

ALASKA LEGISLATURE COMMITTEE FILES 1901-1902 00/2

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HLC

HB

697

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HB

741

The Department of Fish and Game currently has 712 permanent seasonal positions that were created in response to Alaska Statute 39.25.195. These seasonal positions range in time from two weeks to ten months each year. The regulations required us to create seasonal positions because our activities are both planned and reoccurring each year. For positions that last more than four months in a year, the seasonal system has produced some positive benefits for Fish and Game. For these longer term positions, a higher percentage of the incumbents return in succeeding years providing us with trained, knowledgeable employees. However, these benefits are unfortunately overshadowed by the problems we encounter with the system on those positions that last less than 120 days. The difficulties occur in two major areas: cost and local hire.

First the cost.

Attachment No. 1 outlines the salary plus benefit costs for 712 seasonal positions. 56% or 399 of these 712 positions are employed for less than 120 days a year. These 399 positions represent a salary cost of 2.4 million dollars to which you must add \$656,000 for benefits as permanent seasonals. These same 399 positions would need only \$185,000 as non permanents—a difference of \$471,000. Keep in mind these employees are on our payroll for two weeks to four months per year.

That is only part of the cost. To that you must add the cost of recruiting these people. We did a survey of those positions hired out of our Anchorage Regional office for just the Division of Commercial Fisheries. In 1979, prior to the passage of the non permanent hire law, we spent \$3,900 on telegrams and long distance phone calls, during April, May and

June, to hire 175 temporary employees. In 1980, after the non permanent hire law, to hire these same 175 employees we spent \$14,600 on telegrams and long distance phone calls--a difference of \$10,000. In 1981 our \$14,000 in long distance calls and telegrams only got us 40 employees. The total cost for telegrams and long distance phone calls for recruiting in 1981 was \$28,000.

The third cost associated with these seasonal employees is another recruiting cost--manpower. Commercial Fisheries estimates it took about 50 man days in 1979 to recruit 175 seasonals. In 1980 it took 217 man days to recruit 175 seasonals. In 1981 the personnel doing the recruiting were more organized, more knowledgeable about the new regulations and more efficient and it still took in excess of one man day of effort to hire each seasonal employee. When we hit the peak recruiting months of April, May and June in Anchorage, everyone from a range 8 clerk typist to range 20 management biologists recruit seasonal personnel. At an average salary of \$12 per hour plus benefits, 217 man days represents a cost of \$25,000. Even at this we haven't begun to measure the cost of lost productivity in their regular jobs.

Another area of particular concern to the Department is the ability to hire local residents. In the past, if one of the Fisheries Divisions needed some basic biological information in a rural area, they sought someone in the area who understood the local fishery to gather the data. Now, when that need arises, the Divisions must go to a register and hire from the top five. In most cases they hire someone from an entirely different area. This is compounded by some rural residents who don't want to bother with the

bureaucracy so don't bother to get on registers or, during the one month in the year when the register is open, doesn't think he will want to work for us in six months so again doesn't get on the register.

Those are the major problems but, in addition, there are the little ones:

- Comm Fish tries to get this seasonal hiring organized early and on May 1 offers John Smith a Fish Tech II job for two months beginning on June 1. John says, "I'll be there." On May 27, Sport Fish offers John Smith a Fish Tech III job for three months beginning June 1 and John Smith accepts. Comm Fish then finds themselves with an expired register and no employee to begin work in 4 days. An emergency hire is only good for 30 days so, if you hire that way, you will have to replace the person mid stream. It will take a week to get a new register, another week to work it and, if you are successful, there is only a two week delay which probably means some data is lost forever.

- College students who want summer jobs have to be on the registers when we go through our big recruiting effort in April and May. Individuals have told us they have received in excess of 100 telegrams from Fish and Game. Each one must be responded to or their name will be removed from the register.

In summary, Fish and Game supports permanent seasonal positions for jobs that last more than 120 days per year. However, we believe the Department could operate more efficiently, less expensively, to greater satisfaction of all parties and to the benefit of State if AS 39.25.195 applied only to positions in excess of 120 days.

Department of Fish and Game
Seasonal Positions
FY 1982

		<u>Pos</u>	<u>Mos</u>	<u>Salary</u> \$
Commercial Fisheries	Salmon	326	868.2	1,419.4
	Shellfish	40	142.8	280.7
	Herring	42	97.7	165.4
	Admin	3	9.5	16.4
	Groundfish	14	76.0	159.1
Sport Fish	Investigations	119	313.5	593.7
	Management	5	17.0	33.7
	Restoration	4		14.8
F.R.E.D.	Operations	127	579.0	1,037.4
	Admin	4	27.5	37.9
Game	Investigations & Research	28	147.0	270.8
		<u>712</u>	<u>2,286.2</u>	<u>4,029.3</u>

56% of these positions are for less than 120 days.

$\$4,029.3$ (total salaries) \times .56 = $\$2,256.4$

Benefits as Non Permanents

$\$2,256.4 \times .0819$ (FY 82 benefit rate) = $\$184.8$

Benefits as Permanent Seasonals

$\$2,256.4 \times .1575$ (FY 82 benefit rate) = 355.4

$\$1,128.2 \times .0966$ (50% covered by police retirement) = 109.0

$1,280.3 \text{ mm} \times \150 (insurance premium \times months) = 192.0

Total benefits $\$656.4$

Difference $\$471.6$

✓
Temporary
State Em-
ployees
(hiring of)

HOUSE BILL NO. 697, by Rep. Bylsma. Would allow the state to hire temporary employees if the hiring of permanent employees for a work assignment of 120 days or less would result in "additional costs or the hiring of inappropriate individuals." Adds new section to AS 39.25 entitled "Procedure for Certain Nonpermanent Employees" which allows above exception to current prohibition on the hiring of temporaries contained in AS 39.25.195. Directs the Commissioner of a department that hires temporaries under provisions of bill to adopt regulations "to ensure that employees are appointed in the most efficient manner possible so that the needs of the department regarding these work assignments of 120 days or less are met. The regulations shall require that each employee meet the minimum qualifications established by regulation for a particular work assignment." Effective immediately.

Introduced January 27 and referred to Labor & Commerce and State Affairs.

H B

703

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

(5)

1/29/82

Date: 4-6-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 703

"An Act relating to the use of communication media under the Administrative Procedure Act."

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)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation (4)
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Terry Mastler

APy Com...

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Terry Mastler
CHAIRMAN

Date introduced 1-29-82

" Resid. 2-1-82

Referrals Finance

Cham. Hearing 3-3-82 - held -

" action

CS rec'd in finalized form advis. committee did not review a work draft. 9-29-82 7-6-82

Position paper
of HSS therein
plus F/N
Requested Adm.
all Dept. for position
paper.

See Blume Inquired
also Hill notified
Allen Blume "
56-9685

ALASKA BROADCAST SERVICES

308 G STREET, SUITE 311 • ANCHORAGE, ALASKA 99501 • (907) 276-4262

Subject: Telecommunications

With the State of Alaska's increased role in the establishment and operations of telecommunications services has come a tremendous increase in the budgets for such services. This year, the state is facing revenue short-falls yet services to the public must continue. There is perhaps, no other area that can stand the budget ax and be a positive incentive to the private sector as in the area of telecommunications.

At present the state funds:

1. A public broadcasting system
2. A Public radio network
3. A commercial satellite system
4. An educational satellite system
5. A program on the happening of the legislature
6. A program on Alaska (Alaska Review)

A rough guess would put all of these programs in the neighborhood of \$30-\$40 million dollars for state funding per fiscal year. I believe that significant reductions in these areas can be made without effecting the overall service to the public.

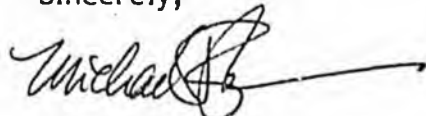
In addition to the above mentioned funding components, a critical look should be made into the contracting area for telecommunications services for all executive branch agencies. Past practices have indicated that purchasing regulations carry little force with agencies of the executive branch. The Office of the Governor, I should mention, is a prime offender (i.e. state image and film contract).

Should you wish to pursue such an investigation I would estimate that the time frame would be 6 to 8 weeks, with a final report available in 8 to 10 weeks. The final report will have all finding, and proposed legislation, if needed, to correct problems and save money.

I would estimate that the cost would be \$400 per day plus travel and expenses not to exceed a total of \$30,000.

Please contact me if I can be of further service.

Sincerely,

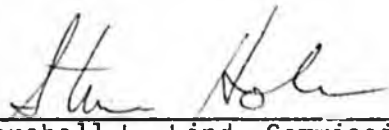


Michael F. Porcaro

Department of Education
Position Paper
House Bill 703

While the State Board of Education has not had the opportunity to discuss the provisions of Sections 1, 2 and 5, the department administration supports the provisions of Section 4.

