

ALASKA LEGISLATURE

1322

HOUSE and SENATE FINANCE COMMITTEE FILES, 1995-1996

ORGANIZATION AND FUNCTION

The Board of Nursing Home Administrators was created by the Alaska legislature in 1975 in response to federal law requiring states to license nursing home administrators in order for nursing homes in the state to receive Medicaid assistance from the federal government. The board (see inset at right) consists of three members. By statute, the members are one nursing home administrator licensed and practicing in the state, one registered nurse having no direct financial interest in any nursing home, and one person from the general public.

BOARD OF NURSING HOME ADMINISTRATORS

Gary Sheridan, Nursing Home Administrator
Kathy S. Lockhart, Registered Nurse
Rose Palmquist, Public Member

Alaska Statute (08.70) defines the board's authority, purpose, and scope of work. The primary duty performed by the board is the licensing of qualified applicants. The board is assisted in its duties by Division of Occupational Licensing (OL) personnel. OL processes applications, maintains licensing files, answers board-related correspondence, and provides administrative support to the board. In addition, OL investigates any complaints involving nursing home administrators.

REPORT CONCLUSION

In accordance with AS 08.03.010(18), the Board of Nursing Home Administrators (BNHA) is presently scheduled for termination on June 30, 1994. Alaska Statute 08.03.020 provides BNHA one year in which to conclude its affairs if the legislature does not enact legislation for the continuance of the board. We recommend that BNHA be allowed to terminate for the following reasons. First, the board has been inactive for much of its existence. This inactivity is evidenced by the lack of board meetings held, statutorily required annual reports which have not been issued, and statutes and regulations which are out-of-date when compared with current licensing practices. Second, the U.S. Department of Health and Human Services has communicated to us that it is unnecessary for the State to have a board in order to license nursing home administrators. As there is currently a federal requirement that the state license nursing home administrators in order for nursing homes to receive federal Medicaid receipts, a mechanism for licensing nursing home administrators is necessary. Consequently, we recommend that the Division of Occupational Licensing license nursing home administrators based on legislative criteria until it is determined that there is no longer a federal requirement to license nursing home administrators (see Recommendation No. 1).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Pending the Department of Law interpretation regarding federal requirements, the legislature should allow the BNHA to terminate on June 30, 1994. Consistent with federal requirements, the legislature should amend statutes to assign OL the responsibility for licensing nursing home administrators.

a. The existence of BNHA is not required for the public's protection.

Public protection can be provided by other state agency licensing and certification procedures. The Alaska Department of Health and Social Services (DHSS), Division of Medical Assistance, Health Facilities, Licensing and Certification, certifies nursing homes for the U.S. Department of Health and Human Services (USDHHS). As described by DHSS personnel, the certification process is a comprehensive review. Approximately four hundred items are evaluated when a team of health facility workers certifies a facility. The teams consist of approximately three to five people and most of the team members are registered nurses. Areas covered under the certification review include: Nursing Services, Physician Services, Medications, Rehabilitation Services, Dental Services, Pharmacy Services, Infection Control, Physical Environment, Administration, Quality of Care, Resident Rights, and Quality of Life.

According to DHSS personnel, the governing body of the nursing home is responsible for the operations of the facility. The nursing home administrator is hired by the governing body and is ultimately responsible for all aspects of the nursing home facility on a day-to-day basis. During certification reviews the nursing home administrator is evaluated to ensure that the care given is in accordance with professional standards and principles.

The administrator is responsible for the competency of his or her staff and all facets of the operation of the facility. When there are serious problems in a nursing home, such as concerns over nursing, the nursing home administrator is cited as well as the nursing section. The nursing home administrator is ultimately responsible for any problem in the facility. DHSS has the authority to require that problems noted during certification reviews be corrected and can order the facility closed for lack of compliance with mandated corrections.

In addition to the monitoring done by DHSS, screening of nursing home administrators is undertaken during their initial hiring by the governing body of the nursing home.

- b. We have noted deficiencies in the performance of the board in prior audits and we continue to observe similar problems.

BNHA is currently required to meet annually. BNHA did not meet in three of the last five fiscal years. The last board meetings were held in FY 90 and FY 92. The most recent sunset reviews (FY 86 and FY 90) of BNHA also noted that the board did not fulfill its statutory requirements to meet. Prior to 1986, BNHA had a five member board which was required to meet semiannually. Changes were made to the board's statutes in 1986 to reduce board membership to three and require annual board meetings. It was thought a smaller board that was required to meet less often would be adequate to accomplish its statutory requirements. However, as can be seen by a continued disinterest in meeting, these changes have not served to increase board compliance with state laws.

The board is also required by law to prepare and submit annual reports to the governor and legislature. Board of Nursing Home Administrators' annual reports were available for FY 90 and FY 93; but were not prepared for FY 91 and FY 92.

While these deficiencies are attributable to the inactivity of BNHA, we feel no purpose would be served by recommending increased board activity. Statutory requirements of the board have already been reduced to allow the board to meet these requirements. In spite of this, the board has consistently had difficulties in meeting its statutory requirement to meet and carry out the objectives of licensing nursing home administrators.

- c. Federal law does not require a state board to license nursing home administrators.

The predominate rationale presented to us for having the board to license nursing home administrators is to meet federal requirements. United States Code, Title 42, § 1396a(29) requires a state to license nursing home administrators in order for that state to receive Medicaid assistance from the federal government. Thus, to receive Medicaid funding, a nursing home must be administered by a licensed nursing home administrator. However, public law has repealed this section, effective when the Secretary of USDHHS promulgates standards regarding the qualifications of facility home administrators. To date the regulations regarding qualifications of nursing facility administrators are in draft form. USDHHS has no estimate as to when these regulations will be issued in final form.

Our understanding of the federal Medicaid requirement concerning the licensing of nursing home administrators is that state licensing of nursing home administrators is required in the manner outlined in state statutes and regulations. The information that we received from representatives of the USDHHS, Health Care Financing Administration for Region X, is that until the effective repeal date of U.S. Code, Title 42, § 1396a(29), there is a requirement that the State license nursing home administrators. However, the State may license nursing home administrators without the benefit of a board. Furthermore, as soon as the Secretary of the USDHHS

promulgates standards regarding the qualifications of nursing facility administrators, their opinion is that the licensing of nursing home administrators will become a state prerogative.

In our opinion, the primary function the board has provided is approving applicants to sit for the examination. We believe that OL can adequately administer the licensing of nursing home administrators based on statutory requirements until there is no longer a federal requirement to license nursing home administrators. Therefore, we recommend that OL actively work with the Department of Law, Department of Health and Social Services, and USDHHS to resolve this issue.

If the legislature chooses to continue the board, we have made recommendations which, if implemented, will improve the efficiency and effectiveness of the board.

Recommendation No. 2

BNHA should revise the BNHA regulations to reflect current licensing practices.

The National Association of Boards of Nursing Home Administrators (NAB), in cooperation with the Professional Examination Service, prepares a nursing home administrator examination. The passage of this examination is one of the requirements for licensure as a nursing home administrator in Alaska. The NAB notified OL in a letter dated June 16, 1989, of changes to the examination which should be addressed by state boards of nursing home administrators.

a. The national examination will be given on certain days throughout the year.

The NAB testing dates are the second Thursdays of January, April, July, and October. The new testing dates became effective January 1, 1992; however, NAB urged states to follow the new dates wherever possible by January 1, 1990. However, 12 AAC 46.030(c) states that the examination is offered semiannually in May and November. The national organization exempted the State of Alaska from complying with the national testing dates and allowed the examination to be given May 21, 1993. NAB has stated that this is the last time that they will accommodate the State and the State must comply with the new testing dates in the future. States may offer the examination less than four times a year, but the date of the examination must be on the second Thursdays of January, April, July, and October. According to OL staff, the examination will be given in Alaska on the second Thursdays of July and October.

As noted previously, the regulations continue to state that the examination is offered in May and November. Since the application deadline for taking the examination is thirty days prior to the examination, nursing home administrator candidates intending to take the November examination in reliance on current regulations could be prevented from taking the examination.

b. The NAB will be revising how it scores the national examination.

Recently, OL has received from NAB two scores for each candidate taking the nursing home administrator examination. One score is a percentage score also referred to as a raw score. For example, someone answering 113 of the 150 questions on the examination correct, would receive a percentage score of 75%. Another score (referred to as a scale¹ score) is also provided. The regulations have not yet been revised and are silent as to whether a raw score or scale score is accepted as a passing grade. The NAB recommended that the state board adopt as its passing score the scale score. Although the board, at its November 13, 1989 meeting, discussed the need to define the scoring methodology used, the regulations have not been revised to define the scoring methodology used.

The scoring methodology issue arose for two candidates taking the Spring 1991 nursing home administrator examination. These candidates appealed the decision that they had failed the examination. The Board of Nursing Home Administrators reviewed their decision and denied the license application based on a raw score of less than 75%. Both candidates appealed the board's decision. The case went before a hearing officer. The hearing officer's decision was that

the State may choose to adopt only a raw or scaled score as its standard, but that should be done after public notice and through the regulation process. Until then, a passing score of 75% on either the raw or scaled score should be accepted as meeting the requirement of 12 AAC 46.020(c)(1).

The Board of Nursing Home Administrators accepted the hearing officer's decision on October 22, 1991. Since the date of the adoption of the decision, the board has had the opportunity to take action on this matter but has not yet revised their regulations.

Candidates should be able to rely on the accuracy of the information in the regulations for the given occupation they are pursuing. Inaccurate or inadequate information in the regulations could potentially be relied on by the occupational licensing candidate to his or her detriment.

¹Scaling is a statistical process used by NAB to provide comparability in examination results over a period of time.

Recommendation No. 3

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of the Governor, Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

OL's methodology for determining FY 93 fees allocates costs to a board or occupation in one of two ways. Some costs, termed direct costs by OL, are directly distributed to a specific licensing program. Direct costs include personnel assigned to one specific occupation, travel associated with board business, public notices of board proceedings, and printing of board applications and statute booklets. Other costs, termed indirect costs, are allocated based upon the percentage of licensees in each occupation compared to the total number of occupational licensees. These costs include the expenditures associated with licensing examiners', investigators', hearing officers', management's, and clerical staff's time.

Effective August 24, 1992, DCED was required to establish fee levels so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for that occupation (AS 08.01.065(c)). Prior to FY 93, DCED could establish fees that reflected, but did not exceed, the actual costs of the activity for which the fee was charged and could establish a fee at less than full cost if they deemed it unreasonable to impose the full cost of the activity on the licensee.

Our office and OMB have both reviewed OL's cost allocation methodology to determine if it is sufficient to meet the requirements of AS 08.01.065(c). Both our office and OMB do not believe that OL's cost allocation methodology distributes costs reflective of the actual effort spent. The primary disparity involves the classification of licensing examiners', investigators', and hearing officers' time. The manner in which these three categories of employees' cost have been allocated prior to FY 94 can cause occupations with a large number of licensees to absorb costs that are not associated with the actual effort spent regulating their profession.

In addition to our concerns with OL's cost allocation methodology, we found problems in how they distributed costs in their calculation of a two-year average of expenditures used in determining FY 93 license fees. The percentages applied to allocate indirect costs were not always correct. These inconsistencies were caused by formula errors on spreadsheets prepared by OL staff. Also, documentation supporting some expenditures on the spreadsheets has not been retained. Review of selected current information available does not confirm these numbers. As discussed with OL staff, we recommend that OL retain original supporting documentation in their future distributions of costs.

In their September 1993, *Occupational Licensing Fee-Setting Policy Assessment* report OMB made seven recommendations to OL on how to allocate costs so that the intent of AS 08.01.065(c) is met. According to OMB's report, "A follow-up review for this project ... DCED has recently indicated that, for the determination

of the FY 94 fees, they will allocate costs for licensing examiners, investigators, and hearing officers based on estimated time spent by those employees, with periodic adjustments to actual time spent in accordance with our office and OMB's recommendations. As of October 1993, the allocation of direct and indirect costs using FY 93 expenditure data has not been performed.

DCED should continue to work with OMB in establishing fee levels for occupational licensees that are more reflective of actual regulatory cost of the occupation.

Recommendation No. 4

OL should, in conjunction with the Equal Employment Opportunity Office (EEO), review the BNHA licensure application form to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The nursing home administrator application requires a photograph of the candidate. EEO within the Department of Administration, Division of Personnel discourages agencies from asking applicants information on sex, height, weight, and hair and eye color. If an applicant were denied a license, the board or OL may find it difficult to prove that there was no discrimination involved if this type of information had been provided to the board members reviewing the application for licensure.

The nursing home administrator application form used by OL should be reviewed with EEO to make sure that a photograph is pertinent to the licensure of nursing home administrator candidates. OL indicated that one of the reasons photographs are required is to prevent fraud when a licensee moves from one state to another. If a photograph is considered necessary for identification, to prevent fraud or for other reasons, it should be separated from the application prior to review of the application for licensure. If a photograph is not necessary, the request for one should be removed from the application.

Recommendation No. 5

If BNHA remains in existence, OL should continue their efforts to provide adequate public notice of their board meetings.

Alaska Statute 08.01.050 requires the department to publish notice of examinations and meetings. Alaska Statute 44.62.310 requires reasonable notice for all meetings required to be open. The notice must include the date, time, and place of the meeting and, if the meeting is by teleconference, the location of any teleconferencing facilities that will be used. The Attorney General has defined adequate public notice as three business days prior to the meeting and, when possible, ten days. OL's public notice policies are even more restrictive in that they require public notice at least two weeks prior to a scheduled meeting and one week prior to an unscheduled teleconference.

BNHA did not meet in FY 93. A BNHA board meeting and a teleconference meeting were held in FY 92. Adequate public notice was given for the board meeting, with one exception. There was no evidence that the public notice was published in one of the three Alaskan cities cited in OL's policies and procedures governing public notice. The teleconference meeting was published in two newspapers in less than a week prior to the teleconference.

OL has a large volume of public notices and the division's public notice process is very labor intensive. OL is in the process of initiating a system to automate the public notices. OL should continue their efforts to automate the public notice process in order to ensure adequate public notice.

