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COMMITTEE REPORT

SENATE

4/22/80

FURTHER: None

Date: April 24, 1980

Mr. President:

The Committee on COMMERCE has had SB 573
con~~tin~~g the existence of the Board of Marine Pilots

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s) same title
- replace with CS for _____ new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without ^{individual} recommendations
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Tim Kell

Tommy D. Stinson

Clinton F. ...

Brad Bradley

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Brad Bradley
CHAIRMAN

BOARD OF MARINE PILOTS

MR. PRESIDENT, I MOVE THE ADOPTION OF SENATE BILL 573, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

(SEC. 08.62.020)

P. 1, Ls 16-18

why?

SECTION 1 IS CHANGED TO FORBID A BOARD MEMBER FROM SERVING MORE THAN TWO CONSECUTIVE TERMS, BUT DOES NOT LIMIT THE TOTAL NUMBER OF TERMS WHICH A PERSON MAY SERVE. THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT OR HIS DESIGNEE IS A MEMBER OF THE BOARD, AND THIS PROVISION DOES NOT APPLY TO HIM. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD CREATING MORE DIVERSITY.

(SEC. 08.62.040(A)(3))

P. 1, Ls. 20-21

Why not define reason for manager being excluded.

SECTION 2 IS AMENDED TO STATE THAT THE BOARD MUST KEEP A REGISTER OF LICENSED PILOTS AND AGENTS, BUT IS NO LONGER REQUIRED TO KEEP A REGISTER OF VESSELS, OPERATORS, AND MANAGERS. "OPERATORS" IS AN UNDEFINABLE TERM IN SEA-GOING LANGUAGE. ANY VESSEL FROM ALL OVER THE WORLD CAN BE IN OUR WATERS AND THE COMPILING OF A LIST IS VIRTUALLY IMPOSSIBLE. LLOYDS OF LONDON COMPILED SUCH A LIST AND IT COMPRISED VOLUMES.

(SEC. 08.62.040(A)(4))

P. 1, Ls. 23-26

Don-07

SECTION 3 REQUIRES THE BOARD TO ADOPT REGULATIONS ESTABLISHING STANDARDS BY WHICH FEES MAY BE SET AND TO PAY FOR AUDITS IF AN AUDIT IS NEEDED TO COLLECT INFORMATION REQUIRED IN

ORDER TO APPLY THE STANDARDS IN THE ... NS,
THERE HAS BEEN A NEED FOR SUBSTANTIATING THE
SETTING OF THE FEES.

(Sec. 08.62.140)
P. 2, Ls. 1-3

SECTION 4 INCREASES THE FEES PROVIDED FOR
~~UNDER~~ EXISTING LAW. AN ADDITIONAL BIENNIAL
REGISTRATION FOR AGENTS IS ADDED. AGENTS HAVE
NOT BEEN REGISTERING AND BY ATTACHING A FEE
TO THE REGISTRATION IT IS BELIEVED THAT REGISTRA-
TION FOR AGENTS WOULD SEEM MORE IMPORTANT AND
HENCE MORE AGENTS WOULD REGISTER. REGISTRATION
TAKES ON MORE VALUE WHEN A FEE IS ATTACHED.

(Sec. 08.62.150(A))
P. 2, Ls. 4-5

SECTION 5. ^{→ appeal} UNDER CERTAIN SPECIFIED CONDITIONS
THE BOARD MAY IMPOSE A DISCIPLINARY SANCTION
ON A PERSON. SECTION 5 ADDS, AS A CONDITION
WHICH WOULD ALLOW THE BOARD TO DENY A LICENSE,
REVOKE A LICENSE, OR SUSPEND A LICENSE, THE
REVOCATION OF A FEDERAL PILOTS LICENSE HELD
BY A PERSON LICENSED OR SEEKING A LICENSE
UNDER THIS CHAPTER. IT IS FELT THAT ONE
LOOSING HIS FEDERAL LICENSE IS GROUNDS FOR
REVOCATION OF THE STATE LICENSE.

(Sec. 08.62.187)
P. 2, Ls. 7-9

SECTION 6 IS A NEW PROVISIONS REQUIRING A
PERSON TO HAVE HIS NAME ON THE REGISTER OF
AGENTS BEFORE HE MAY ACT AS THE AGENT OF A
VESSEL. THIS ENABLES GREATER CONTROL OF
AGENTS.

(SEC. 08.03.010(c))
P. 2, Ls. 10-11

SECTION 7 PROVIDES THE TERMINATION DATE FOR
THE BOARD OF MARINE PILOTS IS JUNE 30, 1983.

(SEC. 08.03.010(B)(8))
P. 2, L. 12

SECTION 8 REPEALS THE EXISTING TERMINATION DATE,
JUNE 30, 1980, FOR THE BOARD OF MARINE PILOTS.

P. 2, L. 13

SECTION 9 THE EFFECTIVE DATE OF THIS ACT IS
JUNE 30, 1980, THE DATE UPON WHICH THE BOARD
OF MARINE PILOTS IS SCHEDULED TO TERMINATE.

08.62.020

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

08.62.040

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

08.62.140

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

- (1) application fee..... \$ 10
 - (2) biennial license fee..... \$200
- (sec 2 ch 106 SLA 1970)

08.62.150

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

THE BOARD OF MARINE PILOTS STATUTES

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

- (1) Board of Chiropractic Examiners (AS 08.20.010);
- (2) Board of Dental Examiners (AS 08.36.010);
- (3) State Medical Board (AS 08.64.010);
- (4) Board of Nursing (AS 08.68.010);
- (5) Board of Dispensing Opticians (AS 08.71.010);
- (6) Board of Examiners in Optometry (AS 08.72.010);
- (7) Board of Pharmacy (AS 08.80.010);
- (8) Board of Veterinary Examiners (AS 08.98.010);
- (9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (10) Board of Nursing Home Administrators (AS 08.70.010);
- (11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

- (1) Board of Public Accountancy (AS 08.04.010);
- (2) Board of Barber Examiners (AS 08.12.010);
- (3) Collection Agency Board (AS 08.24.011);
- (4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
- (5) Board of Electrical Examiners (AS 08.40.010);
- (6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
- (7) Guide Licensing and Control Board (AS 08.54.010);
- (8) Board of Marine Pilots (AS 08.62.010);
- (9) Real Estate Commission (AS 08.88.011);
- (10) Board of Welding Examiners (AS 08.99.010);
- (11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT. (a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

- (1) "board" includes the boards and commissions listed in sec. 10 of this chapter;
- (2) "department" means the Department of Commerce and Economic Development;
- (3) "commissioner" means the commissioner of commerce and economic development;
- (4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;
- (5) "licensee" means any person who holds a license;
- (6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 62. MARINE PILOTS

Article

1. Board of Marine Pilots (secs 08.62.010 - 08.62.040)
2. Licensing (secs 08.62.080 - 08.62.150)
3. General Provisions (secs 08.62.160 - 08.62.200)

Revisor's note (1970) -
In ch. 106, SLA 1970, AS 08.62
was incorrectly designated AS
08.87.

ARTICLE 1. BOARD OF MARINE PILOTS

Section	Section
10. Creation and membership of board	30. Meetings
20. Appointment and term of office	40. Powers and duties

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager

shall be from any one judicial district. All members of the board shall be residents of the state. (sec 2 ch 106 SLA 1970; am sec 8 ch 258 SLA 1976) (Eff. of amendment. The 1976 amendment inserted "two public members in accordance with AS 08.01.025" in the second sentence.)

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

- (1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;
- (2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;
- (3) keep a register of licensed pilots, vessels, operators, agents and manager;
- (4) regulate pilotage fees; and
- (5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

ARTICLE 2. LICENSING

Section	Section
80. License requirement	120. Duration, renewal
90. Application	130. Lapsed license
100. Qualifications	140. Fees
110. Previous licensure	150. Denial, revocation or suspension

Sec. 08.62.080. LICENSE REQUIREMENT. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form proscribed by the board. (sec 2 ch 106 SLA 1970)

Sec. 08.62.100. QUALIFICATIONS. A person is entitled to a license under this chapter if he

(1) is of good moral character;
 (2) is a citizen of the United States;
 (3) passes the examination given by the board; and
 (4) qualifies under the regulations adopted under section 40(a)(2) and (b) of this chapter. (sec 2 ch 107 SLA 1970)

Sec. 08.62.110. PREVIOUS LICENSURE. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.120. DURATION, RENEWAL. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970. A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of \$100. A license shall be renewed without examination upon the payment of the biennial license fee. (sec 2 ch 106 SLA 1970)

Sec. 08.62.130. LAPSED LICENSE. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license is incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (sec 2 ch 106 SLA 1970; am sec 1 ch 22 SLA 1973)

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

- (1) application fee..... \$ 10
 (2) biennial license fee..... \$200

(sec 2 ch 106 SLA 1970)

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;
 (2) is habitually intoxicated;
 (3) illegally uses or sells narcotic or hallucinogenic drugs;
 (4) makes a false statement to obtain a license;
 (5) violates a provision of this chapter or a regulation adopted under it; or
 (6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and
 (2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

ARTICLE 3. GENERAL PROVISIONS

Section	Section
160. Mandatory employment of licensed pilots	180. Exemptions
170. Pilot's lien for compensation	190. Penalty
	200. Definitions

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulations shall employ a pilot holding a valid license under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (sec 2 ch 106 SLA 1970)

Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

- (1) vessels under enrollment;
 (2) fishing vessels registered in the United States or in British Columbia, Canada;
 (3) motorboats as defined in sec. 1 of the Federal Motorboat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);

(4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively

(A) on the rivers of Alaska; or

(B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruiseships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and
 (6) pleasure craft. (sec 2 ch 106 SLA 1970; am sec 1 ch 43 SLA 1972)

Effect of amendment-The "vessels in (4) and added 1972 amendment inserted "of "or" in (A). United States registry of less than 300 gross tons" after

Sec. 08.62.190. PENALTY. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 nor more than \$5,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500 nor more than \$1,000. (sec 1 ch 34 SLA 1979)

Sec. 08.62.200. DEFINITIONS. In this chapter

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under 180 of this chapter. (sec 2 ch 106 SLA 1970; am sec 48 ch 218 SLA 1976)

Effect of amendment.-The 1976 amendment substituted "Department of Commerce and Economic Development"

for "Department of Commerce" in paragraphs (2) and (3).

THE BOARD OF MARINE PILOTS

STATUTES

08.62.020

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(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

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(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

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(b) Boards listed in this subsection have a termination date of June 30, 1980:

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- (7) Guide Licensing and Control Board (AS 08.54.010);
- (8) Board of Marine Pilots (AS 08.62.010);
- (9) Real Estate Commission (AS 08.88.011);
- (10) Board of Welding Examiners (AS 08.99.010);
- (11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 28, 1980

~~SUBJECT: Section-by-section analysis of SB 573
dealing with the Board of Marine Pilots
(Work Order Number 8525)~~

~~TO: Senator Brad Bradley
Chairman, Senate Commerce Committee~~

~~FROM: Tamara Brandt Cook *TBC*
Legislative Counsel~~

You have requested a section-by-section analysis of Senate Bill 573 entitled: "An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities, and providing for an effective date."

- (1) *(P.1, lines 16-18) Sec. 1, AS 08-67-020.*
~~Section 1.~~ This change forbids a board member from serving more than two consecutive terms, but does not limit the total number of terms which a person may serve. The commissioner of the Department of Commerce and Economic Development or his designee is a member of the board, and this provision does not apply to him. *This was done to allow more turnover on the board creating more diversity.*
- (2) *(P.1, lines 20-21) Sec. 2, AS 08-62-040 (4)(3):*
~~Section 2.~~ The board must keep a register of licensed pilots and agents, but is no longer required to keep a register of vessels, operators, and managers. *Operators is an undefinable term in sea-going language. Any vessels from all over the world can be on our -*
- (3) *(P.1, lines 23-26) Sec. 3, AS 08-62-040 (4)(3):*
~~Section 3.~~ Under existing law the board has the duty to regulate pilotage fees. This section requires the board to adopt regulations establishing standards by which fees may be set and to pay for audits if an audit is needed to collect information required in order to apply the standards in the regulations. *There has been a need for substantially the setting of the fees.*
- (4) *(P.2, line 1-3)*
~~Section 4.~~ The fees provided for under existing law are increased. An additional biennial registration fee is added. *Agents have not been registering & by attaching a fee to the registration it is believed that registration for agents would become more important & some more agents would register. Registration takes on more value when a fee is attached.*

Senator Brad Bradley

Page 2

April 28, 1980

(P 2, line 4-5) See 5, AS 08.62.150(a).

