

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 3011

Regulation of occupations divided between occupational licensing boards and DCCED

Occupations are regulated by either an occupational licensing board or directly by DCCED. Alaska statutes designate 21 occupational licensing boards and 14 occupations that DCCED directly regulates (Appendix B identifies the 21 occupational boards and Appendix D identifies the 14 occupations regulated directly by DCCED). Occupational boards are generally responsible for establishing regulations for its occupations, granting licensure, and taking disciplinary action. DCCED provides administrative support to occupational boards including general administrative assistance (purchasing and scheduling); communicating with licensees (license information, exam information); and, providing inspection, enforcement, and investigative resources.

Role of board members and experts in the occupational licensing investigative process

According to statutes and regulations, an occupational licensing board can be involved in an investigation at three different points in the investigative timeline. The board can:

- issue a summary suspension of a license;
- approve, deny, or modify a Memorandum of Agreement (MOA);³ and,
- act as an adjudicative authority after reviewing a Hearing Officer's decision.

Exhibit 5

Investigative Authority

Sec. 08.01.087. Investigative and enforcement powers of department.

- (a) The department may, upon its own motion, conduct investigations to
- (1) determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 ;

Individual board members are utilized by the investigative staff for technical assistance. However, board members that have reviewed evidence must recuse themselves in the event the full board is called upon to act in any of the three points mentioned previously.

The Department of Law has recommended that board members be prohibited from participating in the investigative process. This segregation is necessary, in order to maintain the boards' statutory role as impartial adjudicators.

When it is determined necessary by the Chief Investigator, the investigative unit will hire an expert. Experts are typically used when technical expertise is needed to help substantiate an alleged violation.

³ MOAs are agreements between the licensee and, either, DCCED (for occupations regulated without an occupational board) or a board. The terms of an MOA are negotiated by staff in the investigative unit and the respondent or the respondent's attorney. Occupational licensing boards can modify terms of an agreement and request that the respondent agree to the new terms, or the board can accept the terms by signing the agreement.

Process for investigating occupational licensing complaints

DCCED's Division of Occupational Licensing (OccLic) has an investigative unit whose purpose is to investigate allegations of illegal or incompetent activity by licensees. The unit also investigates allegations of unlicensed occupational activity. The unit is composed of a chief investigator, 12 investigator IIIs, one investigator I, and an administrative clerk.

Each investigator is assigned to a primary occupation and serves as backup for other occupations. When the unit is contacted about a complainant, contact is routed to the assigned investigator. The investigator assigned to the pertinent occupation interacts with the complainant to gain an understanding of the alleged offense and determines whether the violation falls within OccLic's jurisdiction. If the complaint appears to be within OccLic's jurisdiction to investigate, the investigator will request a complaint form be completed and returned.

When complaints are filed with OccLic, they are forwarded to the primary investigator. It is each investigator's responsibility to officially open the case by entering the pertinent information into the investigative case management system.

OccLic does not hold complaints in a backlog until resources become available. Most investigators have more assigned cases than they can actively investigate. Investigators keep an inventory of assigned cases and make their own determination – subject to general priority guidance – as to which of their assigned cases to investigate.

The investigative unit does not use standard procedures when conducting investigations (except for a standard policy of assigning case priority levels). Investigators draw upon their previous investigative experience when conducting and documenting investigations. The extent and format of documentation reflects each investigator's previous training and experience. There is no standard means of informing a subject of an investigation that the investigation is being conducted. Further, there is no standard means of informing complainants of delays in the investigative process.

In addition to investigating complaints, investigators have the responsibility of monitoring compliance with disciplinary actions and/or memorandums of agreement. Typically, memorandums of agreements consist of fines, continuing education classes, and/or drug testing. However, occupational licensing boards and DCCED have imposed other requirements such as periodic psychological examinations.

Exhibit 6

Director Caseload Reduction Directive

During FY 03, OccLic's director instituted a caseload reduction project to reduce the inventory of cases. Investigators were directed to close cases that were over a year old and did not pose a serious threat to public safety. During FY 03 and FY 04, a total of 78 cases were closed under this project.

REPORT CONCLUSIONS

We conducted a review of Alaska's sunset process to assess the impact of Alaska's sunset laws and to make recommendations for improvement taking into consideration national trends and best practices.⁴ We also reviewed the investigative unit within the Department of Commerce, Community, and Economic Development (DCCED), Division of Occupational Licensing.

Operational, regulatory, and statutory improvements associated with over 25 years of sunset experience have been institutionalized by entities subject to sunset. Because of improvements, sunset reviews on a standard four-year cycle are no longer an efficient use of state resources. Detail conclusions regarding the sunset process are discussed in Section I below.

DCCED's investigation unit has increased protection of the general public and members of licensed professions by increasing the number of disciplinary actions taken. However, the unit's case management procedures are in need of significant improvement. Detailed conclusions regarding operations of DCCED's investigative unit are discussed in Section II beginning on page 17.

SECTION I – ANALYSIS OF ALASKA'S SUNSET PROCESS

Alaska's sunset process has been successful at identifying and correcting significant deficiencies. Consequently, sunset laws have evolved from a means of enacting change to the mechanism for monitoring continued operations. Entity operations have matured and warrant less frequent oversight.

The sunset review period should be lengthened to eight years to more efficiently use state resources. Sunset evaluation criteria can be improved by specifically requiring an analysis of effectiveness and efficiency and including a review for duplication of effort. Both recommended changes are consistent with national trends in sunset law.

Sunset laws in other states have changed significantly

Sunset laws in other states have changed significantly since first enacted nationally in the mid-1970s. The focus of sunset reviews during the early years was on eliminating government agencies. Many states were successful at eliminating unneeded agencies;

⁴ The Government Accountability Office defines best practices as "the processes, practices, and systems identified in public and private organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific areas." We used best practices entitled *Carrying Out a State Regulatory Program* published by the National State Auditors Association in 2004 to help evaluate operations of DCCED's investigative unit.

Exhibit 7

Sunrise Laws Gain Popularity as Means of Limiting Growth of Government

Nationally, legislation called "sunrise law" has been adopted by many states. Sunrise is defined as the process by which an occupation or profession wishing to receive registration or licensure must propose the components of the legislation, along with cost and benefit estimates of the legislation. Sunrise attempts to limit the growth of government by requiring certain aspects of regulation be considered as part of the legislative decision-making process. Currently, there are 11 states with active sunrise programs.

Sunrise laws differ from sunset in that sunrise attempts to limit growth of government by preventing an unwarranted government agency or program. Conversely, sunset attempts to terminate unnecessary government agencies or programs. Proponents of sunrise law argue that it is less costly and more effective to increase the scrutiny at an agency's birth rather than try to enact its termination.

As with sunset programs, states have set up their respective sunrise programs differently and have experienced varying levels of success. States differ on what occupations are covered by sunrise law and to what degree interested parties must provide information. Some states have formal sunrise procedures that require questionnaires for applicant groups and a summary review of the questionnaire by an objective agency – both the questionnaire and the review must be considered by the legislature during the decision-making process. Other states have more informal procedures, while others make the process optional. A report on occupational licensing issued by the state of Minnesota's legislative auditor (Report # 99-05b Feb 3, 1997) concluded that state legislatures with formal procedures appear to be better informed during the occupational licensing process.

In this same report, Minnesota's legislative auditor highlighted Florida and Washington as two states with successful sunrise programs. Florida's sunrise statute covers proposals to regulate previously unregulated occupations but does not include increases in the scope of practice of occupations already licensed. Washington's law covers unregulated occupations and scope of practice proposals for health care professions. Additionally, Washington's sunrise law stipulates that when regulation is deemed necessary the legislature should enact the least restrictive form of regulation (for instance registration or certification rather than license).

Both Washington and Florida have been successful at limiting licensure through their sunrise programs. No groups of professionals have been licensed in Florida since the law was passed in 1991. In Washington, only one health care profession has been licensed since the law was passed in 1983.

A well-designed sunrise program can provide complete information for better decision making, thereby limiting unnecessary growth of government. However, the improvement is not without a cost. Similar to the sunset program, administration of the program, review, and deliberation would be a costly process.

however, not to the extent envisioned. The most common outcome of sunset reviews has been administrative and structural changes.⁵

The commitment to improve government through sunset legislation led 36 states to adopt sunset laws between 1976 and 1981, but the use of sunset laws began to fade in the mid-1980s. By 1990, only two additional states had adopted sunset laws, six states had repealed their sunset laws, and another six had suspended their programs. Some discontinued the sunset process due to funding shortages, while other states discontinued their programs because they were ineffective. As of 2002, 26 states continue to have active sunset review programs.

For those states that continue to utilize the sunset process, attention has shifted away from determining whether there is a continued public need for an agency, program, or law. Instead, reviews are becoming more focused on efficiency and effectiveness. Recommendations tend to reflect needed operational and regulatory improvements.

States have found it difficult to terminate agencies or provisions of law under the sunset process. Once established, agencies/programs/laws tend to have a number of people with a strong vested interest in maintaining the status quo. Terminations often result in a marginal benefit to the public but can have significant, negative consequences for a specific group. Political forces make it difficult to objectively terminate. As a result of the difficulty in terminating a program, sunrise laws have gained popularity as a means of limiting the growth of government. Sunrise laws are explained in Exhibit 7 on the opposite page.

The sunset process has contributed to operational improvements

Sunset review recommendations have resulted in significant operational, regulatory, and statutory changes to boards and regulatory agencies covered by the sunset law. The changes have improved and enhanced operations of Alaska's boards and regulatory agencies. We reviewed the degree to which sunset audit recommendations made by our division, during the years 1993 through 2003, were implemented. We limited our review to recommendations that could be implemented by a board/regulatory agency (operational and regulatory types of recommended changes) or by the legislature (statutory changes).

During the 11-year time period (FY 93 to FY 04), Legislative Audit made 176 statutory, operational, or regulatory recommendations in sunset audits, that could be implemented by either a board/regulatory agency or the legislature. Seventy-three percent of recommendations for nonoccupational boards and regulatory agencies were implemented or partially implemented. For occupational boards, eighty-three percent of recommendations were implemented or partially implemented. Exhibit 8 on the next page summarizes the degree of implementation by type of recommendation.

⁵ Information taken from *Sunset, Sunrise, and Agency Audits* published by the Council on Licensure, Enforcement and Regulation (CLEAR) 2004.

In summary, operational procedures, regulations, and statutes have been improved as a direct result of the sunset process. Consequently, the boards and regulatory agencies subject to sunset, are less at risk of operating in a manner contrary to the public's best interest.

Standard sunset extension period of four years is not an efficient use of state resources

Since the 1977 initiation of Alaska's sunset law, government accountability has become a more central part of public policy. Occupational boards submit annual reports which include: licensing statistics, goals and objectives of the next year, investigative unit summaries, progress made on sunset audit recommendations, and recommendations for statutory or regulatory changes. The legislature has instituted an accountability program for state agencies that require reporting measures of accomplishments. These non-sunset mechanisms of oversight provide alternative ways for the legislature to review operations.

Resources devoted to the sunset process are not commensurate with the need for continued legislative oversight. As discussed earlier, improvements have been institutionalized by entities subject to sunset and alternative means of oversight were instituted. Monitoring of operations accomplished through the sunset process would become more efficient, if the standard period of review was lengthened. We recommend increasing the standard period for review to eight years.

This recommendation is supported by national trends. Alaska, along with three other states, has the shortest standard extension period of four years. Three states have a six-year standard and eight have a ten-year standard. The Background Information section of this report identifies the standard sunset review periods for other states with active programs.

Alaska's existing sunset criteria are similar to other states but could be improved

The sunset law includes nine criteria to be considered during the legislative oversight process. These nine criteria are used by Legislative Audit as evaluation criteria for every sunset audit. No changes to sunset criteria statutes have been made since first enacted in 1977. The nine criteria are listed in Appendix A of this report.

