0422

Juneau Alaska 99802

(907) 586-9091

February 10, 1990

Ref: Senate Bill 288

Dear Senator Sturgulewski;

I am opposed to Senate Bill 288 for the following reasons:

1. If the bill passes it will result in creating more government jobs . Do you really think the VOTERS want to elect a governor who is promoting bills that create more state government jobs and bills to further regulate our lives? I do not want to pay for more government employees who will only whine five years from now when they get laid off because we have run out of oil money. And if someone says the real estate industry will pay for more staff with their licensing fee--I am opposed to paying more for licensing. Licensing fees are only another name for taxes or extracting money from the private sector to pay for jobs of non productive government paper pushers. We have far more government employees per capita than another other state--the situation here is totally out of hand! If the legislature does not act responsibly in cutting back the number of government employees drastically and now, then I think there will be such great turmoil in this state when we run out of oil money that it will make the years 1986-87 look like a picnic. You are responsible for promoting bills that solve problems now and for Alaska's future--but creating more unnecessary state jobs is a problem now and for Alaska's future. By sponsoring bills like this YOU are part of the problem--not solution.

2. If those currently licensed are not presently competent or the test is not adequate, then I am not against changing the test or requiring more education or proven ability through past experience to get licensed initially as a sales person or broker. What I am opposed to is requiring all agents who want to renew licenses get some sort of continuing education . I do not want some state employee to tell me what type of education they think is best for my business or type of real estate I handle. This type of mentality treats real estate professionals as second class business people. Alaskans don't need to be protected " for their own good" by some bureaucrat "big brother"--the citizens of Alaska need to be protected from: government intereference and regulation, and "government employeeism"--the cancers that are gobbling away at private sector economic development. In addition, the rationale presented for such across the board recommendations is not well thought through and only serves to illustrate the attitude that government employees have for procreating more state jobs and spending more money in an effort to try to solve a non-existing problem. Following are examples of irrational materials presented supporting passage of the bill:

a) "A minimum number of continuing education hours for licensed salespersons and brokers in order to ensure licenses are keeping up-to-date on important industry changes" ( Dept. of Commerce & Economic Development Position Paper-p 1) If a person in the sales business does not keep up to date automatically on market changes they will be out of a job in short order. The position paper does not give credit to those who have been in business successfully. If someone can not keep up with the changing market and industry then lets not spoon feed them to keep them in business. The private sector will automatically weed out those who do not keep up with the time. To assume that a government employee knows more than those who are successfully earning a living in a private sector industry by letting that government employee decide what type of continuing education is pertinent to that business, takes on the typical mentality of most bureaucrats which is " I know what is best for you". Since when did the Real Estate Commission or Dept. of Commerce and Economic Development become experts in the dynamics of education and become more intuned to my business to know what I need to become more wise in my business? If some bureaucrat thinks they know what is best for my business or knows more about my business, then why aren't they busy in the industry making money like me? I don't need any big brothers telling me what I need to be educated on. And if I make the wrong decision by not keeping up to date with market conditions then I alone should be responsible for not being successful in my line of business.

b) "The increasing complexity of real estate transactions requires that a greater degree of competency and skill be attained in order to adequately protect the public" (Dept. of Commerce and Economic Dev. Position Paper page 2) Things are always as simple or complex as anyone wants to make them. I have been in the real estate industry over six years and things do not seem to be getting anymore complex to me. As I get more experience I automatically accumulate more information which makes my skill level greater. Greater COMPETENCY comes with more hands on experience. The same level of complexity has always been there. And the more experience a business person has in any area the more valuable they automatically become to themselves as well as those who pay for their services. AND, It is not logical to assume that the public in some way is not being adequately protected already by the current level competency of people working in the field now. Where are your figures to prove that the profession is not adequately being responsible to the public or is not competent?? Everything in life is always in a state of change and this holds true for the real estate industry as in all industries. For example, one change that has taken place over the last several years in the Juneau market is that transactions involving the selling of many repossessed homes involve more paperwork and persons participating in the paperwork-- but there sure does not seem to be anything difficult in adapting to letting the public know that everything in that particular market takes more time and paperwork. The additional time and paperwork involved in selling many repos over non-repo properties surely can not be the fault of the real estate industry. And if as a business person, I feel selling one particular type of property isn't worth the effort then I don't need to deal in that type of product. I don't bother selling AHFC repos and try to stay away from FDIC repos. The time involved in dealing with their overly bureaucratic system isn't worth the money to me--it takes too long to get paid such a

small amount in most cases. If another real estate professional wants to deal with that type of property then let them. The problem with those type of properties isn't with the real estate professional --it's with the SELLER which in this particular case is a bureaucratic government agency. If a real estate agent or broker chooses freely to deal in those types of sellers or properties then it is in the end that brokers responsibility to do the job correctly. The broker is the private sector individual who freely chooses to deal in any particular type of product and should be responsible for their success and/or failure in their business decisions. If they do not handle selling that type of property or any other type of property correctly then there is already a system in place to protect the public. The system isn't getting more complex--it is the same as it has always been--always in a state of flux.