~~Section 5.~~ Under certain specified conditions the board may impose a disciplinary sanction on a person. This section adds, as a condition which would allow the board to deny a license, revoke a license, or suspend a license, the revocation of a federal pilots license held by a person licensed or seeking a license under this chapter.

It is felt that one losing his federal license is grounds for revocation of the state license.

(P 2, line 7-9) ~~Section 6.~~ This is a new provision requiring a person to have his name on the register of agents before he may act as the agent of a vessel. *AS 08.62.157. enables greater control of agents.*

(P 2, line 10-11) ~~Section 7.~~ June 30, 1983 is the termination date for the Board of Marine Pilots. *AS 08.03.010(c)*

(P 2, line 12) ~~Section 8.~~ This section repeals the existing termination date, June 30, 1980, for the Board of Marine Pilots. *AS 08.03.010(b)(8)*

(P 2, line 13) ~~Section 9.~~ The effective date of this act is June 30, 1980, the date upon which the Board of Marine Pilots is scheduled to terminate.

If you have any further questions regarding this matter, please contact me.

TBC:ljb

ORDER TO APPLY THE STANDARDS IN THE REGULATIONS.
THERE HAS BEEN A NEED FOR SUBSTANTIATING THE
SETTING OF THE FEES.

(Sec. 08.62.140)
P. 2, Ls. 1-3

SECTION 4 INCREASES THE FEES PROVIDED FOR
UNDER EXISTING LAW. AN ADDITIONAL BIENNIAL
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TO THE REGISTRATION IT IS BELIEVED THAT REGISTRA-
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THE BOARD MAY IMPOSE A DISCIPLINARY SANCTION
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REVOCATION OF A FEDERAL PILOTS LICENSE HELD
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LOOSING HIS FEDERAL LICENSE IS GROUNDS FOR
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SECTION 6 IS A NEW PROVISIONS REQUIRING A
PERSON TO HAVE HIS NAME ON THE REGISTER OF
AGENTS BEFORE HE MAY ACT AS THE AGENT OF A
VESSEL. THIS ENABLES GREATER CONTROL OF
AGENTS.

BOARD OF MARINE PILOTS

MR. PRESIDENT, I MOVE THE ADOPTION OF SENATE BILL 573, WHICH IS IDENTICAL, AT THIS POINT, TO THE HOUSE BILL FOR THE SAME BOARD. WE HAVE WORKED JOINTLY TO TRY TO PREVENT AN UNNECESSARY AND OFTEN TIME-CONSUMING FREE CONFERENCE COMMITTEE.

(SEC. 08.62.020)

P. 1, Ls 16-18

why?

SECTION 1 IS CHANGED TO FORBID A BOARD MEMBER FROM SERVING MORE THAN TWO CONSECUTIVE TERMS, BUT DOES NOT LIMIT THE TOTAL NUMBER OF TERMS WHICH A PERSON MAY SERVE. THE COMMISSIONER OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT OR HIS DESIGNEE IS A MEMBER OF THE BOARD, AND THIS PROVISION DOES NOT APPLY TO HIM. THIS WAS DONE TO ALLOW MORE TURNOVER ON THE BOARD CREATING MORE DIVERSITY.

(SEC. 08.62.040(A)(3))

P. 1, Ls. 20-21

Why not define reason for manager being excluded.

SECTION 2 IS AMENDED TO STATE THAT THE BOARD MUST KEEP A REGISTER OF LICENSED PILOTS AND AGENTS, BUT IS NO LONGER REQUIRED TO KEEP A REGISTER OF VESSELS, OPERATORS, AND MANAGERS. "OPERATORS" IS AN UNDEFINABLE TERM IN SEA-GOING LANGUAGE. ANY VESSEL FROM ALL OVER THE WORLD CAN BE IN OUR WATERS AND THE COMPILING OF A LIST IS VIRTUALLY IMPOSSIBLE. LLOYDS OF LONDON COMPILED SUCH A LIST AND IT COMPRISED VOLUMES.

(SEC. 08.62.040(A)(4))

P. 1, Ls. 23-26

SECTION 3 REQUIRES THE BOARD TO ADOPT REGULATIONS ESTABLISHING STANDARDS BY WHICH FEES MAY BE SET AND TO PAY FOR AUDITS IF AN AUDIT IS NEEDED TO COLLECT INFORMATION REQUIRED IN

Introduced: 4/22/80
Referred: Commerce

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 SENATE BILL NO. 573

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 ELEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act continuing the existence of the Board of Marine
7 Pilots and amending the law relating to its powers and
8 responsibilities; and providing for an effective date."

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

10 * Section 1. AS 08.62.020 is amended to read:

11 Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor
12 shall appoint the pilot and agent or manager members of the board,
13 subject to confirmation by a majority of the members of the legislature
14 in joint session, for terms of four years, or until their successors are
15 appointed. The first members shall be initially appointed for one, two,
16 three and four year terms. No person, with the exception of the commis-
17 sioner or his designee, may be appointed to the board for more than two
18 consecutive terms.

19 * Sec. 2. AS 08.62.040(a)(3) is amended to read:

20 (3) keep a register of licensed pilots, and [VESSELS, OPERA-
21 TORS,] agents [, AND MANAGERS]

22 * Sec. 3. AS 08.62.040(a)(4) is repealed and re-enacted to read:

23 (4) adopt regulations under the Administrative Procedure Act
24 (AS 44.62) establishing standards by which pilotage fees may be estab-
25 lished, and pay for audits whenever an audit is necessary to collect
26 information needed to apply the standards in the regulations;

27 * Sec. 4. AS 08.62.140 is amended to read:

28 Sec. 08.62.140. FEES. The following fees shall be imposed under
29 this chapter when applicable:

THE LEGISLATURE OF THE STATE OF ALASKA
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST Senate Bill 573 - An Act continuing the existence of the Board of Marine
Bill/Resolution No. ~~pilots and amending the law relating to its powers and responsibilities;~~
Title and providing for an effective date.
Requested by Commerce Committee Date 4/29/80

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development

Program Category Affected Consumer Protection

BRU, Program, or Subprogram(s) Affected Regulation and Licensing of Professions

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 80	FY 81	FY 82	FY 83	FY 84	FY 85
100 PERSONAL SERVICES	-0-	-0-	-0-	-0-	-0-	-0-
200 TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
300 CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
400 COMMODITIES	-0-	-0-	-0-	-0-	-0-	-0-
500 EQUIPMENT	-0-	-0-	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700 GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Fund Source)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No fiscal impact is associated with passage of this bill.

It is also felt that the audits necessary to collect information for the establishment of pilotage fees would not be very large and could be absorbed by the division.

IV. DATE 4/29/80

PREPARED BY Ann Griqas, Director

AGENCY Occupational Licensing

PHONE 465-2534

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

BILL ANALYSIS

ASSIGNMENT DATE _____

UNASSIGNED _____

DEPARTMENT Commerce & Economic Development	SPONSOR (PRINCIPAL) Commerce Committee	BILL NO. SB 573
DEPARTMENT POSITION Support		
DIVISION DIRECTOR <i>W. C. [Signature]</i> Occupational Licensing	DATE 4/29/80	Deputy COMMISSIONER Bertram L. Wagon
GOVERNOR'S OFFICE USE		
<input type="checkbox"/> POSITION NOTED	<input type="checkbox"/> POSITION APPROVED	<input type="checkbox"/> POSITION DISAPPROVED
BY:	DATE:	
SUMMARY		
(1) RELATED BILLS (SIMILAR OR CONFLICTING) HB 1025		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL Unknown		(2) b. ORGANIZATIONAL OPPOSITION TO BILL Unknown
(3) PROGRAM EFFECTS OF BILL		
(4) FISCAL IMPACT: <input type="checkbox"/> NONE <input checked="" type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		
(6) COMMENTS:		

The Department of Commerce & Economic Development, Division of Occupational Licensing supports SB 573.

THE PRECEDING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

Key to References

- (Y) - (yellow cover) - State of Alaska Sunset Review, 1979.
Prepared by the Division of Occupational Licensing
- (B) - (blue cover) - Division of Legislative Audit Performance Review
- (W) - (white cover) - Senate Commerce Committee Public Hearing Testimony, December 10, 1979

1. Examinations - Statutory elimination of the Coast Guard exam as a prerequisite to the State Exam. ~~Redundant.~~ *need both exams*

- (Y) - p 5, last paragraph; p 6, first paragraph
(B) - p 5, paragraph 4; p 7
(W) - p 2, paragraph 3; p 3, paragraph 1; p 4; p 5, paragraph 4

2. Increase the biennial license fee to \$300 (presently \$200) and the application fee to \$50 (presently \$10).

- (Y) - p 3; p 11, paragraphs 2 and 3
(B) - p 25
(W) - page 16; page 18

3. Repeal Sec. 08.62.040 (2)(4) which gives the board the power to regulate pilotage fees. I suggest that this power be given to an existing regulation body, such as the Alaska Transportation Commission, which already has a rate structure within it.

- (Y) - p 7, last paragraph; p 8
(B) - p 6; p 7, last paragraph; p 12
(W) - p 6 (Capt. Ed Murphy); p 28, paragraph 1; p 30

4. The Board of Marine Pilots should be continued for four more years.

- (Y) - p 1
(B) - p 7, paragraph 2
(W) - p 2, paragraph 3; p 6, paragraph 2

5. Repeal Sec. 08.62.110 (AS 30.10 was repealed in 1970) and the portion of Sec. 08.62.120 which states "A license issued under AS 30.10 lapses at the end of calendar year 1970."

- (Y) - p 11; p 13 (obsolete)

6. AS 08.62.040(a)(3) - repeal vessels in section.

- (a) The board shall:

(3) Keep a register of licensed pilots, [vessels], ~~operators, agents, and managers~~

Shippers
(Y) - This is a suggestion by OL and Elaine Garrett may wish to comment on this. Evidently there is no way OL is able to keep a register on all vessels. They are performing this function for the Board of Marine Pilots.

7. Members of the Board may be appointed to serve no ~~more~~ *more* than two full terms, *excluding the Commissioner.*

Consent

7. Section 08.62.150 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

8. In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

BOARD OF MARINE PILOTS

1. Section 08.62.040(4) should be amended to read:

The Board shall:

(4) regulate pilotage fees and consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), justifying the setting of these fees.

Costs required by regulation to carry out this section will be paid for by the Board.

OR

The Board shall:

(4) regulate pilotage fees and develop specific regulations to substantiate these fees.

(a) the Board shall establish regulations for input by marine pilots, industry, and public in the setting of these fees.

2. AS 08.62.040 (a) (3) Repeal [vessels] [operators] and [managers] in section.

(a) The Board shall:

(3) Keep a register of licensed pilots and agents. Evidently, vessels with over 1600 gross tons of cargo, or those vessels which carry dangerous cargo (chemicals, etc.) must give 24-hour notice to the Coast Guard before their arrival to the Captain of the particular port. (Registry, etc.)

Operators and managers are not proper terms.

3. Agents who represent ships subject to the state pilotage Act shall pay a biennial registration fee of \$100.00.

The agents are not paying any registration fee at this time and by doing so they would be more likely to register. There is evidently a large number of agents who are not registered at this time and this suggestion could help alleviate this problem.

The pilots are required to pay a fee so the agents should also. This would also give the general fund more monies which might allow more than one meeting a year by the Board of Marine Pilots.