As a practical matter, the department has found audio conferencing to be a very effective means of information exchange at a very low cost. This bill could result in substantial savings over the cost of face to face testimony acquisition in public meetings and administrative proceedings, although those savings would not necessarily accrue to the state.

for 

Marshall L. Lind, Commissioner

Introduced: 1/29/82
Referred: Labor & Commerce and
Finance

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE BILL NO. 703

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of communications media
7 under the Administrative Procedure Act."

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

9 * Section 1. AS 44.62.210(a) is amended to read

10 (a) On the date and at the time and place designated in the notice
11 the agency shall give each interested person or his authorized repre-
12 sentative, or both, the opportunity to present statements, arguments, or
13 contentions in writing, with or without opportunity to present them
14 orally. The state agency may accept matter presented by means of any
15 form of communication and shall consider all relevant matter presented
16 to it before adopting, amending or repealing a regulation.

17 * Sec. 2. AS 44.62.310(a) is amended to read:

18 (a) All meetings of a legislative body, of a board of regents, or
19 of an administrative body, board, commission, committee, subcommittee,
20 authority, council, agency, or other organization, including subordinate
21 units of the above groups, of the state or any of its political sub-
22 divisions, including but not limited to municipalities, boroughs, school
23 boards, and all other boards, agencies, assemblies, councils, depart-
24 ments, divisions, bureaus, commissions or organizations, advisory or
25 otherwise, of the state or local government supported in whole or in
26 part by public money or authorized to spend public money, are open to
27 the public except as otherwise provided by this section. Public atten-
28 dance and participation at meetings may be by communications media.

29 Except when voice votes are authorized, the vote shall be conducted in

*and - agency meetings also
not only "public attendance meetings etc."*

HB 703

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K-STATE CAPITOL
JUNEAU, ALASKA 99811

March 2, 1982

Hon. Terry Martin, Chairman
Labor and Commerce Committee
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 703 (use of communica-
tions media under APA)

Dear Representative Martin:

A member of your staff called this afternoon to ask for a "position paper" on this bill, for your committee's consideration tomorrow. Here are some quick comments:

1. The basic purpose of the bill appears to be the recognition of technological advances in communications and the promotion of the use of that technology in conducting the state's business for the benefit of the public. We support that.
2. I am unable to predict the fiscal impact of this, and can only observe that technology usually costs money.
3. The amendment in sec. 1, allowing an agency to accept matter presented by any form of communication, when following the regulation-adoption procedures, is good.
4. (A) The amendment in sec. 2, amending the basic "open meeting" statute (AS 44.62.310), looks good to the extent that it might increase the possibility of public participation. However, the statute being amended in sec. 2 of the bill covers many different kinds of meetings and hearings. In some of them, it is important for the members of the agency conducting the hearing to be able to actually see the witness, and, in others, it is important for public participants to see each other. Your definition of "communications media" in sec. 7 of the bill is not limited to video technology; in fact, it is not limited to any of

sub sec. "7"

the more advanced methods of communication; the definition leads off with the word "includes." Without getting into the various rules of construction that would be applied to interpret your definition, I will simply observe that that definition could cause problems in applying the amendment in sec. 2.

(B) In addition, since "communications media" includes telephones, there is the potential for people to disrupt an otherwise orderly meeting or hearing, unless it is made clear in the statute that the body conducting the meeting or hearing may establish reasonable ground rules for the use of whatever media are to be employed. This is especially important in light of AS 44.62.310(f), which says that action taken contrary to AS 44.62.310 is void.

(C) One additional point: The amendment only refers to "[p]ublic attendance and participation" at meetings. It says nothing about the agency members themselves being able to conduct a meeting through communications media (which is especially important in emergency situations). This omission in the bill should be corrected, since not dealing with the permissibility of agencies themselves conducting meetings through communications media may be interpreted by the courts as an implied prohibition on such meetings.

5. The statement of intent in sec. 3, regarding broad dissemination of information, is good. However, in mentioning only the "convenience of the public," it overlooks the legitimate needs of the governmental bodies involved to get on with the business of the public as a whole. The interests and convenience of various segments of the public will often conflict with each other. The bill should be amended in this regard too.
6. The amendment in sec. 4 relates to hearings in the course of administrative adjudication. Speaking of the "mutual convenience of the parties" is okay, but it overlooks the constitutional right to due process and to confront and cross-examine witnesses against an individual. The statute should not appear to give an agency the right to consider the

convenience of perhaps its own staff and of a witness, while disregarding the rights of a central figure in the hearing. Consider, for example, a license revocation hearing for which the complaining witness would find it more convenient to phone in from his home. The hearing officer or administrative law judge would not be able to observe the demeanor of the witness, and the accused party would be seriously hindered in his questioning of the witness.

7. Basically, the amendment in sec. 5, allowing voting by communications media, in an administrative adjudication, is okay, especially since agency members are currently authorized to vote by mail (which, actually, under your definition of "communications media," could be considered as included in the new term). However, the sentence being added to AS 44.62.600 only requires recordation of the vote in a manner that identifies each person who has voted. That is a good point to cover, but nothing is said about recording how each person voted (not by what means, but on which side of the issue). This additional point should be covered; it would be consistent with the next-to-last sentence of the current AS 44.62.310(a).
8. The catch-all provision in sec. 6 of the bill is okay, but should also say something about the protection of constitutional and statutory rights of individuals. The variety of meetings and hearings covered by the Administrative Procedure Act must be borne in mind.

Thank you for the opportunity to comment on this bill. It would be very helpful to us if you could provide a bit more advance notice, however.

Yours truly,

WILSON L. CONDON
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, Governor

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

March 3, 1982

The Honorable Terry Martin
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Martin:

As you requested, we have prepared and enclosed the department's position paper and fiscal note for H.B. 703 "An act relating to the use of communications media under the Administrative Procedures Act".

Sincerely,



Richard Aks
Deputy Commissioner

Enclosures

POSITION PAPER

Requested by: Representative Martin

Subject: H.B. 703 - An Act Relating to the use of Communications Media Under the
Administrative Procedures Act.

Departmental Position: Favorable

Remarks:

The department supports the proposed statutory change and feels that it will enhance the public's opportunity for input into the governmental decision making process. Moreover, the voting provision allows individuals who are unable to attend meetings in person to vote by communications media. This can only serve to expedite decision-making.

1 such a manner that the public may know the vote of each person entitled
2 to vote. This section does not apply to any votes required to be taken
3 to organize the afore-mentioned bodies.

4 * Sec. 3. AS 44.62.312(a) is amended by adding a new paragraph to read:

5 (6) the use of communications media under the provisions of
6 this chapter is for the convenience of the public and to provide the
7 broadest dissemination of information as is practicable.

8 * Sec. 4. AS 44.62.410 is amended by adding a new subsection to read:

9 (b) For the mutual convenience of the parties, the agency may use
10 communications media in the conduct of a hearing under this section.

11 * Sec. 5. AS 44.62.600 is amended to read:

12 Sec. 44.62.600. VOTING PROCEDURE [MAIL VOTE]. A member of an
13 agency qualified to vote on a question may vote by mail or by communica-
14 tions media. A vote by communications media shall be recorded in a
15 manner that identifies each person who has voted. *and. to show how they*
16 *voted.*

17 * Sec. 6. AS 44.62 is amended by adding a new section to read:

18 Sec. 44.62.635. COMMUNICATIONS MEDIA. In addition to the specific
19 authorizations in this chapter of the use of communications media, an
20 agency may use communications media for the benefit or convenience of
21 the parties or the public in connection with any proceeding or act
22 authorized under this chapter.

23 * Sec. 7. AS 44.62.640 is amended by adding a new subsection to read:

24 (c) In this chapter "communications media" includes telecommunica-
25 tions equipment or services that provide for the exchange of information
26 by audio, video, or computer teleconferencing.

27
28 *Have you suggested.*
29

March 3, 1982

Rep. Terry Martin
Chairman
House Labor & Commerce Committee
Pouch V
Juneau, Alaska 99811

Dear Rep. Martin:

Thank you for the opportunity to testify on HB703. We appreciate the work that you and your staff have done on this bill, and hope that it will receive favorable consideration by the full legislature, this year.

TELELINK Communications, Inc. is seeking passage of this bill, to permissively expand the capacities of state agencies to act on matters that otherwise require expensive, time-consuming, face-to-face meetings.

While the use of electronic communications will not completely replace travel and the need to "press the flesh", we believe that contemporary advances in communications technology will mitigate the loss of productivity and revenues engendered by the need to be physically present during rate and tariff proceedings; employment security appeals and the like.

We believe that it is in the public interest to permit persons in remote corners of the state to enter opinions and matters of fact into the public record, without the requirement that they spend hundreds or thousands of dollars traveling away from home to interact with the policy makers.

The Legislature's substantial success with the Legislative Teleconference Network, and the Department of Education's Learn/Alaska network are examples of the gains that positively benefit Alaskan society.

HB703 will act to further expand the information collection and decision-making capability of the state whether through increased participation in Public Utility Commission hearings; Regional Fish and Game advisory board meetings; DOT/PF bid awards; or consultant bidder's conferences.