Recommendation No. 6

OL should request statutory changes to AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meeting minutes and production of an annual report.

Alaska Statute 08.01.050 establishes DCED's administrative duties for professional licensing boards. Alaska Statute 08.01.070 identifies the administrative duties of the boards. Included in the board's responsibilities are the taking of minutes and records of all proceedings, forwarding a draft of the minutes of proceedings to the department within 20 days after the proceedings, and submission of an annual performance report to the department before the end of the fiscal year. However, we found that OL rather than the board performed these duties.

For example, the licensing examiner is responsible for tape recording the board proceedings, recording votes, taking notes, and preparing the minutes. OL also compiles much of the information in the board's annual report. OL has the records needed to determine statistics such as the number of licenses issued and examinations given and passed.

We recommend that OL review the statutes and request changes that reflect actual responsibilities and timelines that are both practical and timely.

Recommendation No. 7

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Alaska Executive Branch Ethics Act (AS 39.52) requires members of boards and commissions to disclose potential violations of that Act to their designated supervisor. The designated supervisor for members of a board is the chair or acting chair of the board. Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act, as does Law. Disclosures by board members are compiled by OL for submission to Law. These reports are required to be submitted on a quarterly basis. Law reviews these submissions and makes available to the public a

summary of the reports received with sufficient deletions to prevent disclosure of a person's identity.

These reports have not been submitted in a timely manner. In 1991, no reports were submitted to Law. In 1992, reports were submitted three to six months after the end of the quarter. In 1993, the first two quarters' reports were submitted in July. In addition, division personnel have indicated that there is some confusion as to what should be reported. While staff at Law believe that OL understands what should be reported, written policies and procedures governing the reporting of potential ethical violations would benefit OL as well as board members. There would be clear criteria for OL staff to follow as to what should be reported as well as when it should be reported.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, Alaska Statute 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

We have determined that a public need for the Board of Nursing Home Administrators (BNHA) has not been demonstrated. Public protection is provided by State licensing and certification of nursing homes in the State. The State Department of Health and Social Services (DHSS) certifies nursing homes for the U.S. Department of Health and Human Services (USDHHS). As described by DHSS personnel, the certification process is a comprehensive review. According to DHSS personnel, the governing body of the nursing home is responsible for the operations of the facility. The nursing home administrator is hired by the governing body and is ultimately responsible for all aspects of the nursing home facility on a day-to-day basis. In addition to the monitoring done by DHSS, screening of nursing home administrators is undertaken during their initial hiring by the governing body of the nursing home (see Recommendation No. 1).

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

BNHA is currently required by state law to meet annually. BNHA did not meet in three of the last five fiscal years. The last board meetings were held in FY 90 and FY 92 (see Recommendation No. 1).

The board is also required by law to prepare and submit annual reports to the governor and legislature. The BNHA annual reports are available for FY 90 and FY 93; but were not prepared for FY 91 and FY 92 (see Recommendation No. 1).

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

The board has not pursued revising their statutes during FY 90 through FY 93. We are not aware that the board has any current plans to revise their statutes.

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

One of the methods for the public to report to a board is by providing a public comment time period at board meetings. As noted previously, the board did not meet in FY 93 (see Recommendation No. 1). A board meeting and a teleconference meeting were held in FY 92. Adequate public notice was given for the board meeting, with one exception. There was no evidence that the public notice was published in one of the three Alaskan cities cited in OL's policies and procedures governing public notice. The teleconference meeting was only published in two newspapers and one newspaper did not publish the teleconference meeting three business days prior to the meeting. According to an Attorney General Memorandum, this is the minimum acceptable time for advertising meetings (see Recommendation No. 5).

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

See preceding paragraph. We believe that the board has not encouraged public participation. The board has not met on a regular basis to make decisions on board-related matters and has not pursued revision of their regulations (see Recommendation Nos. 1 and 2). These are both areas in which public participation can be obtained in the board's decision-making process.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The Division of Occupational Licensing received one complaint about the professional competence of a nursing home administrator during FY 91 through FY 93. Based upon review of this case, OL is adequately handling complaints filed against nursing home administrators.

The Office of the Ombudsman had one closed case file during this same period. This case related to the untimely receipt of test scores from the national testing agency. Recent test scores have been sent to OL in a timely manner.

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

As of June 30, 1993, there were 79 State of Alaska licensed nursing home administrators. During FY 93, eleven nursing home administrators were licensed by the board. During our testing, we found no instances where BNHA had licensed unqualified applicants.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

The nursing home administrator application requires information questioned by the Equal Employment Opportunity Office (see Recommendation No. 4).

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

Please refer to the previous section, Findings and Recommendations.

APPENDICES

APPENDIX A

Department of Commerce and Economic Development
Board of Nursing Home Administrators
Schedule of Revenues Compared with Expenditures
(Unaudited)
(Note 1)

Revenues (Note 2)	\$2,800
Expenditures (Note 3)	<u>8,653</u>
Excess of Expenditures over Revenues (Note 3)	<u>\$(5,853)</u>

Note 1

The Schedule of Revenues Compared with Expenditures was prepared from discussions with Division of Occupational Licensing (OL) personnel and from OL prepared documents comparing revenue and expenditures for fee determination. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Schedule of Revenues Compared with Expenditures.

Note 2

A significant portion of revenues is comprised of license renewal fees. For the current fee structure, see Appendix B. Licenses are renewed biennially. Because of the renewals, revenues vary substantially year to year. Therefore, OL combined revenues collected in FY 90 and FY 91 and calculated an average in order to obtain a representative amount of annualized revenues collected for comparison with expenditures.

Note 3

Expenditures consist of direct costs resulting from board member activities, (i.e., travel and per diem) and an allocation of overhead costs of OL. Our understanding of the allocation methodology is discussed in Recommendation No. 3 of this report and is the subject of a September 1993 Office of Management and Budget (OMB), Division of Audit and Management Services report entitled *Occupational Licensing Fee-Setting Policy Assessment*. Both our office and OMB do not believe that OL's method of allocating costs to a professional licensing board distributes costs reflective of the actual effort spent regulating their profession.

Appendix B
Department of Commerce and Economic Development
Board of Nursing Home Administrators
Application, License, and Other Fees¹

Application and Other Fees²

Type of Fee	Amount
Application	\$50
Examination	125
Provisional License	50

License Fees

License Category	Initial and Biennial Renewal Fee ³
Nursing Home Administrator	\$200

¹The licensing fees charged by the Division of Occupational Licensing for the Board of Nursing Home Administrators are set out in the Alaska Administrative Code at § 12 AAC 02.290. The last fee change for this board was effective May 28, 1993. According to Division of Occupational Licensing staff, at this time there are no planned fee changes for this board.

²The Division of Occupational Licensing is also authorized to charge administrative fees. Administrative fees include: duplicate license fee, photocopying fee, and penalty for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

³The biennial renewal period for the Board of Nursing Home Administrators is December 31, 1994.

WALTER J. HICKEL, GOVERNOR

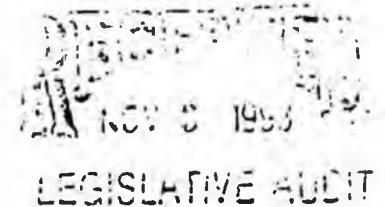
DEPARTMENT OF COMMERCE AND
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November 29, 1993

Mr. Randy Welker
Legislative Auditor
Legislative Budget & Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811



Dear Mr. Welker:

This is written in response to the Audit Division's (hereinafter "Audit") preliminary audit report of its sunset performance review of the Board of Nursing Home Administrators (hereinafter "Board"). Below is the Department of Commerce and Economic Development's (hereinafter "Department") comments on Audit's preliminary findings and recommendations.

Response to Recommendation No. 1

The Legislature should allow the Board of Nursing Home Administrators (BNHA) to terminate and the Division of Occupational Licensing (OL) should assume sole responsibility for the licensing of nursing home administrators.

The Department concurs with this recommendation providing federal regulations support such action. The Department remains cautious inasmuch as the loss of medicaid is at risk if the auditor's understanding is flawed. We strongly recommend that the Department of Law review this course of action before a change is made. The Division of Occupational Licensing cannot "assume" the responsibility for licensing Nursing Home Administrators. The ability to license this profession must be specifically authorized by amending AS 08.01 and AS 08.70.

Response to Recommendation No. 2

The Division of Occupational Licensing should revise the BNHA regulations to reflect current licensing practices.

The Division is aware of the need to amend the regulations regarding examination dates and the passing score requirement. However, the board has the regulatory authority and the department cannot proceed without board action. Should the board be terminated the division will assume action for this.

Response to Recommendation No. 3

The Department of Commerce and Economic Development (DCED) should continue to work with the Office of Management and Budget (OMB) in establishing fee levels for occupational licensees that are more reflective of the actual regulatory cost of the occupation.

During 1993, the division accomplished fee revisions for all program areas to reflect program expenses. The calculations were based upon all available data regarding direct and indirect program costs.

Concerns were voiced by various boards regarding their fee increases/program costs. Based on these concerns, the department requested an independent review by OMB of the procedures used in calculating expenses by the Office of Management and Budget. The OMB audit was completed early October. OMB's recommendations for defining direct costs, including the implementation of timekeeping records for licensing staff, investigators and hearing officers has been implemented effective July 1, 1993 by the division.

OMB audit recommended a cap on incremental fee increases of no more than 10-25 percent per licensing period. This is problematic inasmuch as it places a limit on recovering the actual cost of licensing the profession. OMB budget reviewers placed an even more restrictive cap of seven percent on the license fee this fiscal year. Unpredictable and unforeseen program expenses occur due to investigations, litigation and legal challenges which are not controlled by the board or the division. Limiting expenditures in order to comply with these caps is anticipated to have serious effects on the board's abilities to comply with their statutory mandates. Under the present scheme, once a program has expended its "acceptable" limit for fee increase adjustments under the OMB recommendations and in accordance with 08.01.065, the board will effectively be shut down for the remainder of the fiscal year. The consequences have potential health and safety risks as well as economic hardships for licensees who may wish to renew their licenses, etc. The division will make requests for additional spending allocation to LB&A to alleviate these harsh consequences, but failing favorable consideration must control its expenditures.

The division does not fully concur with the audit findings that errors were made in the calculation of a two-year average of expenditures used to determine the FY 93 license fees, and as a result, license fees did not truly reflect the cost of providing regulatory services to each occupation. Detailed expenditure information used in calculating a two-year average was based on information obtained from the state accounting system. It is a real possibility that data generated from the state accounting system for the purposes of this audit has changed from data obtained by division staff at the end of the fiscal year. Since appropriate division staff was not consulted regarding specific financial information, the division cannot agree with this finding until both audit and division staffs have had the opportunity to discuss this matter.

The recommendation of estimating time spent by certain job classes of employees stated in the OMB fee-setting policy assessment audit was implemented on July 1, 1993; and at the start of FY 94, the division prepared an FY 94 budget allocation for each licensing program.

In conclusion, DCED has attempted to work with the OMB auditor regarding this issue, but we have been informed that the audit is over and no more time will be allocated to this issue.

Recommendation No. 4

OL should, in conjunction with the Equal Employment Office (EEO), review the BNHA licensure application to assure that personal questions of a potential discriminatory nature are essential for prudent licensure.

The Department has been working toward updating all of its licensing applications with emphasis toward the Americans with Disabilities Act and also EEO concerns. Because of the many considerations involved in revising our applications and the number of professions affected, the Department is not rushing through this project to satisfy immediate concerns, but rather making a concerted effort to give this review the quality of thoroughness it deserves.

EEO's concerns that it may be difficult to prove that discrimination was not a factor in the denial of licensure (because the board had been provided a picture of an applicant) may be unnecessary. Specifically, license denials must be based upon a provision in the board's statutes or regulations. Denial notices must list the specific authority for rejection. We believe the procedures for denying an applicant, and the practice of listing the specific reasons for denial in the notice to the applicant provides adequate protection for the board from being subject to discrimination complaints. Further, your suggestion of separating the photo from an application prior to board review is questionable since licensing applications are public documents and we believe it would be inappropriate for division staff to withhold public information from the board. If the NHAB is terminated and the division becomes the licensing authority the recommended procedure of separating the photo from the application becomes more absurd.

Response to Recommendation No. 5

If BNHA remains in existence, OL should continue their efforts to provide adequate public notice of their board meetings.

The Department partly concurs with Audit regarding the public notice of board meetings. It is true that the public notice policy is labor intensive and the Department has been diligently trying to streamline this process to meet our obligation to public notice while at the same time developing a public notice procedure that is fiscally responsible.

We take exception that the audit has cited an Attorney General Opinion written in December, 1992 to the Department of Education in response to that department's request for public notice clarification. This Department was not carbon copied on that opinion and, therefore, not privy to that legal advice. That opinion was written after the meetings cited by Audit in this report. This Department has relied on its own internal policies and our AAG's advice for adequate public notice. The APA does not require public notice in three major

newspapers, only our internal procedures. The public notice for the September, 1991 board meeting was sent to three major newspapers; however, the Anchorage Times, for reasons unknown, did not publish the notice. We have no control of their unwillingness to publish according to our time requirements. Second, the teleconference referenced was noticed, timely, in two newspapers. That teleconference occurred on October 22, 1991 and notice appeared October 17 and 18, 1991.

Further, events such as the need for immediate discipline proceedings may make it impossible to "adequately" public notice an event. An exception is provided in statute for such a situation albeit we still attempt to provide some notice if possible. The Department will continue to comply with the public notice requirement as defined by our AAG.

Response to Recommendation No. 6

OL should request statutory changes in AS 08.01.050 and AS 08.01.070 to clarify responsibilities for the taking of board meetings and production of an annual report.

The Department concurs with Recommendation No. 6. A rewrite of AS 08.01 makes numerous revisions including amendments to the statutes cited in this recommendation. The rewrite includes revisions which make drafting minutes a Department responsibility. It also provides for annual report deadline submission of August 1. The annual report deadline revision is necessary as many statistics needed for the annual report are not available until June 30, thus making it impossible for the boards to meet the existing deadline of submission by June 30.