BOARD OF MARINE PILOTS

For the Committee's information see attached letter from the Department of Transportation, State of Washington, regarding the procedures in establishing their pilotage fees.



STATE OF
WASHINGTON

Dixy Lee Ray
Governor

DEPARTMENT OF TRANSPORTATION

Washington State Ferries, Seattle Ferry Terminal
Seattle, Washington 98104 206/464-7800

BOARD OF PILOTAGE COMMISSIONERS

October 23, 1979

Ms. Elaine Garrett
Department of Commerce & Economic
Development
Division of Occupational Licensing
Pouch D
Juneau, AK 99811

Dear Ms. Elaine Garrett:

This letter responds to your telephone inquiry as to how pilotage tariffs are set in Washington State.

The Board of Pilotage Commissioners is charged with the annual setting of pilotage fees (RCW 88.16.035(4)). A copy of the current pilotage act is attached. For many years it has been the practice that the pilots associations, and the Puget Sound Steamship Operators Association (their pilotage committee) will negotiate a level of fees to which both sides ultimately come to an agreement. With previous communication, as the negotiations progress, the Board will set a hearing date to hear testimony and ask questions of the two sides as to how the agreement was reached. Because of the agreement between the parties, the Board is usually inclined to adopt the rates as proposed. The rate hearings are therefore usually very short in duration and when completed the usual monthly meeting is commenced (the hearing is set on the day of the regular meeting).

Last year the Grays Harbor pilots received a 7% increase; the Puget Sound pilots received a rate increase of 8.3%, covering an 18 months period. Negotiations are commencing now for the next round.

As you can see the Board spends very little time in the actual tariff making process. We feel this is better handled by the parties directly involved, i.e., the ones providing the services and the ones paying the bills.

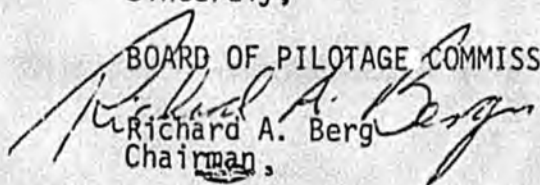
Copies of the two current tariffs are attached along with copies of minutes of the two hearings at which they were adopted.

We hope this information will be of assistance to you in your efforts to establish your next set of tariff changes. If any members of the Commission or your staff are interested, our Board meetings are held the second Thursday of each month. We would be delighted to have you attend so as to exchange matters of mutual interest and concern.

Please let us know if we can be of further assistance.

Sincerely,

BOARD OF PILOTAGE COMMISSIONERS


Richard A. Berg
Chairman

RAB: ht
enc.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K--STATE CAPITOL
JUNEAU 99811

September 5, 1975

H. Phillip Hubbard
Deputy Commissioner
Department of Commerce
Pouch D
Juneau, Alaska 99811

Re: Tariffs for licensed pilots on
enrolled ships (AS 08.62.040,
AS 03.62.180, 12 AAC 56.160(j))

Dear Deputy Commissioner Hubbard:

You have requested an opinion from the Attorney General whether or not the Board of Marine Pilots has statutory authority to regulate tariffs charged by licensed pilots employed on enrolled ships. It is the opinion of this department that the board does have such authority. The rationale for this conclusion is set out below.

The powers and duties of the board are set out in AS 08.62.040(a), which reads in part as follows:

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

#

(4) regulate pilotage fees;

This statute then gives the board authority to regulate services by licensed pilots on specified waterways to assure protection of shipping, the safety of human life and property, and to regulate tariffs charged by licensed pilots for their services.

Under AS 08.62.180(1), "vessels under enrollment" are explicitly excepted from the requirements of AS 08.62. However, the board has promulgated regulation 12 AAC 56.160(j) which reads as follows:

When a pilot licensed under AS 08.62 is employed on an enrolled ship, the same regulations [as for ships not excepted from the requirements of AS 08.62] apply.

It is generally held that an express exception in a statute "comprises the only limitation on the operation of the statute and no other exception will be implied." ^{1/} In the matter at hand, the fact that AS 08.62.180(1) provides an express exception for enrolled vessels does not require an implied exception from the board's tariff regulations for licensed pilots employed on those vessels.

The enrolled ship exception in AS 08.62.180(1) does not expressly extend to licensed pilots employed on such vessels. That is, the board is authorized and has the duty to establish qualifications of licensed pilots to provide for examination of pilots and their licensing, and to provide for efficient and competent pilot service, as well as, to regulate pilotage fees for licensed pilots regardless of whether the vessel in question is enrolled. One might at first view this result as indirect regulation of the enrolled vessels themselves, in violation of AS 08.62.180(1). However, owners of enrolled vessels are not required to take on licensed pilots while in Alaskan waters. These owners are free to go elsewhere for pilotage advice.

Therefore, it is the opinion of this department that the board is authorized under AS 08.62.040 to regulate tariffs charged by licensed pilots employed on enrolled ships. And so, 12 AAC 56.160(j) is a valid regulation pursuant to this authority.

Sincerely yours,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Wilson Condon
Deputy Attorney General

WC:chp

AMERICAN INSTITUTE OF MERCHANT SHIPPING

1625 K Street, N.W., Suite 1000, Washington, D.C. 20006

Telephone 202/753-5445

Telex: 89-424 AIMSHIP WSH

February 29, 1980

Honorable W. E. Bradley
Chairman, Senate Commerce Committee
State of Alaska
State Capitol
Pouch-V Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Bradley:

At the January 30, 1980, Sunset Hearings on the Board of Marine Pilots held by the House Commerce Committee in Juneau, I presented testimony on behalf of the American Institute of Merchant Shipping (AIMS). During discussions following my prepared testimony, I was requested to categorize AIMS' recommendations into statutory and regulatory proposals. I am pleased to respond at this time to that request, and would also like to take this opportunity to offer further comment on other issues not fully explored during the hearing which may have a bearing on your deliberations.

With respect to categorizing AIMS' recommendations into statutory or regulatory proposals, I offer the following:

Licensing State Pilots

1. Continue to require Federal pilotage endorsements as a prerequisite to State pilotage.

No action is requested. This requirement is included under 12 AAC 56.030(2).

2. Eliminate those State license examination requirements which duplicate Federal pilotage examinations.

It is recommended that language be added to AS 08.52.040(2) permitting elimination of examination requirements

1 of 5

3. Seek active USCG liaison with the Board of Marine Pilots.

It is recommended that the Board of Marine Pilots be encouraged to solicit active liaison with the U. S. Coast Guard regarding establishment of appropriate guidelines for pilot qualification, examination, recertification and discipline. In this regard, we encourage the State to request such a U. S. Coast Guard representative to be stationed in, or be in close contact with, U. S. Coast Guard Headquarters in Washington. This will ensure uniformity of application nationwide.

Pilot Recertification

As indicated in AIMS' Testimony, recertification procedures are too vague to assure that the intent of the legislature is met. In addition, the USCG will, in the near future, issue new procedures for recertification of Federal pilots. AIMS proposes that a committee of interested parties, including the pilots, industry, USCG and Board of Members be established to identify and recommend statutory or regulatory changes to strengthen this most important area.

Pilot Discipline

1. Clarify the terms "incompetent" and "misconduct."

This subject should be included in the scope of the previously recommended Committee's work.

②. Suggest Alaska standards for revocation or suspension of State pilot licenses be established similar to USCG standards and procedures for revocation or suspension of Federal pilot licenses.

AIMS proposes Section 08.62.160 should be amended to include failure to maintain qualifications for the original license as a basis for mandatory revocation, suspension, or refusal to re-issue a license.

Regulation of Fees

1. Provide more detailed criteria for evaluating pilot-age rate changes.

Section 08.62.040(4) should be amended to require that

individual pilot compensation must be adequate, but not excessive, to assure that qualified personnel are attracted to the service, and that consideration must be given to difficulty of pilotage, length of time on the job, hours on standby, area standards of living, ratio of time off to time worked, benefits, necessary expenses, including pilot boat cost if required, and equitable distribution of these costs to the users of the pilotage service.

2. Require annual financial audit of pilot associations by state auditors with the audit available to the public.

In keeping with the Board's mandate to provide for the maintenance of efficient pilot service for Alaska, AS 08.62.040(4) should be amended to require that marine pilot associations have their records audited annually by a certified public accountant approved by the Board, a copy of such report shall be submitted promptly to the Board.

Board Composition

- ① Provide for tanker industry representation on the Board.

It is proposed that AS 08.62.101 be amended to specify that one industry member of the Board be a representative of the tanker industry. This member could make a significant contribution to the Board through the industry's resources and experience. In order to assure that a person of sufficient experience and knowledge is available for service to the Board, the State residency requirement for that representative should also be expanded to permit any U.S. citizen to qualify for appointment.

Regulation of Enrolled Vessels

- ① Eliminate those Sections of State Statute AS 08.62 added by passage of HB 510 in 1977 because they conflict with Federal law.

AS 08.62.185 should be repealed in its entirety for reasons already presented in AIMS' testimony.

In addition to clarifying AIMS' proposals to the Committee, I would like to discuss more fully two statements which were made by others during the Hearings which were inaccurate.

The first was that pilots assume responsibility for the safe navigation of the vessel when piloting. This statement is not consistent with the widely recognized master/pilot relationship which, by Federal and international law, holds the master fully and ultimately responsible for the safe navigation of the vessel at all times except when transiting the Panama Canal. The pilot, whether required by law or not, acts as an advisor to the master with respect to local conditions. Any orders which the pilot may give to the helmsman are given under the direct supervision of the master and with his approval. The master has the responsibility and authority to countermand any order given by the pilot, or to relieve the pilot if he believes the safety of the ship is being jeopardized.

A second statement was made that Federal, or employec, pilots are influenced by the vessel owner to "maintain schedule or move the vessel with unacceptable margins of safety," and therefore the State pilot "places a higher priority on the protection of life, property and the environment." This argument is obviously without merit when one considers the owner's investment in his ship, its cargo and crew and the social and financial consequences which would result from a vessel casualty. No one has more to lose than the U.S. ship owner when safety is not the paramount consideration in vessel operation.

Furthermore, it is not necessary for a Federal pilot to be an employee of the shipowner or operator. Independent Federal pilot services are available at many U.S. ports and provide both channel navigation and docking pilot services.

In closing, let me thank you again for the opportunity to express AIMS' views on this most important matter. I will be happy to try to provide you and other members of the Committee with any further information you may request.

Very truly yours,



Mark R. Johnson
Assistant to the Director
of Marine Affairs

/for/ Daniel J. Paul, Jr.

4 of 5

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 28, 1980

SUBJECT: Section-by-section analysis of SB 573
dealing with the Board of Marine Pilots
(Work Order Number 8525)

TO: Senator Brad Bradley
Chairman, Senate Commerce Committee

FROM: Tamara Brandt Cook *TBC*
Legislative Counsel

You have requested a section-by-section analysis of Senate Bill 573 entitled: "An Act continuing the existence of the Board of Marine Pilots and amending the law relating to its powers and responsibilities; and providing for an effective date."

Section 1. This change forbids a board member from serving more than two consecutive terms, but does not limit the total number of terms which a person may serve. The commissioner of the Department of Commerce and Economic Development or his designee is a member of the board, and this provision does not apply to him.

Section 2. The board must keep a register of licensed pilots and agents, but is no longer required to keep a register of vessels, operators, and managers.

Section 3. Under existing law the board has the duty to regulate pilotage fees. This section requires the board to adopt regulations establishing standards by which fees may be set and to pay for audits if an audit is needed to collect information required in order to apply the standards in the regulations.

Section 4. The fees provided for under existing law are increased. An additional biennial registration fee is added.

Senator Brad Bradley
Page 2
April 28, 1980

Section 5. Under certain specified conditions the board may impose a disciplinary sanction on a person. This section adds, as a condition which would allow the board to deny a license, revoke a license, or suspend a license, the revocation of a federal pilots license held by a person licensed or seeking a license under this chapter.

Section 6. This is a new provision requiring a person to have his name on the register of agents before he may act as the agent of a vessel.