Sincerely,



Allen S. Blume
Marketing Associate

AUDIO TELECONFERENCING COST INCENTIVES

CMX VS. TRAVEL*

2 HOUR TRAVEL MEETING
JUNEAU TO ANCHORAGE

Transportation	\$	300.00
Air Fare		45.00
Rental Car		15.00
Gas & Oil		60.00
Lodging		45.00
Meals (including tips)		12.00
Telephone charges from Hotel		250.00
Salary (\$36,000)		<u>250.00</u>
 Cost per person	 \$	 727.00
 X 8 people		 <u>\$5,816.00</u>
 Lost Productivity:		
Travel time 4 hours @ \$125x8		<u>\$1,000.00</u>
Missed telephone calls and Meetings at home office?		\$6,816.00

2 HOUR CMX MEETING

Transportation	\$.00
Lodging		.00
Meals		.00
Telephone charges (50.00/hr.) x 2		100.00
CMX fee (22.80/hr.) x 2		50.00
Salary (\$36,000)		250.00
 Cost per person		 400.00
 X 8 people		 <u>\$3,200.00</u>

COMPARISON

Travel Meeting Cost	\$6,816.00
CMX Meeting Cost	\$3,200.00
 Cost Saving Using CMX	 <u>\$3,616.00</u>

*Assumes typical two hour meeting.
Does not account for weather or
other airline delays.

Bill No. House Bill 703

Date March 3, 1982

Title "An Act relating to the use of communications media under the Administrative Procedure Act"

Contact: *Judy Knight*
Judy Knight
465-2700

The provisions of House Bill 703 which provide for expanded use of telecommunications type media in public proceedings, public meetings and administrative adjudication proceedings will be advantageous to both the public and to state agencies.

The Department of Labor presently conducts telephonic hearings in connection with unemployment insurance appeals, and such hearings have been well accepted by both claimants and attorneys. In fact, many of these people prefer such a hearing because they feel it removes them from any prejudices the hearing officer may have with respect to their personal appearance. Our hearing officers have also found telephonic hearings to be satisfactory.

We have also used the state's teleconference facilities on a limited basis in the development of workers' compensation proposals; and again have found it to be a very efficient and effective means of conducting public meetings.

If the opportunity were available, the Department of Labor would definitely expand its use of this type of communications media; and we, therefore, support the passage of this bill.

POSITION PAPER/Department of Labor

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 703
 Title Relating to Communications Media
 Requested by House Labor and Commerce Date March 2, 1982

II. FISCAL DETAIL Administration
 Agency Affected _____
 Program Category Affected _____
 BRU, Program, Or Subprogram(s) Affected _____
 (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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	0	00	0	0	0	0.
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	0	0	0	0	0	0
FULL TIME						
PART TIME						
TEMPORARY						

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

No impact on Department of Administration operations. Accordingly, no fiscal impact

IV. DATE 3/2/82 PREPARED BY Alex Hills
 AGENCY Administration

Original: Legislative Finance PHONE _____
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) Rep. Terry Martin
 33-001 (Rev. 12/81) Office of the Governor: Keith Speckinj

BILL ANALYSIS

ASSIGNMENT DATE: _____

UNASSIGNED _____

DEPARTMENT	SPONSOR (PRINCIPAL)	BILL NO.
Environmental Conservation	House Labor & Commerce	HB 703
DEPARTMENT POSITION We support this legislation. Teleconferencing would allow greater public participation, probably at less cost to the agency.		
DIVISION DIRECTOR	DATE	COMMISSIONER DATE
		Ernst W. Mueller 3/3/82
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)		
(2) a. ORGANIZATIONAL SUPPORT FOR BILL	▨	(2) b. ORGANIZATIONAL OPPOSITION TO BILL
(3) PROGRAM EFFECTS OF BILL Teleconferencing should result in less cost to the agency.		
(4) FISCAL IMPACT: <input checked="" type="checkbox"/> NONE <input type="checkbox"/> FISCAL ANALYSIS ATTACHED		
(5) AMENDMENTS PROPOSED:		
(6) COMMENTS:		

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE:

March 3, 1982

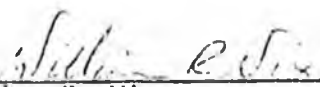
POSITION PAPER

HOUSE BILL NO. 703

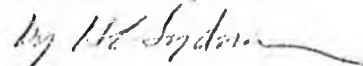
AN ACT RELATING TO THE USE OF COMMUNICATION MEDIA
UNDER THE ADMINISTRATIVE PROCEDURES ACT

HB 703 would amend AS 44.62 to allow the use of communications at public meetings and hearings. Since this Bill would allow the Department to accept testimony by any form of communications, expanding the parameters by which the public could provide input on proposed regulations provided for under the Administrative Procedures Act, the Department of Public Safety supports passage of HB 703.

It should be noted, however, that support for this Bill is contingent upon receiving the necessary funding to purchase the communications equipment required to implement this Bill, if enacted. A Fiscal Note will be provided the Finance Committee outlining the projected costs anticipated if this Bill were to become law.



William R. Nix
Commissioner



POSITION PAPER

HOUSE BILL #703

"An Act relating to the use of communications media under the Administrative Procedure Act."

House Bill No. 703 allows the use of communications media for hearings and meetings under the Administrative Procedure Act.

Analysis

This bill would enhance the opportunity for public input into state administrative deliberations by allowing use of communications media. People living in remote locations, whether members of administrative bodies or interested citizens, will be able to participate in hearings or meetings with much less trouble and expense if this bill passes. It is a cost effective and efficient way for the department to conduct business and take public testimony on an issue.

Department Position

The Department of Health and Social Services strongly supports House Bill No. 703.

Recommended by:

Marsha Hubbard
Marsha Hubbard,
Director, Division
of Management & Budget

Date:

2 - 16 - 82

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

2 - 16 - 82

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907-465-3600

MEMORANDUM

January 12, 1982

SUBJECT: Electronic media under the Administrative
Procedure Act (Work Order No. 12-2185)

TO: Representative Terry Martin, Chairman
House Labor and Commerce Committee

FROM: Thomas A. Sofor ^{TAS}
Legislative Counsel

In preparing the attached work draft regarding the use of electronic media under the Administrative Procedure Act, I reviewed a memo from Ray Tyson which outlined some suggested changes to AS 44.62. I originally proceeded by strictly adhering to the outline suggested until it became apparent that several well placed amendments would accomplish the objectives of the committee without actually amending each individual suggestion which the outline listed. An example of this type of result can be seen by reviewing the amendment contained in Sec. 1 of the draft (authorizing the use of electronic media at public proceedings under AS 44.62.210) and the second amendment suggested on the outline to AS 44.-62.230. A review of the latter section indicates that there is no need to state again that electronic media may be used as method of hearing petitions since AS 44.62.230 refers back to the public hearing process of AS 44.62.210. Unless the committee further desired that the petition itself could be submitted by electronic media no further adjustment in AS 44.62.230 is needed.

As to the possible suggestion that petitions as well as accusations and notices of defense, etc., be submitted through the use of electronic media, the committee should consider that the process seems to require that the initial contact be in written form. For similar reasons the sections pointed out for my review in sec. 6 of the outline did not seem to require further insertion of the term electronic media. As an example, AS 44.62.440 permits the use of

Representative Terry Martin

Page 2

January 12, 1982

depositions "in the manner prescribed by law for depositions in civil actions". Depositions may be videotaped and, in appropriate instances, introduced into evidence in civil actions of this state. I think most of the changes which were suggested that are not found in this work draft can be explained by applying the rationale described above.

I do have one or two questions regarding suggested amendments to AS 44.62.310 (Agency Meetings Public) and AS 44.62.312 (State Policy Regarding Meetings). It was suggested under AS 44.62.310 that a roll call vote would be appropriate in the case of a voice vote taken by electronic means. This seems to create a higher standard of accountability for casting an affirmative or negative vote in the case of a voice vote taken at a meeting where electronic media is used. It can be argued that in the absence of being physically present in the room, an observer might not know which "voices" cast their votes either affirmatively or negatively. However, this is a defect inherent in the voice vote procedure and I am not sure the committee intended to create more accountability merely because electronic media were present. Similarly, the outline suggests adding a new section (f). Although the outline is inaccurate or poorly cross-referenced, I have taken the suggestion to mean that when the agencies meet in closed or executive sessions that an electronic transcript of that session be retained. This, of course, goes against the typical procedure for executive sessions which are by their very nature private. If the outline is suggesting that an electronic transcript be prepared of the proceedings of those bodies listed in subsection (d) of AS 44.62.310, the committee must be cautioned that this also would be inappropriate given the nature of those deliberative bodies. In the same manner, I cannot really make sense out of the request to add a section to AS 44.62.340 concerning the delegation of power by agencies. The concept of a delegation of power "per se" is ambiguous and will only serve to confuse matters under the Administrative Procedure Act. At best, this suggested amendment seems unnecessary.

I would like to particularly draw the committee's attention to our slightly revised definition of "communications media" which appears in the last section of this draft. I solicit your comments as to whether the revised definition accurately encompasses the telecommunications formats which are to be included.