The Department strongly disagrees that the annual report authority should be amended to make annual report submission a Department responsibility. We recognize that Division staff are instrumental in assisting boards when completing reports. Staff provide statistical and clerical assistance, however, this report must be reflective of the board's position on various matters involving the profession regulated including legislative and regulatory needs, budget requests, and upcoming goals. These are areas which the board is solely responsible for developing.

Response to Recommendation No. 7

OL should develop and implement written policies and procedures for reporting potential violations of the Executive Branch Ethics Act to the Department of Law (Law).

The Department agrees and will comply with this recommendation. A written procedure developed by staff will be limited to include directives for staff follow-up at each meeting with collection of ethic reports as well as clarifying dates which quarterly reports must be compiled and forwarded to the Attorney General's Office. We concur that staff is responsible for the timely submission to the Department of Law. This is the limit of responsibility recognized on behalf of the Department.

Mr. Randy Welker

-5-

November 29, 1993

All other policy, procedures, interpretations, and written directives for what must be reported must come from the Department of Law. Guidance on when a member must report a conflict, what should be reported, confirmation of what constitutes a conflict and who has authority to rule/overrule a decision made by a designated supervisor are all matters which are beyond the scope of DCED staff expertise. Consequently, the Department disagrees with the statement in the text of recommendation no. 7 which states "Functionally, OL staff advise the professional licensing boards as to the reporting necessary for compliance with the Ethics Act"

The Department has asked for a written directive from the Department of Law, in layman's terms, which clarifies these matters. Any forthcoming directives from the Department of Law will be distributed to board members.

Thank you for this opportunity to respond. If my department can assist you in any other way, please let me know.

Sincerely,


Paul Funs
Commissioner

PF/JW/dgl5295D
112993b

cc: Karl Luck, Director, Division of Occupational Licensing

HB

124

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/7/95

FURTHER:

DATE TURNED INTO OFFICE: 4-25-95

The Finance Committee considered CS FOR HOUSE BILL NO. 124(FIN)

transferring the regulation of nursing home administrators to the Department of Commerce and Economic Development; abolishing the Board of Nursing Home Administrators; efd.

and recommends:

- be replaced with S CS CSH B124 (FIN)
- adopt previous CS
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill
 same title
 new title
 House Bill
 same title
 technical change
 new Section

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNF	AM
<i>Steve Rein</i>	✓	<i>Keep E Cell</i>	✓		
<i>Deborah Wiley</i>	✓	<i>John G. Humphrey</i>	✓		
<i>Bob Adams</i>					
Co-Chair: <i>Ralph Halford</i>	✓				
Co-Chair: <i>John</i>	✓				

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
<i>DC + ED</i>	<i>3/1/95</i>	<i>82</i>	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

No. 1

Bill Version: CSHB 124

(H) Publish Date: 3/6/95

**STATE OF ALASKA
1995 LEGISLATIVE SESSION**

Revision Date: February 22, 1995 Department: Commerce and Economic Development
 Title: Extending the termination date of the BRU: Occupational Licensing
 Board of Nursing Home Administrators:.... Component: Operations
 Sponsor: Representative Toohy
 Requestor: Representative Toohy COMPONENT SERIAL #: 1844

(Thousands of Dollars)

EXPENDITURES/REVENUES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES	5.7	5.7	5.7	5.7	5.7	5.7
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	2.5	2.5	2.5	2.5	2.5	2.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.2	8.2	8.2	8.2	8.2	8.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	1.9	14.5	1.9	14.5	1.9	14.5
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(Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	8.2	8.2	8.2	8.2	8.2	8.2
1006 GF/MHTIA						
Other						
TOTAL	8.2	8.2	8.2	8.2	8.2	8.2

Estimate of any current year (FY 95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

CSHB 124 proposes to eliminate the Board of Nursing Home Administrators and continue licensing by the department. Travel funds which allowed the board to meet have been eliminated. Licenses are presently due to expire on December 31, 1996; therefore, the revenue identified in the fiscal note assume that fees will be adjusted in FY 97 to equal costs.

Prepared by: Jennifer Strickler, Admin. Officer Phone: 465-2144
 Division: Occupational Licensing Date: 2/22/95
 Approved by Commissioner: William L. Hensley Date: 3/3/95
 Agency: Commerce and Economic Development

Lueterboe

9-LS1105C ✓

SENATE CONCURRENT RESOLUTION NO.
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Introduced:

Referred:

A RESOLUTION

1 **Suspending Uniform Rules 24(c), 35, 41(b), and 42(e) of the Alaska State**
2 **Legislature concerning House Bill No. 124, relating to nursing home administrators.**

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

4 That under Rule 54 of the Uniform Rules of the Alaska State Legislature, the
5 provisions of Rules 24(c), 35, 41(b), and 42(e) of the Uniform Rules, regarding changes to the
6 title of a bill, are suspended in consideration of House Bill No. 124, relating to nursing home
7 administrators.

April 25, 1995

Val -

RE: Fiscal Notes for SCS CSHB 124 (Fin)

Elmer Lindstrom, Special Assistant, Dept. of Health and Social Services, advises that the department will be delivering new fiscal notes for our Senate Finance Committee Substitute. He said one note would indicate an indeterminate amount for Medicaid and the other would show \$30.0 (\$15.0 in general funds and \$15.0 in federal moneys) for Administrative Services, Facilities and Planning. He said the department earlier advised Sen. Halford's office of the fact that the Finance Committee Substitute would generate new notes. The bill was moved from committee with accompanying fiscal notes this morning and read across into Rules. I asked that the Senate Secretary hold onto the bill until we are clear on the fiscal notes.

Kathy

Given to Val 1:30pm.

4/26/95 -

These fiscal notes were offered by DHSS for our SCS CSHB 124 (Fin) after bill was reported out of committee. I understand Sen. Halford did not want to return the bill to Finance or attach the notes in Rules. He indicated to Elmer that they should again be brought on for consideration by Conference Committee.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SCS CSHB 124 Fin

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Transfer of nursing home administrator BRU: Administrative Services
regulation and prohibition of new nursing home beds Component: Health Planning and Facilities Mgmt
 Sponsor: Representative Cynthia Toohey COMPONENT SERIAL NO. 2020
 Requestor: Senate Finance See also (SN#): 230

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	30.0	30.0	0.0	0.0	0.0	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	30.0	30.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY96	FY97	FY98	FY99	FY00	FY01
1002 Federal Receipts	15.0	15.0	0.0	0.0	0.0	0.0
1003 GF Match	15.0	15.0	0.0	0.0	0.0	0.0
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	30.0	30.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

\$30,000 in contractual funds is needed for the Division of Administrative Services, Section of Facilities and Planning to study the senior services system and develop a facilities plan. The current facilities plan was last published in 1984 and is outdated. Since that time a new tier of community-based services for seniors has developed, some of which reduce the need for long-term care beds. The plan will be developed in cooperation with the Department of Administration, Division of Senior Services and the Governor's Council on Developmental Disabilities and Special Education. Consultants will develop 10-year projections on the number of residential and long-term care beds needed in each service area; an Alaska specific methodology for determining bed need; estimates of the financial costs of increased services; an analysis of the current distribution of beds and senior population, an analysis of the acuity levels of seniors in Alaska, and a comprehensive facilities development plan.

Prepared by: Janet Clarke, Director *J Clarke*
 Division: Administrative Services

Phone: 465-3015
 Date: 04/25/95

Approved by Commissioner: Karen Perdue, Commissioner *K Perdue*
 Agency: Department of Health & Social Services

Date: 4/25/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. SCS CSHB 124 Fin

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Transfer of nursing home administrator BRU: Medical Assistance
regulation and prohibition of new nursing home beds Component: Medicaid-Facilities
 Sponsor: Representative Cynthia Toohy COMPONENT SERIAL NO. 230
 Requestor: Senate Finance See also (SN#): 2020

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	**	**	**	**	**	**
MISCELLANECUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGES IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

	FY96	FY97	FY98	FY99	FY100	FY01
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

	FY96	FY97	FY98	FY99	FY100	FY01
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Although this bill does not directly reduce the Division of Medicaid Assistance budget, it is aimed at avoiding expensive future costs which will be incurred by the Division if the industry is allowed to build planned projects. Letters of intent or strategic plans were received from 9 facilities interested in adding a total of 178 new beds and 63 replacement beds in the next 5 years.

** Costs Avoided by this legislation:

	FY96	FY97	FY98	FY99	FY100	FY01
Medical Assistance	3,300.0	9,100.0	10,600.0	10,700.0	13,400.0	13,400.0

Half of the costs for these projects are paid for by federal funds and the other half by a general funds match. Operating costs could continue to increase substantially after the first two years. These costs could have a deleterious effect upon home and community-based services which enable elderly Alaskans to avoid entirely, or postpone nursing home placement. In 1993, the average annual Medicaid amount for a nursing home bed was \$80,926. Typical costs for community based care were significantly lower from \$19,770 to \$52,389 per client.

Prepared by: Janet Clarke, Director
 Division: Administrative Services

Phone: 465-3015
 Date: 04/25/95

Approved by Commissioner: Karen Perdue, Commissioner
 Agency: Department of Health & Social Services

Date: 4/25/95

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ANALYSIS (cont.):

The growth and maintenance of community-based care will be threatened if unplanned and unnecessary nursing home beds are built. Alaska seniors prefer to stay at home as long as possible and avoid nursing home placement.

Construction of some of the nursing home beds may be prevented by the Certificate of Need program. However, a significant number of beds (35 or 28%) could be built without a Certificate of Need review because of loopholes in the law. A two year moratorium on long-term care beds would allow time for the community based services programs to more fully develop. Also, it would allow the Department of Health and Social Services and the Division of Senior Services time to develop a plan for the orderly development and proper mix of community-based services and long-term care beds.

Letter of Intent/Plans Received From:	Number of Beds Planned	Estimated Construction Cost	Estimated Completion Date	Annual Medicaid Costs
Herrage Place	15 new beds	\$ 920,000	1/96	\$ 784,378
St. Ann's Care Center	20 new/45 replaced	\$ 13 to 20 Million	12/96-8/97	\$ 1.9 - \$2.1 million
Valley Hospital	60 new beds	\$ 5,000,000	9/96-4/97	\$ 3,645,623
So. Peninsula Hospital	8 new	\$ 150,000	1996	\$ 644,637
Conversions:				
AK Regional Hospital	16 beds	\$ 488,000	5/15/95	\$ 938,353
Fairbanks Memorial	8 to 12 beds	\$ 230,000 to \$1.3 M	1995	\$ 469K - \$511,416
Plumfield House	8 beds	\$ 6,000	June-July, 1995	\$ 459,656
Totals:	178 new, 63 replaced	\$19.7 to \$27.8 Million		\$8.7 to \$9.1 Million

Over \$12 million in long-term care capital projects are planned for completion after 1997.

Projects Planned to Open After 1997:				
YK Health Corp.	34 new beds	\$ 6,923,720	Unknown	\$ 2,717,599
So. Peninsula Hospital	25 beds replaced	\$ 3,000,000	1998-2000	\$120,000
Sitka Community	14 beds	\$ 3.0 to \$3.5 Million	1997-1999?	\$ 1.3 to \$1.5 Million
Plumfield House	30 beds?	Unknown	Unknown	Unknown

SENATE FINANCE
 COMMITTEE
 Amendment Number: CS-1
 Bill Number: HB 124
 Sponsor: _____ Date: _____
 Logged In By: _____

9-LS0491NG
 Lauterbach
 4/22/95

SENATE CS FOR CS FOR HOUSE BILL NO. 124(FIN)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
 Referred:

Sponsor(s): REPRESENTATIVE TOOHEY

A BILL

FOR AN ACT ENTITLED

1 "An Act transferring the regulation of nursing home administrators to the
 2 Department of Commerce and Economic Development; abolishing the Board of
 3 Nursing Home Administrators; clarifying the conditions under which a nursing
 4 home administrator license may be denied; relating to applications for certificates
 5 of need; prohibiting the issuance of a certificate of need or a license for
 6 additional nursing home capacity in the state until July 1, 1997; and providing
 7 for an effective date."

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

9 * Section 1. AS 08.01.010 is amended by adding a new paragraph to read:
 10 (36) regulation of nursing home administrators under AS 08.70.

11 * Sec. 2. AS 08.01.050(a) is amended to read:
 12 (a) The department shall perform the following administrative and budgetary
 13 services when appropriate:

- 1 (1) collect and record fees;
- 2 (2) maintain records and files;
- 3 (3) issue and receive application forms;
- 4 (4) notify applicants of acceptance or rejection as determined by the
- 5 board or as determined by the department under AS 08.06 for acupuncturists, under
- 6 AS 08.11 for audiologists, under AS 08.18 for contractors, under AS 08.40 for
- 7 electrical and mechanical administrators, under AS 08.45 for naturopaths, [OR] under
- 8 AS 08.55 for hearing aid dealers, or under AS 08.70 for nursing home
- 9 administrators;
- 10 (5) designate dates examinations are to be held and notify applicants;
- 11 (6) publish notice of examinations and proceedings;
- 12 (7) arrange space for holding examinations and proceedings;
- 13 (8) notify applicants of results of examinations;
- 14 (9) issue licenses or temporary licenses as authorized by the board or
- 15 as authorized by the department under AS 08.06 for acupuncturists, under AS 08.11
- 16 for audiologists, under AS 08.18 for contractors, under AS 08.40 for electrical and
- 17 mechanical administrators, under AS 08.45 for naturopaths, [OR] under AS 08.55 for
- 18 hearing aid dealers, or under AS 08.70 for nursing home administrators;
- 19 (10) issue duplicate licenses upon submission of a written request by
- 20 the licensee attesting to loss of or the failure to receive the original and payment by
- 21 the licensee of a fee established by regulation adopted by the department;
- 22 (11) notify licensees of renewal dates at least 30 days before the
- 23 expiration date of their licenses;
- 24 (12) compile and maintain a current register of licensees;
- 25 (13) answer routine inquiries;
- 26 (14) maintain files relating to individual licensees;
- 27 (15) arrange for printing and advertising;
- 28 (16) purchase supplies;
- 29 (17) employ additional help when needed;
- 30 (18) perform other services that may be requested by the board;
- 31 (19) provide inspection, enforcement, and investigative services to the

1 boards and for the occupations listed in AS 08.01.010, regarding all licenses issued by
2 or through the department;

3 (20) retain and safeguard the official seal of a board and prepare, sign,
4 and affix a board seal, as appropriate, for licenses approved by a board;

5 (21) issue business licenses under AS 43.70.