Section 7. June 30, 1983 is the termination date for the Board of Marine Pilots.

Section 8. This section repeals the existing termination date, June 30, 1980, for the Board of Marine Pilots.

Section 9. The effective date of this act is June 30, 1980, the date upon which the Board of Marine Pilots is scheduled to terminate.

If you have any further questions regarding this matter, please contact me.

TBC:ljb



Official Business

Alaska State Legislature

Senate

Committee on Commerce

March 13, 1980

Pouch V
State Capitol
Juneau, Alaska 99811

The Honorable Clem Tillion
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Your Senate Commerce Committee has had under consideration for "Sunset" review the Board of Marine Pilots pursuant to your referral under AS 44.66.050 and AS 08.03.010.

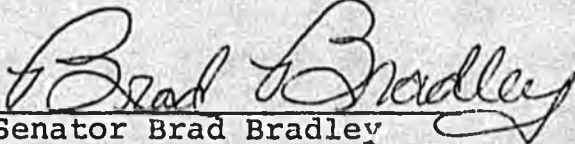
In accordance with the statutory requirements, a public hearing was held on the review of this board, members of the board testified in person or by teleconference. The Committee considered the proposed budget of the board for FY 1981 and particularly examined the performance audit of the activities of the board prepared by the Legislative Audit Division.

Guided, in part, by the report prepared by the Legislative Audit Division the Committee took into consideration the factors required to be considered under AS 44.66.050(c).

The Committee feels it has adequately addressed the recommendations and categories required under AS 44.66.050(d), and recommends that the Board of Marine Pilots be continued for another four years, that is, that the repealer with regard to the activities of the board be amended to read June 30, 1984.

A bill will be introduced by the Commerce Committee to implement the recommendations in this report.

Respectfully submitted,


Senator Brad Bradley
Chairman
Senate Commerce Committee

BB/bm

08.62.020

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

08.62.040

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

08.62.140

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

(1) application fee..... \$ 10

(2) biennial license fee..... \$200

(sec 2 ch 106 SLA 1970)

08.62.150

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

(1) is incompetent in the performance of his pilotage duties;

(2) is habitually intoxicated;

(3) illegally uses or sells narcotic or hallucinogenic drugs;

(4) makes a false statement to obtain a license;

(5) violates a provision of this chapter or a regulation adopted under it; or

(6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

(1) the reason for the license denial, revocation or suspension has been remedied; and

(2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

THE BOARD OF MARINE PILOTS STATUTES

08.03.010.

Sec. 08.03.010. Termination, continuation and reestablishment of regulatory boards. (a) Boards listed in this subsection have a termination date of June 30, 1979:

- (1) Board of Chiropractic Examiners (AS 08.20.010);
- (2) Board of Dental Examiners (AS 08.36.010);
- (3) State Medical Board (AS 08.64.010);
- (4) Board of Nursing (AS 08.68.010);
- (5) Board of Dispensing Opticians (AS 08.71.010);
- (6) Board of Examiners in Optometry (AS 08.72.010);
- (7) Board of Pharmacy (AS 08.80.010);
- (8) Board of Veterinary Examiners (AS 08.98.010);
- (9) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010);
- (10) Board of Nursing Home Administrators (AS 08.70.010);
- (11) Physical Therapy Board (AS 08.84.010).

(b) Boards listed in this subsection have a termination date of June 30, 1980:

- (1) Board of Public Accountancy (AS 08.04.010);
- (2) Board of Barber Examiners (AS 08.12.010);
- (3) Collection Agency Board (AS 08.24.011);
- (4) Board of Hairdressing and Beauty Culture Examiners (AS 08.28.010);
- (5) Board of Electrical Examiners (AS 08.40.010);
- (6) State Board of Registration for Architects, Engineers and Land Surveyors (AS 08.48.011);
- (7) Guide Licensing and Control Board (AS 08.54.010);
- (8) Board of Marine Pilots (AS 08.62.010);
- (9) Real Estate Commission (AS 08.88.011);
- (10) Board of Welding Examiners (AS 08.99.010);
- (11) Board of Governors of the Alaska Bar Association (AS 08.08.040).

(c) Upon termination, each board listed in (a) and (b) of this section shall continue in existence until June 30 of the next succeeding year for the purpose of concluding its affairs. During this period, termination does not reduce or otherwise limit the powers or authority of each board. One year after the date of termination, a board not continued shall cease all activities.

(d) The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS 44.66.050.

(e) A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years. (§ 2 ch 149 SLA 1977)

Sec. 08.01.100. LICENSE RENEWAL, LAPSE AND REINSTATEMENT.

(a) All licenses shall be renewed biennially on the dates set by the department with the approval of the respective board.

(b) A registration, license permit or certificates requiring renewal to continue effective must be renewed on or before the date set by the department or it will lapse. A penalty of \$10 shall be charged in addition to all delinquent renewal fees for reinstatement of a registration, license, permit or certificate which remains lapsed for more than 60 days.

Sec. 08.01.105. PENALTY FOR IMPROPER PAYMENT. An applicant shall pay a penalty of \$10 each time a negotiable instrument is presented to the department in payment of an amount due and payment is subsequently refused by the named payor.

Sec. 08.01.110. DEFINITIONS. In this chapter

(1) "board" includes the boards and commissions listed in sec. 10 of this chapter;

(2) "department" means the Department of Commerce and Economic Development;

(3) "commissioner" means the commissioner of commerce and economic development;

(4) "license" means any license, certificate, permit, or registration or similar evidence of authority issued by one of the boards listed in sec. 10 of this chapter;

(5) "licensee" means any person who holds a license;

(6) "occupation" means any of the trades or professions for which licensure is required by one of the boards listed in sec. 10 of this chapter.

CHAPTER 62. MARINE PILOTS

Article

1. Board of Marine Pilots (secs 08.62.010 - 08.62.040)
2. Licensing (secs 08.62.080 - 08.62.150)
3. General Provisions (secs 08.62.160 - 08.62.200)

Revisor's note (1970) -

In ch. 106, SLA 1970, AS 08.62 was incorrectly designated AS 08.87.

ARTICLE 1. BOARD OF MARINE PILOTS

Section	Section
10. Creation and membership of board	30. Meetings
20. Appointment and term of office	40. Powers and duties

Sec. 08.62.010. CREATION AND MEMBERSHIP OF BOARD. There is created the Board of Marine Pilots. It consists of two pilots licensed under this chapter who have been actively engaged in piloting on vessels subject to this chapter, two agents or managers of vessels subject to this chapter, two public members in accordance with AS 08.01.025, and the commissioner or his designee. Not more than one pilot and one agent or manager

shall be from any one judicial district. All members of the board shall be residents of the state. (sec 2 ch 106 SLA 1970; am sec 8 ch 258 SLA 1976) (Eff. of amendment. The 1976 amendment inserted "two public members in accordance with AS 08.01.025" in the second sentence.)

Sec. 08.62.020. APPOINTMENT AND TERM OF OFFICE. The governor shall appoint the pilot and agent or manager members of the board, subject to confirmation by a majority of the members of the legislature in joint session for terms of four years, or until their successors are appointed. The first members shall be initially appointed for one, two, three and four year terms. (sec 2 ch 106 SLA 1970)

Sec. 08.62.030. MEETINGS. The board shall hold a regular annual meeting. The board may hold special meetings at the call of the chairman with prior approval of the governor. (sec 2 ch 106 SLA 1970)

Sec. 08.62.040. POWERS AND DUTIES. (a) The board shall

(1) provide for the maintenance of efficient and competent pilot service on all waters covered by this chapter to assure protection of shipping and the safety of human life and property;

(2) consistent with the law, adopt regulations, subject to the Administrative Procedure Act (AS 44.62), establishing the qualifications of pilots and providing for the examination of pilots and the issuance of original or renewal pilot licenses to qualified persons;

(3) keep a register of licensed pilots, vessels, operators, agents and manager;

(4) regulate pilotage fees; and

(5) make available, upon request, copies of this chapter and the regulations adopted under it.

(b) The board may, by regulation, make any other provision for proper and safe pilotage upon the waters covered by this chapter and for the efficient administration of this chapter. (sec 2 ch 106 SLA 1970)

ARTICLE 2. LICENSING

Section	Section
80. License requirement	120. Duration, renewal
90. Application	130. Lapsed license
100. Qualifications	140. Fees
110. Previous licensure	150. Denial, revocation or suspension

Sec. 08.62.080. LICENSE REQUIREMENT. No person may pilot a vessel subject to this chapter unless he is licensed under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.090. APPLICATION. (a) A person who desires to be licensed under this chapter shall apply in writing to the department.

(b) The application shall provide the information and be made on a form prescribed by the board. (sec 2 ch 106 SLA 1970)

Sec. 08.62.100. QUALIFICATIONS. A person is entitled to a license under this chapter if he

- (1) is of good moral character;
- (2) is a citizen of the United States;
- (3) passes the examination given by the board; and
- (4) qualifies under the regulations adopted under section 40(a)(2) and (b) of this chapter. (sec 2 ch 107 SLA 1970)

Sec. 08.62.110. PREVIOUS LICENSURE. A license that was issued under AS 30.10 is considered as having been issued under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.120. DURATION, RENEWAL. A license issued under this chapter shall be renewed biennially on dates set by the department. A license issued under AS 30.10 lapses at the end of calendar year 1970. A license issued between May 7, 1970 and the end of 1970 shall be issued for a fee of \$100. A license shall be renewed without examination upon the payment of the biennial license fee. (sec 2 ch 106 SLA 1970)

Sec. 08.62.130. LAPSED LICENSE. A lapsed license may be reinstated without examination if it has not remained lapsed for more than two years. However, if the license is lapsed for less than two years and the board has reason to believe that the person applying for reinstatement of his license is incapable or incompetent to carry out the duties of a licensed marine pilot, the board may require the applicant to take and pass the examination given by the board. (sec 2 ch 106 SLA 1970; am sec 1 ch 22 SLA 1973)

Sec. 08.62.140. FEES. The following fees shall be imposed under this chapter when applicable:

- (1) application fee..... \$ 10
 - (2) biennial license fee..... \$200
- (sec 2 ch 106 SLA 1970)

Sec. 08.62.150. DENIAL, REVOCATION OR SUSPENSION. (a) The board, after compliance with the Administrative Procedure Act (AS 44.62), may deny, revoke or suspend the license of a person who

- (1) is incompetent in the performance of his pilotage duties;
- (2) is habitually intoxicated;
- (3) illegally uses or sells narcotic or hallucinogenic drugs;
- (4) makes a false statement to obtain a license;
- (5) violates a provision of this chapter or a regulation adopted under it; or
- (6) is guilty of misconduct during the course of his employment.

(b) A license denied, revoked or suspended under (a) of this section may not be granted or reinstated until

- (1) the reason for the license denial, revocation or suspension has been remedied; and
- (2) the period of suspension has been served and all fines imposed under this chapter have been paid. (sec 2 ch 106 SLA 1970)

ARTICLE 3. GENERAL PROVISIONS

Section	Section
160. Mandatory employment of licensed pilots	180. Exemptions
170. Pilot's lien for compensation	190. Penalty
	200. Definitions

Sec. 08.62.160. MANDATORY EMPLOYMENT OF LICENSED PILOTS. A vessel subject to this chapter navigating the inside coastal waters of Alaska as determined by regulations shall employ a pilot holding a valid license under this chapter. (sec 2 ch 106 SLA 1970)

Sec. 08.62.170. PILOT'S LIEN FOR COMPENSATION. Each vessel, its tackle, apparel and furniture and the owner of the vessel are jointly and severally liable for the compensation of a pilot employed on the vessel and the pilot has a lien on the vessel, her tackle, apparel and furniture for his compensation. (sec 2 ch 106 SLA 1970)

Sec. 08.62.180. EXEMPTIONS. This chapter does not apply to

- (1) vessels under enrollment;
- (2) fishing vessels registered in the United States or in British Columbia, Canada;
- (3) motorboats as defined in sec. 1 of the Federal Motorboat Act of 1940 (54 Stat. 163; 46 U.S.C., sec. 526 et seq.);
- (4) vessels of United States registry of less than 300 gross tons and tow boats of United States registry and vessels owned by the State of Alaska, engaged exclusively
 - (A) on the rivers of Alaska; or
 - (B) in the coastwise trade on the west coast of the United States including Alaska, Hawaii, and British Columbia, Canada;

(5) vessels of Canada, including Canadian cruiseships, engaged in frequent trade between British Columbia and Alaska, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; and

(6) pleasure craft. (sec 2 ch 106 SLA 1970; am sec 1 ch 43 SLA 1972)

Effect of amendment-The 1972 amendment inserted "of United States registry of less than 300 gross tons" after "vessels in (4) and added "or" in (A).