Representative Terry Martin
Page 3
January 12, 1982

As a result of this office's interpretation of the goals to be achieved in preparing this work order, the attached draft is probably somewhat shorter than you had anticipated. There may be several items which we still need to include if, after discussion, you do not feel that the general amendments suggested adequately address the situation. I would recommend that we continue to attempt to accomplish the committee's objectives by using several general, well placed amendments in AS 44.62 rather than a wholesale amendment of each section in which electronic media might have some possible application.

If you have any questions, I would be happy to discuss them with you at your convenience.

TAS:ljb

Enclosure

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

DEPUTY COMMISSIONER — ADMINISTRATION

March 3, 1982

JAY S. HAMMOND, GOVERNOR

(907) 465-3900

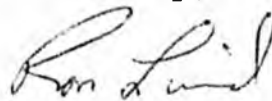
POUCH Z
JUNEAU, ALASKA 99811

Honorable Terry Martin
Alaska State Representative
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Representative Martin:

In reply to a request from your office for a position paper from this department regarding House Bill 703, relating to the use of communications media under the Administrative Procedure Act, we wish to state that this department has no comment to make on this bill.

Sincerely,

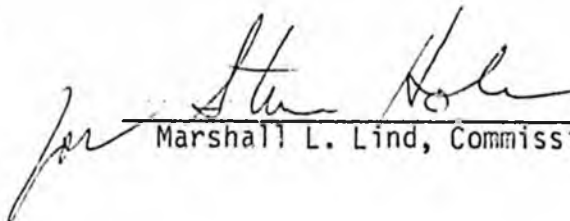


Ron B. Lind
Deputy Commissioner

Department of Education
Position Paper
House Bill 703

While the State Board of Education has not had the opportunity to discuss the provisions of Sections 1, 2 and 5, the department administration supports the provisions of Section 4.

As a practical matter, the department has found audio conferencing to be a very effective means of information exchange at a very low cost. This bill could result in substantial savings over the cost of face to face testimony acquisition in public meetings and administrative proceedings, although those savings would not necessarily accrue to the state.



Marshall L. Lind, Commissioner

POSITION PAPER

HOUSE BILL #703

"An Act relating to the use of communications media under the Administrative Procedure Act."

House Bill No. 703 allows the use of communications media for hearings and meetings under the Administrative Procedure Act.

Analysis

This bill would enhance the opportunity for public input into state administrative deliberations by allowing use of communications media. People living in remote locations, whether members of administrative bodies or interested citizens, will be able to participate in hearings or meetings with much less trouble and expense if this bill passes. It is a cost effective and efficient way for the department to conduct business and take public testimony on an issue.

Department Position

The Department of Health and Social Services strongly supports House Bill No. 703.

Recommended by:

Marsha Hubbard
Marsha Hubbard,
Director, Division
of Management & Budget

Date:

2-16-82

Approved by:

Helen D. Beirne
Helen D. Beirne
Commissioner

Date:

2-16-82

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB No. 703

Title "An Act relating to the use of communications media under the Admin. Procedure Act."

Requested by Labor & Commerce Committee Date _____

II. FISCAL DETAIL

Agency Affected Department of Health & Social Services

Program Category Affected Health, Social Services, Justice

BRU, Program, Or Subprogram(s) Affected _____

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

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

This bill would have no significant fiscal impact on the Department of Health & Social Services

IV. DATE February 8, 1982 PREPARED BY Joanne C. Clark

AGENCY Division of Management & Budget

Original: Legislative Finance PHONE 465-3331

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 703
Title Relating to the use of communications media
Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Fish and Game
Program Category Affected NRMEC
BRU, Program, Or Subprogram(s) Affected Boards of Fish and Game
(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
POSITIONS	-0-	-0-	-0-	-0-	-0-	-0-
FULL TIME						
PART TIME						
TEMPORARY						

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

Any costs related to teleconferencing would probably be offset by reductions in travel expenses for board members currently being paid for by the State.

IV. DATE 3/9/82 PREPARED BY J. Green
AGENCY Fish and Game
Original: Legislative Finance PHONE 4120
cc: Budget and Management
Prime Sponsor (First Legislator Named)
33-001 (Rev. 12/81)



STATE OF ALASKA
OFFICE OF THE GOVERNOR

*Many Issues
Belongs
Rm. 211*

BILL ANALYSIS

Department Fish and Game	Sponsor (Principal) Hayes	Bill Number HB 866
Department Position No Comment		
Division Director <i>[Signature]</i> Richard [Name]	Date 3/9/82	Commissioner <i>[Signature]</i> Ronald O. Skoog
		Date 3/9/82

GOVERNOR'S OFFICE USE		
Comments:		
<input type="checkbox"/> Position Noted	By	Date

SUMMARY	
1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill
3. Program Effects of Bill	
4. Fiscal Impact: <input type="checkbox"/> None <input type="checkbox"/> Fiscal Note Attached	
5. Amendments Proposed:	
6. Comments:	

HB

704

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

1/29/82

Date: 3-10-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 704

"An Act continuing the existence of the Real Estate Commission; and providing for an effective date."

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)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Lawrence
Byloma
[Signature]

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Lawrence
 CHAIRMAN

Date introduced 1-29-82

" Rec'd: 1-29-82

Expenses none

Comm. hearing 3-1-82 - CS work draft to be prepared

" action 3-10-82 CS adopted - passed out of Comm.
legal services provided by
financing Dept & Chief Clerk @ 4:30 p.m.

Atty Generalist of
Ad. Coastal Health
Notified 586-1212

He sending some amendments
he would like to see part of
the Board. Sending (5) copies that
members can study prior to
meeting.

3-1-82 - Reminder

PROPOSED STATUTORY CHANGES IN AS 08.88 PRESENTED TO THE HOUSE LABOR AND COMMERCE COMMITTEE BY THE ALASKA REAL ESTATE COMMISSION, MARCH 1, 1982:

* Sec. 08.88.091 is amended by adding a new paragraph to read:

(3) The commission may make available to the public manuals, *OK* texts or other materials prepared with funds from the surety fund. When these materials are made available the commission may make a reasonable charge for them designed to recover the actual costs of the item provided. Funds collected under this section shall be paid at least once a month into the general fund. These payments shall be credited to the real estate surety fund.

* Sec. 08.88.101 (11) is repealed and reenacted to read:

OK (11) print and distribute duplicate license certificates to replace lost certificates;

* Sec. 08.88.101 (12) is amended to read:

OK (12) send notice 30 days before (*Jan 31 of next year*, BEFORE DECEMBER 1 OF EACH YEAR,) the date that licenses must be renewed; *Not of commission but of state*

* Sec. 08.88.201 is repealed and reenacted to read:

OK 08.88.201. REEXAMINATION. A person who fails an examination may apply for a subsequent examination, but shall pay the examination fee each time he applies.

* Sec. 08.88.221 is repealed and reenacted to read:

08.88.221. FEES. Fees for the following categories for a *if applicable* real estate broker, associate broker, or salesman licensee or applicant are established by regulations adopted under AS 08.01.065:

- (1) examination; - 50
- (2) reciprocity; - 100
- (3) initial license; - 100
- (4) renewal of an active license; 100
- (5) renewal of an inactive license; 50
- ~~(6) amending or transferring a license. 25~~

sub. (all) added.
Sec. 08.88.221 (all) fee in.

* Sec. 08.88.251 is amended to read:

(c) A person who is inactive may become active by applying for an active license and paying the required fees. In the application form he shall state the date on which he intends to become active. His active status begins on the date stated. The commission shall send him a license certificate. A person is entitled to change from an inactive to an active status without examination if he has not been inactive more than two (THREE) years. If he has been inactive more than two (THREE) years, he is required to take an examination.

* Sec. 08.88.261 is repealed:

* Sec. 08.88.361 is amended to read:

Sec. 08.88.361. WHEN COMMISSION IS EARNED. A commission or fee is earned when the real estate broker fulfills the terms of a written personal services contract.

all AS 08.88.401 is repealed and reenacted to read.
* Sec. 08.88.401 (a) is repealed and reenacted to read:

Sec. 08.88.401 (a) a licensee may not in any way represent that he holds or has been awarded any degree or designation to which he is not entitled nor may he represent himself as being a member or affiliate of any professional organization to which he does not belong.

* Sec. 08.88.401 (b) is repealed and reenacted to read:

Sec. 08.88.401 (b) commissions or fees for performance of acts specified in Section 161 of this chapter may be paid only to a licensed Alaska real estate broker except when a real estate broker properly licensed in another state assists an Alaskan real estate broker, the out-of-state broker's commission or portion of the commission may be paid directly to the out-of-state broker by the seller or escrow holder. Commissions or portions of commissions paid to a licensed real estate salesman must be paid by the broker or under the authorization of the broker with whom the real estate salesman is licensed.