Exhibit 8

**Implementation of Audit Recommendations
1993 through 2003**

Nonoccupational Board/Regulatory Agency

Type of Recommendation	Yes	Partial	No	Total
Statutory	6	1	10	17
Operational	37	5	8	50
Regulatory	1		1	2
Total	44	6	19	69

Occupational Board

Type of Recommendation	Yes	Partial	No	Total
Statutory	27	3	10	40
Operational	53		8	61
Regulatory	5		1	6
Total	85	3	19	107

We compared Alaska's sunset criteria to five other states with similar comprehensive sunset programs.⁶ Sunset criteria used by Alaska are similar to the criteria used in other states. Our comparison also concluded that several states use criteria that Alaska does not have but may benefit from including in its laws. As discussed in Recommendation No. 1, the legislature should consider amending the sunset statutes to include the following criteria:

- *The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.* This criterion reflects the national trend towards focusing sunset reviews on efficiency and effectiveness. This focus is consistent with efforts by the legislature to make government more accountable.
- *The extent to which the entity duplicates the activities of other government agencies or of the private sector.* This criterion gives legislators a means of evaluating whether government is duplicating government or is providing a service already available through the public sector. This criterion could serve as a basis for recommending sunset of existing agencies in the event that duplication is unjustified.

Schedule for sunset reviews should be restructured to make workload more manageable

The 24th Alaska Legislature will be considering legislation that extends 12 boards and commissions set to terminate under the sunset statutes. Typically, four to seven boards and/or commissions are due to terminate each year. The spike in this number of entities set to terminate is a result of extensions made over the previous years. The resulting 2005 workload will require additional commitment of staff resources and committee time.

Legislative Audit will be considering the impact on legislative resources when making recommendations for extension. It is our intent to recommend extension dates that smooth the workload. Such action will make the impact more manageable for future legislatures (See Appendix E).

SECTION II – ANALYSIS OF DCCED'S INVESTIGATIVE UNIT OPERATIONS

DCCED's investigative unit has difficulty in efficiently addressing its caseload. Case management is hampered by poor supervision of open caseloads, a lack of standards for completing critical aspects of the investigative process, and a prioritization policy that does not ensure cases are consistently addressed in a fair and equitable manner.⁷ Most findings

⁶ As discussed in the Background Information section of this report, there are currently 26 states with active sunset programs. Eight of the 26 are comprehensive in scope, including Alaska. By comparing Alaska's sunset criteria to five other comprehensive sunset programs, our review covered 75 percent of states with similar sunset programs.

⁷ Individuals that file a complaint with the investigative unit most likely assume their complaint will be addressed in the order in which it was received. Investigators manage their own inventory of cases under broad guidance to first address cases concerning public safety. When it comes to cases with the same priority level, investigators are not required to investigate cases on a first-in first-out basis.

noted during our review can be attributed to the need for improving case management procedures.

Inability to reduce the inventory of open investigative cases has been an ongoing problem

A large inventory of open cases has been a continual problem for the investigative unit. The unit had 586 open cases at the end of FY 93, compared to 530 open cases at the end of FY 04. The unit's inventory of open cases dipped to a low of approximately 450 in 1999 but increased to over 600 at the end of each year between FY 01 and FY 03. The large inventory of open cases slows down the unit's ability to address new complaints in a timely fashion.

The investigative unit has been unable to address the case inventory (thereby improving the timeliness of the investigative process) even though their staff has doubled since FY 93.⁸ Staff increased during the 11-year period, yet the inventory of cases did not significantly decrease. Increase in staff positions did lead to an increase in disciplinary actions,⁹ the number of cases opened, and the number of cases closed.

Investigators are limited in their ability to actively work cases. The number of cases an investigator can actively work varies based on the nature of complaints, complexity of the investigations, and priority set on other cases in an investigator's assigned caseload. Most investigators have a much larger caseload than they can investigate. The longer a case is open, the more difficult it is for investigators to find respondents, witnesses, and other forms of evidence. Further, older cases are more likely to be closed due to lack of investigative resources and lack of evidence.

Poor case management noted during review of investigative case files

While the investigative unit does a good job of monitoring compliance with ongoing disciplinary actions, we observed several deficiencies in the processing and management of the investigative unit's caseload. The operational deficiencies involve:

- inconsistent assignment of case priority levels,
- inappropriate delays in entering a case in the investigative computerized tracking system,
- extended periods of investigative inactivity,
- inadequate documentation to justify closure action,
- investigator reassignment, and
- instances of keeping cases open after an investigation is completed.

⁸ In FY 93 there were seven full-time equivalent investigator positions. This number increased to a high of 16 positions in FY 03. In FY 04, the unit had one investigator IV position, 12 investigator III positions, and one investigator I position for a total of 14 investigator positions.

⁹ Disciplinary actions usually involve one or more of the following: license suspension, license revocation, memorandum of agreement, or fines.

Most findings can be attributed to poor case management procedures. Poor case management procedures include inadequate supervision of investigators' inventory of assigned cases and a general lack of standards for critical aspects of the investigative process. Without adequate supervision of investigators' caseloads, periods of inactivity go undetected and older cases go unaddressed. The organizational structure and reporting relationships of the investigative unit contributes to the Chief Investigator's inability to adequately supervise his staff's open caseload. This is discussed in further detail below.

Critical aspects of the investigative process include complaint intake and assignment, investigation and documentation, drafting of closure documents, and enforcement. The investigative unit lacks standards for most of these areas. Investigators claim that prescribed standards would not be effective, because each investigation is unique. We acknowledge the unique circumstances involved in each investigation, however, general standards could be effective in ensuring investigations conform to predetermined expectations with regards to documentation and timeliness. For example, we noted in several instances, a delay between the conclusion of an investigation and the drafting of closure documents. Standard timelines would be helpful to clarify management's expectation regarding a reasonable timeframe for completing and submitting closure documents.

Organization of the investigative unit impedes productivity and restricts improvements

The investigative unit's organization and workload assignment procedures make it difficult to address the operational deficiencies through policy and procedure changes. The unit's organizational structure would limit the impact of improved procedures.

The Chief Investigator has the difficult task of supervising 14 positions (13 investigators and one clerical staff) and fulfilling the position's other time-intensive responsibilities. The unit has no midlevel supervisors.

Under this organizational structure, the Chief Investigator prioritizes his workday, working on the tasks that must get done such as; drafting accusations, editing closure documents, assisting with negotiations, working with the Department of Law, and interacting with the press, board members, and the general public. Less time-sensitive supervisory duties such as monitoring the status of investigators' open cases, evaluating the quality of investigative work (including level of documentation), and providing training receive little of the Chief Investigator's attention.

In summary, organization of the investigative unit impedes the ability to make procedural improvements. Recommendation No. 2, in the Findings and Recommendation section, addresses the need to make organizational changes as the first step to implementing improvements.

Investigative staff positions do not reflect complexity of investigative tasks

Almost all of the investigator positions (12 out of 14) are Investigator IIIs, yet the complexity of investigative tasks range from simple to complex. Consequently, the investigative unit has upper-level investigative positions doing tasks that would be more efficiently performed by a lower-level position or a paralegal. Productivity would be efficiently maximized in an organizational structure where duties being performed were commensurate with the experience and education of the position performing the task. This is further discussed as a basis for restructuring the investigative unit in Recommendation No. 2.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending sunset statutes.

From our review of Alaska's more than 25 years of experience with the sunset review process, we have developed three overarching recommendations for improving the sunset statutes. The legislature should consider amending the sunset statutes to:

1. Lengthen the standard sunset extension period from four to eight years: The need for legislative oversight no longer warrants sunset reviews on a standard four-year cycle. Most boards and regulatory agencies have been through the sunset process several times and have implemented many of the recommended improvements. As a result, the risk that boards/regulatory agencies are acting in a manner inconsistent with the public's best interest has decreased substantially.

Alaska Statute 08.03.020 provides procedures governing termination, transition, and continuation of occupational boards. Subsection (c) states:

A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010.

This statute does not preclude a longer extension period. However, because of this statute, it has been standard practice for the legislature to authorize an extension period of four years.

Alaska Statute 44.66.010 sets the maximum extension period for nonoccupational boards and regulatory agencies. Subsection (c) states:

A Commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

We recommend amending AS 08.03.020(c) and AS 44.66.010(c), making the standard period for reestablishment no longer than eight years, while giving the legislature discretion to make extensions for a shorter/longer period. An eight-year period reflects our central findings that boards/regulatory agencies warrant less-frequent legislative oversight. Lengthening the standard extension period to eight years will free up legislative committee time for consideration of other priorities and make the sunset process less time consuming for board/regulatory agencies and legislative staff.

2. Expand sunset evaluation criteria: Sunset evaluation criteria in state law do not explicitly include an overall assessment of: (1) efficiency and/or effectiveness of an agency; or, (2) duplication of effort with other state entities or the private sector. Efficiency is mentioned in Alaska statutes only in terms of the boards' ability to process complaints. Past actions by the legislature indicate that this is an important area for evaluation.

Additionally, the degree to which an agency's activities are duplicated by other state agencies, or the private sector, is a valid basis for recommending termination. State law at AS 44.66.050(d) indicates that duplication should be considered but sunset evaluation criteria do not specifically address this performance area.

Adding these criteria will make the sunset process more effective and enhance legislative oversight. States with similar sunset programs have sunset criteria that addressed these areas.

We recommend the legislature consider amending the sunset criteria statutes, AS 44.66.050(c), by adding the following criteria:

- The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.
- The extent to which an entity duplicates the activities of other government agencies or of the private sector.

While efficiency and effectiveness are often part of sunset reviews, inclusion in statutory evaluation criteria would make sure these factors were consistently considered during the sunset process. Likewise, addressing the possibility of duplication of services would assist the legislature in making government more efficient overall.

3. Clarify responsibility for regulation, in the event an occupational licensing board terminates. Statutes do not specifically define how the regulating responsibility for professions will shift to another state agency, in the event an occupational licensing board terminates under the sunset provisions. Traditionally, the Department of Commerce, Community and Economic Development (DCCED) has assumed the responsibility for administering the regulated occupation after a board has terminated. However, the statutes do not clearly give DCCED the authority to do so.

We recommend the legislature consider amending central licensing statutes to address this uncertainty.