6 * Sec. 3. AS 08.70.050 is amended to read:

7 Sec. 08.70.050. REGULATION BY DEPARTMENT [DUTIES AND
8 POWERS OF THE BOARD]. (a) The department [BOARD] shall

9 (1) adopt standards for licensing nursing home administrators to ensure
10 [INSURE] that licensees have knowledge and experience in health care and
11 institutional administration necessary for competent administrators, and update the
12 standards when necessary;

13 (2) examine, approve issuance of licenses to, and renewal of licenses
14 of qualified persons;

15 (3) establish procedures to ensure that licensees continue to uphold the
16 department's [BOARD'S] standards; impose disciplinary sanctions upon persons who
17 fail to uphold the standards;

18 (4) adopt criteria for educational programs for persons preparing for the
19 licensing examination and for the continuing education of licensees; review the
20 educational programs available in the state and accredit the programs meeting the
21 criteria;

22 [(5) KEEP A RECORD OF ITS PROCEEDINGS AND SUBMIT
23 ANNUAL REPORTS TO THE GOVERNOR AND THE LEGISLATURE;

24 (6)] adopt regulations ensuring that renewal of a license is contingent
25 upon proof of continued competency by the licensee.

26 (b) The department [BOARD] may adopt regulations necessary for the
27 performance of its duties and to meet the requirements of Title 19 of the Social
28 Security Act, the federal regulations adopted under it, and other federal requirements.

29 * Sec. 4. AS 08.70.110 is amended to read:

30 Sec. 08.70.110. LICENSING. (a) The department [BOARD] shall license

31 (1) applicants who pass the written examination administered by the

1 department [BOARD] and meet the standards established by the department
2 [BOARD] under AS 08.70.050;

3 (2) persons licensed under emergency regulations 7 AAC 12.045
4 promulgated in Register 51, July 8, 1974, who have practiced as administrators since
5 licensing.

6 (b) The department [BOARD] may issue a license without examination to a
7 person holding a current license as a nursing home administrator from another
8 jurisdiction, if the department [BOARD] finds that the standards for licensing in the
9 other jurisdiction are substantially equivalent to those in this state, and the person is
10 otherwise qualified.

11 * Sec. 5. AS 08.70.110 is amended by adding a new subsection to read:

12 (c) Notwithstanding other provisions of this chapter, the department may refuse
13 to issue a license to a person

14 (1) who attempts to secure the license through deceit, fraud, or
15 intentional misrepresentation; or

16 (2) for a reason for which it may impose disciplinary sanctions under
17 AS 08.70.155.

18 * Sec. 6. AS 08.70.120 is amended to read:

19 Sec. 08.70.120. EXAMINATION. The purpose of the examination is to test
20 the applicant's knowledge of the health and safety standards of the state and the
21 applicant's experience in the practice of health care. The department shall determine
22 [BOARD DETERMINES] the content, scope, format, and grading procedure.
23 Examinations shall be given at least annually, at the time and place chosen by the
24 department [BOARD].

25 * Sec. 7. AS 08.70.130(a) is amended to read:

26 (a) A provisional license may be granted without examination to a person who
27 meets the standards adopted by the department [BOARD] under AS 08.70.050 and
28 who is needed to fill a vacancy in an administrative position.

29 * Sec. 8. AS 08.70.155 is amended to read:

30 Sec. 08.70.155. GROUNDS FOR IMPOSITION OF DISCIPLINARY
31 SANCTIONS. The department [AFTER A HEARING THE BOARD] may impose

1 the disciplinary sanctions authorized for boards under AS 08.01.075 or otherwise
2 authorized for the department under AS 08.01 when it finds that a licensee

3 (1) secured a license through deceit, fraud, or intentional
4 misrepresentation;

5 (2) engaged in deceit, fraud, or intentional misrepresentation in the
6 course of providing professional services or engaging in professional activities;

7 (3) advertised professional services in a false or misleading manner;

8 (4) intentionally or negligently engaged in or permitted the performance
9 of patient care by persons under the licensee's supervision that [WHICH] does not
10 conform to minimum professional standards regardless of whether actual injury to the
11 patient occurred;

12 (5) failed to comply with this chapter, with a regulation adopted under
13 this chapter, or with an order of the department [BOARD];

14 (6) continued to practice after becoming unfit due to

15 (A) professional incompetence;

16 (B) addiction or severe dependency on alcohol or other drugs
17 that [WHICH] impairs the licensee's ability to practice safely;

18 (C) physical or mental disability;

19 (7) sold or furnished a license to another;

20 (8) practiced as a nursing home administrator or used a designation
21 tending to imply that the licensee is a nursing home administrator without a license
22 issued under this chapter unless exempted from licensure requirements under
23 AS 08.70.080.

24 * Sec. 9. AS 08.70.180(3) is amended to read:

25 (3) "license" means the certificate awarded by the department
26 [BOARD] to a qualified person that [WHICH] entitles the person to be a nursing
27 home administrator in this state;

28 * Sec. 10. AS 08.70.180(4) is amended to read:

29 (4) "licensee" means a person who has been granted a license to be a
30 nursing home administrator in this state by the department [BOARD];

31 * Sec. 11. AS 44.62.330(a)(50) is amended to read:

1 (50) Department of Commerce and Economic Development
2 concerning the licensing and regulation of nursing home administrators [BOARD
3 OF NURSING HOME ADMINISTRATORS];

4 * Sec. 12. AS 08.01.010(18); AS 08.03.010(c)(18); AS 08.70.010, 08.70.020, 08.70.030,
5 08.70.040, 08.70.055, and 08.70.180(1) are repealed.

6 * Sec. 13. TRANSITION. (a) A regulation adopted by the Board of Nursing Home
7 Administrators and in effect on the effective date of this Act remains in effect and shall be
8 implemented and enforced by the Department of Commerce and Economic Development after
9 the effective date of this Act until the department amends the regulation. To be consistent
10 with the changes made by this Act, wherever in the regulations adopted by the Board of
11 Nursing Home Administrators the board is identified, that reference shall be read as referring
12 to the Department of Commerce and Economic Development. Under AS 44.62.125(b)(6), the
13 regulations attorney shall implement this subsection in the administrative regulations.

14 (b) All litigation, hearings, investigations, and other proceedings pending under a law
15 amended or repealed by this Act, or in connection with functions transferred by this Act,
16 continue in effect and may be continued and completed notwithstanding a transfer or
17 amendment or repeal provided for in this Act. Licenses and orders issued under authority of
18 a law amended or repealed by this Act remain in effect for the term issued, or until revoked,
19 vacated, or otherwise modified under the provisions of this Act. All contracts, rights,
20 liabilities, and obligations created by or under a law amended or repealed by this Act, and in
21 effect on the effective date of this Act remain in effect notwithstanding this Act's taking effect.
22 Records, equipment, and other property of the Board of Nursing Home Administrators are
23 transferred to the Department of Commerce and Economic Development.

24 * Sec. 14. MORATORIUM ON NURSING HOME CERTIFICATES OF NEED. (a)
25 Notwithstanding AS 18.07, after the effective date of this Act, the Department of Health and
26 Social Services may neither accept an application for a certificate of need under AS 18.07.031
27 or 18.07.071(b) nor grant a certificate of need under AS 18.07.031 or 18.07.071(b) for

28 (1) construction of a health care facility that includes nursing home beds that
29 require licensure under AS 18.20.020; or

30 (2) conversion of a building or part of a building to nursing home beds.

31 (b) This section does not apply to decisions concerning a certificate of need for which

1 an application was filed with the Department of Health and Social Services before March 15,
2 1995. For purposes of this subsection, a letter of intent is not considered an application for
3 a certificate of need.

4 * Sec. 15. MORATORIUM ON NURSING HOME LICENSURES. (a) Notwithstanding
5 AS 18.20, after the effective date of this Act, the Department of Health and Social Services
6 may not issue a license for

7 (1) construction of a health care facility that includes new nursing home beds;

8 (2) additional new nursing home beds in a health care facility.

9 (b) This section does not apply to decisions concerning a license for which an
10 application was filed with the Department of Health and Social Services before March 15,
11 1995.

12 * Sec. 16. Sections 14 - 15 of this Act are repealed July 1, 1997.

13 * Sec. 17. This Act takes effect immediately under AS 01.10.070(c).

LONG-TERM CARE BED MORATORIUM IN ALASKA

The health care industry in Alaska is planning to build substantial number of new long term care beds. The total number of beds could increase by 20% within 3 to 5 years from 909 to a total of 1,087. Letters of intent or strategic plans were received from 9 facilities interested in adding a total of 178 new beds and 63 replacement beds. Initially, the Medicaid budget would increase an estimated \$11.9 to \$12.3 million annually and operating costs could increase substantially after that.

Seniors in Alaska want to avoid nursing homes and live at home as long as possible. The growth and maintenance of community care will be threatened if unplanned and unnecessary nursing home beds are allowed to be built. In 1993, the average annual Medicaid rate for a nursing home bed was \$80,926. Typical costs for community based care were significantly lower from \$19,770 to \$52,389 per client.

"Home and Community-Based services" enable elderly Alaskans to avoid entirely, or postpone nursing home placement. Programs specifically designed to keep seniors out of nursing homes include:

- Adult day care and family respite care (AS 47.65.100) target "frail older persons and other similarly disabled" who are "at risk of institutional placement."
- Home and Community-Based Waivers (7 AAC 43.100) offer an alternative to institutional care to Medicaid eligible clients.
- AS 47.33.005 promotes establishment of assisted living homes to help the elderly "age in place." There are currently 393 assisted living beds in Alaska.
- Personal care attendant services (7 AAC 43.750 (a)), enable an individual who would otherwise require nursing home placement to remain safely at home.

Other services include Home Health Care (7 AAC 43.800), homemaker/chore services, home health aid, adult foster care, specialized private duty nursing, case management, home delivered and congregate meals, habilitation services, and transportation.

Construction of some of the nursing home beds may be prevented by the Certificate of Need Program. However, a significant number (35 beds or 28%) could be built without a Certificate of Need review because of loopholes in the law.

A two year moratorium on long-term care beds would allow time for the community based services programs to more fully develop. Also, it would allow the Department of Health and Social Services and the Division of Senior Services time to develop a plan for the orderly development and proper mix of community based services and long-term care beds.

Potential Increase in Long-Term-Care Beds

Plans are being developed to build a substantial number of new long term care beds in Alaska. The total number of beds could increase by 20% from 909 to a total of 1,087. So far this year, letters of intent or strategic plans were received from 9 facilities interested in building new or converting to long term-care beds. A total of 178 new beds and 63 replacement beds are planned. Five beds were built in 1994, and 52 beds could be built in 1995. **Impact:** Medicaid costs for the next decade could increase by \$11 - \$15 Million (capital) and \$108 million (operating).

Letter of Intent or Plans Received:	Number of Beds Planned	Estimated Construction Cost	Estimated Completion Date	Is a CON Required?	Annual Medicaid Construction Costs	Annual Medicaid Operating Costs
Heritage Place	15 new beds	\$ 920,000	1/96	No	\$ 36,800	\$ 747,578
St. Ann's Care Ctr.	20 new/45 replaced	\$ 13-20 Million	12/96-8/97	Yes	\$ 520K-\$800,000	\$ 1,257,271
Valley Hospital	60 new beds	\$5,000,000	9/96-4/97	Yes	\$ 200,000	\$ 3,445,623
So. Peninsula Hospital	8 new/18 replaced	\$ 150,000? to \$3 M	1996 or 1998-2000	No/Yes*	\$ 5K-\$120,000	\$ 728,027
YK Health Corp	34 new beds	\$ 6,923,720	analysis only	Yes	\$ 276,949	\$ 2,440,650
Conversions:						
AK Regional Hosp.	16 beds	\$ 488,000	5/15/95	No	\$ 19,520	\$ 918,833
Sitka Community	5 beds	\$ 155,000	11/94	No	\$ 6,200	\$ 300,446
Fairbanks Memorial	8 to 12 beds	\$ 230,000 to \$1.3 M	1995	No/Yes*	\$ 9,200-\$52,000	\$ 459,416
Plumfield House	8 beds	\$ 6,000	June-July, 1995	No	\$ 240	\$ 459,416
Totals:	178 new, 63 replacement beds	\$ 26,872,720 to \$ 37,792,720	4 NO, 3 YES, 2 UNK		\$ 1,074,909-\$ 1,511,709	\$ 10,757,261

South Peninsula Hospital is considering adding 8 LTC beds (by converting acute beds) and then building a new LTC facility for \$3 million in 3 to 5 years. Sitka Community Hospital wants to add additional beds at a future date and Providence Hospital has expressed interest in converting some beds from acute to long-term Care. Fairbanks and Alaska Regional want to designate their beds as "Subacute care." St. Ann's will be connected to Bartlett Memorial Hospital and Valdez Hospital and Seward General Hospital are interested in merging facilities with Sourdough Place and Wesley Rehabilitation and Care Center respectively. The purpose of co-locating is to increase revenues. The \$6.9 million YK project would be almost totally funded by Medicaid, since federal funds are not available for long-term care.

Capital depreciation will cost Medicaid an estimated \$1.1 to \$1.5 million annually, and operational costs nearly \$11 million.. If all the beds are built, the fiscal impact would increase Medicaid by \$12 million annually. 44% to 66% of projects would not be reviewed by a CON. The largest component of cost, operating costs, are 7-10 times greater than depreciation and would not be reviewed by CON. **Methodology:** Medicaid occupancy rates are from the July 31, 1994, Alaska Nursing Home Census; per diem rates from a special Medicaid Rate Advisory Commission report (4/10/95). New facilities with no prior per diem rates used the swing bed rate of \$218.52. Medicaid depreciation was figured by dividing the total cost of the project by 25 years and multiplying by the percent of Medicaid utilization. Operational costs were figured using per diem rates multiplied by the number of beds multiplied by the % Medicaid occupancy rate.