c) "Requiring additional training focused on office supervisory responsibilities and trust account management prior to being licensed as a broker or associate broker will address the most common causes for complaints received by the division against real estate brokers" (Dept. of Commerce and Economic Dev. Position Paper page 2) It would seem logical to require some sort of skill level in dealing with trust accounts prior to licensing a broker or associate broker but, if they don't know how to add or subtract numbers then don't give them a license. If the current test is deficient in some way perhaps the state should change the test by adding some sort of special trust account section. In addition, requiring some sort of supervisory training is not necessarily pertinent to everyone. Some companies don't have or want staff or agents to supervise--why should they take supervisory training. Some people already have the ability to supervise. And even if a person were given supervisory training it does not mean they will be able to absorb and/or apply any of the information given to them. If a broker is not any good in supervising their staff then they will naturally not earn as much money as other companies, if their business tries to earn money through efforts of agents, nor keep good staff, and perhaps be washed by the wayside in the business world. If a broker is doing something seriously wrong then there are already the statutes in place to protect the public. The real estate regulating body does not need to try to be the judge of what will make a real estate business more successful by demanding education in supervisory responsibility skills or specific education on how to add and subtract numbers in books --I think I learned how to add and subtract in first grade. Neither is it the job description of the real estate regulating body to tell the industry how to be successful in a private sector sales and service business.

d) "Finally, requiring continuing education during each biennial licensing period should assist in ensuring that all real estate professionals are periodically updated on current real estate laws and practices" (Dept. of Commerce and Economic Development Position Paper page 2 ) Again illogical! If there is a change in state statute pertaining to the real estate laws then all the state real estate office needs to do is send out the changes to each agent and broker. That should be one basic service provided already. And who will tell me what are the updated real estate practices--if I'm not already doing them then I'm not an efficient organized astute business person. The buyers and sellers let you know what are the updated practices and automatically

ask you the questions you need to find answers to--and they set the market standard. You can't get much more consumer oriented than that. And if there are changes in federal laws let the state real estate office send out copies of those too. I don't need to pay someone to read a piece of paper to me in some seminar--I learned how to read in grade school.

e) "Third, the field of real estate is constantly changing with its multitude of financing and tax implications. It is imperative that real estate practitioners remain current on taxes, financing, zoning, equal housing laws, hazardous waste and a myriad of topics to best advise their clients and customers." Letter to Arliss Sturgulewski Jan 17, 1990 from Jim MCourt, President of the Alaska Association of Realtors--Canned educational seminars on all the above will not keep any agent current on the above. I use my phone book and call the appropriate professional or agency when I have a question on any of the above. I don't need a \$300 seminar to answer my zoning questions here in Juneau--I just call the City. If I don't know something about a particular type of financing I call a lender--that's their area of expertise. If a client asks me about tax implications, I suggest they talk with their accountant--that is another profession entirely. If I were to try to become an expert, through canned education programs, in all the fields the President of the Alaskan Association of Realtors suggests, then I would probably make mistakes and get sued. His good advise isn't by my standards a healthy path to follow. The constantly changing world is not a logical reason to have to take canned educational sessions which always seem too watered down and not useful for me. And if a broker thinks one of his agents needs more education, it is that brokers responsibility to correct the situation or be responsible for the consequences of an agent lacking ability in some area.

Who will really profit from passage of the proposed bill as currently written under the guise of "public protection" : the racket the state government employees have going and the National and Alaskan Association of Realtors. We don't need more state employees. We need less state employees. And the National and Alaskan Association of Realtors is the organization who will, if this bill passes, force me to have to pay them money in their effort to make me more wise and more moral under their slogan of "for the good of the public". I think my parents already taught me how to be moral and know the difference between right and wrong by the age of 10. And, I think the public is already wise enough--if you don't like how someone does business you don't have to use their services--the public doesn't need any big brother government helping them think. If someone does wrong to a consumer in their business, then there is already the protection net in place. This bill does not give the average consumer credit for being a thinking responsible person, even though the public does have many other important rights they are trusted with--right to vote, right to freedom of speech, right to free association. Neither myself or the public are second class citizens--I don't want anymore big brother protection. I want protection from government regulations taking away my rights! The people who will smile all the way to the bank in this case is the National and Alaskan Association of Realtors. They will be providing the canned goods to the real estate industry, spoon feeding at their monopolistic prices creating a monopoly in the industry. I RESENT their attempt to

force me to join their glee club, which will happen if I am forced to participate in their "education" system. If I thought they already had something to offer me of value I would inquire or join. Isn't that what private sector--free market is all about. But since their product isn't considered by me and obviously others to be of value as presented through the free market approach, they must try to go through the back door and force me to participate through their using State Government (Dept. of Commerce and Economic Dev.) to promote their cause and lobbying efforts. Maybe I should ring up the Commission and see if he can lobby for me on some issue. I must admit I didn't attend several of the Realtors Association classes but have found them so remedial and so boring it about makes one want to throw up. If you don't believe me try one of their classes yourself! For the type of real estate I deal with I get more out of talking with Dept. of Nat. Resources, Fish and Game, DEC, the City, reading business publications, books and newspapers, talking with my peers in the industry and the CONSUMERS than I've ever got from one of their remedial classes. Let's face it-- you can only learn how to fill out listing forms, earnest money agreements and go to "motivational or goal setting" seminars so often before you learn that type of material. If a business person in the real estate industry does not know how to learn from the market then they are in the wrong business. Besides I just called the local head of the education committee for the Alaska Association of Realtors--we don't even have any classes available here anyway and he said he doesn't even have any idea what educational materials are available statewide. If they aren't even providing a product here and now or to smaller communities then how can they try to say they know that more education is the answer to all their special interest/ real estate industry concerns? The classes if they ever sponsor any in Southeast may provide useful information for some people but currently I have not seen anything pertinent to me or classes helping me make more money or helping me to be a better business person.