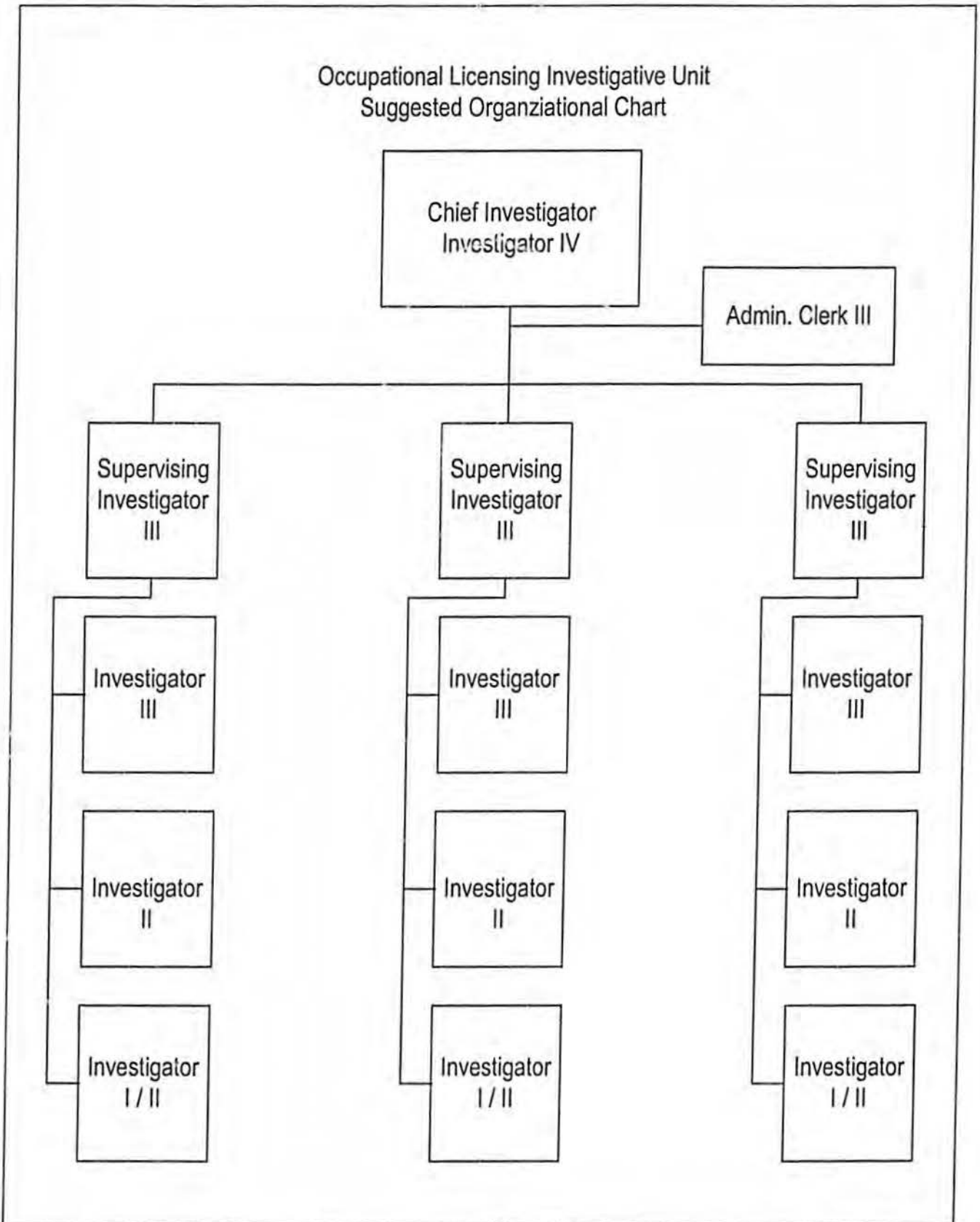
Recommendation No. 2

The director of the Division of Occupational Licensing (OccLic) should implement changes to address investigative inefficiencies and case management procedures.

Investigative inefficiencies and poor case management procedures have hampered the performance of the investigative unit, thereby reflecting poorly on occupational boards', and DCCED's, effectiveness at regulating their respective professions. Review of 59 investigative cases identified the following:

- The priority code for 12 of 59 cases (20% of tested cases) was not assigned in a manner consistent with the unit's policy and procedure.
- In 11 of 59 cases (19% of tested cases), the investigator started working the case at least 14 days before it was opened in the case management system. Delays range from 15 to 679 days.
- There were 37 periods of inactivity exceeding 90 days in 24 cases (41% of tested cases). This excludes the periods of inactivity that were outside the control of an investigator (waiting for documents, cases at the Attorney General's office, and cases awaiting hearing).
- In the six cases using an expert witness (10 % of tested cases), three cases were delayed over 100 days awaiting receipt of the expert's opinion.
- In the nine cases that involved the Attorney General's office (15% of tested cases), five cases experienced delays of over 239 days awaiting action by the Department of Law. Two of the five cases were delayed over 360 days.
- There were four of 40 closed cases that lacked adequate documentation in the investigative file to justify the closure action.
- There was one delay of 179 days between the respondent requesting a hearing and the investigative unit notifying the hearing officer.
- There were 14 instances in nine cases (15% of tested cases) that had the investigator reassigned. One of the cases was reassigned four times during the course of the investigation.
- Five of the 59 cases (8% of tested cases) were left open even though the investigation had concluded. Investigators stated that cases remained open as a means of monitoring.
- One case selected for testing could not be located by OccLic's investigative unit.

Exhibit 9



The duty to investigate occupational licensing complaints is statutorily assigned to DCCED. The efficiency to which complaints are investigated is one of the evaluation criteria used in the sunset legislative oversight process. AS 44.66.050(c) requires the determination as to whether a board or commission has demonstrated a public need for its continued existence by taking into consideration a number of factors, including the following, as specified in AS 44.66.050(c)(6):

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 victims' rights or the office of the ombudsman have been processed and resolved;

The ineffective, organizational structure of the investigative unit and poor case management procedures contributed to the findings noted above. Recommendations addressing the findings are twofold: (1) restructure the investigative unit's staff positions and reporting relationships; and, (2) based on the restructured organization, implement a number of procedural improvements.

1. Restructure the organization of the investigative unit

We recommend OccLic's director take action to reorganize the investigative unit. The Chief of Investigations cannot, both, effectively supervise 14 staff positions and carry out his other required duties. Without correcting this problem, the impact of any changes to policies and procedures will be limited.

OccLic's director should consider the addition of midlevel supervisors and the reclassification of several Investigator III positions to create a more hierarchical organizational structure. The organizational chart in Exhibit 9, on the opposite page, demonstrates how the investigative unit could be reorganized.

Such reorganization will alleviate much of the Chief Investigator's routine, daily supervisory responsibilities. It will allow for the successful implementation of procedural improvements such as detailed assessment and assignment of cases that maximizes the use of staff resources. These improvements are necessary to address the findings noted during our review of investigative case files.

Further, a hierarchical organizational structure is more capable of effectively dealing with turnover of investigator positions. Midlevel supervisors will be in a position to facilitate training and mentoring of new staff positions. Large scale turnover is imminent since many of the current investigators are at or nearing retirement age. The new structure should help mitigate the cost and disruption caused by staff turnover.

2. Change case assessment and assignment procedures

Once an improved hierarchical organizational structure is in place, the unit would benefit from a case assessment process whereby cases are assigned to investigative positions, based on expected complexity of the case and availability of investigative resources. Under this type of system, less-complex cases would be assigned to less-experienced entry-level investigators and more-complex cases would be assigned to more-experienced upper-level investigators. The assessment and assignment process would also consider the assignment of higher priority cases (those that could pose a public harm) to investigators with resources available to immediately address the case.

Most cases (70% of those opened during the past five fiscal years) are considered lower-level priority cases – priority three or four. Currently, lower-level cases are more prone to extended periods of inactivity and generally take longer to get through the investigative process. Assessing and assigning cases based on complexity and priority would help ensure that all cases move through the investigative process in a more timely fashion.

Assigning cases based on complexity does a much better job of matching the skills and experience of investigators to the tasks they are asked to perform. Less-complex tasks are performed by less-costly investigative positions, which is a more efficient use of resources. Further, because cases are assigned based on available resources, the investigative process should endure fewer periods of inactivity, making the overall process more efficient and effective.

3. Implement improvements to case management procedures

Reorganization of the investigative staff positions, and implementation of a new case assessment and assignment process, are essential to the successful implementation of procedural improvements. We also recommend the following improvements to address investigative findings:

- a) ***Improve the monitoring of open investigations:*** Midlevel supervisors should conduct routine evaluations of investigator caseloads including the development of action plans to address effective closure of older cases.
- b) ***Timelines for completion should be made a part of contracts for expert services:*** To address the problem of untimely submission of expert analyses, mutually agreed upon timelines for completing the project should be made a part of contracts with experts.
- c) ***Develop and enforce standards for case file documentation:*** Standards are needed to ensure that case files provide comprehensive support for investigative outcomes.

Documentation should include all contacts made related to the investigation. Ensuring cases are well documented will help alleviate the inefficiencies associated with reassigning cases. Further, improved documentation will facilitate case file review.

- d) ***Develop and enforce expected timelines for completing aspects of the investigation:*** Timelines are necessary to clarify management expectations for opening cases, investigating cases, drafting closure documents, and if necessary, presenting closing documents for board consideration. Further, using standards for completion as a performance measure will help gauge productivity.

4. Implement other changes to increase efficiency and effectiveness

Other improvements should also be implemented to improve the investigative function including the following:

- a) ***Improve website to better filter complaints:*** Industry best practices¹⁰ recommend websites that encourage valid complaints and discourage invalid complaints. DCCED's current Occupational Licensing website does not provide enough information about the division's jurisdiction by occupation to effectively filter out nonjurisdictional complaints. Investigators often spend time communicating information to potential complainants that could, more economically, be communicated through the agency's website. We also recommend providing a detailed description of the investigative process and answers to frequently asked questions via the website to further reduce the need for investigators to communicate this information, thereby freeing up more time to focus on investigating open cases.
- b) ***Extend work schedule:*** Industry best practices allow for investigators to meet with people outside the standard business day. Prior to FY 04, several investigators worked four days a week coming in early and/or staying late. According to investigators, this schedule provided them with time before and/or after the standard work day for scheduling interviews. We recommend, reestablishing some form of a flexible schedule to provide for interaction with the public before/after the standard business day.
- c) ***Establish preset schedules for inspections:*** Industry best practices also identify a predetermined schedule for conducting inspections. Currently, the timing and frequency of inspections are left up to investigators. The investigative unit would benefit from a management approved schedule for conducting inspections that reflects a strategic use of available resources.

¹⁰ We compared industry best practices for carrying out a state regulatory program published by the National State Auditors Association in 2004 to DCCED's investigative unit operations.

We recognize the organizational changes suggested may be difficult to accomplish within the context of Alaska's personnel system and collective bargaining structure. As stated however, such a restructuring is central to the effectiveness of other recommended changes.

Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

Our review of case files found that consultation with board members was poorly documented and the degree they are involved in the investigative process was unclear. While most investigators seek out board member guidance in a significant number of cases, the unit does not have clear guidance on how to utilize board members in a manner that is consistent with legal guidance.

Most investigators routinely consult members of various occupational licensing boards for technical assistance including advice on case closures. Further, for all professions regulated by the State Medical Board, it is standard practice for case closures to be reviewed by a designated board member. We question whether the use of board members, in this type of advisory capacity, is consistent with legal guidance.

Statutes assign the responsibility for investigating occupational licensing complaints to DCCED. Most occupational licensing boards are subject to the state's Administrative Procedures Act (APA). Under APA, licensing boards are the ultimate arbitrator of administrative hearings, held in conjunction with sanctions against licensees, and are required to be impartial in that capacity. As such, the Department of Law has directed that board members not become involved with the investigative process – lest it compromise the impartiality of their adjudicative function.

Using board members to direct investigative activities of a case is an inadequate separation of duties. The risk of improperly using board members is heightened by the lack of an approved policy guiding the investigators. We recommend a standard policy and procedure be drafted and approved by the Attorney General's office to ensure the boards do not jeopardize their position in occupational licensing legal proceedings.

APPENDICES

(Intentionally left blank)

APPENDIX A

Alaska's Sunset Criteria

Alaska's criteria for reviewing boards and commissions, subject to sunset, are defined by AS 44.66.050(c) as noted below:

- (1) the extent to which the board, commission, or program has operated in the public interest;
- (2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
- (3) the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest;
- (4) 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;
- (5) the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;
- (8) 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; and
- (9) 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.

APPENDIX B

Changes in Occupational Boards Subject to Sunset per AS 08.03.010

Terminated Boards	July 1, 1980 through June 30, 2004
Big Game Commercial Services Collection Agency Electrical Examiners Guide Licensing and Control Mechanical Examiners Nursing Home Administrators Welding Examiners	

Added Boards	July 1, 1977 through June 30, 2004
* Big Game Commercial Services Certified Direct-Entry Midwives Certified Real Estate Appraisers Marital and Family Therapy * Mechanical Examiners Professional Counselors Social Work Examiners	

Occupational Boards Subject to Sunset	As of June 30, 2004
Barbers and Hairdressers Certified Direct-Entry Midwives Certified Real Estate Appraisers Chiropractic Examiners Dental Examiners Dispensing Opticians Governors of the Alaska Bar Association Marine Pilots Marital and Family Therapy Medical Nursing Optometry, Examiners in	Pharmacy Physical Therapy and Occupational Therapy Professional Counselors Psychologists and Psychological Associate Examiners Public Accountancy Real Estate Commission Registration for Architects, Engineers, and Land Surveyors Social Work Examiners Veterinary Examiners

* Board has also been terminated.

