

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2559 HLC • SUNSET REVIEW BD OF CHIROPRACTIC - HB 1

ORGANIZATION AND FUNCTION

Created in 1939, the Alaska Board of Chiropractic Examiners is a regulatory board comprised of five members appointed by the Governor. Four are licensed chiropractors and one is a public individual.

The underlying reasons for this Board are fourfold. First, the Board is responsible for reviewing the applications of individuals desiring to enter the chiropractic profession in Alaska. Secondly, the Board has the responsibility of administering an examination to test the applicant's ability. Third, the Board is responsible for the adoption of regulations regarding the standards of professional practice in Alaska and fourth, to investigate and act upon complaints filed against members of the regulated profession.

To assist the Board, it has the staff support of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development which is comprised of two sections. The licensing section processes applications, maintains license files, collects statistics, answers inquiries, and provides administrative help to the Board. The investigation section provides investigative services to the Board in the event of consumer or other professional complaints.

The Board of Chiropractic Examiners issues licenses to applicants that have met all licensing requirement and have taken and passed the State examination. The Board may also issue a license without examination if the applicant holds a current license in another state whose licensing requirements are essentially equivalent to those of Alaska. In addition, the Board may issue a temporary permit to individuals apparently qualified until the next regular meeting of the Board.

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REPORT CONCLUSION

POLICY ISSUES

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

REPORT CONCLUSION

In our opinion, the Board of Chiropractic Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the effectiveness and efficiency of the Board.

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FINDINGS AND RECOMMENDATIONS

Prior Audit Recommendation No. 1

The Board of Chiropractic Examiners should eliminate Part I (written) of the State examination.

The Alaska State Board of Chiropractic Examiners has recognized the National Board examination by adopting through proposed regulation "persons applying for a chiropractic license by examination in the State of Alaska, graduating after January 1, 1978, are required to submit a Diplomate Certificate from the National Board of Chiropractic Examiners." The Diplomate Certificate is certification that the applicant has taken Parts I and II of the National Board and indicates the areas tested and examination results. The following areas of chiropractic are tested at the National level: General and Spinal Anatomy, Physiology, Chemistry, Pathology, Micro-Public Health, General and Neuro-Muscular Diagnosis, X-ray, Principles of Chiropractic, Chiropractic Practice, Associate Clinical Science, and Physiotherapy. The examination questions are objective in nature.

In addition to the requirement that the applicant provide the Board with the Diplomate Certificate, the State Board administers a State examination which basically consists of three parts. Part I is a written examination consisting mostly of subjective type questions. Part II involves X-ray identification and interpretation, and Part III consists of practical application of chiropractic technique. While Parts II and III of the State examination involve physical application of the applicant's knowledge through oral testing and actual adjustive techniques in case situations, the merits of the written examination (Part I) are questionable.

Part I of the State examination tests the applicant on topics, previously examined at the National Board level, such as anatomy, physiology, physiotherapy, chiropractic, diagnosis and X-ray. Also, in a 1971 opinion, the Attorney General stated that "the Board of Chiropractic Examiners has the authority to require an applicant to demonstrate competence only in those subjects not covered by the National Board."

Therefore, considering the redundancy of the State written examination over the National Board, the Attorney General's opinion on the topic and the State requirement of the applicant to take the National Board, we recommend the discontinuance of the State written examination.

Legislative Audit's Current Position

During 1980, the State Board sent a copy of the written State examination to the National Board of Chiropractic Examiners so they could review the State examination for redundancy.

The National Board's response was that any State examination is going to be redundant to the National Board examination since it covers such a large scope of material and that Alaska's written examination was 100% redundant. Therefore, we reiterate our prior audit recommendations that the Board eliminate Part I (written) of the State examination.

Prior Audit Recommendation No. 2

Legislation should be introduced requiring continuing education for chiropractors as a provision for license renewal.

The underlying purpose of continuing education is to permit professional education on a post-graduate level and allow for the maintenance and upgrading of professional competency.

According to the most recent figures provided by the Federation of Chiropractic Licensing Board's, thirty-nine states require some form of continuing education for license renewal. In December of 1977, the Alaska Chiropractic Society notified the Board of Chiropractic Examiners of its unanimous endorsement of a requirement of continuing education for license renewal. Of more significance, 94% of the respondents to the questionnaire were in favor of such a requirement and 78% knew of workshops or seminars that may qualify as continuing education that were in the respondents' locality.

From information available, it appears the Board expressed interest in a continuing education requirement in early 1977. We recommend that this worthwhile interest be regenerated towards implementing a sound post-graduate education requirement tied to the biennial license renewal. Accordingly, regulations should be promulgated for the administration of such a program by the Board.