Just because Alaska does not have the educational requirements of other states does not mean we are doing something wrong. I would not object to seeing some sort of experience or competency required initially for licensing but the on going education portion is not necessary. But if it is felt that the people passing the test are in some way not competent, then change the test. Additionally, there is not any guarantee we will have or want any reciprocal agreements with any other states if we even did have some sort of "educational requirements". If reciprocal agreements are so important in this industry then why don't we have reciprocal agreements with the four other states that currently have no pre-licensing educational requirements or the 10 other states that have no continuing educational requirements? Alaska is a very different place from any other state--I would think it would be a great risk to try to think I could just jump into the same level, say for example in Washington State as compared to here. Regardless if we had a reciprocal agreement, let's say for example with Washington, it would still take years to gain the same level of competency in that totally different environment. And if there is concern about people who are not competent getting licenses in this state then why even encourage reciprocal agreements in the first place--why not make them pass all tests same as any Alaskan in order to be sure of

their level of competency.

The bill further restricts the private citizen by trying to give the real estate governing agency latitude in deciding who is entitled to be a member of the industry. The way it is written now seems to be just fine--it's currently clear and objective. I haven't heard anything about why they think they need more discretionary judgement rights on who can or who can not receive a license anyway. Here again the bill is chipping away at the rights and strengths of the private sector and public and free market system. I'm not interested in giving any government agency more authority to meddle in my life and business. There is already a list of requirements established objectively outlining what is needed to receive a license. There should not be any need for discretionary authority if the list is clear and objective. If the list is not clear and objective or needs to be changed to make it current with the times, then change the list so that it is clearly understood by the public and pertinent to life today in the State of Alaska.

I resent the bills way of treating me a member of the public like I don't have enough sense to make my own business decisions and downgrading the group of professionals in the real estate industry who at this time show no record of being incompetent. As a member of the public and real estate industry I want protection from further government regulation , protection from special interest groups like the Association of Realtors trying to join forces with Government Agencies (Dept. of Commerce and Economic Dev. and state mandated real estate office staff) trying to force my hard earned money out of my own pocket book. I want protection from those who try to downgrade my business to a second class status like this bill is trying to do. I want protection from those who try to add more state employees while at the same time taking away basic decision making freedoms from the public. I'm tired of public servants (government agencies in this case Dept. of Commerce and Economic Development and state mandated real estate office ) trying to gang up against the private sector and lobby against the freedoms of the public. Public servants get paid to dream up these causes in order to really further protect they own skins under the guise of big brother to the public while at the same time lobbying for the National Real Estate Association. No one is paying me to take the time to write this document-- it's my own nickle and my own time. And I made that nickle through my own efforts and through hard work and competency.

This bill is ridiculous--it takes on the mentality of trying to fix something that isn't broken and tries to convict the real estate industry of something they COULD POSSIBLY do wrong in the future when there currently is no evidence of any incompetency in the industry now. If this bill were a case in court the judge would kick it out for lack of evidence.

Sincerely,

*Barbara Craig*

Barbara Anne Craig  
Owner / Broker  
P.O. Box 02-0422  
Juneau, Alaska 99802

work: 586-9091  
home: 364-2818

cc: Senate Labor & Commerce:

Dick Eliason  
Pat Rodey  
Jan Faiks  
J. Kerttula  
Jack Coghill

Rep. Bill Hudson



ALASKA ASSOCIATION OF REALTORS, INC.<sup>®</sup>  
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## EDUCATION CALENDAR, 1990

- Jan. 12            HP-12C Advanced Course
- Jan. 15-20        CI 103: Advanced Real Estate Taxation and Marketing  
Tools for Investment Real Estate
- Jan. 24-25        Instructor Development Workshop
- March 8-9        RS 201: Listing Strategies for the Residential Specialist
- April 30-May 4   GRI II, Anchorage
- Oct. 11-12        RS 203: Personal and Career Management for the  
Residential Specialist



March 6, 1990

Finance Committee  
Alaska State Senate  
State Capital Building  
Juneau, Alaska 99811

Re: Senate Bill 28844

Senators,

It has just come to my attention that SB288, regarding changes to AS08.88 of the Alaskan statutes, contains provision that would require additional education requirements for real estate licensees. I would like to take this opportunity to stress my strong opposition to any provisions that would require "mandatory continuing education".

During my years of service on the Real Estate Commission, including one year as Chairman, there were numerous attempts to get this type of legislation passed. We held many public hearings on this matter and tried to balance the desire with the practicality. While there are acceptable arguments such as, "This is the way it is done in other states so therefore we should do it in Alaska!" or "We have to do something to cut down on the numerous complaints!", our careful analysis always ended in not supporting continuing education as a solution. We simply felt forcing a licensee to sit through a real estate class two days every two years would not materially change the quality of their work. The cost of another layer of bureaucracy versus the expected result is not warranted. I do not feel the arguments for or against mandatory education have changed materially since that time.