APPENDIX C

**Changes in Nonoccupational Boards and Regulatory Agencies
Subject to Sunset per AS 44.66.010**

Terminated, Merged, or Renamed	July 1, 1980 through June 30, 2004
<p><u>Terminated:</u> Alaska Code Revision Commission Alaska Council on Science and Technology Alaska Renewable Resources Corporation Alaska State Fire Commission Alaska Tourism Marketing Council Alaska Transportation Commission Alaska Women's Commission Citizen's Foster Care Review Board Hazardous Substance Spill Technology Review Rural Development Council Tourism Coordinating Committee</p>	<p><u>Merged:</u> Alaska Public Utilities Commission <i>merged with the Alaska Pipeline Commission and renamed</i> Regulatory Commission of Alaska</p> <p><u>Renamed:</u> Older Alaskan Commission <i>renamed to</i> Alaska Commission on the Aging</p> <p>Citizens Review Panel for Permanency Planning <i>renamed to</i> Citizen's Foster Care Review Board</p>

Added	July 1, 1977 through June 30, 2004
<p>* Alaska Code Revision Commission * Alaska Council on Science and Technology * Alaska Renewable Resources Corporation Alaska Seismic Hazards Safety Commission * Alaska State Fire Commission * Alaska Tourism Marketing Council * Alaska Women's Commission Board of Storage Tank Assistance Citizen's Review Panel for Permanency Planning</p>	<p>Council on Domestic Violence and Sexual Assault * Hazardous Substance Spill Technology Review Older Alaskans Commission * Rural Development Council Special Education Service Agency Statewide Suicide Prevention Council * Tourism Coordinating Committee</p>

Nonoccupational Boards and Regulatory Agencies Subject to Sunset – As of June 30, 2004	
<p>Alaska Commission on Aging Alaska Seismic Hazards Safety Commission Alcoholic Beverage Control Board Board of Storage Tank Assistance Council on Domestic Violence and Sexual Assault</p>	<p>Regulatory Commission of Alaska Special Education Service Agency State Board of Parole Statewide Suicide Prevention Council</p>

* Agency has also been terminated.

APPENDIX D

DCCED-Regulated Occupations without a Board

<u>Name of Occupation</u>	<u>Statutory Reference</u>
Regulation of acupuncturists	AS 08.06
Regulation of audiologist and speech-language pathologists	AS 08.11
Regulation of big game guides and transporters	AS 08.54
Regulation of collection agencies	AS 08.24
Regulation of concert promoters	AS 08.92
Regulation of construction contractors	AS 08.18
Regulation of dietitians and nutritionists	AS 08.38
Regulation of electrical and mechanical administrators	AS 08.40
Regulation of agencies that perform euthanasia services (animals)	AS 08.02.050
Regulation of professional geologists	AS 08.02.011
Regulation of hearing aid dealers	AS 08.55
Regulation of morticians	AS 08.42
Regulation of the practice of naturopathy	AS 08.45
Regulation of nursing home administrators	AS 08.70

APPENDIX E

Schedule of Actual and Proposed Termination Dates

June 30, 2006

Board of Governors of the Alaska Bar Association
Board of Chiropractic Examiners
Board of Examiners in Optometry
State Physical Therapy and Occupational Therapy Board
Council on Domestic Violence and Sexual Assault

June 30, 2007

Board of Certified Direct-Entry Midwives
Board of Marine Pilots
State Medical Board
Alcoholic Beverage Control Board
Regulatory Commission of Alaska
Board of Storage Tank Assistance

June 30, 2008

Board of Parole
Real Estate Commission
Alaska Commission on Aging

June 30, 2009

Board of Public Accountancy *
State Board of Registration for Architects, Engineers, and Land Surveyors *
Board of Veterinary Examiners *
Statewide Suicide Prevention Council *

June 30, 2010

Board of Pharmacy *
Board of Social Work Examiners *
Board of Marital and Family Therapy *
Board of Professional Counselors *
Board of Psychologist and Psychological Associate Examiners *
Board of Certified Real Estate Appraisers *

June 30, 2011

Board of Nursing
Board of Dental Examiners *
Board of Barbers and Hairdressers *

June 30, 2013

Special Education Service Agency

Recommended for Termination

Board of Dispensing Opticians
Alaska Seismic Hazards Safety Commission

* These are proposed sunset dates.

(Intentionally left blank)



OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 30 2004
LEGISLATIVE AUDIT

RE: Sunset Process and Selected Investigative Issues

Dear Ms. Davidson:

Thank you for the opportunity to review and comment on the findings in your recent audit of the Sunset Process and the Investigative Unit for the Division of Occupational Licensing. Both of these audits were overdue and we greatly appreciate your initiative and thoughtful efforts. Our comments are as follows:

Recommendation No. 1

The legislature should consider amending sunset statutes.

The Department sees merit in many of your suggestions for statute changes and will work with you during the next legislative session to gain the desired results.

Recommendation No. 2

The Director of the Division of Occupational Licensing should implement changes to address investigative inefficiencies and case management procedures.

The Department basically agrees with your specific recommendations as follows:

1. Restructure the organization of the investigative unit
2. Change case assessment and assignment procedures
3. implement improvements to case management procedures
4. Implement other changes to increase efficiency and effectiveness

We agree that various actions are necessary if we are to achieve our ultimate goal of a timely, efficient and fair investigative process. However, any changes will not come easily or quickly.

Through the director of the division, changes have been implemented over the past two years specific to structure and management with the investigations unit. The director will evaluate the success of these changes and make additional changes and modifications as necessary to continue to evolve the effectiveness of the investigation unit. These changes may include reinstating the investigators' flexible schedule under close management supervision to assure accurate and timely work accomplishments.

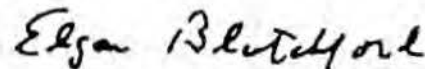
Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

The Department agrees there should be a policy regarding board members involvement in the investigative process, but we are unsure of what that policy should be. Several boards have asked about being exempt from the Administrative Procedures Act (APA) so that they could be more involved in the investigations. These board members are willing to give up their duties as adjudicators to better use their expertise in resolving complaints against others in their professions. They feel that their involvement would help eliminate unnecessary investigations, shorten the time required for closure and decrease the costs associated with investigations. While the APA has removed board members from the investigative process because of the potential problems with impartiality, it is a rather small percentage of the cases where board members actually become the adjudicators. This may be more of a "turf" battle than a legal issue. The division will make additional efforts in an attempt to resolve these conflicting issues and develop sound policy concerning board member involvement in investigative actions.

Again we appreciate the opportunity to comment and we especially appreciate your assistance in improving our services to the public.

Sincerely,



Edgar Blatchford
Commissioner

cc: Rick Urion, Director
Division of Occupational Licensing

Audit Report

DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF MARITAL AND FAMILY THERAPY
SUNSET REVIEW

November 1, 2004



Audit Control Number:

08-20032-05

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us/>

BUDGET AND AUDIT COMMITTEE

Representative Ralph Samuels, Chair
Representative Mike Hawker
Representative Ben Keritua
Representative Vic Kohring
Representative Mike Chenault
Representative Reggie Joule (alternate)

Senator Gene Therriault, Vice Chair
Senator Ben Stevens
Senator Gary Wilken
Senator Con Bunde
Senator Lyman Hoffman
Senator Lyda Green (alternate)

DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA
Legislative Auditor

P.O. Box 113300
Juneau, AK 99811-3300

(907)465-3830, Juneau
(907)561-1445, Anchorage
(907)465-2347, Juneau Fax
(907)561-1452 Anchorage Fax

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
Internet e-mail address:
legaudit@legis.state.ak.us

November 15, 2004

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF MARITAL AND FAMILY THERAPY

November 1, 2004

Audit Control Number

08-20032-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(11), the Board of Marital and Family Therapy is scheduled to terminate on June 30, 2005.

We recommend that the legislature consolidate the Board of Marital and Family Therapy with the Board of Professional Counselors and establish the new board's termination date to June 30, 2009. If the legislature chooses to keep the Board of Marital and Family Therapy intact, we recommend the board be extended to June 30, 2010.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Background Information.....	5
Report Conclusions.....	7
Findings and Recommendations.....	11
Analysis of Public Need	17
Agency Responses	
Office of the Governor	23
Department of Commerce, Community, and Economic Development	25
Board of Marital and Family Therapy.....	27

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Marital and Family Therapy (BMFT). As required by state law, the legislative committees of reference are to consider this report when determining whether to extend the termination date for BMFT. Currently under AS 08.03.010(c)(11), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BMFT will have one year to conclude its administrative operations.

Objectives

The four central, interrelated objectives of our report are:

1. To determine if the termination date of BMFT should be extended.
2. To determine if BMFT is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed marital and family therapists.
4. To analyze possible cost savings and other factors in order to determine if there is merit in the consolidation of BMFT with three other behavioral-health related boards.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted most of this review. We followed professional standards to determine that the other auditor was independent and their work was competent and sufficient.

Our audit reviewed the operations and activities of the Board of Marital and Family Therapy for the period spanning FY 01 through FY 04. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documentation of licensees.
3. Minutes of board meetings and Division of Occupational Licensing correspondence files.

4. Annual reports issued by the Board of Marital and Family Therapy.
5. Case files involving complaint investigations related to professionals licensed by, and applicants seeking licensure from BMFT.
6. Direct and indirect costs charged to the board in recent years, in order to assess the possibility of achieving significant cost savings through a merger of behavioral health related licensing boards.

We interviewed various staff of the Division of Occupational Licensing, including both licensing staff and investigators.

We conducted a survey of occupational licensees of the four behavioral health boards. Survey responses varied from 50 to 62 percent, specifically:

<u>Behavioral Health Boarur</u>	<u>Licensees</u>	<u>Responses</u>	<u>Percent Response</u>
Board of Marital and Family Therapy	94	58	62%
Board of Professional Counselors	300	150	50%
Board of Psychologists and Psychological Associates	205	128	62%
Board of Social Work Examiners	347	187	54%

ORGANIZATION AND FUNCTION

The Board of Marital and Family Therapy was established under the provisions of Title 8, Chapter 63 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Three members must be licensed marital and family therapists. The statutes require that two members of the general public also sit on the board.

The board regulates licensed marital and family therapists in the State. It sets education, training, and work experience standards necessary for an individual to be licensed as a marital and family therapist or a marital and family associate.

Alaska statute defines the practice of marital and family therapy as the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. This covers all disorders, whether cognitive, affective, or behavioral, within the context of human relationships, particularly the marital and family system.

The board's duties include:

1. Examining and issuing licenses to qualified applicants,
2. Developing written guidelines to ensure licensing requirements are not unreasonably burdensome and the issuance of licenses is not unreasonably withheld or delayed,
3. Holding hearings in order to impose disciplinary sanctions on persons who violate the statutes or regulations related to the licensure of marital and family therapists,
4. Adopt regulations necessary to enforce the statutes relating to the Board of Marital and Family Therapy, and
5. Adopt a code of ethical practice for marital and family therapy.

A marital and family therapy applicant may be licensed by passing an examination given by the board, or by what is termed "credentials." In order to be licensed by credentials, an applicant must provide proof of licensure by another authority, such as a state, that has equal or more stringent licensing requirements than the State of Alaska.

In order to become licensed by examination, an applicant must have an advanced degree in marital and family therapy or allied mental health field from a regionally accredited

Board of Marital and Family Therapy (as of June 30, 2004)

<p><u>Therapist</u> Larry Holman, Chair Vivian Finlay Bill Platte</p>

<p><u>Public Member</u> Ann Swift Vacant</p>
--

educational institution approved by the board for which the person completed substantially equivalent course work¹ in the following: (1) marital and family therapy, (2) marital and family studies, (3) human development, (4) professional studies or professional ethics and law, (5) research, and (6) supervised clinical practice; meet specific experience requirements;² and pass a written examination. The examination is a national examination developed jointly by the Association of Marital and Family Therapy Regulatory Board and Professional Examination Service. The test is administered by the Division of Occupational Licensing.

Department of Commerce, Community, and Economic Development, Division of Occupational Licensing (OccLic)

The Department of Commerce, Community, and Economic Development, OccLic, provides administrative and investigative assistance to the Board of Marital and Family Therapy. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.087 empowers the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. OccLic may:

1. Conduct an investigation if it appears a person is engaged or is about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

¹ AS 08.63.100(b) permits the substitution of post-degree courses or practice, as approved by the board, by a person whose master or doctorate degree in marital and family therapy or allied health field whose course of study did not include all the course or clinical practice requirements of AS 08.63.100(a)(3)(B).