Legislative Audit's Current Position

Alaska Statute 08.20.170(d) requires the Board to adopt "regulations which insure that renewal of license is contingent on proof of continued competency by a practitioner." Continuing education is one way of promoting continued competency. In October of 1981, the Board drafted continuing education regulations, but has not yet adopted them. Therefore, to fulfill the Alaska Statute requirement we recommend that the Board should adopt continuing education regulations for chiropractors as a provision for license renewal.

Recommendation No. 3

The Board of Chiropractic Examiners should improve examination guidelines.

During our review, we noted two examples of an employer/employee relationship existing between a Board member and the individual taking the examination. Examination guidelines should be established to prevent situations where a Board member/employer is administering and grading the State examination for an employee. These guidelines would prevent any appearance of a conflict of interest for the Board member and the examinee.

Recommendation No. 4

The Board of Chiropractic Examiners should revise regulation 12 AAC 16.200 regarding the issuance of temporary permits.

Currently, AS 08.20.160 allows for the issuance of temporary permits "to persons apparently qualified until the next regular meeting of the Board." The Board also adopted 12 AAC 16.200 as additional regulations for issuing temporary permits. The regulations stipulate that a temporary permit holder must "practice in association with a licensed chiropractor in the State." Currently there is no definition of "association." The term "association with" does not limit the scope of services that can be performed nor requires direct or indirect supervision by the licensed chiropractor. Therefore, a temporary permit holder is allowed to practice unsupervised, for up to 6 months prior to taking the State examination.

If the Board feels that the State examination, both written and practical is necessary for public protection then the issuance of temporary permits to individuals who can practice chiropractic unsupervised is not in the best interests of public health.

Therefore, the Board should revise the regulations on the issuance of temporary permits to include either a supervisory requirement or a limitation on the services that can be performed.

Recommendation No. 5

The Board of Chiropractic Examiners should issue, and the Division of Occupational Licensing should maintain the yearly reports as required by statute.

Alaska Statute 37.07 requires the Board to prepare and issue a performance report which should include the Board's goals, objectives, licensing, and financial information. For Fiscal Years 1981 and 1982, we could not locate the required report for the Board of Chiropractic Examiners. Without the report, neither the Legislature nor the Governor have an adequate basis for evaluating and analyzing the Board's performance for the year.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive but to address those areas we were able to cover during our review.

- I. The extent to which the board, commission or program has operated in the public interest.
 - A. The written examination requirement is redundant of the required National Board examination, except for certain areas covering Alaska law, resulting in duplicate testing of Alaskan applicants (see Recommendation No. 1).
 - B. The Board has not established a formal passing grade for the State examination.
- 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.
 - A. The Division of Occupational Licensing (OL) has not provided licensing and examination statistics for the Board to use in their annual report.
- III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. The Board has initiated the repeal of the regulation on advertising that was in violation of antitrust laws.
 - B. The Board has drafted, but not yet adopted, a regulation requiring continuing education for license renewal.
 - C. The statutes providing for licensure of Associate Chiropractors has been repealed.
- 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.
 - A. The Board publishes public notices of all examinations, meetings, and regulation changes.

- V. The extent to which the board, commission or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board announced proposed regulation changes or additions in the newspaper, according to the Administrative Procedures Act.
- 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.
- A. According to the Division of Occupational Licensing's files, there have been approximately fifteen investigation cases in the past four years with an average case length of eleven months. No complaints have been filed with the Office of the Ombudsman or the Attorney General's office.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
- A. The Board issues temporary licenses to individuals so they may practice unsupervised, until the next scheduled examination (see Recommendation No. 4).
- 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.
- A. Application for licensure as a chiropractor require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.
- 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.

Please refer to the recommendations section of this report.

APPENDIX

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APPENDIX A

BOARD OF CHIROPRACTIC EXAMINERS
REVENUES COMPARED WITH EXPENDITURES

For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

<u>Average Revenue</u> (Note 2)	\$ 8,680
<u>Less: Expenditures</u> (Note 3)	<u>42,240</u>
<u>Excess of Expenditures</u> <u>Over Revenues</u>	<u>\$33,560</u>

<u>Revenue Type</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application
Re-examination Fee	20	With application
Temporary Permit	50	With application
Initial License	200	With license issuance
Renewal License	200	Every four years

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and accordingly we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes 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 1981 and 1982 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments (such as the Department of Law) assisting the boards and the Division.