* Sec. 08.88.401 (c) is amended to read:

(c) knowingly make, authorize, direct or aid in the publication of a false statement or misrepresentation concerning land or a subdivision of other real estate offered for sale or lease;

* Sec. 08.88.401 is amended by adding a new paragraph to read:

E (d) The commission or its executive director may issue a stop order to any person or firm who is or appears to be about to pay a commission or fee for acts specified in Section 161 of this chapter to a person who is not a licensed real estate broker in another state authorized to receive commissions under part (b) of this section.

(E) a person who violates this sec. 161 of this chapter is guilty of a misdemeanor.

A PERFORMANCE REVIEW OF THE
REAL ESTATE COMMISSION

June 4, 1981

Audit Control Number
08-101-1037-R

Commissioner, Department of
Commerce and Economic Development

Charles R. Webber

Deputy Commissioner, Department of
Commerce and Economic Development

Pete Jeans

Deputy Commissioner, Department of
Commerce and Economic Development

Vacant

Members of the
Real Estate Commission

Chairperson
Member
Member
Member
Member
Member
Member

Lance Youngquist
Karen Morris
Barbara Hill
Frank Austin
Gary Wilken
Ken Calhoon
Gail Glad

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

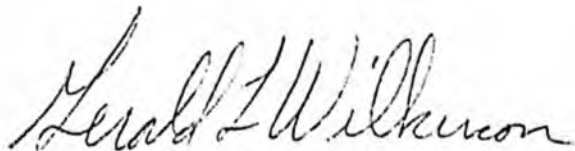
June 4, 1981

Members of the
Legislative Budget and Audit Committee:

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

A PERFORMANCE REVIEW OF THE REAL ESTATE COMMISSION

June 4, 1981



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

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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), an audit of the Real Estate Commission was conducted to review Commission activities and accomplishments to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1982.

Scope

The major areas reviewed were the Commission's operations and its licensing, examination, administration, complaint and affirmative action functions. Our review consisted of analyzing and evaluating the following:

1. Applicable statutes and Commission regulations.
2. Interviews with Commission members.
3. Tests of records and documents of the Commission and the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
4. Interviews with OL employees.
5. Complaints filed with OL, the Ombudsman's Office and the Consumer Affairs Agency.

ORGANIZATION AND FUNCTION

The Real Estate Commission (REC) was established and operates under Title 8, Chapter 88 of the Alaska Statutes. It is a regulatory commission composed of five real estate brokers or associate brokers, and two public members.

The Commission regulates licensed real estate agents (brokers, associate brokers, and salespersons) by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary to enforce State statutes.
3. Holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations.
4. Prosecuting through the Department of Law, violators of real estate statutes and regulations.

REC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate brokers and associate brokers must pass an examination, be a resident of the State, have had 24 months of experience as a real estate salesperson, and not have engaged in conduct demonstrating their unfitness to be a broker. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation. An associate broker has met the statutory qualifications of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination, be a resident of the State, be employed by the owner of a real estate brokerage and not have engaged in conduct demonstrating unfitness to be a salesperson.

Real estate agents must pay a bond fee when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for making settlements to victims of fraud, misrepresentation, and deceit by real estate agents. Settlements to damaged parties are made by REC after a hearing is held. If the Surety Fund balance reaches above \$250,000, the excess may be appropriated for educational programs put on by REC.

Chapter 167 passed during the 1980 legislative session gave the Commission the power to appoint an executive director, employ assistants and approve the appointment of an investigator or auditor. However, these changes were not funded by the Legislature at that time. Prior to the enactment of this law, the Commission received staff support from the Division of Occupational Licensing (OL).

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these issues the legislative oversight committees should consider the findings and alternatives presented in this report, so that the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Real Estate Commission (REC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, and dishonest real estate practitioners.

Chapter 167, SLA 1980 significantly changed the powers and responsibilities of the Real Estate Commission. The Commission is now an agency separate from the Division of Occupational Licensing and has the power to hire its own personnel. The Commission has, however, not received sufficient funding for its operations. As a result, it is difficult to draw overall conclusions about the performance of REC.

REC has operated in the public's best interest through its examination and education efforts. For instance, the Commission has taken positive actions to inform and educate licensees and the public by publishing a newsletter. In addition, the Commission has proposed various statutory changes designed to clarify the law and improve services by licensees. Other Board actions have been made which appear to meet public needs and demands reasonably.

Chapter 167 gave REC the power to conduct its own investigations. Due to the lack of funding, REC had to have the Division of Occupational Licensing handle real estate investigations. We suggest that the Commission formalize its investigative procedures to be properly prepared when its investigative function is returned (see Recommendation No. 1).

The statutes specifying procedures for the Real Estate Surety Fund conflict with the Administrative Procedures Act. This is causing payments from the Fund to be delayed. Also, claims in process may become greater than the Fund total (see Recommendation No. 2).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Investigative procedures for real estate complaints should be developed to assure an accurate and proper system for handling complaints.

The Real Estate Commission has temporarily delegated its investigative function to the Division of Occupational Licensing due to budgetary constraints. Because of this transfer, REC has not yet established a formal system of handling complaints. In order to be properly prepared when the investigative responsibility is returned to the Commission, REC needs to develop and approve a formal system. The following items should be included.

1. The final disposition of a case should be formally recorded in the Commission's minutes. The case file should reflect these actions.
2. A log should be developed which will track each case from original receipt, through the investigation to the Attorney General's Office and hearing (if applicable), and to the formal Commission action. All cases which have been dropped or have become inactive should be identified.
3. A cross-reference system needs to be developed which will provide a history of complaints against particular individuals or firms. Many investigations involve oral misrepresentation with only the complainant as a witness. Identifying patterns of allegations against a particular company, broker or salesperson will give more effective evidence in cases that are sent to hearings.
4. A manual needs to be developed which documents the procedures used for investigating complaints and documenting case files. REC should define specific procedures to prevent potential conflict of interest situations with Board members and REC employees. The manual will be useful to evaluate staff personnel and help orderly transition in cases of employee turnover.

Recommendation No. 2

Legislation should be introduced to revise the Real Estate Surety Fund (RESF) statutes in order to allow payments to be made from the Fund in an equitable and timely manner.

Procedures for processing claims against RESF are controlled by the provisions of AS 08.88.450-.500 and the Administrative

Procedures Act (APA), AS 44.62.010-.650. APA allows a broker, associate broker or salesperson to file a written statement in opposition to a claim within 15 days after receiving notification of the claim. AS 08.88.465 allows the broker only 10 days to file a statement. Due to this conflict and others, the Attorney General's Office has notified REC not to pay any claims until the statutes have been changed.

RESF exists to protect the public against injuries resulting from malfeasance by licensed real estate agents. Chapter 167 of the 1980 Session Laws of Alaska gave REC the responsibility of making payments out of the RESF in order to get payments to claimants in a more timely manner. Until the statutes are changed to eliminate the conflict with APA, timely payments will not occur.

Time is of the essence in the passage of new legislation. REC has not completed a detailed financial analysis to determine the monetary liability against the Fund. However, we found that the number of claimants seeking reimbursement from RESF has increased in the last two years from five to twenty-four cases. Using the maximum reimbursement of \$10,000 per case allowable by law, the twenty-four cases could cost as much as \$240,000 or almost two-thirds of the Fund balance of \$374,800 as of June 30, 1980. There is a potential that outstanding claims may soon amount to more than the Fund balance.

The maximum reimbursement of \$10,000 allowable by law was enacted in 1976. The Surety Fund fees of \$125 and \$40 paid by brokers and real estate salespersons have also not been adjusted since 1976. "The Alaska Statistical Review 1980" prepared by the Alaska Department of Commerce and Economic Development shows that the Anchorage Consumer Price Index for urban consumers has increased since 1976 by more than 50%. We suggest that REC complete a financial analysis of the Fund and determine if the current fees and maximum reimbursement for claims are sufficient. Legislation should be introduced if changes need to be made.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of Commission activities relate to the public need factors defined in the "Sunset" law. These analyses are not intended to be all-inclusive, but addresses those areas we were able to cover within the scope of our review.

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

1. The Real Estate Commission (REC) has legally implemented several regulations concerning:
 - a. Suspension, revocation, and issuance of licenses.
 - b. Prohibited conduct by real estate agents.
 - c. Accounting for trust accounts by real estate agents.
2. According to OL's files, REC met four times last year and advertised one public hearing on proposed regulations. Examinations were scheduled for each month except December and were held in eight locations around the State.
3. The Commission has sponsored seminars and publications on real estate matters.

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. Chapter 167, Session Laws of 1980 gave the Board the power to hire its own personnel. Present staffing includes an Executive Director, a License Examiner and a Secretary. However, funding for REC was not substantially increased. As a result, the Commission has not hired an investigator or auditor, a key feature of this legislation. The Division of Occupational Licensing has continued to provide investigative support to REC. However, there is a severe backlog of cases totalling 145 as of January 22, 1981.