² The following practical experience is required in addition to obtaining a degree in accordance with the requirements of AS 08.63.100(a)(3)(B):

- Practiced marital and family therapy within three years of the person's application, including 1,500 hours of direct clinical contact with couples and families.
- Has been supervised in the clinical contact for at least 200 hours, including 100 hours of individual supervision and 100 hours of group supervision approved by the board.
- Has received training related to domestic violence.

BACKGROUND INFORMATION

In 2002, while considering the bill (HB 343) that would extend the termination date of the Board of Professional Counselors, the House Labor and Commerce Committee developed a letter of intent. The letter stated:

It is the intent of the House Labor and Commerce Committee that the operations and regulatory oversight responsibilities of the following professional licensing boards be combined into one board:

- 1. Board of Professional Counselors*
- 2. Board of Marital and Family Therapy*
- 3. Board of Psychologist and Psychological Associate Examiners*
- 4. Board of Social Work Examiners*

To help ensure an effective transition, the four boards are to work cooperatively to develop an appropriate proposed statute for this new combined board.

Such a proposed statute should be designed to accomplish the intent of the committee to combine the operations of the boards while meeting the individual regulatory and oversight responsibilities of each current separate licensing board. If the boards involved would like to propose alternative combinations of how to combine the four boards, they are encouragea to also draft alternative proposed statutes.

Jointly, the chair of each board is to report on their progress in both January 2003 and 2004.

This intent, generated by the 22nd Legislature was modified by a letter, co-signed by the chairs of the House and Senate Labor and Commerce Committees of the 23rd Legislature. The letter discharged the boards from planning and reporting on their progress as required in the original statement of intent.

(Intentionally left blank)

REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for the Board of Marital and Family Therapy (BMFT), we also analyzed the operating costs and other factors related to the operations of the board. Various nonfinancial factors were considered in order to assess the advisability of consolidating BMFT with other behavioral health boards, along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

BMFT should be consolidated with the Board of Professional Counselors

In our opinion, BMFT should not be reestablished by the legislature. Rather, we recommend the licensing of qualified professionals be continued through consolidation with the Board of Professional Counselors (BPC). Our recommendation is based upon the following factors:

1. Number of BMFT licensees has significantly declined. The number of professionals licensed by the board is steadily declining. Currently, there is less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Scope of practice and educational requirements are similar for therapists and counselors. As defined in state law, the areas of practice for the professionals regulated by the two boards are similar. Both professionals are defined as engaging in diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature. Both are charged with making diagnoses to treat such disorders whether cognitive, affective, or behavioral.

Educational requirements for licensing as a marital and family therapist or as professional counselor are similar. BMFT licensees are required to have more specialized systemic training for group and family counseling.

4. Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. *"The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective."*

1. Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

5. BMFT is in a chronic deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18 of this report). In order to reduce the deficit and be in compliance with state law,³ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for the two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of therapists responding to our survey either disagreed or strongly disagreed with the statement that their "*licensing fees were reasonable.*"

6. Combination of these two professions under a single board is the most common regulatory model. Professions covered by boards listed in the 2002 legislative intent are regulated by other states through different groupings of oversight boards. The number of boards used in regulating the professions varies from one to four. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.

The new consolidated board should be established for four years.

In our opinion, the termination date for the consolidated board covering marital and family therapists, along with professional counselors, should be established for June 30, 2009. Both boards have been actively working in the public's interest by promoting the competence of individuals who hold themselves out to the public as marital and family therapists or professional counselors.

BMFT has testified in favor of statutory changes and adopted regulatory changes that made therapists more accountable to their clients and the general public. The board has also substantially curtailed its operating costs, in an attempt to minimize its current negative balance position.

³ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each profession be set at a level that will cover the operating costs of regulating the relevant profession.

Alaska Statute 08.03.010(c)(11) requires BMFT to be terminated on June 30, 2005. If the legislature takes no action, under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature combine BMFT with BPC and the consolidated board's termination date be set at June 30, 2009.

If the legislature elects not to combine the board, we recommend the Board of Marital and Family Therapy be extended to June 30, 2010.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Marital and Family Therapy (BMFT) and Board of Professional Counselors (BPC) should be combined into a single oversight and licensing board.

BMFT and BPC should be combined into a single regulatory board. We make this recommendation based on our review of the cost analysis, the comparison with licensing requirements in other states, and survey results from licensees of various behavioral health boards. Our recommendation is based on the following factors and analysis:

1. Number of BMFT licensees has significantly declined since its inception. The number of professionals licensed by the board is steadily declining. There is, currently, less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Practice, as defined in law, is similar between therapists and counselors. As defined in state law, the areas of practice for both boards are similar. The practice of marital and family therapy is defined as:

the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. [emphasis added]. The therapist must be able to "diagnosis and treat such disorders whether cognitive, affective, or behavioral, within the context of human relationships, particularly marital and family systems [emphasis added]."⁴

The practice of professional counseling is defined in state law as:

*the application of principles, methods, or procedures of the counseling profession to diagnose or treat, other than through the use of projective testing or individually administered intelligence tests, mental and emotional disorders that are referenced in the standard diagnostic nomenclature for individual, group, and organizational therapy. [emphasis added]*⁵

⁴ Definition of practice of marital family practice is from AS 08.63.900(5).

⁵ Definition of practice of professional counseling is from AS 08.29.490(1).

As with marital and family therapist, professional counselors are to "*diagnosis and treat such disorders, whether cognitive, affective, or behavioral, within the context of human relationships and systems.*[emphasis added]."

Both professions are charged with the diagnosis and treatment of mental and emotional disorders, whether the disorders can be categorized as cognitive, affective, or behavioral.

4. Educational requirements for the two licenses are similar. Degree requirements for licensing as BMFT therapists and licensing as BPC counselors are virtually identical. BMFT requires applicants to have more specialized systemic training for group and family counseling; however, this distinction does not appear to be overly critical to the basis of practice between these two professions.
5. BMFT is in a chronic-deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18). In order to reduce the deficit and be in compliance with state law,⁶ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for every two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of therapists responding to our survey either disagreed or strongly disagreed with the statement that their "*licensing fees were reasonable.*"

Our analysis of costs did not indicate there would be any significant reduction in board operating costs. In recent years both boards have carefully controlled expenses, especially those associated with holding board meetings – the cost most susceptible to savings through consolidation. Nevertheless, we believe that merging the two boards will have a positive effect on keeping down the cost pressure on therapist licensing fees – which hold out some prospect for possibly being reduced in the future.

6. Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. "*The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective.*"

Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

⁶ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each occupation be set at a level that will cover the operating costs of regulating the relevant occupation.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

7. Combination of these two professions under a single board is the most common regulatory model. For the professions covered by the boards listed in the 2002 legislative intent letter, or behavioral health boards, other states tend to group the oversight boards differently. States regulate the professions with between one and four boards. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.
8. Related, but not same, professions on a board enhances public representation. A consolidated board would provide for more members on a regulatory board that are not members of the profession involved. Members of the related professions would essentially be quasi-public members. This helps to better accomplish a common policy objective of regulatory boards – members of the general public should be on boards to provide a nonprofessional perspective on regulation.

Public members are put on boards to provide representation of broader, consumer-oriented interests. This is to offset, to some extent, the possibility of professionals acting more in their commercial interests, at the expense of the public interest, in carrying the regulatory responsibilities of a given board. Although it is difficult to specify how such a board's actions would necessarily differ from that of the currently structured board, there is the prospect of bringing a wider public perspective to regulation of these professions.

When BPC was first established, there was discussion by some legislators about possibly placing the licensing and regulation of professional counselors under the already existing BMFT. After legislative committee discussions and questioning, it was decided to create a separate Board of Professional Counselors – in part because of concern that the one-time “start-up” costs involved in regulation should be borne entirely by counselors, rather than being made part of the costs paid by BMFT therapists. BPC is beyond this start-up phase, and in our view, given the factors discussed in the Reports Conclusions section and those listed above, we recommend the legislature consolidate the regulation of the two professions under one licensing board.

A consolidation of the BPC and BMFT will not consolidate the licensure of either profession. However, at some future time because of the similarity of education and practice a combined board may want to consider a single counseling license with an endorsement to practice a specialty – such as marital and family therapy.

Recommendation No. 2

The Division of Occupational Licensing, in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

At the end of FY 04, BMFT had an operating deficit of more than \$75,000. Based on expenditures and revenues to date, we project that it is likely BMFT will, again, be in a deficit at the end of FY 05. The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues, without the board and Division of Occupational Licensing (OccLic) putting in place the necessary licensing and other fee adjustments. State law, at AS 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs related to that occupation.

BMFT has reduced its direct operating costs to less than \$10,000 in FY 04 compared to more than the \$20,000 incurred for both FY 03 and FY 02. Additionally, during this same period, the amount of indirect costs charged to the board has remained steady, because of the decrease in the number of BMFT licensees and an increase in the total number of licensees covered by OccLic.

A projection prepared by OccLic in FY 03, based on an estimated renewal of 80 licensees, indicated that renewal fees would have to be doubled to \$1,550 for BMFT being compliant with the self-financing requirements of state law. Since that estimate, BMFT has made progress in reducing its continuing deficit. However, without an increase to fees for BMFT licensees, the deficit will remain and it is likely the board will not be able to eliminate its deficit until FY 07 or beyond.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

BMFT is made up of five members – two representatives from the general public and three licensed professionals. One public member seat was open for all of FY 03. The Office of the Governor made appointments of two new public members in August 2004, but one of the licensed professional seats is vacant; and, the term of another licensed member will expire in December 2004. In past years, the extended absence of public members on the board has hampered it from conducting business with appropriate public input and perspective.

Public members are an important, but often overlooked, part of occupational licensing boards. Technical expertise is provided by professional members while public members provide a consumer perspective. Consumer protection is the basis for regulation in the first place. While public board members are often initially inexperienced in the profession being regulated, they are on the board to represent the consumer and interests of the general

' citizenry. Contributing to board decisions, such representation provides balance to a board to prevent undue bias toward the profession being regulated.

Accordingly, we recommend that BMFT and the Governor's office work to fill appointments to all seats on the board, with particular emphasis on public member seats, designed to represent the state's citizenry.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

The following analysis of BMFT activities relates to the public need factors defined in the "sunset" review law, AS 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.

BMFT has operated in the public interest by licensing only qualified individuals. The board has established licensing requirements and minimal practice standards that licensed Marital and Family Therapist are to adhere to in the course of practice.

BMFT has established regulations governing its duties and licensure requirements, enforced the laws for issuing licenses in a uniform and consistent manner, held meetings, and administered examinations in accordance with statutory requirements.

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

State law⁷ requires that BMFT consist of three board-licensed therapists and two members of the public. For most of the last three years, one or both public member seats on the board have been vacant. Currently, one licensed professional seat is vacant and the term of another licensee seat will expire in December 2004. In the past, vacancies on the board have created difficulties in maintaining a quorum which would permit the board to operate. See Recommendation No. 3 for further discussion of this issue.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing (OceLic), must "establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation." Licensing fees for BMFT were originally set at \$300 for a Therapist and \$200 for an Associate License. The licensing fees were subsequently increased to \$775 where they currently remain. Since inception, the collected board fees have not been sufficient to cover all of BMFT's expenditures. The number of licensees has steadily declined over recent years, resulting in a significant deficit having to be covered by fewer and fewer licensees.

⁷ AS 08.63.010(b)

OccLic evaluates the fee level to be set by analyzing costs and revenues on a biennial roll-forward or cumulative basis. As reflected by the summary schedule below, BMFT renews licenses in odd-numbered fiscal years – resulting in the highest revenues.