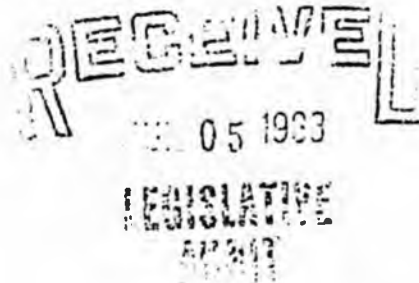
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**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

July 5, 1983



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

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on your February 28, 1983 audit findings entitled A Performance Report on the Board of Chiropractic Examiners, July 1, 1980 to February 28, 1983. The Department of Commerce and Economic Development feels that the licensing of chiropractors and the continuation of the Board of Chiropractic Examiners is in the public interest. The following are our comments with regard to the specific recommendations outlined in your findings.

Prior Audit Recommendation No. 1: The Board of Chiropractic Examiners should eliminate Part I (written) of the State Examination.

The department does not object to this recommendation. The audit findings present substantial evidence that part one of the State examination duplicates the national examination by testing the same knowledge base. It is the policy of the department to oppose unnecessary obstacles to licensure since they may delay or discourage competent practitioners from offering their services to the public. However, the board contends that there are several key differences in the two examinations which merit retention of both.

First, the national examination is normally taken by students immediately out of school and is, therefore, a weaker indicator of the individual's ability to retain basic knowledge over time.

Second, the national examination has straight multiple choice questions while the State written examination tests the knowledge base through questions which emphasize practical applications.

For these two reasons, primarily, the board feels that the State's written portion provides a reasonable and more desirable level of public protection. In view of the board's concerns, consideration might be given to requiring a State written examination only for those candidates who have not passed the national examination within a reasonable period of time (e.g., two years) prior to application for licensure.

July 7, 1983

Prior Audit Recommendation No. 2: Legislation should be introduced requiring continuing education for chiropractors as a provision of license renewal. The department concurs with the audit finding that "to fulfill the Alaska Statutes...the board should adopt continuing education regulations for chiropractors as a provision for license renewal." However, the department questions the assumption that continuing education assures continuing competence and that it is the State's responsibility to require such education. Continuing education regulations entail additional costs of doing business which are passed on to the consumer.

Recommendation No. 3: The Board of Chiropractic Examiners should improve examination guidelines. The department concurs with this recommendation. Written examination guidelines should be established and followed to prevent situations where board member/employer is administering and grading the State examination for his/her employee.

Recommendation No. 4: The board should revise regulation 12 AAC 16.200 regarding the issuance of temporary permits. The department concurs with this recommendation. More appropriate controls over practice under temporary permits should be established to assure public protection.

Recommendation No. 5: The board should fulfill its statutory reporting requirements. The department concurs with this recommendation.

Thank you again for this opportunity to comment on your findings.

Sincerely,



Richard A. Lyon
Commissioner

RAL/saH/37
705b

Board of Chiropractic Examiners

Current Number of Licensees - 95

FY '83 - Allocated 10.5 (Board Travel and Per Diem)

Revenues (7/1/82 - 7/1/83)	5.5	
Contractual	23.0	
Board Travel and Per Diem		12.9
**Personal Services		8.6
*Contractual		1.5
	Total	<u>23.0</u>

FY '84 - Allocated 5.5 (Board Travel and Per Diem)

Revenues (7/1/83 - 2/1/84)	1.4	
Contractual	9.5	
Board Travel and Per Diem		5.0
**Personal Services		4.1
*Contractual		.4
	Total	<u>9.5</u>

FY '85 Board Component - Division Budget Total - 95.0
Board of Chiropractic Examiners Allocation - 2.3

- * The above items are funded in the division's budget under the Administration component.
- ** Personal services or 1/3 of one licensing examiner's position.

(1) meets the requirements of 12 AAC 16.030;

(2) furnishes the board with the name of the licensed chiropractor in the state with whom he or she will associate while practicing under authority of the temporary permit;

(3) has not previously taken and failed the examination; and

(4) has not previously held a temporary permit.

(b) A temporary permit holder must

(1) provide the board with a statement sworn to by a licensed chiropractor in the state with whom the temporary permit holder will practice, that the licensed chiropractor assumes all legal liability for the practice of the temporary permit holder.

(2) display his or her temporary permit in a conspicuous place in the office where the holder practices chiropractic; and

(3) inform the board of a change in his or her mailing and practicing address.

(c) A temporary permit is valid until the results of the next scheduled examination are received by the applicant. If an applicant is unable to appear for the first scheduled examination, the board will, in its discretion, extend the temporary permit until the results of the next scheduled examination are received. The board will not extend a temporary permit more than once.