It is important to keep the State's position with the real estate industry in perspective when considering the adoption of this type of requirement. The State of Alaska, in it's wisdom, has established a set of laws that regulate the right to perform those functions allowed under AS08.88. You can only perform those functions with a license. Realizing that in the spectrum of the real estate industry that there are all levels of expertise, experience, etc., the law established two levels of licensing, broker and salesman. By passing certain requirements, one can become a salesman. If you have at least two years of experience and pass additional requirements, you can become a Broker. You cannot perform those fuctions authorized in the statutes as a salesman unless your are working under a broker's license. In turn, a Broker can have licensees "working" under his broker's license but the Broker has total responsibility for the actions of the salesmen licensees.

This process is not only simple but affective. The Broker has the responsibility and liability for not only himself but for all of the licensees working under him. The public's recourse is through the courts for damages. The State can prevent further miscarriages

by revoking the license.

The only strong argument against this system was that in many real estate circumstances it was unfair to make someone that had been harmed go through the lengthy court procedure to get monetary recourse. To correct this flaw the surety fund and procedure was established.

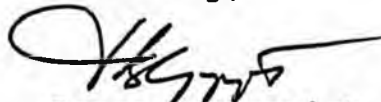
My point is this. The system outlined above works as well as any. Keep it simple and leave clear lines of accountability. It is the licensee's responsibility to educate himself. Since the Broker is responsible he'd better darn well be sure that both he and the licensee's working under him are educated. It is when you cloud this chain of responsibility and accountability that indifference begins. If the State is going to take on a portion this responsibility who is going to be liable? I trust you will not want to accept this liability based upon two days of education every two years.

It is my opinion that strong enforcement of your existing statutes is the solution to improve industry standards, not some mandatory requirement that will only cause dissention and further disburse the liability. If you are inclined to pass this type of legislation, first insist on using the excess surety funds (as they are intended) for voluntary courses. Do this for, say, two years and then get a report. Use this as a test. Poll the licensees. Do they want mandatory education? Do they think it will improve the industry? Remember, many licensees are not Realtors. Realtor is only a designation used by those who belong to a professional organization and many licensees do not espouse to this organizations goals.

In summary, I believe the limited benefits gained from mandatory education are far outweighed by the cost, the insidious bureacracy that will be created, the red tape and the speading of liability resulting from its inception. It is simply not worth the problems that will be caused.

I would be more than happy to discuss this issue with any of you if you so desire. You can reach me in Juneau at 586-8161.

Sincerely,



Lance Youngquist

Folder: Mailbox

Wednesday 03/07/90 07:33 am

To: Randall Burns  
Subject: Broker count

From: GRAYCE OAKLEY  
Date: 03/06/90

There are 574 licensed brokers in the state, office locations as follows:

Fairbanks, North Pole	44
Wasilla, Palmer, Big Lake	52
Anchorage, Eagle River, Chugiak	383
Kenai, Soldotna	23
Homer, Anchor Point, Ninilchik	13
Kodiak	6
Juneau, Douglas	23
Ketchikan	6
Sitka	3
All other areas*	21

\*All others

Bethel	1	Copper Center	1
Dillingham	1	Moose Pass	1
Naknek	1	Seldovia	1
Seward	3	Valdez	2
Willow	3	Delta Junction	2
Nome	1	Tok	1
Gustavus	1	Haines	1
Skagway	1	Wrangell	1

*Barbara Craig Realty*

(Formerly Barbara Jayo Realty)

P.O. Box 02-0422

Juneau Alaska 99802

(907) 586-9091

March 7, 1990

Real Estate Licenses:

Anchor Point 4  
Bethel 2  
Copper Center 1  
Dillingham 1  
Slana 1  
Girdwood 7  
Homer 33  
Kenai 38  
Kodiak 27  
Moose Pass 1  
Naknek 1  
Nikiski 7  
Nenilchik 3  
Ouzinkie 1  
Big Lake 13  
Seldovia 3  
Seward 12  
Soldotna 38  
Sterling 5  
Talkeetna 1  
Valdez 6  
Willow 6  
Dutch Harbor 1  
Fairbanks 165  
College 2  
North Pole 17  
Salcha 1  
Barrow 2  
Delta Junction 8  
Nome 2  
Tok 2  
Juneau 80  
Gustavus 1  
Sitka 9  
Ketchikan 18  
Craig 1  
Wrangell 1  
Haines 1

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

### DIVISION OF OCCUPATIONAL LICENSING

3/6/90  
Barbara Craig  
STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.  
3801 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503  
PHONE: (907) 561-2878

To: Gordon Harrison  
Legislative Research Agency  
From: Grayce Oakley, Executive Secretary *GAO*  
Real Estate Commission  
Date: March 5, 1990  
Re: Request for Surety Fund Information

I was attending a surety fund hearing when your faxed request arrived Thursday. The hearing did not recess until late Friday afternoon. I understand from Terry McGillivary that when she told you the volume involved with minutes of commission meetings, you deleted that request. Here are the remaining statistics:

	FY 86	FY 87	FY 88	FY 89
Income	\$266,960	\$ 26,840	\$205,342	\$ 38,704
Expenses for Claim Settlements	52,357	88,619	90,860	118,031
Expenses paid for Education	136,703	126,239	89,182	76,882
Appropriated for Education*	145,000	145,000	145,000	145,000

\* Although the appropriation remained constant, the actual expenditures were cut back because of the anticipated heavier payouts as a backlog of claims were resolved in FY 88 and FY 89.