State of Alaska Board of Marital and Family Therapy FY 02 - FY 04 Schedule of Revenues and Expenditures (Unaudited)			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>5,500</u>	\$ <u>67,700</u>	\$ <u>1,600</u>
Direct Expenditures			
Personal Services	6,700	14,600	11,700
Travel	600	4,500	4,500
Contractual	900	1,900	11,400
Supplies	<u>-0-</u>	<u>100</u>	<u>-0-</u>
Total Direct Expenditures	8,200	21,100	27,600
Indirect Expenditures	<u>4,900</u>	<u>5,500</u>	<u>4,900</u>
Total Expenditures	13,100	26,600	32,500
Net Income (Loss)	<u>(7,600)</u>	<u>41,100</u>	<u>(30,900)</u>
Beginning Cumulative Surplus (Deficit)	(68,000)	(109,100)	(78,200)
Ending Cumulative Surplus (Deficit)	\$ <u>(75,600)</u>	\$ <u>(68,000)</u>	\$ <u>(109,100)</u>

BMFT has been able to reduce its deficit substantially at the end of FY 04, compared to the total at FY 02, the end of the previous two-year licensing cycle. While progress is being made, it is clear that current licensing fees are not set appropriately for BMFT to be self-sufficient in the near term.

Another fee increase poses a dilemma, possibly encouraging licensees to switch licensure as BPC counselors, or perhaps leave the profession altogether – which in turn would exacerbate the deficit problem. See Recommendation No. 2 for further discussion of these issues.

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

BMFT testified in favor of two pieces of legislation, one passed in 2002 and the other passed in 2003, having a big impact on professional practice. In 2002, the legislature adopted a statute that broadened the definition of a mental health professional as it related to the state's policy and procedures for individuals with mental health problems. The legislation changed state law to include licensed clinical social workers, marital and family therapists, and professional counselors recognized as mental health professionals. By including these professions under the definition of mental health professional, practitioners now could take a legal role in the state's mental health system to protect youths and adults who are experiencing acute psychiatric crises.

The legislation allowed therapists to: (1) provide mental health treatment for prisoners; (2) evaluate children and minors in custody of the state to determine appropriate placement in residential treatment centers; and, (3) conduct civil psychiatric commitment evaluations. Additionally, therapists were included in the list of individuals who are required to report incidents of harm to vulnerable adults.

In 2003, the legislature adopted a change to state law that allowed marital and family therapists to breach their duty of confidentiality to their clients in cases where:

1. Threats have been made by a client. Therapists can now communicate with either a potential victim or law enforcement officers where a threat of imminent serious physical harm to an identified victim has been made by a client; or,
2. Client has discussed actions that could be a basis for professional sanction. Therapists can now disclose communications about an act that they have reasonable cause to "*suspect constitutes unlawful or unethical conduct that would be grounds for imposition of disciplinary sanctions by a person licensed to provide health or mental health services.*" Such disclosure is to be made only to the relevant licensing board and the disclosure must be made in good faith by the therapist.

The 2003 legislation also added "*sexual misconduct with a client during the course of therapy, either within or outside the treatment setting, or within two years of therapy or counseling contact...*" as grounds for disciplinary sanction by board against a license holder.

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.

The location, date, and time of upcoming BMFT meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News* with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside adequate time for BMFT to take public comment. Minutes from the meetings reflect public participation throughout various meetings.

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

BMFT changed its regulations, repealing licensing by transition, amending and adding new subsections to licensing by examination, simplifying the renewal process, and amending the code of ethics for practitioners. The board initiated regulations to put into place definitions regarding what constituted "sexual misconduct," in the context of new state law, which gave the board authority to sanction licensees for such actions.

BMFT developed and finalized a new state ethics test to be administered by OccLic; and, starting with FY 01 the board switched to a computerized form of testing administered by Prometric Tompson Learning Center, utilizing the National Licensure Examination for Marriage and Family Therapy.

Proposed regulations are often circulated through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing. We verified the public received adequate notice of the location, date, and time of board meetings where regulatory changes were considered. This notice was provided through advertisements in the state's major newspaper, the board's internet website, and the state's online public notice internet website. The State also offers a subscription service whereby the State will email the subscriber requested public notices. BMFT's meeting agendas provided time for the board to take public comment.

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 victims' rights or the office of the ombudsman have been processed and resolved.

From July 2001 through May 2004, OccLic's investigative unit opened up four investigation cases related to BMFT licensees or applicants. Two involved complaints of ethics violations (one made by another BMFT licensee and one generated by OccLic). One involved a dispute.

over continuing professional education with license renewal, while the fourth complaint was generated by an inquiry from another state.

We reviewed three of the four complaint files. All investigations were conducted in a timely manner and, where applicable, resulted in reasonable licensing actions. We conclude the complaint investigation process for BMFT-related complaints was carried out in an effective and efficient manner.

No BMFT complaints or investigations were carried out by the Office of Victim's Rights or the state Office of the Ombudsman.

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

The board has only licensed applicants that have applied for licensure by credentials or by examination. Requirements to be licensed under BMFT are stringent and eliminate those that do not have the educational background and adequate work experience.

Continuing education is required, and appropriately monitored, by BMFT to promote a high level of quality performance and to help ensure the integrity of the profession. Each applicant is required to satisfy requirements for licensing. BMFT meeting minutes reflect that the board considers each applicant and verifies the licensing requirements are satisfied prior to issuing a license. Activity related to issued licenses for the last three fiscal years are presented below:

Licenses Issued	Newly Issued			Total At
	FY 02	FY 03	FY04	June 30, 2004
Marital and Family Therapist	1	2	3	93
Marital and Family Associate	0	0	0	1

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.

We did not find any evidence that BMFT was not in compliance with state personnel practices, including affirmative action in qualifying applicants. In no instances has BMFT denied an applicant a license based on personal attributes.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.

As discussed in the Report Conclusions and Recommendation No. 1, we recommend that the legislature consider combining the Board of Marital and Family Therapy and the Board of Professional Counselors. There is minimal difference in the definition of what constitutes each profession's practice as set out in AS 08.29.490 (Professional Counselors) and AS 08.63.900 (Marital and Family Therapist). Both boards would benefit from such a combination.

As discussed in Recommendation No. 2, OccLic, in conjunction with BMFT, should increase licensing fees to eliminate the board's current and projected operating deficits.

If BMFT is not consolidated with BPC, as discussed in Recommendation No. 3, the Office of the Governor should take steps to expedite appointments to the board.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

P.O. Box 110001
JUNEAU, ALASKA 99811-0001
1907) 465-350J
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

RECEIVED
DEC 27 2004
LEGISLATIVE AUDIT

December 23, 2004

Ms. Pat Davidson
Legislative Auditor
Legislative Audit Division
P.O. Box 113300
Juneau, AK 99811-3300

Dear Ms. Davidson:


This letter is in response to your agency's November 1, 2004 Preliminary Report regarding a sunset review of the Board of Marital and Family Therapy.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

The Office of the Governor concurs with this recommendation. However, the Governor's Office strives to have geographical as well as gender and ethnic diversity on state boards. This is made difficult by the limited number of marital and family therapists residing in the state and then only in the larger communities. In addition, it is very difficult to find members of the general public who are willing to serve on the occupational licensing boards.

Sincerely,


Linda J. Perez
Administrative Director

cc: Jim Griffin, Audit Manager
Laraine Derr, Director Boards & Commissions

(Intentionally left blank)



OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 30 2004
LEGISLATIVE AUDIT

RE: Board of Marital and Family Therapy

Dear Ms. Davidson:

We appreciate the opportunity to review the Board of Marital and Family Therapy Preliminary Audit Report. Comments on the recommendations are noted below:

Recommendation No. 1:

The Board of Marital and Family Therapy and the Board of Professional Counselors should be combined into a single oversight and licensing board.

The Department supports consolidation of the Board of Marital and Family Therapy and the Board of Professional Counselors. The Department recommends a five member board (two professionals from each existing board and one public member) as the make-up for a consolidated board. We believe five members would be sufficient to represent the combined professions and to work effectively on issues of common interest/scope of practice concerns. Additionally, a five member board would assist with keeping travel costs at a minimum.

Recommendation No. 2:

The Division of Occupational Licensing (Oce Lic), in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

The Division considered the program deficit and the existing license fees as part of the review for the upcoming renewal period. The Division determined it was in the best interest of the profession to maintain the license/renewal fee at \$775 and to allow the continuation of pay back of the deficit over future years. As noted in your review, the board has attempted to cut costs where possible and seek ways to reduce operating costs from previous fiscal years.

In the event to legislature deems it appropriate to require the Board of Marital and Family Therapy to pay back the deficit prior to board consolidation, the legislature may consider enacting a requirement that

licensees under the board pay a one-time assessment to cover the deficit. The assessment would be applied to all current licensees; if payment were not made, the legislation should provide for license revocation. In the event 80 licenses are current at the time of assessment, the fee per licensee would be approximately \$938 (i.e., 80 licensees covering a \$75,000 deficit).

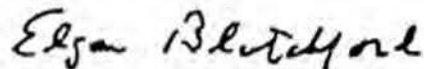
Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

We defer response on this recommendation to the Office of the Governor.

Again, we appreciate the opportunity to comment.

Sincerely,



Edgar Blatchford
Commissioner

cc: Rick Urion, Director,
Division of Occupational Licensing

December 13, 2004
Ms. Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, AK. 99811-3300

RECEIVED
DEC 15 2004
LEGISLATIVE AUDIT

Dear Ms. Davidson,

Re: Preliminary audit report on Board of Marital and Family Therapy Sunset Review,
November 1, 2004

My comments relate to the "Report Conclusions" and "Findings and Recommendations".
I believe I represent the MFT Board members as well as many licensees.

I support the overall recommendation that the BMFT should be consolidated with BPC.
However, I disagree with some of the conclusions and findings.

1. It is true that BMFT licensees have significantly declined, however, this is largely due
to several factors not noted in your report, namely:

- a) Licensing fees are extremely high, so psychotherapists may choose to obtain another
license instead of MFT, or to not be licensed at all;
- b) There are no master's degree programs for MFT's in the State of Alaska; therefore, the
only people who get licensed are those from other states;
- c) Alaska does not have a "Practice license" so that therapists can do "marital and family
therapy" without a license;
- d) The initial number of licenses issued when BMFT was formed in 1993 was less than
those in all the other Boards (due to the stringent education and training requirements).

2. A) The 15% of MFT's who hold dual licenses have the necessary education and
training for both licenses and they want to hold dual licenses. There is value in the MFT
designation because of the specific training that license infers. However, many people
who have one license may not be able to obtain a dual license.

3 and 4. The scope of practice may be similar for therapists and counselors, however, I
disagree that educational requirements are similar for therapists and counselors. The
report states that MFT's have "more specialized systemic training for group and family
counseling". In fact, if you compare the specific courses required for the MFT, you will
note MFT's are required to take numerous courses that educate and train the therapist in
systemic thinking. This distinction is CRITICAL to the basic difference in practice
between the two professions. Systemic thinking and working is used for all types of
therapy, not just for groups and families, and represents a different and unique
methodology/theoretical model for the way we work with clients. Other professionals
may not be adequately trained in systemic work unless they have taken relevant courses.

Furthermore, the legislative audit committee may not be aware that the BMFT is
charged with monitoring licensees who are "Approved Supervisors". Marriage and

Family Therapy is the only mental health discipline that requires extensive education and training on a national level for a therapist to become a Supervisor of those wanting to become licensed. This is because the training in "systemic therapy" is so specific and specialized. BMFT is charged with monitoring that there is sufficient training and continuing education of Alaska State Approved Supervisors.

Therefore, if the two Boards were consolidated, provision needs to be made to have Board members who are able to differentiate between the requirements for the two licenses, and who are able to issue two distinctive licenses.

I definitely disagree with the recommendation on p. 13 that the "combined board may want to consider "a single counseling license with an endorsement to practice a specialty..." I do not believe that this would serve the public because the implication is the training for both licenses is the same; that both licenses are covered by the public's health insurance; (however, in at least one instance, I am aware of a medical insurance plan that covers therapy by a LMFT with no restrictions, but restricts coverage of the LPC practitioner-the military person's insurance); and there could be less Board scrutiny over who is stating they are qualified to do "marital and family therapy".