Sec. 08.62.190. PENALTY. A master or owner of a vessel required by this chapter to employ a licensed pilot who fails to do so when a licensed pilot is available, unless the perils or hazards of the sea prevent the employment of a pilot, is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$1,000 nor more than \$5,000. A person who violates any other provision of this chapter or a regulation adopted under it is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less than \$500 nor more than \$1,000. (sec 1 ch 34 SLA 1979)

Sec. 08.62.200. DEFINITIONS. In this chapter

08.62.200

ALASKA STATUTES

08.62.200

- (1) "board" means the Board of Marine Pilots;
- (2) "commissioner" means the commissioner of the Department of Commerce and Economic Development;
- (3) "department" means the Department of Commerce and Economic Development;
- (4) "vessel" means all vessels not exempt under 180 of this chapter. (sec 2 ch 106 SLA 1970; am sec 48 ch 218 SLA 1976)

Effect of amendment.-The 1976 amendment substituted "Department of Commerce and Economic Development"

for "Department of Commerce" in paragraphs (2) and (3).

STATE OF ALASKA

JAY S. HAMMOND

GOVERNOR



BOARD OF MARINE PILOTS

CENTRALIZED LICENSING STATUTE, AS 08.01.

MARINE PILOT STATUTE 08.62.010

MARINE PILOT REGULATIONS 12 AAC 56.010

Printed: September 1979

STATE OF ALASKA

JAY S. HAMMOND

GOVERNOR



BOARD OF MARINE PILOTS

CENTRALIZED LICENSING STATUTE, AS 08.01.

MARINE PILOT STATUTE 08.62.010

MARINE PILOT REGULATIONS 12 AAC 56.010

BOARD
OF PUBLIC
ACCOUNT.

WORK ORDER REQUEST FORM

NO 8435

KEYWORDS: Sunset

ASSIGNED TO Cook

Boards and Commissions

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT Board of Public Accountancy

REQUESTED FOR Senate Commerce BY Bob Aaron EXT. 3834

* DELIVER TO Attn: Christian Basler/Senate Commerce TAKEN BY Cook

INSTRUCTIONS, EXPLANATIONS Senate duplicate of WO 8375 relating to sunset report recommendations on Board of Public Accountancy.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

TO REQUESTER

APPROVED: BGB Director, Legal Services

Director, Research

REVIEWED _____

IN 4/1 DUE _____

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT

FINAL

How shoplifting is draining the economy

Bank robbers have been grabbing headlines since the days of Jesse James. Last year they made off with nearly \$25 million in cash and negotiable securities. But that is all small potatoes compared with a less glamorous but far more costly crime that is draining upwards of \$8 billion a year from U.S. merchants—and which no one has been able to do much about so far.

The crime is shoplifting, and, according to experts, it contributes to productivity losses, saps the vitality of many retail businesses, and redistributes a significant amount of wealth from stores to thieves and fences—which adds up to higher costs for most consumer goods. Merchandise losses and extra security costs, in fact, add an average of 2% to 3% to everything sold by major department stores and grocery and drug chains, speeding up an already overheated inflationary spiral.

In fact, shoplifting appears to be growing faster than most segments of the economy, including the inflation rate. For as prices rise, many consumers are taking out their frustration and anger on the person along the business chain who is closest at hand: the retail merchant. And as such pilferage gains increasing acceptance among many Americans, it is accelerating the growth of a subterranean economy in the U.S., which some economists claim reached a mind-numbing \$195 billion in 1977—or about 10% of the recorded gross national product (BW—Mar. 13, 1978).

Even the Internal Revenue Service has belatedly acknowledged the existence of an underground economy where some \$100 billion worth of income from legal sources goes unreported—as well as \$35 billion from drug peddling, illegal gambling, and prostitution on which no income tax is paid. So far, the IRS has been unable to estimate the tax loss from such white-collar crimes as shoplifting.

Bankruptcies. For the bigger retailers, all this has become an unpleasant fact of doing business. But for smaller merchants, who can afford neither the losses nor the security to keep them in line, shoplifting can mean financial ruin. According to some estimates, one out of three small-business bankruptcies are the direct result of thefts by employees and customers.

Unlike many other social scientists, economists view such crimes as shoplifting as rational acts in which the thief carefully weighs the personal costs and benefits involved. And according to econ-

omist William E. Cobb of the West Virginia College of Graduate Studies, who spent a year talking to fences and surveying shoppers in metropolitan Washington, all the benefits are on the side of the shoplifter. Cobb found that the average veteran shoplifter in 1971 was walking off with more than \$30,000 worth of merchandise annually. At 1979 prices, a skilled shoplifter could thus be clearing \$53,000 a year. "I'd say that's a pretty good occupation," says Cobb, who

Losses add at least 2% to the prices of most goods. Productivity feels the pinch

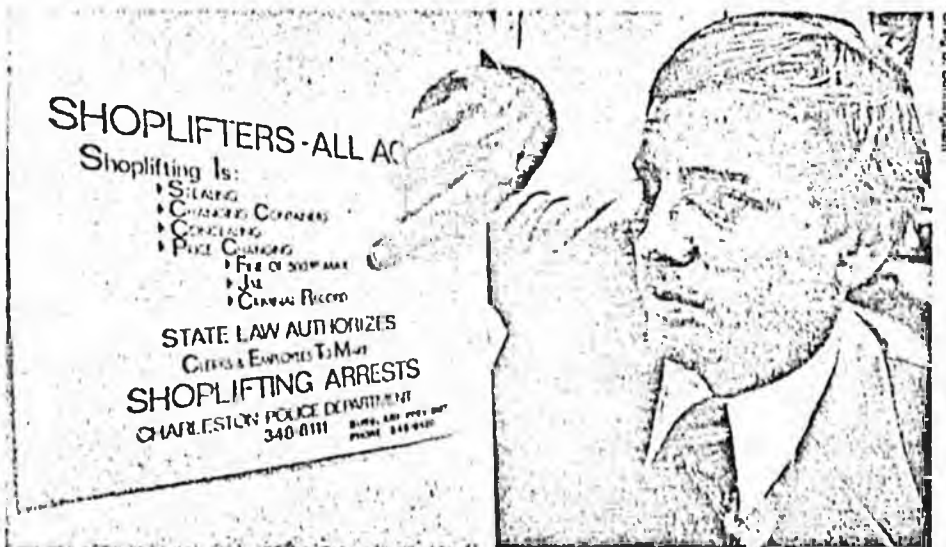
also found that only 1 out of 1,250 shoplifters ever sees the inside of a jail cell. And for those who do, almost none ends up behind bars for the act of shoplifting alone. Instead, they are sentenced for such crimes as illegally possessing drugs or weapons when caught by the store detective.

In fact, a good part of the reason why the benefits are all on the side of the shoplifter is that judges are reluctant to imprison them. Many companies in turn, are reluctant to spend time and money

experts on economic growth and an associate director of the Commerce Dept.'s Bureau of Economic Analysis, says that retail crime takes a significant slice out of U.S. productivity. Extra security means that stores are using money to pay guards and buy electronic equipment that could be spent on adding more consumer goods to the economy. "You are basically adding lots of people and no output," he maintains. And theft means that goods purchased as inventory have disappeared from the store's books and thus, in a sense, from the nation's measurable output.

Compounded losses. Moreover, fences traditionally purchase stolen merchandise for about 25% of its actual value and resell it illegally to stores that are willing to ask few questions in order to buy something at discount. Thus a very real part of the value of the nation's output has been destroyed.

Professional shoplifters often compound the loss still further by returning their stolen goods for a 100% refund to the very stores from which they were taken. And the toll can be even higher—many thousands of times the actual value of the merchandise—because



Economist Cobb: Stores have to get tough on shoplifters by prosecuting all thefts.

prosecuting shoplifters when the courts put them right back on the street. But Cobb and most security experts stress that stores must become tough on thieves. Evidence shows that amateurs, once nabbed, are discouraged from shoplifting again, and that even repeat shoplifters are deterred by being fingerprinted and formally arrested.

But shoplifters prey not just on stores but on the economy as a whole. Edward F. Denison, one of the nation's foremost

many professional thieves shoplift not to walk off with the store's wares but with an eye to a civil lawsuit for false arrest. Says James J. Kerin, former security director at Macy's New York and now president of security consultant Kerin, Duffy & Heberer Inc.: "There's no question that a professional shoplifter can kill you [financially]."

As shoplifting has increased, so has the number of professionals living off it. In 1977 police in New York and other

major U. S. cities reported that members of organized gangs were each netting as much as \$1,000 a day stealing better men's and women's clothes. According to Glen R. Dornfeld, who recently retired as security director at Minneapolis-based Dayton's department stores, the professionals today are far more brazen and more violent than any he has ever seen.

Made to order. At Southern California's Von's Grocery Co., C. R. Gresswell, the chain's loss prevention manager, says that he is seeing both more professional shoplifters and more of them carrying weapons. In fact, grocery stores are finding themselves even bigger prey to organized rings, where such easily resold items as meat, cigarettes, and liquor are often shoplifted to order for fences or well-to-do clients.

Economists stress that the only real solution is to change the actual—as well as the perceived—costs of such thefts. West Virginia's Cobb says that stores should redirect the amount they are currently spending on fancy electronic equipment and put their dollars to work in the following areas:

■ Prosecuting all shoplifters they catch. Instead, most stores ask apprehended thieves to return the stolen goods and sign a statement admitting the crime

and agreeing not to set foot in the store again.

■ Advertising the fact that both uniformed and plainclothes detectives are on the watch for potential shoplifters. The idea, Cobb says, is to give thieves the feeling that they can never be sure when they are being observed.

■ Mounting dummy cameras and large signs promising dire consequences to

Skilled shoplifters can clear \$50,000 a year. Few ever see a jail cell

shoplifters who are caught—even though such threats may not be valid.

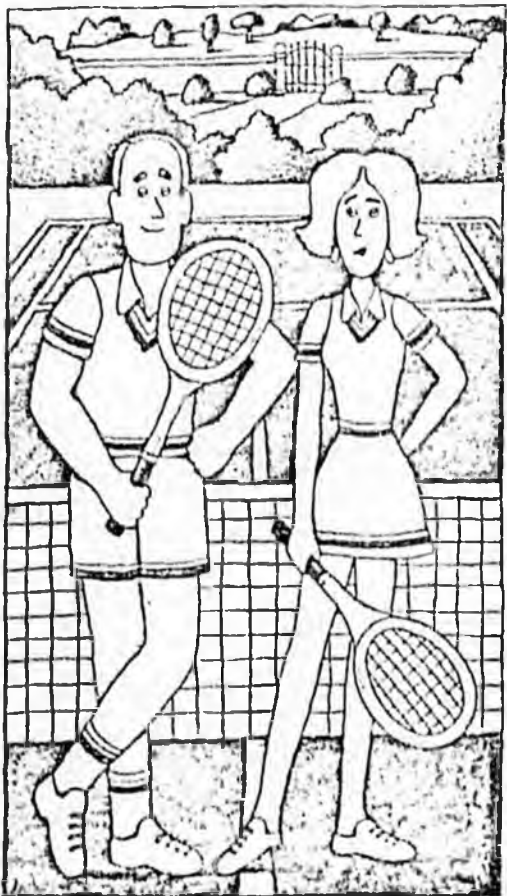
■ Hiring actors to pose as shoplifters and periodically staging fake, calm arrests, so that potential thieves get the idea that their misdeeds will be detected. Cobb points out that such ploys have been effective in reducing thefts by employees at major retail chains.