*May require a CON if over \$1 million threshold. *(CERTIFICATE OF NEED)*



TONY KNOWLES, GOVERNOR

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-563-6365 • Fax: 907-563-5357

Senator Rick Halford
 Capitol Building Room 508
 Juneau, AK 99611

April 18, 1995

Dear Senator Halford,

The Governor's Council has worked with several legislatures and administrations to improve the effectiveness of services in the most cost-efficient manner. We have appreciated your openness and willingness to try new ways of solving difficult problems.

FY95 cuts to non-facility Medicaid services unintentionally created life-threatening situations for many Alaskans, and have diverted many adults with disabilities from using the lower-cost home and community based service waivers. This results in higher costs through facility-based Medicaid services and in services paid solely by the General Fund. The Council believes that further cuts to the non-facility Medicaid component will again increase costs to the state.

The Council's Medicaid Subcommittee has reviewed several methods for managing the cost of Medicaid. One method, which the legislature could implement this fiscal year and would save millions over the next few years, would be to place a moratorium on additional long term care beds.

We have become aware of a new problem in Alaska: long term care facilities are growing with little state oversight. Planners at DHSS have informed us of private industry's intentions to add or convert 168 new long term care beds paid for by the state. This will result in a total average annual increase of \$16.8 million in facility-based Medicaid costs. Allowing any of these new beds to come on line diverts state funds from appropriate home and community based services to unnecessarily restrictive, expensive services. The chart below describes some of the data involved; the attached position paper describes the issues more fully.

Numbers and Costs of Long Term Care Beds in Alaska

Number of beds currently available	1,293
Beds needed in 1995	975
Beds needed in 2010	1,037
Planned new beds by 1997	123
Planned conversions by 1997	45
Average annual Medicaid cost per bed	\$100,000

The Council recommends a two-year moratorium on all long term care beds while the Department works with affected populations and providers around the state to identify if, where, and how, additional long term care beds should be built. We understand that Representative Hanley has drafted a bill for such a moratorium, but has not yet introduced it. His draft does not hold the Department responsible for developing a more effective way to manage long term care bed growth, although the Department has offered to do so. We appreciate your assistance in having moratorium legislation introduced in the Senate as well, and in identifying a responsible agency for the management of this issue. I am sending this letter to Senator Lyda Green and Rep. Hanley for their review.

Thank you for considering this matter. Please contact me at 563-5355 if the Council may be of further assistance to you.

Sincerely,

David Maltman
 Executive Director

cc: Sen. Lyda Green
 Rep. Mark Hanley
 Commissioner Karen Perdue



TONY KNOWLES, GOVERNOR

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-563-5356 • Fax: 907-563-5357

Impact of a moratorium on long-term care beds in Alaska
April 18, 1995**Introduction**

The Governor's Council on Disabilities and Special Education (the Council) advocates on behalf of individuals who have developmental disabilities and their families. Most people who have severe, lifelong disabilities use services funded by Medicaid. When the Medicaid program changes, the individuals most affected are those with disabilities.

In the mid-80s, the Council identified ways that Alaska could optimize Medicaid funding for individuals who have severe disabilities through Waivers. With the Older Alaskans Commission and the Department of Health and Social Services (DHSS), the Council developed a package of Waivers and the TEFRA Option in 1992. These innovations maximize federal Medicaid funding while reducing the cost to the state. The Council is interested in continuing to work with the Legislature and DHSS in identifying ways to use Medicaid more efficiently.

To this end, the Medicaid Subcommittee has investigated several ways to decrease the cost of Medicaid while improving program efficiency. One way to cut the cost of Medicaid is to place a moratorium on long-term care beds. This paper describes the problem, impact on individuals who have developmental disabilities, the cost of service, and the factors involved in a moratorium.

Recommendation

The Council recommends that the legislature impose a two year moratorium on long-term care bed construction and conversion. During this two year period, DHSS should reassess the process by which Certificates of Need are given.

Problem Statement

The Legislature is seeking ways to decrease the cost of health coverage to poor people in Alaska. Several ways to cut the cost of Medicaid deserve consideration. This paper will discuss one way to cut Medicaid costs, and the implications for Alaskans who have disabilities and their families.

Impact on a moratorium on long term care beds in Alaska p. 2

Last year, the Legislature decreased Medicaid funding in two ways. By requiring that Medicaid recipients pay a share of home and community based care costs, the Legislature hoped to decrease the state's cost. The Legislature also chose to eliminate funds, resulting in loss of eight services to adults, as allowed in AS 47.07.035. These decreases came from the Medicaid non-facility budget, which serves most poor and disabled Alaskans at a fraction of the cost of facility based care. These decreases have hampered implementation of the home and community based waivers, which the 18th legislature put into place. Individuals ready to transition out of hospital based care are hard pressed to leave, because necessary community based care is not paid by Medicaid or is more costly to the consumer. The state pays a higher price for the same services in the institutional setting than in a community setting.

Alaska has been conservative in capturing federal dollars to supplement state health and social service expenditures. Imminent federal initiatives to give states funds through block grants will decrease Alaska's federal receipts significantly. This is not the time to cut Medicaid expenditures; it is time to assure that Alaska has the fiscal flexibility to meet adequately the needs of its poorest and most disabled citizens.

Cost of services

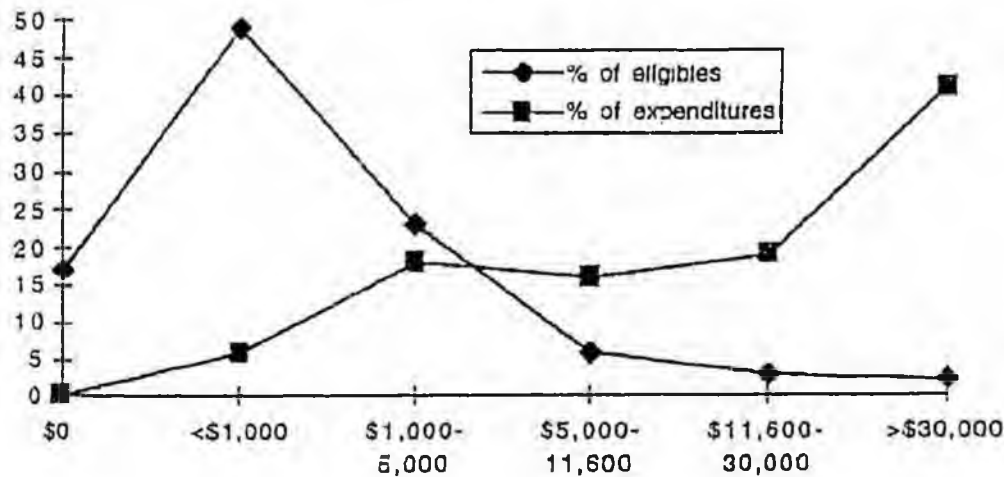
Alaska's costs of services are distributed disproportionately across the Medicaid-eligible population. A brief review of Medicaid expenditures in FY94 reveals that relatively few Alaskans require high cost Medicaid services--yet the bulk of funds pay for services to these few Alaskans who have serious disabilities. This high-cost care is paid to hospitals, nursing homes, and intermediate care facilities.

The state's Medicaid funds are tied to institutional care because of a federal requirement known as the Boren Amendment. The Boren Amendment guarantees institutional facilities reasonable payment rates. As long as poor Alaskans are in hospitals and nursing homes, the state is forced to pay these institutions anywhere from \$72,000 to \$300,000 per person per year. Not only are Alaska's Medicaid dollars funding institutional care, but state general funds cover 100 percent of the care to 2,200 Alaskans with disabilities who do not reside in institutions. The home and community based services waivers put into place in FY94 reduce the state's total cost by maximizing the federal government's share through Medicaid.

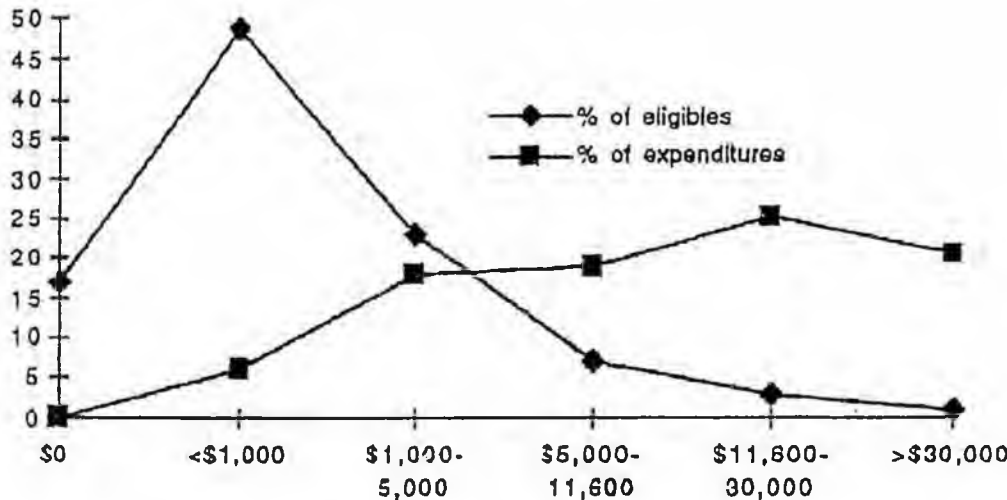
Virtually all Alaskans in institutional settings can benefit from less costly home and community based care. These home and community based services are funded in the Medicaid non-facility component. When home and community based services are reduced or eliminated, however, the number of individuals who can receive life-sustaining services nowhere else must return to hospitals and nursing homes at a higher cost to the state.

Impact on a moratorium on long term care beds in Alaska p. 3

FY94 Medicaid Expenditure Distribution by Eligibles



By fully funding lower-cost home and community based services for the individuals who require specialized care, and reducing use of institutional care, the state could reduce its Medicaid expenditures significantly. Roughly, Medicaid expenditures could look more like the chart below:



However, as the state continues to decrease home and community based services through cuts to the non-facility Medicaid component, the state's institutional cost of care will continue to rise.

Impact on a moratorium on long term care beds in Alaska p. 4

Relevance to people with disabilities and their families

Roughly 10,600 Alaskans have developmental disabilities.¹ Most adults with developmental disabilities are among the approximately 10,000 Medicaid users who are eligible for or use SSI and Adult Public Assistance because of their disabilities or chronic illnesses. These Medicaid users who have disabilities are also poor, and therefore qualify for the program. The monthly income for an individual who uses SSI and Adult Public Assistance ranges from about \$800 to \$825. About 678 of these poor individuals who have disabilities or who are aging use nursing facilities, ICFs-MR, or residential psychiatric hospital care.² Medicaid pays for the cost of long-term care and for all other health care costs, as required by state and federal laws.

Of the 67,631 individuals using the Medicaid program,³ 41,159 are children. As many as 15,155 Alaskan children experience health problems requiring special care.⁴ About 3,500 infants and toddlers require early intervention services to prevent or ameliorate disabilities, reducing the need for more intrusive and extensive lifelong supports.⁵ Other children with disabling conditions are served solely within the educational system, comprising 6.47 percent of the population of all children and youth ages 3 through 21.⁶ Despite the prevalence of children in the Medicaid population, children are very inexpensive to serve.

About 70 percent of all Alaskans with disabilities use Medicaid services. These are 16 percent of Medicaid users who cost the state more than \$3,920, the average yearly cost per person. Approximately 22,600 Alaskans ages 16 to 64 have work disabilities and do not receive institutional levels of care. Of those, 7,900 are prevented from working because of disabling conditions. An additional 8,600 Alaskans ages 16 to 64 have mobility and/or self-care limitations and do not receive institutional levels of care.⁷ More than 95,700 Alaskans have permanent disabilities that substantially limit one or more major life activities, have a history of such disabilities, or are regarded as having such disabilities.⁸

Parents of children with disabilities often find themselves forced to live on public assistance to guarantee Medicaid coverage for their children who have disabili-

¹ Gollay, E. (1981): *Summary Report on the Implications of Modifying the Definition of a Developmental Disability*. Department of Health, Education & Welfare.

² Division of Medical Assistance (1994). *Alaska Nursing Homes Census for 6/30/94*. State of Alaska, Department of Health and Social Services, Division of Medical Assistance.

³ Kim Busch, Policy Analyst, Division of Medical Assistance, February 1995. Although 83,920 Alaskans are eligible, only eighty percent actually use the Medicaid program.

⁴ Dick, S.E. (1992). *An Estimate of the Number of Children with Special Health Care Needs in the State of Alaska*. University of Illinois: Chicago.

⁵ Division of Public Health, Section of Maternal, Child, and Family Health.

⁶ Department of Education, Educational Program Support (1992): *Annual Data Reports*, parts III and IV, 1991-92 School Year. Juneau, AK. The number of children served in all special education programs was 11,721. The total number of children and youth ages 3 through 21 in Alaska is 123,621 (Alaska Population Overview, 1991).

⁷ U.S. Department of Commerce, Bureau of the Census (1992). *1990 Census of Population and Housing*.

⁸ Americans with Disabilities Act of 1990, Section 1(b)(2), Findings and Purposes, (a)(1).

Impact on a moratorium on long term care beds in Alaska p. 5

ties. Adults who have disabilities find themselves unable to find work that provides them with adequate medical coverage. These individuals are those who are least likely to leave the medical and public assistance systems because their disabilities substantially limit their ability to work. This is also the group of people who use most Medicaid services. Any changes to the Medicaid system will affect them more than any other group of Alaskans.

Capping the number of long-term care beds.

In Alaska, the Medicaid facility budget accounts for 54 percent of expenditures—a high price for relatively few services. The state pays for beds, and therefore has fewer funds for home and community based options. At the same time, state and federal law require that individuals who require long-term care and who can receive home or community based care at the same or lesser cost shall receive that option.