Current Balance as of June 30, 1989:	\$243,121.
Plus estimated renewal income--FY 90:	302,000
Less claims paid in FY 90:	28,000
Less claims approved 2/22/90	70,542
Less estimated education expenses FY 90:	100,000
Less claims currently on appeal	97,000
Estimated current available balance:	\$249,000

Uehling 5/6

**Barbara Craig Realty**  
(Formerly Barbara Jaye Realty)

P.O. Box 02-0422  
Juneau Alaska 99802  
(907) 586-9091

March 6, 1990

**Finance Committee/SB288-Real Estate**

The portion of the bill I am against is Sec. 2 (d)--which would require 20 hours of continuing education to get my real estate license renewed.

Education will not make a dishonest person more honest. People generally learn standards of honesty by age 10. I do not believe continuing education will change the basis moral fiber of people therefore the public will not be any more protected.

If the Real Estate Commission has a full time Education Coordinator, Terry McGillivray who puts out a quarterly newsletter, then why isn't that Education Coordinator including important information or case law data in the newsletter? Why isn't the Education Coordinator sending out yearly updated State Statutes, Ak. Administrative Code and Regs in order to keep the people in the industry informed? I pay into the Surety Fund for important data or educational information--I'm a consumer--where is my important updated information I pay for?

If the continuing education requirement was dropped from the bill, then would there be the need to hire an additional state employee as the fiscal note indicates?

In 1989 I received for my payment into the surety fund 4 each newsletters and I believe that is all! I think the RE Commission Education Coordinator should mail out each year:

- a) the quarterly newsletter containing important case law info and other changes and data the RE Commission thinks are vital
- b) updated set of Statutes dealing with real estate, AAC and Regs by registered mail which will assure agents and brokers have the updated information
- c) copy of the trust account manual the RE Commission developed
- d) Brokers kit which is intended as a desk reference for brokers (the RE Commission claims it is nearly complete if not already finished).

I am not for this bill as it now stands because it 1) creates an unnecessary state job 2) it unnecessarily regulates the industry through forced central government planned educational requirements 3) and no stastical data has been presented by anyone showing that there are any more or less honest people in the industry now compared to the past.

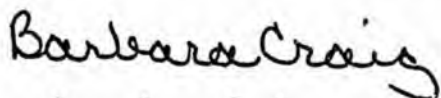
It is my understanding that a number of the surety fund payments being made now are from claims that are YEARS old and have not been responsibly handled until now

which has resulted in heavy draws on the current fund. No one has presented data to prove that current claims are any higher or lower or worse or better than those in the past--only that current claims and complaints are being handled in a more timely fashion now.

Prelicensing educational requirements are something entirely different from the ongoing educational requirements for licensing renewal. Those two distinct matters should be separated when dealing with this bill. I am against the ongoing educational requirements for renewal of license. How can any state government controlled ongoing education program provide equal educational opportunities for people in Kodiak, Nome, Ketchikan, Juneau and Anchorage. Each community is very different and has different needs. If you eliminate the ongoing educational requirements for license renewal (Sec. 1 (d)) then the fiscal note should reflect zero cost for the remainder of the bill-- it should not be necessary to hire additional staff if no central government controlled education programs for renewal of license are approved. In addition the RE Commission anticipates they will spend approx \$25,000 more for education this year over last and those funds are paid directly by people working in the industry. I would be happy to receive the items listed above as fair exchange for my payment into the Surety Fund. But leave the subject matter and methods of ongoing education needed in my business up to me.

Our licensing test is reportedly similar to the test of 25 other states--we are doing exactly what other states are doing, but it is claimed by some not to be working. So should we blindly follow what some states do regarding continuing education? Should we also blindly follow what other states think about locking up Alaska for a wilderness park? Should we also follow the same path in their approach to wetlands? We should learn from other States and find out how they do things but not necessarily follow them. Just because other states have different methods for dealing with an industry does not mean we need to blindly follow their example. Let's think things out slowly and carefully for ourselves. Let's take the time to think about what is best for Alaska and work on what is best for us here and now and for our future.

Respectfully,



Barbara Anne Craig  
Owner/Broker

BY SEN. STURGULEWSKI

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission; and  
7 providing for an effective date."

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

9 \* Section 1. AS 08.88.081 is amended to read:

10 Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall  
11 adopt regulations necessary to carry out the purposes of this chapter.  
12 [PERTAINING TO THE RESPONSIBILITIES OF PERSONS LICENSED UNDER THIS  
13 CHAPTER AND THE GROUNDS FOR REVOKING OR SUSPENDING A LICENSE].

14 \* Sec. 2. AS 08.88.091 is amended by adding new subsections to read:

15 (b) An applicant for licensure under AS 08.88.171(c) must com-  
16 plete 20 hours of education approved by the commission before the  
17 person may be licensed under that subsection.

18 (c) An applicant for licensure under AS 08.88.171(a) or (b) must  
19 complete 15 hours of education approved by the commission before the  
20 person may be licensed under either of those subsections.

21 \* ~~(d) A person who is licensed under this chapter must complete 20~~  
22 ~~hours of continuing education approved by the commission before the~~  
23 ~~person's license may be renewed.~~

24 (e) The commission may not approve an education or ~~continuing~~  
25 ~~education~~ course required under this section unless the commission  
26 certifies the course outline and approves the instructor of the course  
27 before the course is conducted.