Dallas-based Zale Corp. claims quite a bit of success using some of these methods, plus some more traditional ones. The company has started a special program to train employees in spotting common shoplifting tricks, has installed a network of closed-circuit cameras, and is busy redesigning its 1,723 stores to eliminate any blind spots where thieves

could go to hide merchandise under their clothes or in dummy gift boxes. But most important, says Harry D. Johnson, vice-president for loss prevention, Zale now has a company-wide policy of prosecuting all shoplifters. "Everything has to be done," he says, "to make it difficult for the shoplifter to operate in private."

The big dilemma with all programs aimed at discouraging shoplifters, of course, is that they tend to discourage legitimate shoppers as well. With uniformed guards, ominous-sounding posters, and all kinds of electronic spy equipment around, "people begin to think they are in an armed camp," warns Leonard F. Smith, executive director of the American Management Assn.'s Crimes Against Business Project. Thus, retail stores—particularly those with a wealthier clientele—are constantly faced with the trade-off of more surveillance and less theft or less surveillance and more sales.

But far more significant than this trade-off is the one affecting the cost-benefit ratio for shoplifting itself. Unless repeat shoplifters are treated more like house burglars or bank robbers, and unless the courts and society stop dismissing shoplifting as penny-ante stuff, the toll on inflation and U.S. productivity will just keep mounting. ■



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STATE OF ALASKA
THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 3, 1980

SUBJECT: A bill continuing the existence of the
Board of Public Accountancy
(Work Order No. 8435)

TO: Senate Commerce Committee
Attn: Christian Basler, A.A.

FROM: Tamara Brandt Cook *TBC*
Legislative Counsel

Here is the bill you requested continuing the existence of the Board of Public Accountancy. The House Commerce Committee considered this board for "sunset" review in House Journal Supplement No. 29. The committee recommended that the changes suggested in the Performance Review of the Board of Public Accountancy dated October 1, 1979 be made, and that, with these changes, the Board be continued.

I have attempted to incorporate the recommendations of this report into the enclosed act. However, several of the changes recommended cannot be appropriately or adequately dealt with in a bill which deals specifically with the Board of Public Accountancy. I suggest that the following recommended changes be incorporated into another bill dealing with the Department of Commerce and Economic Development, rather than with any one particular board.

(1) Recommendation No. 2 suggests that board members be appointed in a timely fashion. I have amended a provision in the enclosed act to require that members of the Board of Public Accountancy be appointed within 60 days of a vacancy; however, a section requiring the governor to make board appointments is currently in the chapter dealing with the department as a whole, and this could be amended to affirmatively require that appointments of all the board members be made within 60 days or within some other reasonable period of time.

(2) Recommendation No. 4 suggests that the board be required to tape record its meetings and that the department be required to keep these tapes on file as public records for 2 years. In the enclosed bill, I have provided that the board shall tape record its meetings and turn these tapes over to the department; however, a statute requiring the department to maintain the tapes for 2 years is probably in order.

(3) Recommendation No. 7 is addressed specifically to problems with record keeping procedures which exist in the Department of Commerce and Economic Development. Requirements as to how the department shall maintain and update records for all boards ought to be contained in a bill specifically directed at the department.

(4) Recommendation No. 8 is also addressed specifically towards the department. It recommends that the department handle investigations in a more comprehensive, efficient and timely manner. In the enclosed act, I provided that the department will handle investigations for the board of public accountancy; but any requirement dealing with how the department will perform this function ought to be incorporated into legislation directed specifically at the department, rather than at this particular board.

If it is your desire that recommended changes to the Department of Commerce and Economic Development be made as a condition to continuing the existence of the Board of Public Accountancy, the effective date of the enclosed act ought to be tied to the effective date of a bill incorporating the recommended changes to the department. If I can be of any assistance in this matter, please contact me.

TBC:jdn

Enclosure

STATE OF ALASKA



BOARD OF PUBLIC ACCOUNTANCY
STATUTES
AND
REGULATIONS

PRINTED: SEPTEMBER 1979

Alaska Statutes

Title 8. Business and Professions.

Chapter

01. Centralized Licensing (§§ 08.01.010 — 08.01.110)
02. Miscellaneous Provisions (§§ 08.02.010 — 08.02.020)
03. Termination, Continuation and Reestablishment of Regulatory Boards (§ 08.03.010)
04. Accountancy Act of 1960 (§§ 08.04.010 — 08.04.690)
08. Alaska Integrated Bar Act (§§ 08.08.010 — 08.08.250)
12. Barbers (§§ 08.12.010 — 08.12.280)
16. Basic Sciences (Repealed)
18. Construction Contractors (§§ 08.18.011 — 08.18.171)
20. Chiropractors (§§ 08.20.010 — 08.20.220)
24. Collection Agencies (§§ 08.24.011 — 08.24.380)
28. Cosmetologists and Hairdressers (§§ 08.28.010 — 08.28.320)
32. Dental Hygienists (§§ 08.32.010 — 08.32.190)
36. Dentistry (§§ 08.36.010 — 08.36.360)
40. Electrical Administrators (§§ 08.40.005 — 08.40.200)
42. Morticians (§§ 08.42.010 — 08.42.130)
44. Embalmers (Repealed)
48. Architects, Engineers and Land Surveyors (§§ 08.48.011 — 08.48.351)
52. Explosives Handlers (§§ 08.52.010 — 08.52.080)
54. Guides (§§ 08.54.010 — 08.54.240)
56. Hotels and Boardinghouses (§§ 08.56.010 — 08.56.070)
60. Junk Dealers and Metal Scrappers (§§ 08.60.010 — 08.60.100)
62. Marine Pilots (§§ 08.62.010 — 08.62.200)
64. Medicine (§§ 08.64.010 — 08.64.380)
66. Motor Vehicle Dealers (§§ 08.66.010 — 08.66.090)
68. Nursing (§§ 08.68.010 — 08.68.410)
70. Nursing Home Administrators (§§ 08.70.010 — 08.70.190)
71. Dispensing Opticians (§§ 08.71.010 — 08.71.240)
72. Optometry Law (§§ 08.72.010 — 08.72.310)
76. Pawnbrokers and Secondhand Dealers (§§ 08.76.010 — 08.76.030)
80. Pharmacy Act (§§ 08.80.010 — 08.80.490)
84. Physical Therapists Practice Act (§§ 08.84.010 — 08.84.200)
86. Psychologists and Psychological Associates (§§ 08.86.010 — 08.86.230)
88. Real Estate Brokers and Salesmen (§§ 08.88.011 — 08.88.431)
92. Concert Promoters (§§ 08.92.010 — 08.92.090)
98. Veterinarians (§§ 08.98.010 — 08.98.250)
99. Board of Welding Examiners (§§ 08.99.010 — 08.99.120)

A PERFORMANCE REVIEW
OF THE
ALASKA STATE BOARD OF
PUBLIC ACCOUNTANCY

Conducted By
R.W. Pavitt and Associates, Inc.

A PERFORMANCE REVIEW
OF THE
ALASKA STATE BOARD OF
PUBLIC ACCOUNTANCY

Conducted By
R.W. Pavitt and Associates, Inc.
and
Homan-McDowell Associates

October 1, 1979

Commissioner, Department of
Commerce and Economic Development

Charles Webber

Deputy Commissioner, Department of
Commerce and Economic Development

Bertram L. Wagnon

Members of the Alaska State
Board of Public Accountancy

President	Charlotte H. Stuart
Member	James Dieringer
Member	L. Pete Hogan
Member	Vernon R. Johnson
Member	Roxanne Kemp
Member	Vacant
Member	Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

November 2, 1979

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the Alaska Statutes, the Division of Legislative Audit was mandated to perform a "Sunset" review of the Alaska State Board of Public Accountancy.

As many staff members of the Division hold Certified Public Accountant certificates, and are subjected to regulation by that Board, the Division lacked the apparent independence necessary to perform the review.

The Division contracted with R.W. Pavitt and Associates, Inc. and Homan-McDowell Associates (joint venture) to perform this review. Both firms are reputable management consultant businesses that have been in operation for several years.

Due to legal ramifications surrounding the confidentiality of investigative records maintained in the Division of Occupational Licensing, the Division of Legislative Audit excluded the investigative effort from the contractor's audit scope and performed the review of confidential records at the direction of the contractor. Except for the investigative aspects of this report, the content represents only the findings and conclusions of the contractor.

We feel this report discharges our responsibility, mandated under Title 24 and 44. The report is submitted for your review.



Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

R. W. PAVITT AND ASSOCIATES, INC.
AND
HOMAN-McDOWELL ASSOCIATES

September 28, 1979

Legislative Audit Division
State of Alaska
Pouch W
Juneau, Alaska 99811

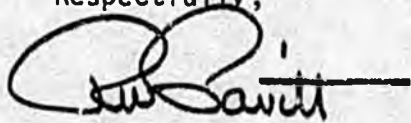
Attention: Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

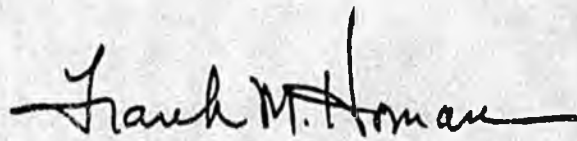
In accordance with the Contract for Services between the Legislative Audit Division and our firm, we have completed a performance review of the Alaska State Board of Public Accountancy using guidelines and standards established in Alaska Statutes for such "sunset" audits.

The report, entitled A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY, is hereby submitted.

Respectfully,



R. W. Pavitt, AICP
President
R. W. Pavitt and Associates, Inc.



Frank M. Homan
Partner
Homan-McDowell Associates

A PERFORMANCE REVIEW OF THE ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY

TABLE OF CONTENTS

	<u>Page</u>
PURPOSE AND SCOPE OF THE REVIEW	- 1 -
ORGANIZATION AND FUNCTION	- 2 -
REPORT CONCLUSION	- 4 -
FINDINGS AND RECOMMENDATIONS	- 7 -
ANALYSIS OF PUBLIC NEED	- 16 -
 <u>Appendices:</u>	
APPENDIX A - REVENUES COMPARED WITH EXPENDITURES.	- 20 -
APPENDIX B - INVESTIGATION STATISTICS	- 22 -
APPENDIX C - STATISTICAL INFORMATION	- 29 -
APPENDIX D - SURVEY QUESTIONNAIRE SENT TO ACCOUNTANTS	- 33 -
 <u>Responses:</u>	
Office of the Governor-Internal Auditor	44
Alaska State Board of Accountancy	45(a)
Department of Commerce and Economic Development.	46(a)

PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (Sunset legislation), a review of the Board of Public Accountancy was conducted to examine Board activities, operations, policies and accomplishments. The purpose of the review is to determine if the Board has operated in a fair, effective, efficient and economical manner in the performance of its statutory functions, duties and responsibilities.

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Board of Public Accountancy should be continued or reestablished. The law currently specifies that this Board will terminate on June 30, 1980, but will continue until June 30, 1981 for the purpose of concluding its affairs.

Scope

The major areas studied were the Board's operations, policies, procedures and its examination, licensing, administration, complaint and affirmative action responsibilities. Our review consisted of research, analysis and evaluation of the following:

- (1) Applicable Alaska Statutes and Alaska Administrative Code regulations;
- (2) Observation of the Board during its August 1 and 2, 1979 meeting in Fairbanks;
- (3) Interviews with Board members;
- (4) Records and documents of the Board and the Division of Occupational Licensing, Alaska Department of Commerce and Economic Development;
- (5) Licensing requirements of other states;
- (6) Survey questionnaires sent to 222 resident State licensed accountants;

(7) Interviews conducted with personnel of:

Division of Occupational Licensing
Consumer Affairs Agency (Department of Law)
Human Rights Commission (Office of the Governor)
Office of the Ombudsman
Division of Equal Employment Opportunity (Dept. of Admin.)
Division of Budget and Management (Office of the Governor)
Legislative Finance Division

(8) Complaints filed with:

Division of Occupational Licensing
Consumer Affairs Agency
Human Rights Commission
Division of Equal Employment Opportunity
Office of the Ombudsman

Constraints

This review was constrained by the following limiting factors:

- (1) The Board has not established and reported financial and program plans as required by AS 37.07.050, nor has it developed and reported performance information with respect to its effectiveness and accomplishments as required by AS 37.07.090.
- (2) The Division of Occupational Licensing (hereafter DOL) has not adequately organized or maintained statistics and files relating to the Board to effectively carry out its administrative responsibilities.