5) I have grave concerns about your findings and recommendations about the BMFT deficit. You state on p. 14 that "The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues". Operating costs for the BMFT are increased by investigative and administrative functions that are unrelated to licensees, or to the Board functions. According to Jennifer Strickler, who spoke to the BMFT at our October 1, 2004 meeting regarding our budget report, the deficit is due to expenses related to two large investigations from 1998. Since that time, the Board has shown surpluses in revenue over expenses for each licensing period. Standard governmental accounting principles would not carry a deficit over 6 years, just as they would not carry forward excess revenues. It should be noted that the BMFT has absolutely no oversight over any investigations. Also, investigations of therapists could, and have, occurred in any discipline/license. The BMFT was most affected because of the small number of licensees. (Please refer to the points in #1) The Board has discussed the need to challenge the procedures that prevent the Board from having oversight. One such proposal is for the investigators to use volunteer "expert witnesses" who may assist in evaluating concerns about therapists' behaviors. Another proposal would require statutory changes which thereby would incur further expenses to the Board, so no action has yet been taken on this. Another proposal is for Ocellic to spear head legislation to create a legal defense fund to help protect all Boards from incurring deficits associated with litigation costs. It is my opinion that MFT licensees should not be penalized by increased fees for investigations not authorized or approved by the Board. In fact, there should be a mechanism to charge investigation expenses to the therapists who incurred the investigations, particularly if a law was violated. This would need legislative action. Ms. Strickler stated that if the number of licensees stays the same and there are no major costs incurred, the fee for the 2006 license renewal might come down. This is different from your statement that the deficit cannot be eliminated until beyond FY07 unless fees are doubled.

On p.14 you recommend that fees would have to be doubled to \$1,550. Increasing fees to "double" would be shortsighted. I think many licensees would choose not to

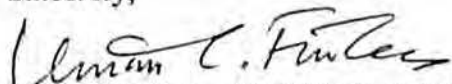
renew their licenses. They could practice without a license, and therefore, would not be monitored for legal and ethical violations. This could be detrimental to the public, and could further delay payment toward the deficit. Consolidating Boards will not alleviate the deficit as LMFT's would need to cover their own "deficits", according to current statutes. I do think the naming of expenditures from 8 years ago as ongoing "deficits" needs to be re-considered. Furthermore, if the "deficit" might indeed be eliminated during the next licensing period (December of 2006), then this is a moot point.

I wanted to point out potential errors under Recommendation No. 3, p. 14. As of December 31, there will be two licensed professional seats on the BMFT that are vacant, and the term of third seat has expired though that person (myself) is serving pending a replacement appointment that was requested in November, 2003. Therefore, I strongly support your recommendation that the Governor's office work to fill appointments to all seats on the Board in a timely manner. Please also note that on p. 3 a listing of the BMFT members as of June 30, 2004 is not correct. Mr. Larry Holman, Chair, resigned from the Board last February due to health problems. The BMFT did not have a Chair until they met to elect one on October 1, 2004.

Under the final subsection on p.22 in reference to statutory, regulatory, budgeting, or other changes, I think the BMFT would better serve the interest of the public if, whether alone or consolidated with BPC, it could be proactive in all its efforts. This can best be achieved with full board membership, regular and timely meetings (to be determined by the Board and not OccLic), keeping licensing fees reasonable, (which requires legislative changes) and knowledge and oversight of investigations.

In summary, I do not object to the consolidation of Boards, but I disagree with some significant points that you raised, and have noted those. Please contact me at 907-373-6006 should you have any questions.

Sincerely,



Vivian C. Finlay, LMFT, Chair BMFT

(Intentionally left blank)

SB

141

(FILE 1)

HFIN

FILE

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
DC RETIREMENT ACCOUNT							
1	Benefit Formula	Increased employer contribution by 1% for a total (employee + employer) contribution of 12.5%	12.5% annual contribution (employer+employee contribution) to the DC account		NO CHANGE		
2	Rollover		Rollover accepted from qualified programs and you can roll over into a qualified program		NO CHANGE		
CONTRIBUTION DETAILS							
3	Employee Contribution Rates	DB Plan: Changed maximum increase to 50 basis points per year (.5%).	DB Plan: All changes eliminated. Existing employee contribution rates remain unchanged.		NO CHANGE		
4	Employer Contribution Rates		DB Plan: Employer cost is the difference between the actuarially calculated cost (normal rate + past service rate) less the member contribution rate, but may not be less than 11% for TRS and 10% for PERS.	P 7-8, Sec. 9 and P 72, Sec. 94	NO CHANGE		
5	Base Salary						
6		DC Plan: Redistributed 8.25% employer contribution, + 4.50% to DC account + 1.75% to Medical + <u>2.00% to HRA</u> 8.25% Total	DC Plan: Increased contribution for medical by 2% (3.75% TRS, 3.5% PERS) New total + 4.50% to DC account + 3.75% to Medical + <u>2.00% to HRA</u> 10.25% Total TRS 10.00% Total PERS	P16, L 12 and P 83, L 22	DC Plan: Returns to Medical Benefits in CSSB 141(FIN) and increases HRA contribution + 4.50% to DC account + 1.75% to Medical + <u>3.00% to HRA</u> 9.25% Total	P 15, L 17 and P 83, L 1; and P 58, L2	
VESTING DETAILS							

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
7	Vesting		Immediate for employee contributions. Fully vested in employer contributions after 5 years (1st year 0%, 2nd yr 25%, 3rd yr 50%, 4th yr 75%, 5th yr 100%)		NO CHANGE		
MEDICAL PROGRAM							
8	Medical Benefits	Removed requirement to "retire from system" and added option to defer participation to a date specified	Restored requirement to retire directly from system with minimum of 10 years of service for medical coverage	P 26, Ls 5-18 and P 93, Ls 15-28	Returns to CSSB 141(FIN) No requirement to retire directly from the system	P 25, L10-13 and P 92, L 25-29	
9			Access to medical coverage at normal retirement age (65) months prior to Medicare eligible age) with 10 years of service	P 26, Ls 23-30 and P 93, Ls 15-28	Access to medical coverage at Medicare eligible age (currently 65) with 10 years of service, or at any age after (1) 25 years for peace officer firefighter, or (2) 30 years for all others	P 25, L10-13 and P 92, L 25-29	
10			Upon reaching normal retirement age, employer subsidy of medical premium is 30% for 10 years of service, incremented by 3% each year. Maximum subsidy is 90% for 30 years or more. The only thing that changes at Medicare eligibility is the subsidy base premium dollar amount	P 27, L 30 thru P 28, Ls 1-5 and P 95, Ls 9-16	Retiree share of medical premium at Medicare eligible age based on years of service	P 26, L 21 thru P 27, L 4 and P 92.	
11			"Early retirees" (meets service but not age requirements) and survivors pay full premium until normal retirement age.	P 27, Ls 28-29 and P 95, Ls 7-8	NO CHANGE		
12			Added a limitation on dependent medical coverage if a spouse or dependent child was not the spouse or dependent child of an eligible member when that person was an active member, they do not qualify for coverage	P 27, Ls 8-11 and P 94, Ls 18-21	Deleted. This situation is already handled in CSSB 141(FIN) which provides medical coverage only for the dependent children of the eligible member if they are dependent on the surviving spouse (Example: the children of a surviving spouse from a second marriage will not be covered)		

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
13	Health Reimbursement Arrangement (HRA)	Clarified HRA can be used even if not participating in State's medical insurance plan.	A person is eligible to apply for reimbursement from the HRA if they have met the eligibility requirements (AS 14.25.470 or AS 39.35.870), <i>except</i> the person does <i>not</i> have to retire directly from the system.	P 59, Ls 28-31	NO CHANGE		
14		Employer contributes 2% of annual average employer's group compensation	Employer contributes 2% of annual average employer's group compensation		Employer contributes 3% of annual average employer's group compensation	P 58, L 2	
15		Changed five-year return requirement from "same" employer to "a participating employer"	Removed five-year return window and added accumulated interest during intervening time to restored account balance	P 59, Ls 24-27	Allow a 10-year window for terminated, non-vested person to return to service. Account record will be restored <i>without</i> interest or other adjustment	P 58, L 11-15	
RETIREMENT BOARDS							
16	Board Structure	Added transition: ASPIB continues until 9/30/05; ARMB effective 10/1/2005			NO CHANGE		
17	Board Members	Added definition of "recognized competence" as a person with at least 10 years working or teaching in the specified fields	Changed trustees to 3 appointed by Governor (only one a non-participant) and 4 elected (2 PERS, 2 TRS). Elections conducted by ARM Board. Removed requirement that all members have "recognized competence" in specified fields only required of Governor appointees	P 47 L 11 thru P 48 L 5	Returns to board structure in CSSB 141(FIN) where all trustees are appointed. Returns to 3 non-beneficiaries and 1 from PERS and 1 from TRS. Adds language regarding PERS and TRS members who may be selected from a list of nominees put forward by the [appropriate] bargaining units	P 46 Ls 10-15	

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
18			Lost PFD eligibility requirement for elected board members		Appointed trustees must be eligible for an Alaska Permanent Fund Dividend	P 45, Ls 28-29	
19	Board Terms		Six year terms, maximum of two consecutive terms. One year break required	P 48 Ls 6-9	Four year terms, maximum of two consecutive terms. One year break required	P 46 Ls 15-19	
20	Board Duties	Added language to the Board that requires the Board to periodically evaluate the assumptions underlying the State's primary actuary			Added requirement for ARLIB to annually evaluate that employer's rate for medical insurance coverage to cover projected costs	P 48 Ls 13-22	
21		There is a moratorium period after initial implementation of the act for the new board to present initial findings and recommendations to the Legislature.					
22	Board Compensation	\$150 per day including travel days			New: Increases per diem to \$400 per day to mirror APFC Board	P 50, L 6	
23	Office of Administrative Hearings (OAH)				NO CHANGE		
CHANGES TO EXISTING RETIREMENT PLANS							
24	AK Resident COLA	Reinstated			NO CHANGE		
25	Ad hoc PRPAs	Defined "financial condition of the retirement fund" for ad hoc PRPAs as 110% ratio of assets to liabilities (see Editor's notes under AS 14.25.143 & AS 39.35.483)			NO CHANGE		

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
26	Refunded Prior Members			NO CHANGE			
27	University of Alaska Optional Retirement Program	<p>Changed AS 14.40.661-14.40.799 giving the Board of Regents flexibility to design both optional and mandatory retirement programs for future University employees. Specifies the University's retirement programs are not subject to collective bargaining. Also provides a one-time option for current employees who chose to participate in PERS or TRS to transfer into the existing optional retirement program.</p>		NO CHANGE			

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
OTHER BILL COMPONENTS							
28	Transfer of Employee to DC Plan	Added option for the transfer of current non-vested (TRS Tier II and PERS Tier III) employees to the DC plan. Unlimited enrollment period. Employer must make new contribution (cannot take from DB trust) and has first option to allow a			NO CHANGE		
29	Prescription Drug Changes				NO CHANGE		
30	Participating Employers	Added an option for political subdivisions and public organizations who do not currently participate in PERS and TRS to join the DC plan in the future.			NO CHANGE		
31		Added specific employers already participating in PERS and TRS to allow their future employees to participate in the DC plan (defined benefit plans closed on July 1, 2005).			NO CHANGE		
32	Membership Service	Added language identical to current statutes that prevents members that participate in both PERS and TRS from claiming more than one year of service (ex., a full-time teacher in TRS that works part-time in a PERS position during			NO CHANGE		
33	Penalty for False Statements	AS 14.25.210	Removed the existing language that a person who knowingly makes a false statement "forfeits all rights under this chapter". Language conforms to PERS AS 39.35.670.	P 13, Sec. 25	NO CHANGE		

SB 141 Bill Version Comparison

		Changes contained in CS for Senate Bill 141(FIN)	HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)	House Finance Workgroup
34	Definition of "teacher" AS 14.25.220 (DB plan) and AS 14.25.590 (DC plan)		Allow DOL instructors to remain in TRS if they were previously a TRS member.	P 14, Sec. 30, Ls 16-20	Deleted. The Dept. of L&WD has changed all positions at AVTEC to non-certificated. Mandating that certificated teachers participate in TRS even though employed in a non-certificated position opens the door to discrimination lawsuits.		
35	Legislative Intent		Added intent language in Sec 1 that R&B implement by regulation cost-saving measures in the retiree health care system and give examples	P 2, Sec 1	Deleted. Intent language that R&B implement by regulation cost-saving measures in the retiree health care system and give examples		
36	Reporting Requirement		requires annual report to legislature by R&B on implementation of cost-saving measures	P 110, Sec 139	Deleted. The annual report to the legislature by R&B on implementation of cost saving measures.		