28 \* Sec. 3. AS 08.88.171(a) is amended to read:

29 (a) A person is eligible for [ENTITLED TO] a real estate broker

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.  
3601 C STREET, SUITE 722  
ANCHORAGE, ALASKA 99503  
PHONE: (907) 861-2878

To: Gordon Harrison  
Legislative Research Agency  
From: Grayce Oakley, Executive Secretary *GAO*  
Real Estate Commission  
Date: March 5, 1990  
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**SUMMARY**

**REAL ESTATE STATUTES & ENFORCEMENT PROCEDURES**

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**Introduction**

**Real Estate Commission**

**Qualifying for a Real Estate License**

**Maintaining a Real Estate License**

**Inactivating a Real Estate License**

**Additional Broker Responsibilities**

**Disciplinary Action for License Law Violations**

**The Real Estate Surety Fund**

**AS 08.88 Real Estate Brokers and Salesmen**  
**AS 08.01 Centralized Licensing Statutes**  
**12 AAC 02 Occupational Licensing Regulations**  
**12 AAC 64 Real Estate Commission Regulations**

**Real Estate Commission Forms**

**Individual License Application**  
**Office Registration**  
**Partnership/Corporation Affidavit**  
**License Complaint**  
**Surety Fund Claim for Payment**

## THE REAL ESTATE SURETY FUND

Legislation enacted in 1974 created the Real Estate Surety Fund with a twofold purpose. First it provided indemnification up to \$10,000 per transaction for judgments awarded by the courts to persons who suffered a financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation or conversion of trust funds. Second, it could be a source of funding for real estate education of both the public and licensees after reaching the specified minimum balance of \$250,000.

The Commission-sponsored seminars held periodically in major population areas of the state and the publication of the Listing and Earnest Money Manual are the tangible results of the second stated purpose.

The first and primary purpose of providing indemnity to satisfy uncollectable judgments against real estate licensees was begun when the first surety fund fees were paid into the fund concurrent with the 1976 biennial license renewal.

A 1980 legislative amendment removed the previous requirement that the claimant first obtain a civil court judgment and gave the Commission the quasi-judicial role of adjudicating the surety fund claims via administrative hearings. Since 1980, the basic procedures outlined in AS 44.62.330-630 have been used in conjunction with specific surety fund claim processing instructions set forth in the regulations (12 AAC 64.280-330) adopted by the Commission in December 1982.

### Surety Fund Authorization

AS 08.88.450

The Real Estate Surety Fund is administered as a special account of the state's general fund. The primary source of revenue is the fee paid by each licensee in lieu of bonding. Filing fees paid by claimants that are retained by the Commission are also deposited into this account. It may not exceed \$500,000 and any amounts in excess of \$250,000 may be designated for real estate educational purposes, such as those named in AS 08.88.091.

AS 08.88.455

With each initial application for a real estate license and the subsequent renewals, the applicant must pay a surety fund fee of up to \$125. The Commission has the authority to adjust the amount of the fee by regulation, but may not make it higher than \$125 per licensing period. When making an adjustment, the anticipated needs for claims and educational expenses must be considered simultaneously with the statutory directive to maintain a minimum fund balance of \$250,000.

\* { Expenditures from the fund for educational purposes are submitted in advance with the proposed budget for the Commission and appropriated from the fund by the legislature.

### Supervising Licensed Personnel

- AS 08.88.071 (c) An individual licensee's conduct is not blamed on the broker unless he/she has knowledge of and agrees to it ahead of time or condones it by remaining silent. However, a broker is responsible for supervising the activities of the licensees in the office and for reviewing all agreements relevant to the transactions they produce. This encompasses listings, purchase agreements, addendums, occupancy agreements, etc. The broker is responsible for the conduct he/she should know about in the course of exercising adequate supervision, including trust account records of property owned and managed by the licensee.

### Record Keeping

- AS 08.88.331 A licensee must process all transactions through his/her broker, and all money collected by the licensees must be turned over the broker. In turn, the broker must account for all monies he/she receives. Transactions where the licensee is a principal in the transaction must also be processed through the broker.
- AS 08.88.351 A major responsibility of the broker is keeping records. This includes:
- 1) Keeping a complete record of all the real estate transactions of the office for at least three years.
  - 2) Preparing a closing statement accounting for all money receipts and disbursements in each transaction.
  - 3) Maintaining a trust account for separate handling of other people's money temporarily entrusted to his/her keeping. Specific requirements for trust account records are discussed later in this section.
  - 4) Making trust account records available to the Commission for audit.
- 12 AAC 64.135 (a) The Commission must give a broker 72 hours notice to conduct an inspection of transaction records. The inspection is to be done during normal business hours (between 8 a.m. and 5 p.m. Monday through Friday). The Commission is entitled to see listing agreements, purchase agreements, trust account deposit and disbursement records, closing statements, and broker/licensee communications regarding transactions.
- 12 AAC 64.135 (b) The Commission may order a trust account audit without prior notice. The auditor must present the notice during normal business hours. In this circumstance, the broker can request a 24-hour delay, but the trust records must be secured by the auditor for the duration of the delay.

## MAINTAINING AN ACTIVE REAL ESTATE LICENSE

An active license is one which is issued in conformity with the criteria described in the preceding section and has not been revoked, suspended, allowed to lapse, or placed on inactive status.

Once obtained, a license is valid as long as the person continues in that position, pays the appropriate renewal fees and does not incur disciplinary action resulting in a suspension or revocation of his/her license.