2. Chapter 167 also gave the Commission the power to make payments from the Real Estate Surety Fund. Because the procedures enumerated in Chapter 167 conflict with the Administrative Procedures Act, claims against the Fund are being delayed (see Recommendation No. 2).
- III. The extent to which the board, commission or agency has recommended statutory changes which are generally or benefit to the public interest.
1. The Commission proposed various changes to State statutes and many of these were enacted in Chapter 167, SLA 1980. REC is continuing its effort to improve the statutes. We believe these efforts are in the public's best interest.
- 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. The Commission has held part of their meetings to specifically meet with interested persons.
 2. The Commission published and distributed the "Alaska Real Estate Commission News" which included a plea for public input.
- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
1. REC, through OL, advertised in newspapers to encourage public participation and also sends notices to interested associations. All meetings and examinations in the past year were publicized.
- 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 a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.
1. Recently the Ombudsman's Office received a complaint about a delay in authorizing payments from the Real Estate Surety Fund.

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. As of March 19, 1981, there were 2,386 persons licensed by REC.
2. From July 1, 1977 to February 27, 1981, REC and the Division of Occupational Licensing received 414 real estate complaints. During this time, the Commission denied, revoked or suspended 21 licenses. As of February 27, 1981, 145 cases were still pending investigation.

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. We found no evidence of problems in this area.

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

1. Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

REAL ESTATE COMMISSION
REVENUES COMPARED WITH EXPENDITURES
Fiscal Year 1980
(UNAUDITED)

Operating

Average Revenue (See Schedule 1 and Note 1)	\$188,600
Expenditures (See Note 2)	<u>112,900</u>
Excess of Revenues Over Expenditures	<u>\$ 75,700</u>

Surety Fund

Revenue (Note 3 and Note 4)	\$118,600
Expenditures	<u>55,200</u>
Excess of Revenues Over Expenditures	<u>\$ 63,400</u>

CHANGES IN SURETY FUND EQUITY
Fiscal Year 1980
(UNAUDITED)

July 1979 Beginning Balance	\$311,400
Fiscal Year 1980 Revenues	118,600
Fiscal Year 1980 Expenditures	<u>55,200</u>
June 30, 1980 Ending Balance	<u>\$374,800</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
<u>Brokers and Associate Brokers</u>		
Initial License Fee	\$100	With issuance of license
Biennial Renewal - Active License	100	Biennially
Biennial Renewal - Inactive License	25	Biennially
Examination Fee	50	With taking examination
Reciprocity Fee	50	With granting of license through reciprocity
Fee for Amending a License	5	With license filing to amend license
<u>Salespersons</u>		
Initial License Fee	50	With issuance of license
Biennial Renewal - Active License	50	Biennially
Biennial Renewal - Inactive License	25	Biennially
Examination	50	With taking examination
Reciprocity Fee	50	With granting of license through reciprocity
Fee for Amending a License	5	With licensee filing to amend license

Note 1

Most of the real estate revenues are composed of renewal registration fees. These fees are collected once every two years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in fiscal years 1979 and 1980 in order to obtain an accurate representation of collected revenues.

Note 2

Expenditures include those made by Commission members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of OL. They do not include expenditures for efforts of other departments, such as the Department of Law, that may be assisting the Commission and OL.

Note 3

The Surety Fund is supported by payments from real estate licenses and provides for financial recovery by the public when injured by malfeasance of a licensee. When the Fund is over \$250,000 the excess may be appropriated for real estate educational purposes. Fiscal Year 1979 revenue has reported as \$17,774.

Note 4

As of April 29, there were 24 claimants seeking reimbursement from the Real Estate Surety Fund. These cases could amount to as much as \$240,000. If the number of claims continues to increase, the amount of claims may become greater than the Fund total.

APPENDIX B

EXAMINATION AND ADMINISTRATIVE
STATISTICS

Schedule 1
Examination Statistics

	<u>Calendar 1980</u>	<u>Calendar 1979</u>
<u>Brokers and Associate Brokers</u>		
Number of Examinees	192	241
Number of Fails	<u>56</u>	<u>65</u>
Number of Passes	<u>136</u>	<u>176</u>
Percentage Pass Rate	<u>71%</u>	<u>73%</u>
<u>Salespersons</u>		
Number of Examinees	764	1,024
Number of Fails	<u>415</u>	<u>514</u>
Number of Passes	<u>349</u>	<u>510</u>
Percentage Pass Rate	<u>46%</u>	<u>50%</u>

Schedule 2
Administrative Statistics

	<u>Calendar 1980</u>	<u>Calendar 1979</u>
<u>Licenses Issued Per Calendar Year</u>		
Brokers	27	55
Associate Brokers	80	90
Salespersons	<u>358</u>	<u>495</u>
<u>Total</u>	<u>465</u>	<u>640</u>

As of 03/19/81

Active Licenses

Brokers	487
Associate Brokers	412
Salespersons	<u>1,487</u>
<u>Total</u>	<u><u>2,386</u></u>

Inactive Licenses

Brokers	47
Associate Brokers	60
Salespersons	<u>711</u>
<u>Total</u>	<u><u>818</u></u>

195 South Franklin
Juneau, AK 99801
September 23, 1981

Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Alaska Office Building
Juneau, AK 99811

RECEIVED

1981

LEGISLATIVE
AUDIT

Mr. Wilkerson,

In response to your request, I am addressing the recommendations made in the preliminary report, "A Performance Review of the Real Estate Commission," dated 4 June 1981.

Recommendation No. 1: Agree. As you know, AREC has had difficulty for many years with investigation and handling of cases. The underlying reasons are many and have been debated at length. Under AREC's original Sunset review, major statutory changes were implemented in 1980 which would enable AREC to become a separate entity and hire its own staff. Unfortunately, funding was not available in FY '81 to implement these changes.

The FY '82 budget has given AREC sufficient funds to begin implementation of the proposed changes. The hiring process for an investigative position should be completed within a short period. AREC is aware of the proposed changes and has commenced planning of the investigative procedures and record keeping that will be required. AREC's Executive Director has been preparing for this transition; many policy and procedure decisions have been approved by the Commission. It should be noted that at this time case closures are being done at a more rapid rate, and that any decisions on a case are entered into our minutes.

Recommendation No. 2: Agree. I agree with the problem as it existed at the time of the writing of the report. However, since the time of Legislative Audit's investigation, there have been many changes that should allow AREC to commence Surety Fund hearings in October. The interpretation, by the Attorney General's office, has been that any Surety Fund hearings would fall under APA procedures. For this reason AREC made an attempt to get legislation passed that would provide relief from the APA problems--that attempt was unsuccessful. Since that time new AG opinions have provided AREC with a method to handle the claims hearings and to make payments that do not require conformance with the APA. Numerous meetings were held on this matter with the AG and with legal counsel of pending claimants. As of this writing, we are preparing to hold Surety Fund hearings at AREC's October meeting and, if warranted, should be able to begin making payments. I agree with the importance of monitoring the Surety Fund balance due to the amount of pending claims and possible future claims. This is being done and possible new legislation will be introduced during the next legislative session to assure that the fund remains healthy.

Mr. Gerald L. Wilkerson, CPA

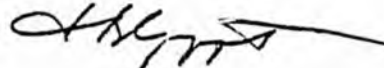
September 23, 1981

Page 2

In conclusion, the report does address two of the major problems that exist with the Commission. It is my opinion that the Commission is very aware of these problems and is actively seeking, or has found, the necessary solutions. The funding problems created by the FY '81 budget hindered our implementation of changes; however, it is my feeling that AREC has performed admirably and is making great strides toward becoming an efficient and effective governmental agency. These accomplishments will be addressed in Sunset hearings next year.

I appreciate the opportunity to address the report and am available at any time to assist you in your investigation or to answer any questions that you may have.

Sincerely,



Lance Youngquist, Chairman
Alaska Real Estate Commission

STATE OF ALASKA

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

JUNEAU, ALASKA 99811

February 19, 1982

TO: Representative Terry Martin
Chairman
House Labor and Commerce
Committee

FROM: *Mark K. Jones*
Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit

R. E. Jiler

SUBJECT: Discussion of Legislative
Oversight Responsibilities
as Related to Sunset Audits

*not in
official file
at this
time*

As required by "sunset" legislation, your Committee has been assigned the oversight review of the Real Estate Commission and the Board of Electrical Examiners. In addition to the audit reports released earlier by this Division, the following information may be helpful.

According to AS 44.66.050, the standing committee of legislative jurisdiction as provided in Rule 20 of the Uniform Rules of the Legislature shall hold one or more hearings to receive testimony from the public and other parties that have associated responsibilities or interests. In addition, the Committee shall consider Legislative Audit's report, the agency's proposed budget, the agency's program performance report, and any other tools that might assist it in evaluating the conduct and activities of the agency being terminated.

*It is important to note that the terminating agency shall have the burden of demonstrating a public need for its continued existence during the public hearings.

The determination of "public need" for continued existence shall take into consideration the following factors set out in AS 44.66.050(c):

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

2. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
3. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.
4. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
5. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
6. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.
7. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
8. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission or agency to its own activities and the area of activity or interest.
9. The extent to which statutory, regulatory, budgeting or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

The Legislative Audit reports have addressed these issues individually but only to the extent allowed by restricted audit scopes detailed within the reports.