4/28/05

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
DC RETIREMENT ACCOUNT							
Benefit Formula	11.5% per year to DC account + investment earnings.	Increased employer contribution by 1% for a total (employee + employer) contribution of 12.5%	P 16, L 8 and P 82, L 6				
Rollover	Rollover accepted from qualified programs and you can roll over into a qualified program						
CONTRIBUTION DETAILS							
Employee Contribution Rates	DC Plan: 8% all members (PERS & TRS) DB Plan: TRS 8.65% or 1/2 of the normal cost rate. PERS: 6.75% and 7.5% (Police/Fire) or 1/2 of the normal cost rate. Maximum increase of 5% per year.	DB Plan: Changed maximum increase to 50 basis points per year (.5%).	P 7, L 30 and P 69, L 13	DB Plan: All changes eliminated. Existing employee contribution rates remain unchanged.			
Employer Contribution Rates	DB Plan: 50% of normal cost plus past service cost. May not be less than total normal cost after subtracting the member contribution.			DB Plan: Employer cost is the difference between the actuarially calculated cost (normal rate + past service rate) less the member contribution rate, but may not be less than 11% for TRS and 10% for PERS.	P 7-8, Sec. 9 and P 72, Sec. 94		
Base Salary							
	DC Plan: 8.25% total. + 3.50% to DC account + 3.75% to Medical + 1.00% to HRA <u>8.25% Total</u>	DC Plan: Redistributed 8.25% employer contribution: + 4.50% to DC account + 1.75% to Medical + 2.00% to HRA <u>8.25% Total</u>	P 16, Ls 8&10 and P 82, Ls 6&8; P 58, L 10	DC Plan: Increased contribution for medical by 2% (3.75% TRS, 3.5% PERS). New total: + 4.50% to DC account + 3.75% to Medical + 2.00% to HRA <u>10.25% Total TRS</u> 10.00% Total PERS	P16, L 12 and P 83, L 22	DC Plan: Returns to Medical Benefits in CSSB 141(FIN) and <i>increases</i> HRA contribution: + 4.50% to DC account + 1.75% to Medical + 3.00% to HRA <u>9.25% Total</u>	P 15, L 17 and P 83, L 1; and P 58, L2

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
VESTING DETAILS							
Vesting	Immediate for employee contributions. Fully vested in employer contributions after 5 years (1st year 0%, 2nd yr 25%, 3rd yr 50%, 4th yr 75%, 5th yr 100%)						
MEDICAL PROGRAM							
Medical Benefits	Must retire directly from system with minimum of 10 years of service for medical coverage and access to HRA.	Removed requirement to "retire from system" and added option to defer participation to a date specified.	P 16, L 3 and P 92, L 1	Restored requirement to retire directly from system with minimum of 10 years of service for medical coverage.	P 26, Ls 5-18 and P 93, Ls 15-28	Returns to CSSB 141(FIN): No requirement to retire directly from the system.	P 25, L10-13 and P 92, L 25-29
	Access to medical coverage at Medicare eligible age (currently 65) with 10 years of service, or at any age after (1) 25 years for peace officer/firefighter, or (2) 30 years for all others.			Access to medical coverage at "normal retirement age" (60 months prior to Medicare eligible age) with 10 years of service.	P 26, Ls 23-30, and P 93, Ls 15-28	Access to medical coverage at Medicare eligible age (currently 65) with 10 years of service, or at any age after (1) 25 years for peace officer/firefighter, or (2) 30 years for all others.	P 25, L10-13 and P 92, L 25-29
	Retiree share of medical premium at Medicare eligible age based on years of service: + 10-14 years = 30% + 15-19 years = 25% + 20-24 years = 20% + 25-29 years = 15% => 30 years = 10%			Upon reaching normal retirement age, employer subsidy of medical premium is 30% for 10 years of service, incremented by 3% each year. Maximum subsidy is 90% for 30 years or more. The only thing that changes at Medicare eligibility is the subsidy base premium dollar amount.	P 27, L 30 thru P 28, Ls 1-6 and P 95, Ls 9-16	Retiree share of medical premium at Medicare eligible age based on years of service: + 10-14 years = 30% + 15-19 years = 25% + 20-24 years = 20% + 25-29 years = 15% => 30 years = 10%	P 26, L 21 thru P 27, L 4 and P 92,
	Retiree and survivors pay full premium until Medicare eligible.			"Early retirees" (meets service but not age requirements) and survivors pay full premium until normal retirement age.	P 27, Ls 28-29 and P 95, Ls 7-8		

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
				Added a limitation on dependent medical coverage: if a spouse or dependent child was not the spouse or dependent child of an eligible member when that person was an active member, they do not qualify for coverage.	P 27, Ls 8-11 and P 94, Ls 18-21	Deleted. This situation is already handled in CSSB 141(FIN) which provides medical coverage only for the dependent children of the eligible member if they are dependent on the surviving spouse. (Example: the children of a surviving spouse from a second marriage will not be covered).	
Health Reimbursement Arrangement (HRA)	Retiree reimbursed for qualified medical expenses from HRA.	Clarified HRA can be used even if not participating in State's medical insurance plan.	P 26, Ls 13-14	A person is eligible to apply for reimbursement from the HRA if they have met the eligibility requirements (AS 14.25.470 or AS 39.35.870), except the person does <i>not</i> have to retire directly from the system.	P 59, Ls 28-31		
	Employer contributes 1% of employer's average annual group compensation	Employer contributes 2% of annual average employer's group compensation	P 58, L 10	Employer contributes 2% of annual average employer's group compensation		Employer contributes 3% of annual average employer's group compensation	P 58, L 2
		Changed five-year return requirement from "same" employer to "a participating" employer.	P 58, L 19	Removed five-year return window and added accumulated interest during intervening time to restored account balance.	P 59, Ls 24-27	Allow a 10-year window for terminated, non-vested person to return to service. Account record will be restored <i>without</i> interest or other adjustment.	P 58, L 11-15
RETIREMENT BOARDS							
Board Structure	Consolidates 3 existing boards (PERS, TRS, ASPIB) into 1 board (Alaska Retirement Management Board [ARMB]).	Added transition: ASPIB continues until 9/30/05; ARMB effective 10/1/2005	P 106, Sec. 134 and Sec. 135				

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
Board Members	All trustees must have recognized competence in one or more fields of investment management, finance, banking, economics, accounting, pension administration, or actuarial analysis. Includes non-beneficiaries and representatives from school districts and municipalities.	Added definition of "recognized competence" as a person with at least 10 years working or teaching in the specified fields.	P 51, Ls 6-9	Changed trustees to: 3 appointed by Governor (only one a non-participant) and 4 elected (2 PERS, 2 TRS). Elections conducted by ARM Board. Removed requirement that all members have "recognized competence" in specified fields; only required of Governor appointees.	P 47, L 11 thru P 48 L 5	Returns to board structure in CSSB 141(FIN) where all trustees are appointed. Returns to 3 non-beneficiaries and 1 from PERS and 1 from TRS. Adds language regarding PERS and TRS members: "who may be selected from a list of nominees put forward by the [appropriate] bargaining units."	P 46 Ls 10-15
	Appointed trustees must be eligible for an Alaska Permanent Fund Dividend.			Lost PFD eligibility requirement for elected board members.		Appointed trustees must be eligible for an Alaska Permanent Fund Dividend.	P 45, Ls 28-29
Board Terms	Three year terms, maximum of three consecutive terms. One year break required.			Six year terms, maximum of two consecutive terms. One year break required.	P 48, Ls 6-9	Four year terms, maximum of two consecutive terms. One year break required.	P 46, Ls 16-19
Board Duties	ARMB assumes prior duties of ASPIB plus coordinates with retirement system administrator on annual actuarial valuations, sets employer contribution rates, and determines interest rates to be credited to members' individual accounts (DB plan and HRA).	Added a requirement for the Board to require a second actuarial opinion on the assumptions used in the valuation by the State's primary actuary.	P 107, Sec. 138			Adds requirement for ARMB to annually evaluate that employer rate for medical insurance is adequate to cover projected costs.	P 48, Ls 16-22
		Added direction to the new Board to prepare a report for the 2nd session of the 24th Alaska Legislature.	P 49, Ls 4-6				
Board Compensation	\$150 per day including travel days					New: Increases per diem to \$400 per day to mirror APFC Board.	P 50, L 6

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
Office of Administrative Hearings (OAH)	Appeals of benefits decisions made by the retirement system administrator transferred to the OAH, an independent quasi-judicial agency.						
CHANGES TO EXISTING RETIREMENT PLANS							
AK Resident COLA	Repeals	Reinstated					
Ad hoc PRPAs		Defined "financial condition of the retirement fund" for ad hoc PRPAs as 110% ratio of assets to liabilities (see Editor's notes under AS 14.25.143 & AS 39.35.483)	P 11 Sec. 17, P 11 Sec. 18, and P 77 Sec. 113				
Refunded Prior Members	Closes window for reinstating past service indebtedness.						
University of Alaska Optional Retirement Program		Changed AS 14.40.661-14.40.799 giving the Board of Regents flexibility to design both optional and mandatory retirement programs for future University employees. Specifies the University's retirement programs are not subject to collective bargaining. Also provides a one-time option for current employees who chose to participate in PERS or TRS to transfer into the existing optional retirement program.	P 38, Sec. 35 thru P 42, Sec. 51				

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
OTHER BILL COMPONENTS							
Transfer of Employee to DC Plan		Added option for the transfer of current non-vested (TRS Tier II and PERS Tier III) employees to the DC plan. Unlimited enrollment period. Employer must make new contribution (cannot take from DB trust) and has first option to allow a transfer.	P 30, L 2 and P 96, L 1				
Prescription Drug Changes	None						
Participating Employers		Added an option for political subdivisions and public organizations who do not currently participate in PERS and TRS to join the DC plan in the future.	P 98, Ls 9-22				
		Added specific employers already participating in PERS and TRS to allow their future employees to participate in the DC plan (defined benefit plans closed on July 1, 2005).	P 32, L 20 thru P 33, L 28 and P 93, Ls 2-17				
Membership Service		Added language identical to current statutes that prevents members that participate in both PERS and TRS from claiming more than one year of service (ex., a full-time teacher in TRS that works part-time in a PERS position during summer).	P 32, L 10 and P 98, L 23				

SB 141 Bill Version Comparison

	Senate Bill 141 DC Plan	Changes contained in CS for Senate Bill 141(FIN)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(STA)	Page, Line (or Sec.)	Changes contained in HCS for Senate Bill 141(FIN) Work Draft "C"	Page, Line (or Sec.)
Penalty for False Statements AS 14.25.210				Removed the existing language that a person who knowingly makes a false statement "forfeits all rights under this chapter". Language conforms to PERS AS 39.35.670.	P 13, Sec. 25		
Definition of "teacher" AS 14.25.220 (DB plan) and AS 14.25.590 (DC plan)				Adds AVTEC instructors to the definition of "teacher" and "member" for participation in TRS regardless of whether the position requires a certificate if the instructor is certified.	P 14, Sec. 30, Ls 16-20	Deleted. The Dept. of L&WD has changed all positions at AVTEC to non-certificated. Mandating that certificated teachers participate in TRS even though employed in a non-certificated position opens the door to discrimination lawsuits.	
Legislative Intent				Added intent language in Sec. 1 that R&B implement by regulation cost-saving measures in the retiree health care system and gives examples.	P 2, Sec. 1		
				Requires annual report to legislature by R&B on implementation of cost-saving measures.	P 110, Sec. 139		