AS 08.88.455

*When & where*

Although Alaska does not have a continuing education requirement for license renewal, the Commission encourages licensees to further their professional growth by sponsoring educational courses funded by Surety Fund monies collected in excess of the minimum balance in the fund.

### Activities Requiring a License

In general, people who provide real estate services for others for pay must be licensed. A person can sell his/her own property without a license; or a person fitting the exceptions listed in AS 08.88.421 need not be licensed, but usually, only a licensed person can sell property for others.

AS 08.88.161

The activities that are considered "dealing in real estate" for which a person must be licensed are:

- 1) Selling, exchanging, renting, leasing, auctioning or buying real estate.
- 2) Listing real estate for sale, exchange, rent, or lease. Listing means contracting with a property owner to act as his agent in marketing his property. The fee or commission paid for this service is usually based on a percentage of the sale price.
- 3) Collecting rent for the use of real estate.
- 4) Dealing in real estate options for the improvement, purchase or lease of real property. An option is the right to purchase, lease or improve the property in the future at a predetermined price.
- 5) Helping to find a buyer for a parcel of real property and/or assisting in the negotiation of a real estate transaction.
- 6) Presenting oneself to the public as doing any of these things.
- 7) Trying to offer to do any of the above listed things.

Examination Content

AS 08.88.191

The Commission is required to offer a real estate exam at least once a year. In Anchorage it is given twelve times a year; in Fairbanks, Juneau and Kenai the exam is offered quarterly. Other locations are by individual application.

There are two versions: the salesperson's and the broker's exam. Alaska is one of the 25 states whose Commission contracts with Educational Testing Service (ETS) of New Jersey to prepare, administer and grade both versions of the exam. The Commission is responsible for reviewing exam contents, but ETS retains full copyright over its examinations, including the portions covering the individual state's statutes.\*\*

The broker's exam is a little longer and more difficult than the salesperson's, but both cover essentially the same material. Five hours are allowed to complete either exam.

Approximately three-fourths of the exam is uniform for all states on general real estate principles and includes such topics as: real estate contracts, financing, deeds, interest in real property, condominiums, fair housing, agency, property management, settlement procedures, appraisals, planning and zoning, property descriptions, and taxes and assessment. The remainder is tailored to the statutes and regulations of each state. In Alaska it encompasses the following statutes and regulations with additional emphasis in the broker's exam on trust account and supervisory responsibilities:

- AS 08.88.011-500 Real Estate Brokers and Salesmen
- AS 34.03.010-380 Uniform Residential Landlord and Tenant Act
- AS 34.08.010-995 Uniform Common Interest Ownership Act
- AS 45.55.010-270 Alaska Securities Act of 1959
- 12 AAC 64.010-950 Real Estate Regulations

A copy of these statutes can be obtained for \$15 plus \$5 for mailing from the Commission office. Also available is an information bulletin published by ETS that outlines testing and scoring procedures and provides sample questions for both exams.

Administration of the Exam

AS 08.01.050

Exams are given on the fourth Saturday of the month unless that is a holiday weekend. In those months, the exam is on the third Saturday. Notices are published in local newspapers prior to the exam in each community where it is offered. The application forms to preregister for taking the exam are available at the office or from most of the pre-licensing schools. An application form and the \$65 exam fee should be mailed to ETS before the first of the month in which an individual wishes to take the exam. He/she should receive an admission ticket from ETS at least one week

AS 08.88.221  
12 AAC 64.910

12 AAC 64.040

extortion, conspiracy to defraud creditors, or any other felony involving moral turpitude, or, if convicted of such an offense, the person has completed the sentence imposed upon conviction, and if the person is employed by a real estate broker. Unless the salesman fails to pay the biennial renewal fee or unless the real estate salesman's license is suspended or revoked under AS 08.88.071(a)(3), a real estate salesman's license continues in effect so long as the salesman is employed as a salesman by a licensed real estate broker. If the salesman stops being employed as a real estate salesman, the real estate salesman's license is suspended from the time the salesman stops until the salesman again is employed as a salesman by a licensed real estate broker.

(d) A licensee shall promptly inform the commission of a change in business association that affects the status of the licensee's license under this section. (sec. 1 ch 95 SLA 1964; am sec. 3 ch 130 SLA 1966; am sec. 1 ch 55 SLA 1969; am secs. 5-7 ch 28 SLA 1974; am secs. 12-15 ch 167 SLA 1980)

*NOTES TO DECISIONS. Relationship between brokers and salespersons. — The Alaska statutory system governing real estate brokers and salespersons implies that the relationship is one of employer and employee. Calvo v. Calhoun, Sup. Ct. Op. No. 1368 (File No. 2839), 559 P.2d 111 (1977)*

*Applied in Black v. Dahl, Sup. Ct. Op. No. 2318 (File No. 4770), 625 P.2d 876 (1981).*

*Collateral references. — Real estate broker. 39 ALR2d 606.*

*Attorney's right to act as real estate broker without having been licensed as such. 99 ALR2d 1151.*

*Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 ALR3d 523.*

*Procurement of real estate broker's license subsequent to execution of contract for services as entitling broker to compensation for service. 80 ALR3d 318.*

*Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold included real property. 82 ALR3d 1139.*

→ **Sec. 08.88.181. Content of examination.** (a) The real estate examination may include, but is not necessarily limited to, questions on business ethics; arithmetic; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, legal descriptions, building restrictions, agency and brokerage; and the general provisions of this chapter and of the regulations of the commission.