The Law further states that the committee of reference shall, not later than the 60th day of the legislative session, submit a report to the presiding officer of each

Representative Terry Martin
February 19, 1982
Page 3

house. The report is to include a summary of findings as to compliance with the "public need" factors enumerated above together with recommendations as to each of the following:

1. An identification of the problems or the needs that the programs and activities of the board, commission or agency are intended to address.
2. A statement, to the extent practicable, of the objectives of the program of the board, commission, or agency program, and its anticipated accomplishments.
3. An identification of any other programs having similar, conflicting or duplicate objectives.
4. An assessment of alternative methods of achieving the purposes of the program.
5. An assessment of the consequences of eliminating the board, commission or program and consolidating its activities with another program, or of funding it at a lower level.
6. A justification for the recommended continuation or extension of the board, commission or program, and an explanation of the manner in which it avoids duplication of or conflict with other efforts.
7. Any other information which, in the opinion of the committee, would improve the performance of the board, commission or agency with respect to its representation of and responsiveness to the public interest.

The committee of reference may introduce a bill providing for the reorganization or continuation of the agency being terminated as stipulated in AS 44.66.050(e).

If additional information is needed, please contact this office at 465-3830.

cc: Senator Arliss Sturgulewski
Chairman
Legislative Budget and Audit Committee

****PLEASE NOTE****

THE ORIGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

"ALASKA REAL ESTATE COMMISSION NEWS"

V 3, No. 1 -- 2/1982

H B

722

COMMITTEE REPORT

HOUSE

FURTHER: JUDICIARY

(5)

2/5/82

Date: _____

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 722

"An Act relating to landlord remedies."

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)
- replace with CS for HB 722 (L-C) same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Larry Martin

MEMBERS HAVING
OTHER RECOMMENDATIONS:

Bill Rogers Do Not Pass
Bill Bylaws Do Pass

Larry Martin
 CHAIRMAN

Acting

reference

Sponsor ⁸⁻¹⁻⁸² ~~8-1-82~~ ^{9:00} ~~9:00~~ Romana Bunker - ^{called} ~~called~~ like
Aide Dave ~~worked~~ like
to see bill passed.

Date Introduced 2-5-82

" Rec'd. 2-5-82

Referrals - Judiciary
Comm. hearing 3-8-82 Sub Comm of Referral - Judiciary to study & report back. CS adopted.
" active CS sent to Chief Clerk!

office

Introduced: 2/5/82
Referred: Labor & Commerce and
Judiciary

1 IN THE HOUSE

BY METCALFE

2 HOUSE BILL NO. 722

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to landlord remedies."

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

8 * Section 1. AS 34.03 is amended by adding new sections to read:

9 Sec. 34.03.225. ~~REMEDY FOR DAMAGE~~ *Remedy for other remedies*
10 *for destroying property* REMEDY FOR DAMAGE. If a tenant vandalizes or
11 deliberately causes unreasonably excessive damage to the dwelling unit,
12 the landlord may terminate the rental agreement and immediately recover
13 possession of the dwelling unit without regard to AS 34.03.140 or any
14 other requirements of this chapter relating to access.

15 Sec. 34.03.226. REMEDY FOR BAD CHECKS. (a) If a tenant issues a
16 check in payment of rent for a dwelling unit and that check is not
17 honored by the drawee, the landlord may terminate the rental agreement
18 and recover possession of the dwelling unit as provided in (b) of this
19 section.

20 (b) If the conditions in (a) of this section are met, the landlord
21 may terminate the rental agreement by giving written notice to the
22 tenant of the dishonored check and of the landlord's intention to termin-
23 ate the rental agreement effective four days after the notice is given
24 unless the tenant immediately tenders the amount due. If the tenant
25 does not tender the amount due within the four-day period, the tenancy
26 terminates and the landlord may immediately recover possession of the
27 dwelling unit without regard to AS 34.03.140 or any other requirements
28 of this chapter relating to access.

29 Sec. 34.03.227. REMEDY FOR DISTURBANCES. (a) If a tenant conducts
himself or allows other persons on the premises to conduct themselves in

1 a manner that unreasonably disturbs his neighbors' peaceful enjoyment of
2 the premises, and if that disturbance is verified by a signed complaint
3 from at least one-half of his neighbors in dwelling units immediately
4 adjacent to or above or below the tenant's dwelling unit, the landlord
5 may terminate the rental agreement and recover possession of the dwell-
6 ing unit as provided in (b) of this section.

7 (b) If the conditions in (a) of this section are met, the landlord
8 may terminate the rental agreement by giving written notice to the
9 tenant of the disturbance and complaint and of the landlord's intention
10 to terminate the rental agreement effective four days after the notice
11 is given unless the tenant ceases the disturbing conduct within the
12 four-day period. If the tenant does not cease that conduct within the
13 four-day period, the tenancy terminates and the landlord may immediately
14 recover possession of the dwelling unit without regard to AS 34.03.140
15 or any other requirements of this chapter relating to access. If the
16 tenant ceases the disturbing conduct within the four-day period, but
17 then begins that or similar conduct after the four-day period expires,
18 and the conduct is verified as provided in (a) of this section, the
19 tenancy terminates and the landlord may recover possession of the dwell-
20 ing unit without regard to AS 34.03.140 or any other requirements of
21 this chapter relating to access by giving written notice of termination
22 to the tenant effective 24 hours after the notice is given.
23
24
25
26
27
28
29

^{Budget}
60 days - include Leg. A Budget report

Present also Rep D Pandolph.

On HB 704 - add in "Proposed Sla

Date 1

INTRODUCTION OF BILLS (House)

Landlord
Remedies

HOUSE BILL NO. 722, by Rep. Metcalfe. Offers legal remedies to landlords for damages, bad checks and disturbances by tenants:

--in the case of excessive damage or vandalism, the landlord may terminate the rental agreement and immediately take over the premises without regard to statute which limits access without court order or if the tenant is absent for over a week.

--in the case of a bad check, the landlord may terminate the rental agreement and take possession of the rental by giving written notice to the tenant. Termination of agreement is effective after four days unless the tenant immediately tenders the amount due.

--the remedy outlined in the case of a disturbance provides that if the tenant or other persons on the premises conduct themselves in a manner that unreasonably disturbs his neighbors' peaceful enjoyment of the premises, and the disturbance is verified by a single complaint from at least one-half of his neighbors in units immediately adjacent to the tenant's unit, the landlord may terminate the rental agreement by giving written notice of his intention to terminate effective four days after notice is given unless tenant ceases the disturbing conduct within the four-day period. If the tenant does not cease, the tenancy terminates. If disturbances cease for four days, but resume, the tenancy terminates effective 24 hours after notice is given by the landlord.

Does not provide for an effective date.

Introduced February 5 and referred to Labor & Commerce, then to Judiciary.

HB

726

COMMITTEE REPORT

HOUSE

(5)

FURTHER:

2/5/82

Date: 3-4-82

Mr. Speaker:

The Committee on LABOR & COMMERCE has had HB 726

"An Act providing an exemption from the Alaska Employment Security Act for certain employees of certain corporations."

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)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Dr. Rogers
Steve Wagoner
[Signature]
B. Boyama

MEMBERS HAVING
OTHER RECOMMENDATIONS:

R

[Signature]
CHAIRMAN

Date introduced 2-5-82

Date Rec'd. 2-5-82

Referred to

Comm. Hearing 3-4-82 - Passed as CS with amendments - 3/4/82 Rec'd. CS from Legal Service
" action taken & chief clerk's office @ 3:10 P.M.

Dept of Labor.
Notified
Spman notified

*Similar concept in Workers Comp. Act
on Fed. reg.*

*Office
Copy*

*3,000 small business companies in AB
Dary Jenkins*

Introduced: 2/5/82
Referred: Labor & Commerce

1 IN THE HOUSE

BY BARNES, HAYES AND CLOCKSIN

Need fiscal note? AS

HOUSE BILL NO. 726

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act providing an exemption from the Alaska Employ-
7 ment Security Act for certain employees of certain
8 corporations."

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

10 *Section 1. AS 23.20.526 is amended by adding a new paragraph to read:

11 (21) service performed for a corporation by an employee of the
12 corporation if

13 (A) the corporation is incorporated under AS 10.05;

14 (B) the corporation is not a government corporation;

15 (C) the employee ^{*is executive officer of the corporation and*} owns directly or indirectly, or has the
16 power to vote, 25 percent or more of any ~~class of~~ voting securities
17 of the corporation; and

18 (D) the employee agrees that the services not be "employ-
19 ment" under this paragraph.

22 [Rec. Financial Comm.]

29



ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

January 22, 1982

MEMORANDUM

TO: Representative Ramona Barnes
FROM: David Teal *Teal*
Research Staff
RE: Unemployment Insurance
Research Request Number 82-6

Dave Stancliffe requested this agency to examine the possibility of exempting shareholder/employees of a corporation from State unemployment insurance taxes. Provisions which currently accomplish this intent in several states are briefly described below.

California Sole stockholders of corporations are exempt from State unemployment insurance taxes.