ORGANIZATION AND FUNCTION

Although regulation of the profession of public accountancy in Alaska dates back to 1949, the Alaska State Board of Public Accountancy was established by the First Alaska Legislature when it adopted the Accountancy Act of 1960 (AS 08.04). An amendment to the Act in 1976 added two public members to the Board, bringing its total membership to seven. (Chapter 258 SLA 1976).

The Accountancy Act of 1960 establishes the Alaska State Board of Public Accountancy and assigns to the Board the following major responsibilities:

1. the promulgation and amendment of rules to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" (AS 08.04.080)
2. granting of certificates of "Certified Public Accountant" to persons meeting the specified requirements (AS 08.04.100)
3. administering the Uniform CPA examination prepared and graded by the Board of Examiners of the American Institute of Certified Public Accountants (AS 08.04.130)
4. consideration of the qualifications of applicants holding certificates in other states or foreign countries (AS 08.04.220)
5. registration of partnerships and corporations engaged in the practice of public accountancy (AS 08.04.240)
6. granting of licenses as "Public Accountant" to persons meeting the specified requirements (AS 08.04.270)
7. prescribing requirements for continuing education as a prerequisite to renewal of permits to practice (AS 08.04.425)
8. consideration of revocation or suspension of a certificate or license for a cause specified in the Act (AS 08.04.450)
9. consideration of reinstatement of a revoked or suspended certificate or license (AS 08.04.490)
10. consideration of application to the appropriate court for an order enjoining certain unlawful acts (AS 08.04.630)

Except for the exemptions specified in AS 08.04.570, the Accountancy Act of 1960 prohibits the practice of public accountancy by any individual, firm, partnership or corporation not holding a currently valid certificate, license and/or permit to practice in the State of Alaska. (AS 08.04.500 et seq.)

REPORT CONCLUSION

Policy Issues

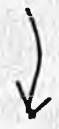
This review contains policy issues raised as a result of our evaluation of various Board practices. Policy decisions affecting these practices are not within the scope of this review, but will require legislative consideration. In debating these issues, the legislative oversight committees should consider the findings and alternatives presented in this report in reaching their decisions.

Report Conclusion

In our opinion, the Alaska State Board of Public Accountancy should be continued. Protection of the public interest is a basic tenet of society and an important responsibility of state government. We believe that state regulation and licensing of the profession of public accountancy is necessary and desirable for the continued protection of the citizens of Alaska.

SB CONTINUED

That conclusion is supported by the following rationale:



- Financial statements, audited and attested by certified public accountants are relied on by many persons required to make judgments on important financial and business transactions. Users of such financial statements cannot reasonably be expected to investigate the individual qualifications and competency of every accountant who performs the attest function.
- State licensing and regulation protects the public from incompetent and fraudulent practitioners.
- State licensing and regulation assures the public that only individuals who have proven themselves skilled and knowledgeable of technical accounting principles and procedures may perform the attest (or audit) function.

- The public interest is advanced when individuals, financial institutions, businesses and government agencies are able to identify and rely on public accountants who have demonstrated professional skill and competence.

Fifty four jurisdictions in the United States including all fifty states, Guam, Puerto Rico, the Virgin Islands and the District of Columbia require that a person must pass the Uniform CPA Examination in order to qualify for a CPA license. Every jurisdiction has found it in the public interest to pass laws regulating public accountancy, and each has established a board of accountancy to administer and enforce the law.

A review of these laws indicates that the experience, educational, age, citizenship and residency requirements vary somewhat from one jurisdiction to another. The requirements of the Alaska Accountancy Act of 1960, as amended, appear reasonable and prudent when reviewed along with the accountancy laws of other jurisdictions.

The Alaska Statute governing public accountancy is clearly designed to set apart those who have met certain qualifications for a license and to restrict the use of the titles of "Certified Public Accountant" and "Public Accountant" to those who have so qualified. The policies and practices of the Alaska State Board of Public Accountancy observed in the conduct of this review appear to be consistent with that objective.

While this report concludes that the Board should continue to regulate the profession of public accountancy and to license practitioners, certain changes need to be implemented in order for the board to more effectively serve the public. *

The statutory make-up of the Board should be reviewed and amended to provide better representation of the accounting profession and the general public (see Recommendation No. 1).

Appointments should be made in a timely manner to assure that the Board has its full complement of qualified members (see Recommendation No. 2).

The licensing of new applicants as Public Accountants (PA) should be discontinued (see Recommendation No. 3).

Electronic recordings of all Board meetings should be required, and the tapes maintained for two years (see Recommendation No. 4).

The Board should consider and adopt a formal statement of its goals, objectives and policies; and should prepare an annual report of its activities (see Recommendation No. 5).

The statute setting forth qualifications for public members of boards (AS 08.01.025) should be clarified (see Recommendation No. 6)

The Division of Occupational Licensing should establish, implement and maintain improved statistical record-keeping methods and procedures (see Recommendation No. 7).

The Division of Occupational Licensing should handle investigations of complaints related to public accountancy in a more comprehensive, efficient and timely manner (see Recommendation No. 8).

*

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

- * The qualifications and conditions of Board membership (AS 08.04.020) should be amended to specify five certified public accountants or public accountants, and two public members.

6-19-79
 Certified

The statutory structure of the Board presently specifies that "three members shall be certified public accountants, two members shall be public members in accordance with AS 08.01.025, and the remaining members shall be public accountants." (emphasis added)

As of September, 1979, DOL reported the valid individual license count to include 495 certified public accountants (CPA) and only eight public accountants (PA).

It is noted that two of the eight PA's are current Board members who are also CPA's of long standing in Alaska. Board minutes indicate that these persons sought and received their PA licenses for the sole purpose of meeting the statutory requirement that the Board must include two PA's in its membership. Other than these cases (which occurred only after all Alaska PA's had declined invitations to serve on the Board), no new PA license has been issued for many years.

Because there are so few PA's in Alaska, it has become increasingly difficult to fill Board vacancies in this category. While the active PA's currently make up less than 1% of the professional accountants in Alaska, the statute as presently written requires that they constitute 40% of the professional representation on the Board.

Recommendation No. 2

* The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Keep at membership 7

Implementation of Alaska's public disclosure law occasioned the resignation of many persons who, because of the confidential nature of their professional relationships, were unwilling to divulge the identity of their clients. The Board of Public Accountancy was no exception, and for a time in the mid-1970s, ceased to function as a duly constituted board.

The combination of resignations, membership requirements (addressed in Recommendation No. 1), slow appointment procedures, and the statutory addition of two public members, created a lack of continuity that has made it difficult for the Board to operate at peak efficiency. The Board is currently two members short of its full complement of seven members.

now 2 short.

Board minutes examined indicate that meetings typically extend over a full two day period, and require many hours of diligent concentration and substantial travel of the members. The charge to "establish and maintain a high standard of integrity and dignity in the profession of public accountancy" is taken seriously by the Board. The State as well as the people of Alaska benefit from the many hours of unpaid and dedicated service contributed by members of the Board.

The Board of Public Accountancy is missing valuable input from the accounting profession and the public by not having a full complement of members. We recommend that the Office of the Governor expeditiously appoint qualified new members to the two vacant Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Gov. for 2 new members

Recommendation No. 3

* Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

*PA's - only
CPA's
Licensing*

In litigation involving state regulation of public accountancy, courts throughout the United States have held that only the auditing or attest function (the expression of an independent opinion on the fairness with which a financial statement presents a financial position in conformity with generally accepted accounting principles) is imbued with sufficient public interest to justify regulation by legislation.

Alaska's Accountancy Law establishes two classes of accountants, certified public accountants (CPA) and public accountants (PA). The experience and educational requirements for achieving PA status are substantially less stringent than those for certification as a CPA. Yet, the attest function can be performed by either class of accountant.

Of the 54 jurisdictions regulating public accountancy in the U.S., only 10 (including Alaska) continue to license PA's to perform the attest function under requirements lower than those applicable to certified public accountants. 40 jurisdictions either license only CPA's, or continue to license present PA's as a "dying class". The remaining four boards license PA's on a continuing basis, but do not permit them the attest function. The Comptroller General of the U.S. has established a policy for the General Accounting Office (GAO) which limits qualifications to audit federal programs to CPA's and those PA's who were licensed as of December 31, 1975.

Licensing two classes of professionals on the basis of different standards to perform identical services is neither logical nor does it serve the public interest. Without affecting the status of the five presently active PA's, the statute should be reviewed with the objective of discontinuing the licensing of new applicants as Public Accountants.

Recommendation No. 4

- * Electronic recordings should be made of all Board meetings, and the tapes retained by DOL for two years.

Although the Board is required to "keep a record of its proceedings" (AS 08.04.070.(d)), neither the Statutes nor the Alaska Administrative Code requires that Board meetings be recorded.

The practice has been to tape record Board meetings and for DOL personnel to prepare summary minutes from notes and the tapes. The written minutes are considered by the Board at its following meeting, corrections and amendments made, and the minutes adopted.

Following acceptance of the minutes of a meeting, the tapes have been re-used or destroyed.

Turnover in Board membership and DOL personnel make such an informal system of record-keeping less than desirable in light of the highly technical and quasi-legal matters with which the Board regularly deals.

Our review of Board meeting minutes for the past five years indicates that the quality and detail of the written and approved minutes varies substantially according to the familiarity of the Licensing Examiner assigned to the Board with its duties, responsibilities, terminology and subject matter. Maintenance of recorded tapes from which transcriptions can be made regarding details of subject matter not covered in the summary minutes would be of value to the Board in the case of defending a particular action, and would lessen concerns regarding the quality or completeness of the written minutes.

Recommendation No. 5

* The Board should adopt a formal statement of goals, objectives and policies; and should prepare an annual report of its activities.

Under sunset legislation, the Board will have the burden of demonstrating a public need for its continued operation. The Board will be expected to develop and adopt formal goals, objectives, policies and programs which provide quantifiable measures. Without identifiable and measurable objectives, neither the Legislature, the Executive branch nor the Board itself can effectively evaluate performance.

Comments required for implementation!

The Annual Report of the Board of Public Accountancy should include:

1. The Board's purpose and goal;
2. Objectives and program for the year;
3. Statistics related to Board operations; (number of applicants, pass/fail rate, certificates issued, complaints processed, etc.)
4. Significant developments or Board concerns;
5. Amendments offered to Regulations or Statutes;
6. Board member participation and appointment status;
7. Receipts and disbursements related to Board operations.

The following recommendation is addressed to the legislative committee responsible for reviewing the performance of the Board of Public Accountancy.

Comments

Recommendation No. 6

Proposed by the Board

AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualifications of public members of boards.

- Sec. 08.01.025. Public member. No public member of a board may:
- (1) be engaged in the occupation which the board regulates;
 - (2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
 - (3) have a direct financial interest in the occupation which the board regulates. (ch 258 SLA 1976)

(over the line)

In a letter dated February 13, 1979, Governor Hammond asked the Legislature to confirm a public member of the Board of Public Accountancy appointed by him to a three year term in July, 1978. The Legislature confirmed the appointment on April 11, 1979.

The person appointed and confirmed as a public member of the Board of Public Accountancy is employed by a CPA firm on a full-time basis in a secretarial capacity.

The question of whether being an employee of a professional practitioner constitutes having a "direct financial interest" in the regulated occupation is not within the scope of this review. Assuming that the legislative committee of reference was made aware of the nominee's employment and yet opted to recommend confirmation, one must assume that no conflict was seen by the Legislature in the matter.