Alaska Statute 18.07.031 allows anyone or any agency to spend under \$1 million to construct a health care facility, change the number of beds in a health care facility, or change the kinds of services provided by a health care facility⁹. If a facility intends to spend over \$1 million, it requires a Certificate of Need from DHSS. A Certificate of Need is based on the availability, accessibility, and quality of existing health care resources. DHSS can issue temporary and emergency certificates, and certificates may be modified. When DHSS denies a Certificate of Need, an applicant may appeal the denial to a hearing officer. Appeals usually result in authorization to build, regardless of the community's actual need for long-term care beds.

Programs can make changes under \$1 million without DHSS approval. This creates the opportunity for unplanned increases in facility beds. Construction of several smaller projects over a period of time has the same effect as building a few large projects. The state currently has virtually no way to halt "nursing home creep," in which hospitals and nursing homes increase the number of beds or convert from one kind of service to another at state expense. The operational costs fall to the state, and are far more costly than the original capital costs. For example, ten new long-term care beds cost the state roughly \$1 million in unplanned, unbudgeted Medicaid program expenses. It is essential that the state identify all needed bed space and monitor its construction in a planned manner.

⁹ Statute describes "health care facility" as a private municipal, state, or federal hospital, psychiatric hospital, tuberculosis hospital, skilled nursing facility, kidney disease treatment center, intermediate care facility, and ambulatory surgical facility. "Health care facility" does not mean an Alaska Pioneers' Home, or private physicians' or dentists' offices.

Impact on a moratorium on long term care beds in Alaska p. 6

Numbers and Costs of Long-term Care Beds in Alaska

Number of beds currently available	1,293
Beds needed in 1995	975
Beds needed in 2010	1,037
Planned new beds by 1997	123
Planned conversions by 1997	45
Average annual Medicaid cost per bed	\$100,000
Total average annual Medicaid increase	\$16,800,000

There are two ways Alaska can cap or decrease the number of long-term care beds: changing the Certificate of Need statute, or a legislative moratorium. The Legislature may change the Certificate of Need statute to delete the \$1 million threshold. By changing the statute, however, there is no guarantee that more beds will be built. The same problems would exist with the appeals process as do now. Without a legislative mandate, the administration can change regulations which now allow certain beds to be built or converted. However, regulations could only limit the number of beds costing over \$1 million, as per current statute.

A two-year moratorium on beds would allow the state to re-assess the process by which Certificates of Need are given. The Legislature may pass such a moratorium, and mandate DHSS to develop a more appropriate certification process. It would place a temporary halt on construction and conversion from short term to long-term care beds. Although Alaska currently has more long-term beds than the state will need until the year 2010, it is important to allow for some growth in areas where long-term beds are needed by individuals for whom home and community based care is not appropriate.

Implications for Alaska

Facility-based care belongs on the spectrum of services to individuals who have disabilities. However, it should be a service of last resort. Alaskans who have disabilities benefit more from care which keeps them in their homes and communities.

Because facility-based care (average cost-\$100,000 per person per year) is so much more costly than community-based care (average cost-\$3,920 per person per year), the state loses money when Alaskans stay in facilities. Both Alaskans with disabilities and the state win if a moratorium is imposed.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

DISTRICT 13

State Capitol
Juneau, AK 99801-1182

MEMORANDUM.

TO: Senators Frank & Halford, Chairmen
Senate Finance Committee

FROM: Representative Toohey *CT*

IN RE: scheduling of CSHB 124 (Fin) for the
Senate Finance Committee

DATE: April 12, 1995

Please schedule CSHB 124 (Fin) for hearing before the Senate Finance Committee at soon as it is convenient for you. I have attached a copy of the bill, a current sectional analysis, a sponsor statement, a fiscal note, applicable federal regulations, and a letter of support. If you require any other information or documents, please have your committee aide contact Benjamin Brown in my office at 4919.

Thank you very much for your consideration of this scheduling request.

INTERIM ADDRESS: 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol
Juneau, AK 99801-1182

DISTRICT 13

MEMORANDUM.

TO: Representative Toohey

FROM: Benjamin Brown, ^{Rep.} Legislative Aide

IN RE: sectional analysis of CSHB 124 (Fin)

DATE: 29 March 1995

A summary, by section, of the Finance Committee Substitute for House Bill 124 follows. It ought to be noted that a sectional summary of a bill is not to be considered generally as an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 adds nursing home administrators to the list of professions to whom Chapter 1 of Title 8 of Alaska Statutes ('Centralized Licensing') applies.

Section 2 is a technical amendment that recognizes that the Board of Nursing Home Administrators is no longer involved in licensing and regulation.

Section 3 transfers the duties and powers of the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 050 of Chapter 70 of Title 8 so they refer instead to the Department.

Section 4 transfers the legal licensing authority of the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 110 of Chapter 70 of Title 8 so they refer instead to the Department.

Section 5 enables the Department of Commerce to deny a license to an applicant who has attempted to gain said license through deceit, fraud, or intentional misrepresentation, or for the reasons for which disciplinary sanctions may be imposed which are listed in Section 155 of Title 70 of

IN THE 8M ADDRESS: 716 West 4th Avenue, Suite 330, Anchorage, 99501-2133

*MEMORANDUM IN RE: sectional analysis of CSHB 124 (Fin)
29 March '95, page two*

Section 6 transfers legal authority to give examinations to applicants for license as nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 120 of Chapter 70 of Title 8 so they refer instead to the Department.

Section 7 transfers legal authority to issue provisional licenses to nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 130 of Chapter 70 of Title 8 so they refer instead to the Department.

Section 8 transfers legal authority to impose disciplinary sanctions on certain nursing home administrators from the Board of Nursing Home Administrators to the Department of Commerce, and changes references to the Board in Section 155 of Chapter 70 of Title 8 so they refer instead to the Department.

Sections 9 and 10 change references to the Board of Nursing Home Administrators in the definitions of "license" and "licensee," respectively, in Section 180 of Chapter 70 of Title 8 so they refer instead to the Department of Commerce.

Section 11 substitutes the Department of Commerce's activity in licensing and regulating nursing home administrators, for the entity of the Board of Nursing Home Administrators, in the list of boards, commission, and officers to whom the administrative adjudication provisions of the Administrative Procedures Act (AS 44.62.330 - 44.62.630) apply.

Section 12 repeals sections or subsections of Title 8 that establish, govern, apply to, or otherwise refer to the Board of Nursing Home Administrators, effectively eliminating the Board.

Section 13 continues in effect all regulations of the Board of Nursing Home Administrators and allows regulatory references to the Board to be considered as references to the Department of Commerce instead; allows continuance of litigation, hearings, investigations, licenses, contract, rights, liabilities, and obligations existing under laws amended or repealed by the bill; and, transfers the records, equipment, and other property of the Board to the Department.

Section 14 provides for an immediate effective date.



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

REPRESENTATIVE CYNTHIA TOOHEY

State Capitol
Juneau, AK 99801-1182

DISTRICT 13

SPONSOR STATEMENT

Finance Committee Substitute for House Bill 124: "An act transferring the regulation of nursing home administrators to the Department of Commerce & Economic Development; abolishing the Board of Nursing Home Administrators; clarifying the conditions under which a nursing home administrator license may be denied; and providing for an effective date."

This bill eliminates the State Board of Nursing Home Administrators and transfers its legal duties to license and regulate to the Division of Occupational Licensing in the Department of Commerce. The Finance Committee Substitute also gives the Department the authority to deny licenses to persons who are deceitful on their applications. The Board is mere months from ceasing to exist legally, having passed its 'sunset date' on the 30th of June last year. At the request of the State Hospital & Nursing Home Association, I introduced HB 124 to extend the life of the Board of Nursing Home Administrators for ten more years, but the Association have since decided that they would prefer to be regulated by the Division of Occupational Licensing. The State is required by federal regulations to license persons who administer nursing homes as a condition for the receipt of Medicaid funds. Since 1975 this licensing function has been the duty of the Board of Nursing Home Administrators. It is possible, and administratively easier and less expensive, for staff at the Division of Occupational Licensing to meet federal regulatory requirements for nursing home administrators. The State Hospital & Nursing Home Association, the Division of Medical Assistance, and the Division of Occupational Licensing support transferring supervision of nursing home administrators to the Department of Commerce.

Please support the Finance CS for HB 124.

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eligibility determination for Medicaid) or immediately thereafter (e.g., as the time of notice of eligibility).

(2) The agency, no less frequently than annually, must also provide written notice of the availability of WIC benefits, including the location and telephone number of the local WIC agency or instructions for obtaining further information about the WIC program, to all Medicaid recipients (including those found to be presumptively eligible) who are under age 5 or who are women who might be pregnant, postpartum, or breastfeeding as described in paragraphs (c)(2) (1) through (17) of this section.

(3) The agency must effectively inform those individuals who are blind or deaf or who cannot read or understand the English language.

(57 FR 23163, June 24, 1992)

Subpart N—State Programs for Licensing Nursing Home Administrators

§ 431.700 Basis and purpose.

This subpart implements sections 1902(a)(29) and 1908 of the Act which require that the State plan include a State program for licensing nursing home administrators.

§ 431.701 Definitions.

Unless otherwise indicated, the following definitions apply for purposes of this subpart:

Agency means the State agency responsible for licensing individual practitioners under the State's healing arts licensing act.

Board means an appointed State board established to carry out a State program for licensing administrators of nursing homes, in a State that does not have a healing arts licensing act or an agency as defined in this section.

Licensed means certified by a State agency or board as meeting all of the requirements for a licensed nursing home administrator specified in this subpart.

Nursing home means any institution, facility, or distinct part of a hospital that is licensed or formally recognized as meeting nursing home standards established under State law, or that is

determined under § 431.704 to be included under the requirements of this subpart. The term does not include—

(a) A Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Mass.; or

(b) A distinct part of a hospital, if the hospital meets the definition in § 440.10 or § 440.140 of this subchapter, and the distinct part is not licensed separately or formally approved as a nursing home by the State even though it is designated or certified as a skilled nursing facility.

Nursing home administrator means any person who is in charge of the general administration of a nursing home whether or not the person—

(a) Has an ownership interest in the home; or

(b) Shares his functions and duties with one or more other persons.

§ 431.702 State plan requirement.

A State plan must provide that the State has a program for licensing administrators of nursing homes that meets the requirements of §§ 431.703 through 431.706 of this subpart.

§ 431.703 Licensing requirements.

The State licensing program must provide that only nursing homes supervised by an administrator licensed in accordance with the requirements of this subpart may operate in the State.

§ 431.704 Nursing homes designated by other terms.

If a State licensing law does not use the term "nursing home," the HCFA Administrator will determine the term or terms equivalent to "nursing home" for purposes of applying the requirements of this subpart. To obtain this determination, the Medicaid agency must submit to the Regional Medicaid Director copies of current State laws that define institutional health care facilities for licensing purposes.

§ 431.705 Licensing authority.

(a) The State licensing program must provide for licensing of nursing home administrators by—

(1) The agency designated under the healing arts act of the State; or

(2) A State licensing board.

(b) The State agency or board must perform the functions and duties specified in §§ 431.707 through 431.713 and the board must meet the membership requirements specified in § 431.706 of this subpart.

§ 431.706 Composition of licensing board.

(a) The board must be composed of persons representing professions and institutions concerned with the care and treatment of chronically ill or infirm elderly patients. However—

(1) A majority of the board members may not be representative of a single profession or category of institutions; and

(2) Members not representative of institutions may not have a direct financial interest in any nursing home.

(b) For purposes of this section, nursing home administrators are considered representatives of institutions.

§ 431.707 Standards.

(a) The agency or board must develop, impose, and enforce standards that must be met by individuals in order to be licensed as a nursing home administrator.

(b) The standards must be designed to insure that nursing home administrators are—

- (1) Of good character;
- (2) Otherwise suitable; and
- (3) Qualified to serve because of training or experience in institutional administration.

§ 431.708 Procedures for applying standards.

The agency or board must develop and apply appropriate procedures and techniques, including examinations and investigations, for determining if a person meets the licensing standards.

§ 431.709 Issuance and revocation of license.

Except as provided in § 431.714 of this subpart, the agency or board must—

(a) Issue licenses to persons who meet the agency's or board's standards; and

(b) Revoke or suspend a license if the agency or board determines that the person holding the license substantially fails to meet the standards.

§ 431.710 Provisional licenses.

To fill a position of nursing home administrator that unexpectedly becomes vacant, the agency or board may issue one provisional license, for a single period not to exceed 6 months. The license may be issued to a person who does not meet all of the licensing requirements established under § 431.707 but who—

(a) Is of good character and otherwise suitable; and

(b) Meets any other standards established for provisional licensure by the agency or board.

§ 431.711 Compliance with standards.

The agency or board must establish and carry out procedures to insure that licensed administrators comply with the standards in this subpart when they serve as nursing home administrators.

§ 431.712 Failure to comply with standards.

The agency or board must investigate and act on all complaints it receives of violations of standards.

§ 431.713 Continuing study and investigation.

The agency or board must conduct a continuing study of nursing homes and administrators within the State to improve—

- (a) Licensing standards; and
- (b) The procedures and methods for enforcing the standards.

§ 431.714 Waivers.

The agency or board may waive any standards developed under § 431.707 of this subpart for any person who has served in the capacity of a nursing home administrator during all of the 3 calendar years immediately preceding the calendar year in which the State first meets the requirements in this subpart.

§ 431.715 Federal financial participation.

No FFP is available in expenditures by the licensing board for establishing and maintaining standards for the licensing of nursing home administrators.

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 10, 1995

Senator Steve Frank
Senator Rick Halford
Co-Chair, Finance Committee
Alaska State Senate
Capitol Building
Juneau, AK 99801

Re: Support, CSHB 124
Nursing Home Administrator Board

Dear Senators Frank; Halford & Members of Finance Committee:

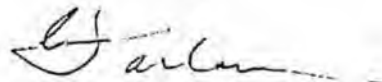
ASHNHA, representing community hospitals and nursing homes from across Alaska support CSHB 124, allowing the sunseting of the Nursing Home Administrator Licensing Board and transferring the administrator licensing responsibilities to the Division of Occupational Licensing (DOL).