Colorado Corporate officers with a majority or controlling interest in the corporation are exempt from State unemployment insurance taxes.

Iowa Shareholder/employees are exempt from State unemployment insurance taxes only if the employer is not subject to the Federal Unemployment Tax Act (FUTA). Attachments to this memorandum define employee for the purpose of FUTA coverage.

Minnesota Shareholder/employees of family agricultural corporations are exempt from State unemployment insurance taxes.

Delaware Officers of corporations performing civil or social functions are exempt from State unemployment insurance taxes if the officers work on a part-time basis and are paid no more than \$75 per week.

Washington Corporate officers may elect exemption from State unemployment insurance taxes if the corporation is not a non-profit or government corporation.

Representative Barnes
 January 22, 1982
 page 2

Primary differences among State laws concern the requirements for exemption and whether the exemption is mandatory or optional. Corporate officer status and/or controlling, majority, or sole interest in the corporation are minimum qualifications in most states. The degree of corporate control required for exemption was not specified for Iowa.

In all cases, the exemption is accompanied by loss of FUTA tax credits on services performed by those exempted from State taxes. That is, if the exemption were in effect, the federal unemployment insurance tax rate would increase from a rate of .7 percent to a rate of 3.4 percent on the first \$6,000 of earnings. Assuming annual earnings exceed Alaska's taxable wage base of \$14,600, exemption would provide a net gain to the shareholder/employee of \$118 to \$650 per year, depending on the State tax rate assigned. The table below describes the effects of exemption on employers with minimum and maximum tax rates assigned by the Alaska Department of Labor.

Effect of Exemption from State Unemployment Insurance Taxes
 Alaska 1982

	minimum tax rate (1.22%)		maximum tax rate (4.86%)	
	current law	with exemption	current law	with exemption
FUTA tax	\$ 42	\$204	\$ 42	\$204
employer share	178	0	710	0
employee share	102	0	102	0
TOTAL	\$322	\$204	\$854	\$204
net change	\$118		\$650	

As you are aware, unemployment insurance is an extremely complex subject. If the terminology or law require further explanation, I will be happy to offer my assistance.

Attachments

The employer covered is determined by the number of days or weeks a worker is employed or the amount of the employer's quarterly or yearly payroll. Originally, most State laws covered only those employers who, within a year, had eight or more workers in each of 20 weeks. This was due largely to the coverage provisions of the FUTA. As the States gained experience in administering unemployment insurance and as a result of the 1954 and 1970 amendments to the FUTA smaller firms have been brought under the acts in all States.

Thirty-one States have adopted the Federal definition of employer; i.e., a quarterly payroll of \$1,500 in the calendar year or preceding calendar year or one worker in 20 weeks. Eight States provide the broadest possible coverage by including all employers who have any covered service in their employ. The other States have requirements of less than 20 weeks or payrolls other than \$1,500 in a calendar quarter (Table 100).

110 COVERAGE BY REASON OF A FEDERAL REQUIREMENT

The 1970 and 1976 amendments to the FUTA added to the types of services which, as a condition for approval of the State law, must be covered under the State law. ~~This Federal requirement for the extension of coverage differs from an extension of coverage by reason of Federal coverage. If a State law fails to cover services that are covered under the FUTA, the employer must pay the full Federal tax and the employee may get no benefits based on such services, but certification of the State law is unaffected.~~ If, however, a State law fails to cover services which the Federal law requires the State to cover, or excludes services from coverage, the State law would not be approved for purposes of tax credits against the Federal tax and no employer in the State would receive a tax credit for State contributions.

110.01 Coverage of nonprofit organizations.--Service for nonprofit organizations continues to be excluded from coverage under the FUTA, but some service is required to be covered under the State laws. Coverage under State laws is required for service for nonprofit organizations which employ four or more workers in 20 weeks, are organizations which are described in section 501 (c) (3) of the Federal Internal Revenue Code of 1954, and which are exempt from Federal income tax under section 501 (a) of the code. However, a number of States have covered nonprofit organizations under the regular coverage provisions. The State law is required to give each nonprofit organization that must be covered an option on financing benefits. Such nonprofit organizations must be given the right either to reimburse the State for benefits paid or pay contributions under the State law's regular tax provisions.

110.02 Coverage of governmental entities.--The Federal law requires that States cover most services for the State and its political subdivisions. When service is performed for an instrumentality owned by more than one State or political subdivision, coverage is determined based on the location of the work. See section 120. States are required to pay compensation based on service with a governmental entity or a nonprofit organization under the same terms and conditions as for other covered services. There are, however, special provisions applicable to school personnel between school terms. See section 450.03 for a discussion of these special provisions. The States are required to provide local governmental entities a choice of financing benefits either through reimbursement, contributions, or any other method deemed feasible by the State (Table 209).

Since the Federal law includes no size-of-firm restrictions for governmental entities as it does for nonprofit organizations, all governmental entities, regardless of size, must be covered. There are, however, certain types of services which the

*Comparison of State Unemployment Insurance Laws
U.S. Dept of Labor, Manpower Admin.*

MEMORANDUM

State of Alaska

TO: A. G. Zillig, Director
Employment Security Division
Department of Labor

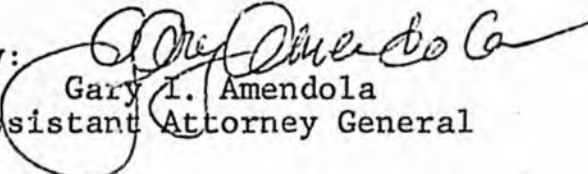
DATE: March 4, 1982

FILE NO:

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON
ATTORNEY GENERAL

SUBJECT: HB 726 and 863

By: 
Gary I. Amendola
Assistant Attorney General

You requested an opinion whether passage of HB 726 or HB 863 would cause our state unemployment laws to be out of conformity with a portion of the Federal Unemployment Tax Act, 26 U.S.C. § 3306(c).

26 U.S.C. § 3306(c) defines "employment" and exemptions therefrom for purposes of the federal act. AS 23.20.526 parallels the exemptions of the federal act and would be amended by passage of HB 726 or HB 863 as follows:

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(21) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.05;

(B) the corporation is not a government corporation;

(C) the employee owns directly or indirectly, or has the power to vote, 25 percent or more of any class of voting securities of the corporation (HB 726); or

(C) the employee is the sole owner of the corporation (HB 863); and

(D) the employee agrees that the services not be "employment" under this paragraph.

AS 23.20.005 and 010 state the purpose and policy of the Alaska Employment Security Act. One of Alaska's stated purposes is to cooperate with other state and federal programs to establish and promote employment systems throughout the several states and to obtain grants and privileges available from the federal government under the Federal Unemployment Tax Act.

The public policy of the State of Alaska is declared to be as follows:

"Economic insecurity due to involuntary unemployment is a serious menace to the health, morals and welfare of the people of the state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread ..." AS 23.20.010.

In State Department of Labor v. Boucher, 586 P2d 660 (Alaska 1978), the Supreme Court indicated that the primary purpose of the Alaska Employment Security Act is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual and society as a whole. See also Estes v. Department of Labor, 625 P2d 293 (Alaska 1981).

Another general purpose of the federal act (and the state act) and other social welfare acts of its kind is to protect those dependent upon others for employment during periods of high unemployment and times of unemployment due to other personal circumstances. Fahs v. Tregold Co-op Growers of Florida, 166 F2d 40 (CA5 1948); Usury v. Pilgrim Equipment Company, Inc., 527 F2d 1308 (CA Texas 1976).

Non-eligibility for certification under 42 U.S.C. § 503 or nonapproval of a portion of an employment security law of our state under 26 U.S.C. § 3304 would prevent the transfer of certain funds to Alaska from the federal government under 42 U.S.C. § 1103. It is our opinion that although HB 726 and HB 863 would create an additional exemption from the Alaska Employment Security Act, the exemption is not of such a nature that would cause any fiscal sanction against the State of Alaska.

The persons to be exempted from participation in the Alaska Employment Security Act, do not appear to be of the class of persons the act was meant to protect. These

Art Zillig, Director

-3-

March 4, 1982

persons are, by definition, substantial stockholders in the corporations in which they perform the services which they consent should not be deemed employment for the purposes of the act.

In conclusion, although HB 726 and HB 863, if passed, would expand the list of exemptions in the Act beyond that contained in its federal counterpart, the expansion is not such that would give rise to noncertification under 42 U.S.C. § 503 or nonapproval under 26 U.S.C. § 3304.

GTA/bap

HB 726
file

I. REQUEST

Bill/Resolution No. Committee Substitute for House Bill 726 (L & C)

Title "An Act providing an exemption from the Alaska Employment Security Act"

Requested by House Labor and Commerce Committee Date 3/5/82

II. FISCAL DETAIL

Agency Affected Labor

Program Category Affected Social Services

BRU, Program, or Subprogram(s) Affected Employment Security

(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 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

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

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

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

The provisions of this bill would not have a measurable effect on the administrative costs for unemployment insurance nor employer rates for purposes of the Unemployment Insurance Trust Fund.

IV. DATE 3/5/82

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Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

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