Two respondents to the survey questionnaire (see Appendix D) questioned the propriety of public members being employed by a regulated CPA firm.

Simplification of the legal language contained in Sec. 08.01.025 would, we believe, be in the best interests of the Governor, the Legislature and all professional licensing boards by clearly and unequivocally stating

who may and who may not be appointed and confirmed as public members to these boards.

H.B. The preceding finding and recommendation is not intended to be in any way critical of the Board member involved who, from all records and our personal observation, has been a diligent, sincere and dedicated member of the Board of Public Accountancy.

The following recommendations are addressed to the Division of Occupational Licensing (DOL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development" October 30, 1978.

Recommendation No. 7

- * DOL should develop improved statistical record-keeping methods and procedures.

In our review of the Board of Public Accountancy, DOL personnel were found to be helpful, courteous and cooperative in providing information with respect to the Board's operations and procedures. The essential statistics, records and files relating to the administration of the Board's affairs, however, were found to be confusing, difficult to retrieve, and deficient in systematic organization. Inaccurate input of data into the computer in the past has further complicated an already confused statistical picture.

The roster of licensed individuals and firms printed in May, 1978 (Directory of Public Accountancy) along with supplements printed May, 1978; October, 1978; January, 1979 and April, 1979 contains numerous errors and redundancies. The identification numbers assigned to individuals (CPA's and PA's), partnerships, resident and non-resident corporations are all preceded with the "alpha" designation AA or II, indicating active or inactive status. This inefficient system produces, for example, the issuance of No. AA 0048 to an active resident corporation in Anchorage as well as to an individual CPA in Juneau who has no connection with that corporation.

*You D.O.C.
STATS, RECORD-KEEPING*

Statistics on renewals, deaths, lapsed licenses, licensed individuals leaving Alaska, etc. are difficult to retrieve, as is information on geographic distribution of certificate holders, pass/fail rate and other data regarding the Board's area of responsibility.

No systematic record appears to exist regarding annual work-load of the Board or the License Examiner assigned to the Board. Such data as number of applicants for examination, record of applicants sitting for parts of the exam previously failed, License Examiner time devoted to processing applicant files, breakdown of receipts by fee types, number of applicants certified by reciprocity with other states or nations, etc. once organized and established, is simple to maintain, and is extremely helpful in the preparation of Board and Division annual reports and budget requests, as well as providing the Board with information useful in establishing its needs and priorities.

Recommendation No. 8

* DOL should handle investigations in a more comprehensive, efficient and timely manner.

Board minutes back to 1975 indicate a high level of frustration with the performance of DOL's investigative unit with respect to the investigation of complaints submitted regarding the field of public accountability.

Investigative files have been closed on matters that have never been brought to the attention of the Board. Reports of cases pending and matters under investigation are promised at nearly every meeting to be presented "at the next Board meeting", but no such comprehensive investigative report has yet been forthcoming.

As independent contractors, we were not privy to the confidential files of the DOL investigative unit. Consequently, the statistical

data contained in Appendix B was developed by personnel of the Legislative Audit Division.

From Board minutes, the statistical summary of investigative activity and interviews with Board members, public accountants, DOL personnel and others, we conclude that DOL's investigative performance is a weak link in the State of Alaska's chain of public protection from abuses in the field of public accountancy. *

*

ANALYSIS OF PUBLIC NEED

The following analysis of Board activities relates to the public need factors defined in AS 44.66.050(c). This analysis addresses those areas we were able to cover within the scope of our review.

- I. The extent to which the board, commission or agency has operated in the public interest.
 1. The Board of Public Accountancy has established criteria and composed regulations setting forth the standards which an individual must satisfy in order to practice public accountancy in Alaska.
 2. The Board has established regulations requiring evidence of continuing professional education (CPE) as a condition of license renewal.
 3. The Board has held an average of three meetings per year for the past four years, and conducts examinations twice a year in Anchorage, Fairbanks and Juneau.

- II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 1. The Division of Occupational Licensing (DOL) has not maintained adequate statistics, records and files for Board use (see Recommendation No. 7)
 2. Investigations of complaints regarding public accountancy matters have not been conducted in a timely manner by the investigative unit of DOL (see Appendix B, Recommendation No. 8 and the DOL Performance Audit Report).

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

1. The Board recommended amendments to AS 08.04.020 and AS 08.04.420 as well as deletion of AS 08.04.260. None of these recommended statutory revisions has yet been enacted. *

IV. 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 which it has provided.

1. Individuals who contact Board members or the Licensing Examiner who wish to present information, ask questions or register complaints are invited and encouraged to attend Board meetings.

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

1. Board meetings are held at least three times annually, and are advertised in a timely manner by DOL in Anchorage, Fairbanks and Juneau newspapers.
2. In accordance with the Administrative Procedures Act, the Board has invited interested persons and groups to offer testimony in regard to proposed changes in regulations, and has held advertised public hearings to receive testimony.

VI. 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 the board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

1. In the past four years, one complaint concerning the Board's activities was filed with the Ombudsman's Office. The case involved a delay in granting a certificate by reciprocity, and was expeditiously resolved to the Ombudsman's satisfaction

2. No complaints regarding the Board's practices or activities have been recorded by the Division of Occupational Licensing, the Human Rights Commission or the Equal Employment Opportunity Office.

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

1. Complaints against licensed accountants are indications of the quality of practice in the State. In the past five years, only seven complaints were filed with DOL charging licensed professionals with unethical, incompetent or unprofessional conduct.
2. The Board has proposed and adopted regulations and standards with respect to acceptable experience necessary for certification.
3. The Board has proposed and adopted regulations for continuing professional education (CPE) as a requisite for license renewal.
4. The Board exercises diligence to assure that only those individuals who fully comply with the requirements of the statute and regulations are certificated to practice public accountancy.
5. The Board has instituted a "critique program" to assist applicants in meeting the high standards of the profession.

VIII. 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.

1. The application forms for examination and certification do not inquire as to race or sex, nor do they require photos.
2. No evidence has been presented that the Board has discriminated against anyone on the basis of age, race or sex.

Recommendation No. 2

The Board of Public Accountancy should be brought to its full complement of seven members, and maintained at that strength by means of timely appointments of qualified professional and public members.

Implementation of Alaska's public disclosure law occasioned the resignation of many persons who, because of the confidential nature of their professional relationships, were unwilling to divulge the identity of their clients. The Board of Public Accountancy was no exception, and for a time in the mid-1970s, ceased to function as a duly constituted board.

The combination of resignations, membership requirements (addressed in Recommendation No. 1), slow appointment procedures, and the statutory addition of two public members, created a lack of continuity that has made it difficult for the Board to operate at peak efficiency. The Board is currently two members short of its full complement of seven members.

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The Board of Public Accountancy is missing valuable input from the accounting profession and the public by not having a full complement of members. We recommend that the Office of the Governor expeditiously appoint qualified new members to the two vacant Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

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Without affecting the rights and privileges of presently-licensed Public Accountants, the Accountancy Law should be amended to discontinue the licensing of new applicants as Public Accountants.

In litigation involving state regulation of public accountancy, courts throughout the United States have held that only the auditing or attest function (the expression of an independent opinion on the fairness with which a financial statement presents a financial position in conformity with generally accepted accounting principles) is imbued with sufficient public interest to justify regulation by legislation.

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Licensing two classes of professionals on the basis of different standards to perform identical services is neither logical nor does it serve the public interest. Without affecting the status of the five presently active PA's, the statute should be reviewed with the objective of discontinuing the licensing of new applicants as Public Accountants.

Recommendation No. 4

Electronic recordings should be made of all Board meetings, and the tapes retained by DOL for two years.

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The Annual Report of the Board of Public Accountancy should include:

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4. Significant developments or Board concerns;
5. Amendments offered to Regulations or Statutes;
6. Board member participation and appointment status;
7. Receipts and disbursements related to Board operations.

The following recommendation is addressed to the legislative committee responsible for reviewing the performance of the Board of Public Accountancy.

Recommendation No. 6

AS 08.01.025 should be amended to state more clearly legislative intent with respect to the qualifications of public members of boards.

Sec. 08.01.025. Public member. No public member of a board may:
(1) be engaged in the occupation which the board regulates;
(2) be associated by legal contract with a member of the occupation which the board regulates except as a consumer of the services provided by a practitioner of the occupation; or
(3) have a direct financial interest in the occupation which the board regulates. (ch 258 SLA 1976)

In a letter dated February 13, 1979, Governor Hammond asked the Legislature to confirm a public member of the Board of Public Accountancy appointed by him to a three year term in July, 1978. The Legislature confirmed the appointment on April 11, 1979.

The person appointed and confirmed as a public member of the Board of Public Accountancy is employed by a CPA firm on a full-time basis in a secretarial capacity.

The question of whether being an employee of a professional practitioner constitutes having a "direct financial interest" in the regulated occupation is not within the scope of this review. Assuming that the legislative committee of reference was made aware of the nominee's employment and yet opted to recommend confirmation, one must assume that no conflict was seen by the Legislature in the matter.

Two respondents to the survey questionnaire (see Appendix D) questioned the propriety of public members being employed by a regulated CPA firm.

Simplification of the legal language contained in Sec. 08.01.025 would, we believe, be in the best interests of the Governor, the Legislature and all professional licensing boards by clearly and unequivocally stating

who may and who may not be appointed and confirmed as public members to these boards.

II.B. The preceding finding and recommendation is not intended to be in any way critical of the Board member involved who, from all records and our personal observation, has been a diligent, sincere and dedicated member of the Board of Public Accountancy.

The following recommendations are addressed to the Division of Occupational Licensing (DOL), and should be read in conjunction with "A Performance Review of the Division of Occupational Licensing, Department of Commerce and Economic Development" October 30, 1978.

Recommendation No. 7

DOL should develop improved statistical record-keeping methods and procedures.

In our review of the Board of Public Accountancy, DOL personnel were found to be helpful, courteous and cooperative in providing information with respect to the Board's operations and procedures. The essential statistics, records and files relating to the administration of the Board's affairs, however, were found to be confusing, difficult to retrieve, and deficient in systematic organization. Inaccurate input of data into the computer in the past has further complicated an already confused statistical picture.

The roster of licensed individuals and firms printed in May, 1978 (Directory of Public Accountancy) along with supplements printed May, 1978; October, 1978; January, 1979 and April, 1979 contains numerous errors and redundancies. The identification numbers assigned to individuals (CPA's and PA's), partnerships, resident and non-resident corporations are all preceded with the "alpha" designation AA or II, indicating active or inactive status. This inefficient system produces, for example, the issuance of No. AA 0048 to an active resident corporation in Anchorage as well as to an individual CPA in Juneau who has no connection with that corporation.

Statistics on renewals, deaths, lapsed licenses, licensed individuals leaving Alaska, etc. are difficult to retrieve, as is information on geographic distribution of certificate holders, pass/fail rate and other data regarding the Board's area of responsibility.

No systematic record appears to exist regarding annual work-load of the Board or the License Examiner assigned to the Board. Such data as number of applicants for examination, record of applicants sitting for parts of the exam previously failed, License Examiner time devoted to processing applicant files, breakdown of receipts by fee types, number of applicants certified by reciprocity with other states or nations, etc. once organized and established, is simple to maintain, and is extremely helpful in the preparation of Board and Division annual reports and budget requests, as well as providing the Board with information useful in establishing its needs and priorities.

Recommendation No. 8

DOL should handle investigations in a more comprehensive, efficient and timely manner.

Board minutes back to 1975 indicate a high level of frustration with the performance of DOL's investigative unit with respect to the investigation of complaints submitted regarding the field of public accountability.

Investigative files have been closed on matters that have never been brought to the attention of the Board. Reports of cases pending and matters under investigation are promised at nearly every meeting to be presented "at the next Board meeting", but no such comprehensive investigative report has yet been forthcoming.

As independent contractors, we were not privy to the confidential files of the DOL investigative unit. Consequently, the statistical