Reasons for support are:

- * Nursing Home Administrators must be licensed by state to meet HCFA requirements for federal Medicaid funding match.
- * Division of Occupational Licensing can administer licensing exams and disciplinary process without a Board.
- * The DHSS Division on Health Facility Licensing & Certification and the Senior Services Ombudsman closely monitor performance Alaska's long term care facilities and performance of administrators.

Your support requested.

Sincerely,



Harlan R. Knudson
President/CEO

✓
cc: Representative Cynthia Toohy
Catherine Reardon, Director, DOL

SENATE COMMITTEE REPORT

DATE: 3/30/95

FURTHER: Finance

DATE TURNED INTO OFFICE: 4-7-95

HESS Committee considered CS FOR HOUSE BILL NO. 124(FIN)

Transferring the regulation of nursing home administrators to the Department of Commerce and Economic Development; abolishing the Board of Nursing Home Administrators; efd.

PH FIN

and recommends:

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

Senate Bill:
 | same title
 | new title
 House Bill:
 | same title
 | technical change
 | new: SCR? _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Loren D. Luman</i>	<input checked="" type="checkbox"/>	<i>Mike Miller</i>	<input checked="" type="checkbox"/>		
		<i>H. Ellis</i>	<input checked="" type="checkbox"/>		
		<i>Judith E. Soto</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Linda Green</i>	<input checked="" type="checkbox"/>				

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>DCED-OL</i>	<i>3/3/95</i>		<i>8.2</i>

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

HB

127

HFIN

FILE

FINANCE COMMITTEE REPORT

(11)

Date Referred: March 22, 1995

FURTHER REFERRALS:

Date of Committee Action: 4/11/95

The FINANCE Committee considered:

HB 127

HOUSE BILL NO. 127

120-DAY JAIL: ASSAULT ON OFFICERS

"An Act increasing the minimum term of imprisonment for assaults in the fourth degree committed against a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responders."

recommends it be replaced with the following committee substitute HS HB 127 (JUD) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) Corrections 2/22/95

zero fiscal note(s) _____ zero fiscal note(s) Admin 2/22/95
DPS 2/22/95 Law 2/22/95

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Terry Martin</i>	Martin	✓			
<i>Tom Therriault</i>	Therriault	✓			
<i>John Parnell</i>	Parnell	✓			
<i>Sam Grussendorf</i>	Grussendorf	X			
<i>Bob Kelly</i>	Kelly	✓			
<i>Mark Hanley</i>	Hanley	X			

CHAIR'S SIGNATURE *Mark Hanley*
 Hanley

FISCAL NOTE

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

BILL NO. HB 127

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act increasing the minimum termassult on BRU: Statewide Operations
...peace officers.... Component: All Institutions
 Sponsor: Rep. Kelly
 Requester: Rep. Kelly COMPONENT SERIAL NO. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	64.2	64.2	64.2	64.2	64.2	64.2
TOTAL OPERATING	64.2	64.2	64.2	64.2	64.2	64.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	64.2	64.2	64.2	64.2	64.2	64.2

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment.

Because this offense involves assault on a clearly identified peace officer, fire fighter or other justice or emergency personnel, these individuals would serve their enhanced sentence in a correctional facility at a cost of \$107.00 per day. Allowing for good time accounting, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assaults on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number is small; perhaps 10 to 12.

$60 \times 10 \times \$107 = \$64,200.00$ annual cost of increase in minimum sentence.

Prepared by: Jerry Shriner
 Division: Commissioner's Office
 Approved by Commissioner: *Harriet M. Pugh*
 Agency: Department of Corrections

Phone: 465-4640
 Date: 2/8/95
 Date: 2/8/95

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FISCAL NOTE

No. 2
 Version: HB 127
 (H) Publish Date: 2/22/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Department of Law
 Title: ...assaults in the fourth degree committed against BRU: Prosecution
a peace officer, fire fighter, correctional officer... Component: All
 Sponsor: Representative Kelly
 Requester: Representative Kelly COMPONENT SERIAL NO. 0085-0090

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES		
----------------------	--	--

CHANGE IN REVENUES		
--------------------	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	0.01	0.01	0.01	0.01	0.01	0.01
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.55.135(d) to increase the minimum term of imprisonment from 30 days to 120 days for a person convicted of assault in the fourth degree for assaulting a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault. This is a sentencing provision that will not have a fiscal impact on the Department of Law.

R. I. Peques

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/13/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/13/95
 Agency: Department of Law

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COMMITTEE COPY

STATE OF ALASKA
1995 LEGISLATIVE SESSION

No. 3
Bill version: HB 127
(H) Publish Date: 2/22/95

Revision Date: _____ Dept. Affected: Public Safety
Title: An Act increasing the minimum term of Alaska State Troopers
imprisonment for assaults against a peace officer Component: Detachments
Sponsor: Representative Kelly
Requestor: (H) State Affairs COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF-Program Receipts						
1006 GF:MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ -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.)

No significant fiscal impact is anticipated.

Prepared By: Francis C. Allan Phone: 269-5691
Division: Alaska State Troopers Date: 02/02/95
Approved by Commissioner: Ronald L. Otto Date: 2/10/95
Agency: Ronald L. Otto, Dept. of Public Safety

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FISCAL NOTE

No. 4
 Bill Version: CSHB 127 (JUD)
 (H) Publish Date: 3/22/95

STATE OF ALASKA
 1995 LEGISLATIVE SESSION

Revision Date: _____
 Title: An Act increasing the minimum term of imprisonment for assaults in the fourth degree
 Sponsor: Rep. Kelly
 Requestor: (H) JUD

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
 No measurable impact on the Public Defender Agency is anticipated.

Prepared by: John Salemi, Director
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Mark Boyer
 Agency: Department of Administration

Date: 3/14/95

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Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99811

Representative Pete Kelly

Sponsor Statement

House Bill 127

Bill: "An Act increasing the minimum term of imprisonment for assaults in the fourth degree committed against a peace officer, fire fighter, correctional officer, emergency medical technician, paramedic, ambulance attendant, or other emergency responders."

It is the intent of this bill to enhance a serious tool for police officers and others on the front line. It will increase the severity of punishment for acts committed against a police officer while in the performance of official duties.

This bill sends a clear message to individuals that once the police arrive the fight must stop. Alaska is not sending in our "tag team blue" for the next round. Expanding the fracas to include a police officer will result in jail time.

This bill also discourages an officer from "engaging in a fair fight." There is no reason for such a fight to continue, and this bill makes that quite clear.

Although initially intended as a tool for police, it has even more meaning when applied to individuals with even less training or expectation of dealing with persons physically. Volunteers responding to a medical emergency, or fire are neither equipped nor trained to handle assault or violence directed against their persons.

Representative Pete KellyNew Sections 1.2.3. and 4. Addition of correctional nurses:

The existing language in AS 12.55.135(d) uses the phrase "correctional officer. Nurses who treat prisoners without benefit of additional guards or adequate backup are not "correctional officers."

We found that the portion of the statutes covering aggravating factors for sentencing options by judges did not use the term "correctional officer" but rather used the term "correctional employee."

AS 12.55.155 Factors in aggravation and mitigation.

(c) (13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, **correctional employee**, fire fighter, emergency technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties.

We chose to substitute the phrase "correctional employee" for the existing "correctional officer." This accomplishes our objective of including correctional nurses, and also makes the statutes more consistent. With this adoption AS 12.55.125, AS 12.55.135, and AS 12.55.155 all include the phrase "correctional employee" instead of "correctional officer."

New Section 6. Addition of parole/probation officers:

Parole/probation officers receive police training and certification. They are clearly identified to the parolees or probationers they are involved with. However, extensive discussions with Legislative Legal's Jerry Luckhaupt, and the Department of Law's, Laurie Otto, concluded that the definition of "peace officer" constructionally related to AS 12.55.135 did not include parole/probation officers.

To include parole/probation officers in HB 127 we selected a specific definition of "peace officer" found under AS 11.81.900.

AS 11.81.900 (b)(38) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests. whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

Date: March 17, 1995

For: House Judiciary Committee

By: Representative Pete Kelly

CS HB 127F

Chart: Sectional Analysis

Section 1	AS 12.55.125(a)	"correctional employee"
Section 2	AS 12.55.125(c)	"correctional employee"
Section 3	AS 12.55.125(d)	"correctional employee"
Section 4	AS 12.55.125(e)	"correctional employee"
Section 5	AS 12.55.135(d)	The original bill.
Section 6	AS 11.81.900	Definition of "police officer."



ALASKA STATE EMPLOYEES ASSOCIATION

AFSCME Local 52, AFL-CIO

February 27, 1995

The Honorable Representative Pete Kelly
State Capital Building
Juneau, Alaska 99801

Dear Representative Kelly,

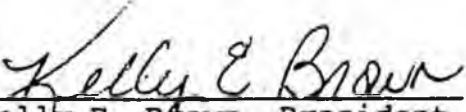
As the prime sponsor of House Bill 127, I am writing to request your consideration of an Amendment to this legislation that would include Adult Probation Officers, Juvenile Probation Officers, Fish and Wildlife Protection Officers and Nurses who work in Correctional Institutions.

It is my opinion that these state employees are at risk of assault from persons that they serve in their professional capacities. As the President of Alaska State Employees Association, I want to ensure that members of ASEA who are at risk as a result of their employment, are protected under this statute. That protection will come in the form of deterrence of criminal behavior directed against them and prosecution when an assault does occur.

The amendment I am requesting could be added during hearings on this legislation before either the House Judiciary Committee or the House Finance Committee. Additionally, I would welcome the opportunity to discuss with you the specific language contained in this proposed amendment.

Thank you for your consideration of this legislative amendment request to House Bill 127. I can be reached at the number above at your earliest convenience.

Sincerely,


Kelly E. Brown, President
Alaska State Employees Association
American Federation of State, County
and Municipal Employees, Local 52

ANCHORAGE OFFICE
3510 Spenard Road, Suite 110
Anchorage, AK 99503
(907) 277-5200 FAX (907) 277-5206
TOLL free: 800-478-ASEA

JUNEAU OFFICE
641 West Willoughby, Suite 100
Juneau, AK 99801
(907) 463-4949 FAX (907) 463-4950
TOLL free: 800-478-0049

FAIRBANKS OFFICE
315 Barnette Street, Suite 104
Fairbanks, AK 99701
(907) 452-2300 FAX (907) 452-2307
TOLL free: 800-478-2305

HB

127

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT OF
SFC 2/20/96

DATE: 2/14/96

DATE TURNED INTO OFFICE: _____

The Finance Committee considered CS FOR HOUSE BILL NO. 127(JUD)

Penalties for certain offenses committed against a peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responders.

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous 5 CS CS HB 127 (JUD)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:
 same title
 new title
House Bill:
 same title
 technical change
 new: SCR# _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll E. P. ...</i>	✓	<i>Paul ...</i>	✓		
<i>David ...</i>	✓				
Co-Chair: <i>Rick Halford</i>	✓	Co-Chair:			
Co-Chair: <i>...</i>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Public Safety	1/14/96	0	
Administration	1/29/96	0	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Corrections	2/6/96		21.4
Law	2/9/96	0	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

REPORTED ON
 SFC 2/20/96

BILL NO: SCS CSHB 127 (JUD)

Revision Date: February 16, 1996 Dept. Affected: Public Safety
 Title: Minimum imprisonment for assaults against BRU: Alaska State Troopers
peace, fire, correctional, or EMS officers. Component: Detachments
 Sponsor: Representative Kelly
 Requestor: S. Finance COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

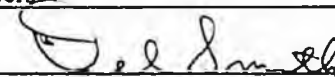
Estimate of current year (FY 96) impact: \$ _____

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.)

This bill will have a negligible fiscal impact on the Division of Alaska State Troopers.

Prepared By: Lt. Dan Lowden Phone: 465-5505
 Division: Alaska State Troopers Date: February 16, 1996
 Approved by Commissioner:  Date: 2/16/96
 Agency: Ronald L. Otte, Department of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. SCS CSHB 127(Jud)

Revision Date: _____
 Title: "An Act relating to 120-day jail: assault on officers...."
for assaults in the fourth degree..."
 Sponsor: Rep. Kelly
 Requestor: (S) JUD

Dept. Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
-----------------------------	----------	----------	----------	----------	----------	----------

CHANGE IN REVENUES ()	0	0	0	0	0	0
-------------------------------	----------	----------	----------	----------	----------	----------

FUND SOURCE:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No measurable impact on the Public Defender Agency is anticipated.

Prepared by: John Salemi, Director
 Division: Public Defender Agency

Phone: 264-4400
 Date: _____

Approved by Commissioner: Mark Bover
 Agency: Department of Administration

Date: 2/14/96

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FISCAL NOTE

No. 5
 Bill CS HB 127 CS
 (S) Publish Date: 2/14/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act increasing the minimum term...assc BRU: Statewide Operations
...peace officers.... Composer: All Institutions
 Sponsor: Rep. Kelly
 Requester: Senate Finance COMPONENT SERIAL NO. 1381

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	21.4	21.4	21.4	21.4	21.4	21.4
TOTAL OPERATING	21.4	21.4	21.4	21.4	21.4	21.4

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	21.4	21.4	21.4	21.4	21.4	21.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	21.4	21.4	21.4	21.4	21.4	21.4

Estimate of any current year (FY96) cost \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the mandatory minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 60 days imprisonment. The bill also expands the coverage to correctional employees.

Because this offense involves assault on a clearly identified peace officer, fire fighter, correctional employee or other justice or emergency personnel, these individuals would serve their sentence in a correctional facility rather than a CRC ; at a cost of \$107.00 per day. Allowing for good time, each inmate affected would serve an additional 20 days in prison. Data concerning assault on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number of convictions will be 10 to 12 per year.