(b) The real estate salesman examination covers the same subjects as the real estate broker examination, but is less difficult.

(7)

→ **(c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public.** (sec. 1 ch 95 SLA 1964; am sec. 2 ch 55 SLA 1969; am sec. 16 ch 167 SLA 1980)

**Sec. 08.88.191. Administration of examination.** (a) The commission shall offer written examinations at periodic intervals but at least once a year.

(b) If the commission contracts with a national testing service to prepare, administer and grade examinations,

→ **(1) the commission shall review the examination and approve its contents;**

(2) application for the examination, accompanied by the proper filing fee, may be transmitted by the applicant directly to the national testing service.

(c) An applicant who fails the written examination may request that the examination be reevaluated. The commission shall provide by regulation for a system of reevaluating examinations on request of an applicant who fails the examination. The system provided by the commission may provide for reevaluation by the testing service or by any other person. (sec. 1 ch 95 SLA 1964; am sec. 2 ch 108 SLA 1970; am secs. 1, 2 ch 24 SLA 1972; am sec. 8 ch 28 SLA 1974; am sec. 17 ch 167 SLA 1980)

**Sec. 08.88.201. Reexamination.** A person who fails an examination may apply for a subsequent examination, but shall pay the application fee for each application. (sec. 1 ch 95 SLA 1964; am sec. 32 ch 6 SLA 1984)

**Sec. 08.88.061. Assistants.** The commission may employ assistants to

(1) prepare questions on examinations;

(2) grade examinations;

(3) investigate alleged violations of this chapter. (sec. 1 ch 95 SLA 1964; am sec. 57 ch 218 SLA 1976; am sec. 4 ch 167 SLA 1980)

**Sec. 08.88.071. Duties of the commission.** (a) The commission shall

(1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;

→ (2) prepare and grade examinations;

(3) after hearing, have the authority to suspend or revoke the license of a licensee who

(A) with respect to a real estate transaction

(i) made a substantial misrepresentation;

(ii) made a false promise likely to influence, persuade, or induce;

(iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;

(iv) has engaged in conduct that is fraudulent or dishonest;

(v) violates AS 08.88.391;

(B) procures a license by deceiving the commission, or aids another to do so;

(C) has engaged in conduct in which the commission had no knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;

(D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning the licensee's business or concerning real estate for sale in the licensee's business in this or any other state;

(E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;

(F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;

(G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;

(H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;

(4) prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations promulgated under this chapter;

*Annual Report for*  
FY 87, 88, 89

STATE OF ALASKA  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
Real Estate Commission

To: Grayce Oakley 6 July 1989  
From: Joseph P Koss, Jr. *JPIC*  
Subject: Activity summary for FY 1989

Opening Inventory	60	
Complaints filed	<u>71</u>	
		131
Closed without action	(57)	
License actions	<u>(18)</u>	
Total complaints closed		( <u>75</u> )
Closing inventory		<u>56</u>

Action	Licensees	Complaints
Revoked	6	8
Suspended	2	4
Denied	1	1
Reprimand	1	1
Dismiss	1	1
Fined	2	3

- Revoked--Burbridge, Hartlieb, Staniszewski, Szymanski, Travers, Yoder
- Suspended--Rich, Shelden
- Denied--McGahan
- Reprimand--Rice
- Dismiss--Carter
- Fined--Klug, Klug

Eleven random trust account audits were completed, with results published in the newsletter.

SURETY FUND CLAIM STATISTICS

	FY89	
Opening inventory (includes 2 appeals to Superior Court)	47	
New claims filed	<u>16</u>	
Total claim inventory		63
Claims paid		
Approved FY88, paid FY89	6	\$ 46,449
Approved & paid FY89	11	75,806
Approved FY89, payment pending	<u>0</u>	
Total claims paid FY89		<u>\$122,255</u>
Claims closed without payment		
Withdrawn/settled before hearing	3	
Dismissed	3	
Denied	<u>14</u>	
Total		20
Appeals		
Filed in Superior Court in FY89 (1 appeal dismissed) (6 pending)	7	
Carried over from FY88 (1 sustained REC decision; appealed to Supreme Court) (1 dismissed; closed unless appealed to Supreme Court)	2	
Total appeals pending		<u>[7]</u>
Total claims closed		30
Closing inventory		33
Of the closing inventory		
For REC action this meeting	17	
In progress, filed in FY89	7	
Appeals pending	7	
In abeyance	2	

## SURETY FUND CLAIM STATISTICS

	FY88	
Opening inventory	67	
New claims filed	<u>11</u>	
Total claim inventory		78
Approved & paid in 88	2	
Approved in 88, paid in 89	4	
Approved in 88, pmt. pending	3	
Approved in 88, withdrawn after appeal filed	1	
Approved pre-88, paid in 88	<u>1</u>	
Total Claims Paid in FY88		11
Dismissed	7	
Appeal pending	<u>(1)</u>	
Total Dismissed		6
Denied	17	
Appeal pending	<u>(1)</u>	
Total Denied		<u>16</u>
Total Claim Files Closed/closed		<u>33</u>
Closing Inventory		<u>45</u>

In addition to the above claims listed as paid, checks were delivered on three claims charged to the fund in FY87 for a total of \$30,000.