$20 \times 10 \times \$107 = \$21,400$ annual cost of increase in minimum sentence.

Prepared by: Jerry Shriner Phone: 465-4640
 Division: Commissioner's Office Date: 2/8/96
 Approved by Commissioner: Margaret Pugh Date: 2/8/96
 Agency: Department of Corrections

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FISCAL NOTE

No. 6

Bill Version: SCSCS HB 127 (Jud)

(S) Publish Date: 2/14/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: 2/9/96 Dept. Affected: Department of Law
 Title: "...penalties for certain offenses committed against BRU: Criminal Division
a peace officer, fire fighter, correctional employee..." Component: Criminal Division
 Sponsor: Representative Kelly
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correction officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending these mandatory sentencing provisions to crimes against non-uniform correctional employees, such as nurses, cooks and maintenance workers, who also work in the state's correctional institutions. The bill also raises the minimum penalty for physical assault against a peace officer or emergency responder from 30 days to 60 days of incarceration. Finally, the bill changes a presumptive sentencing law for class C and B felonies against a peace officer. This change clarifies that a sentence may be increased with the aggravating factor in AS 12.55.155(c)(13) if the offense is directed against a judicial officer or peace officer or other emergency responder. These changes will not cause a fiscal impact for the Department of Law.

Prepared by: Richard I. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/9/96
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/9/96
 Agency: Department of Law

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Sen. Donley
moved/adopted
2/20/96

9-LS0501\W

SENATE CS FOR CS FOR HOUSE BILL NO. 127(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/14/96
Referred: Finance

Sponsor(s): REPRESENTATIVES KELLY, Parnell

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to penalties for certain offenses committed against a peace
2 officer, fire fighter, correctional employee, emergency medical technician, paramedic,
3 ambulance attendant, or other emergency responders."

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

5 * Section 1. AS 12.55.125(a) is amended to read:

6 (a) A defendant convicted of murder in the first degree shall be sentenced to
7 a definite term of imprisonment of at least 20 years but not more than 99 years. A
8 defendant convicted of murder in the first degree shall be sentenced to a mandatory
9 term of imprisonment of 99 years when

10 (1) the defendant is convicted of the murder of a uniformed or
11 otherwise clearly identified peace officer, fire fighter, or correctional employee
12 [OFFICER] who was engaged in the performance of official duties at the time of the
13 murder;

14 (2) the defendant has been previously convicted of

1 (A) murder in the first degree under AS 11.41.100 or former
2 AS 11.15.010 or 11.15.020;

3 (B) murder in the second degree under AS 11.41.110 or former
4 AS 11.15.030; or

5 (C) homicide under the laws of another jurisdiction when the
6 offense of which the defendant was convicted contains elements similar to first
7 degree murder under AS 11.41.100 or second degree murder under
8 AS 11.41.110; or

9 (3) the court finds by clear and convincing evidence that the defendant
10 subjected the murder victim to substantial physical torture.

11 * Sec. 2. AS 12.55.125(c) is amended to read:

12 (c) A defendant convicted of a class A felony may be sentenced to a definite
13 term of imprisonment of not more than 20 years, and shall be sentenced to the
14 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
15 12.55.175:

16 (1) if the offense is a first felony conviction and does not involve
17 circumstances described in (2) of this subsection, five years;

18 (2) if the offense is a first felony conviction, other than for
19 manslaughter, and the defendant possessed a firearm, used a dangerous instrument, or
20 caused serious physical injury during the commission of the offense, or knowingly
21 directed the conduct constituting the offense at a uniformed or otherwise clearly
22 identified peace officer, fire fighter, correctional employee [OFFICER], emergency
23 medical technician, paramedic, ambulance attendant, or other emergency responder
24 who was engaged in the performance of official duties at the time of the offense, seven
25 years;

26 (3) if the offense is a second felony conviction, 10 years;

27 (4) if the offense is a third felony conviction, 15 years.

28 * Sec. 3. AS 12.55.135(d) is amended to read:

29 (d) A defendant convicted of assault in the fourth degree who knowingly
30 directed the conduct constituting the offense at [UPON] a uniformed or otherwise
31 clearly identified peace officer, fire fighter, correctional employee [OFFICER],

1 emergency medical technician, paramedic, ambulance attendant, or other emergency
2 responder who was engaged in the performance of official duties at the time of the
3 assault shall be sentenced to a minimum term of imprisonment of

4 (1) 60 [30] days if the defendant violated AS 11.41.230(a)(1) or (2);

5 (2) 30 days if the defendant violated AS 11.41.230(a)(3).

6 * Sec. 4. AS 12.55.155(e) is amended to read:

7 (c) If a factor in aggravation is a necessary element of the present offense, or
8 requires the imposition of a presumptive term under AS 12.55.125(c)(2) [, (d)(3) OR
9 (e)(3)], that factor may not be used to aggravate the presumptive term. If a factor in
10 mitigation is raised at trial as a defense reducing the offense charged to a lesser
11 included offense, that factor may not be used to mitigate the presumptive term.

12 * Sec. 5. AS 12.55.185 is amended by adding a new paragraph to read:

13 (14) "peace officer" has the meaning given in AS 11.81.900.

14 * Sec. 6. AS 12.55.125(d)(3) and 12.55.125(e)(3) are repealed.

15 * Sec. 7. This Act applies to all offenses committed on or after the effective date of this
16 Act.

FISCAL NOTE

1/25/96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO: CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Public Safety
 Title: "An Act increasing the minimum term of imprisonment for assault against a peace officer" BRU: Alaska State Troopers
 Component: Detachments
 Sponsor: Representative Kelly
 Requestor: (S) Judiciary COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 95) impact: \$ _____

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.)

No significant fiscal impact is anticipated.

Prepared By: Sandy Perry-Provost, Special Assistant to the Commissioner Phone: 465-4322
 Division: Commissioner's Office Date: 01/24/96
 Approved by Commissioner: *Ronald L. Ote* Date: 1/24/96
 Agency: Ronald L. Ote, Dept. of Public Safety

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1/31/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (Jud)

Revision Date: January 29, 1996
Title: "An Act increasing the minimum term of imprisonment for assaults in the fourth degree..."
Sponsor: Rep. Kelly
Requestor: (S)Jud

Dept. Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)
There is no fiscal impact to the Public Defender Agency.

Prepared by: John Salemi, Director
Division: Public Defender Agency

Phone: 264-4400
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: _____

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1/25/96

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127 (JUD)

Revision Date: 1/24/96 Dept. Affected: Department of Law
 Title: "...penalties for certain offenses committed against
a peace officer, fire fighter, corrections employee..." BRU: Criminal Division
 Sponsor: Representative Kelly Component: Criminal Division
 Requester: Senate Judiciary COMPONENT SERIAL NO. 2085

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends various criminal statutes prescribing mandatory terms of imprisonment for crimes committed against emergency personnel (peace officers, fire fighters, correctional officers, and other emergency responders) to change the term "correctional officer" to "correctional employee." The bill has the effect of extending the state's deterrent mandatory sentencing provisions to help deter crimes against non-uniform correctional employees, such as cooks and maintenance workers, who also work in the state's correctional institutions. There will not be a fiscal impact for the Department of Law.

Prepared by: Richard I. Pegues, Director
 Division: Administrative Services Division
 Approved by Commissioner: Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: 1/24/96
 Date: 1/24/96

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FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. CSHB 127(JUD)

Revision Date: _____ Dept. Affected: Corrections
 Title: An Act increasing the minimum term...assault on BRU: Statewide Operations
...peace officers.... Component: All Institutions
 Sponsor: Rep. Kelly
 Requester: Senate Judiciary COMPONENT SERIAL NO. 1381

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	64.2	64.2	64.2	64.2	64.2	64.2
TOTAL OPERATING	64.2	64.2	64.2	64.2	64.2	64.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	64.2	64.2	64.2	64.2	64.2	64.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	64.2	64.2	64.2	64.2	64.2	64.2

Estimate of any current year (FY96) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill would increase the mandatory minimum sentence for assault defined in AS 12.55.135 (d) from 30 to 120 days imprisonment. The bill also expands the coverage to correctional employees.

Because this offense involves assault on a clearly identified peace officer, fire fighter, correctional employee or other justice or emergency personnel, these individuals would serve their sentence in a correctional facility rather than a CRC ; at a cost of \$107.00 per day. Allowing for good time, each inmate affected would serve an additional 60 days at \$107 per day or \$6,420.00. Data concerning assault on this group are not kept separate from other assaults, however, contacts with the Dept. of Law and Dept. of Public Safety indicate the number of convictions will be 10 to 12 per year.

$60 \times 10 \times \$107 = \$64,200.00$ annual cost of increase in minimum sentence.

Prepared by: Jerry Shriner
 Division: Commissioner's Office
 Approved by Commissioner: Margaret H. Pugh Margaret Pugh
 Agency: Department of Corrections

Phone: 465-4640
 Date: 1/29/96
 Date: 1/29/96

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Alaska State Legislature

FEB 08 1996

REPRESENTATIVE
PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District: 31

House Of Representatives

February 8, 1996

Memorandum

To: Senator Rick Halford, Co-Chair
Senator Steve Frank, Co-Chair
Senate Finance Committee

From: Representative Pete Kelly

Handwritten initials "PK" in dark ink.

Regarding: Hearing Request for House Bill 127

Please schedule House Bill 127 at your earliest convenience.

HB 127 passed out of Senate Judiciary with unanimous consent. It was amended at the request of Senator Adam's, and I concurred with the amendments.

A sponsor statement, new sectional, explanations of the changes in Senate Judiciary, current fiscal notes, and letters of support are attached.

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

Mailing Address:

1711 Cushman Suite 203

Fairbanks, Alaska 99701

(907) 456-3161



House Of Representatives

While in Juneau

State Capitol

Juneau, Alaska

99801-1132

(907) 465-2327

House District: 31

Sponsor Statement

House Bill 127

"An Act increasing the minimum term of imprisonment for assaults in the fourth degree committed against a peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responders."

It is the intent of this bill to enhance a serious tool for police officers and others on the front line. It will increase the severity of punishment for acts committed against a police officer while in the performance of official duties.

This bill sends a clear message to individuals that once the police arrive the fight must stop. Alaska is not sending in our "tag team blue" for the next round. Expanding the fracas to include a police officer will result in jail time.

Although initially intended as a tool for police, it has even more meaning when applied to individuals with even less training or expectation of dealing with persons physically. Volunteers responding to a medical emergency, or fire are neither equipped nor trained to handle assault or violence directed against their persons.

Correctional employees are now included in this bill, within the confines of their official duties. The inclusion of correctional employees provides an opportunity for the "message" this bill sends to spread among those offenders currently in prison, before they return to the streets.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

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While in Juneau
State Capitol
Juneau, Alaska
99601-1182
(907) 465-2327

House District: 3

House Of Representatives

Sectional

HB 127\U

Section 1. Adds correctional employee. Correctional employees include nurses and others employed at our correctional institutions and exposed to some of our hardest offenders. This provision is for the murder of a police officer, et al.

Section 2. Same change, for class A felonies committed against a police officer, et al.

Section 3. The original bill, modified. Raises the minimum penalty for physical assault against a police officer from 30 days to **60** days. Modified to add: who knowingly directed the conduct constituting the offense at a . . . peace officer. Also modified to leave the sentencing at **30** days for an individual whose use of "words or other conduct . . . recklessly places another person in fear of imminent physical injury (AS 11.41.230(a)(3)).

Section 4. Technical change in numbering.

Section 5. Adds a "peace officer" definition to Title 12, the same definition as used in Title 11. This is a broad definition including **parole** officers, juvenile parole officers, VPSO's, all officers with arrest authority.

Section 6. Gets rid of a presumptive sentencing flaw. As drafted the current presumptive sentencing provision for class C and B felony assault against a peace officer could result in a lower sentence than for another first time offense. This change allows the sentence to be increased with the aggravating factor in AS 12.55.155(c) (13) if the offense was directed against a peace officer, judicial officer, et al.

Discussion, Changes in Senate Judiciary Committee

Version SCSCSHB 127W of HB 127 contains two changes. The first is a modification of the minimum sentencing to retain the 30 day provision when "by words or other conduct that person recklessly places another person in fear of imminent physical injury (AS 11.41.230(3)).

The second change provides for the use of the felony aggravators in AS 12.55.155(c) (13) for the presumptive sentencing language for a class B felony (AS 12.55.125(d)) and a class C felony (AS 12.55.125(e)). This expands the list to include judicial officers.

There was a problem in the presumptive sentencing structure. For Class B and Class C felonies the presumptive sentence of assault against a police officer was the same as the sentence for a first offense. The result of this was to limit the judges options to give additional sentencing provisions beyond presumptive sentence. For many offenders lacking sufficient judgment that they would attack a police officer, alcohol treatment following their sentence, as well as the presence of a parole officer in their lives can make a difference. These were not options under the current sentencing structure.

Peace officers correctly realized that the actual sentences provided to individuals assaulting a peace officer were shorter than those assaulting citizens. The problem was not readily apparent, but HB 127 gives the judicial branch the tools to correct this problem.

This legislation is intended to send a clear message that we are not sending our employees out to do battle, we do not expect them to engage in a "fair fight" with the criminal element. We expect our employees to be treated with the same respect that we would want if we were there ourselves.

I am well aware that some of my constituents disagree. But they are not only a small minority, they also think of police officers as hired thugs whose purpose is to "teach a lesson" or otherwise take matters into their own hands, perhaps they feel that the individuals who hired on as our police and emergency responders are seeking , not to help, but to physically maintain law and order. This is not the role of today's professional police force, if it ever was.

HB 127 helps set the tone for professional police work. We ask a lot when we send an officer out to respond to a domestic disturbance call. We ask a lot of our police when we ask them to respond to shots fired in one of our neighborhoods. HB 127 does not replace a kevlar shield, it may not instantly deter a drunk trying to self destruct.

HB 127 reaffirms our commitment to a professional police force, to the tough job faced by the correctional nurse who works on a daily basis with the most hardened criminals in a prison infirmary, to the expectation of the emergency responder rushing to a scene to provide help.