(d) Temporary permits are subject to termination by the board at any time if, in the board's determination, the holder of the permit is violating ethical behavior or law after being warned by the board that this action in regard to him or her was being contemplated. (Eff. 3/8/71. Reg. 37, am 3/31/82, Reg. 81; am 10/21/82, Reg. 84)

Authority: AS 08.20.055
AS 08.20.160

12 AAC 16.210. ASSOCIATES. Repealed 9/30/81.

12 AAC 16.211. CHIROPRACTIC ASSOCIATES. (a) No associate may treat or diagnose a patient professionally unless

(1) he establishes and provides the board with documented evidence of a supervisory relationship which includes

(A) name, license number, address and signature of the licensed supervising chiropractor;

12 AAC 16.120. DISTURBANCE. An applicant may not communicate with another applicant during the examination. Communication with another applicant will result in immediate dismissal from the entire examination. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79)

Authority: AS 08.20.055
AS 08.20.130(a)

12 AAC 16.130. SECTIONS OF EXAMINATION. (a) The examination consists of the following sections:

(1) a written examination covering subjects described in 12 AAC 16.070 and the provisions of AS 08.20;

(2) a practical and oral examination of the following subjects:

(A) Clinical proficiency, including manipulation technique, physiotherapy and clinical examination procedures;

(B) physical diagnosis;

(C) X-ray technique and interpretation; and

(D) Any other subjects which, in the opinion of the board, are necessary to demonstrate knowledge of chiropractic as defined in AS 08.20.220.

(b) An applicant shall rely solely on his own judgment for the meaning of each question and on his own knowledge of the subject in answering each question.

(c) A grade of at least 75 percent on the written examination and a grade of at least 75 percent on each subject of the practical and oral section is a passing grade. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79; am 10/21/82, Reg. 84; am 4/22/83, Reg. 86)

Authority: AS 08.20.055
AS 08.20.120
AS 08.20.130i

12 AAC 16.140. GRADES. (a) An applicant failing to make required grade average will be credited for the subjects passed.

(b) An applicant failing to attain a general average rating of 75 percent after two examinations is required to produce evidence of refresher courses in the subjects failed before he is allowed a reexamination. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055
AS 08.20.130

12 AAC 16.150. REEXAMINATION. An applicant may apply for reexamination by

(1) informing the board of his intention at least 30 days before the next regularly scheduled examination; and

(2) paying the reexamination fee. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.160. TIME. Repealed 9/30/81.

12 AAC 16.170. SPECIAL EXAMINATION. A special examination of an applicant may be allowed if all members of the board agree and notice of 30 days in writing is given to the board and the applicant has complied with the provisions of this chapter and AS 08.20. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.180. RECONSIDERATION OF PAPERS. The examining board will not reconsider an applicant's examination papers unless the applicant presents his reason in writing to the board. The applicant is bound by the decision of the board. (Eff. 3/8/71, Reg. 37)

Authority: AS 08.20.055

12 AAC 16.190. LICENSES AND CERTIFICATES. (a) The board will issue a renewable consecutively numbered license to a person passing the examination.

(b) The board will issue a certificate to a person passing the examination. The certificate, issued on a one-time basis, will contain the signatures of all board members. (Eff. 3/8/71, Reg. 37; am 9/30/81, Reg. 79)

Authority: AS 08.20.055

12 AAC 16.200. TEMPORARY PERMITS. (a) The board will, in its discretion, issue a temporary permit to an applicant who

SUNSET
REVIEW

BOARD of
EXAMINERS
in OPTOMETRY

4

A PERFORMANCE REPORT
OF THE BOARD OF
EXAMINERS IN OPTOMETRY

July 1, 1980 - March 31, 1983

Audit Control Number
08-1114-52-83-R

Commissioner, Department of
Commerce and Economic
Development

Richard A. Lyon

Deputy Commissioners, Department
of Commerce and Economic
Development

Vincent O'Reilly
Terry Elder

Members of the
Board of Examiners in Optometry

Chairman
Secretary
Member
Member
Member

Maynard Falconer, O.D.
John Demske, O.D.
Robert O'Connell, O.D.
Vacant
Vacant

STATE OF ALASKA

AUDIT DIVISION
FOUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

March 31, 1983

Members of the
Legislative Budget and Audit Committee:

In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE BOARD OF EXAMINERS IN OPTOMETRY

July 1, 1980 - March 31, 1983



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

TABLE OF CONTENTS

	<u>Page</u>
Purpose and Scope of the Report.	1
Organization and Function.	3
Report Conclusion.	5
Findings and Recommendation.	7
Analysis of Public Need.	9
Appendix:	
A. Board of Examiners in Optometry Revenues Compared with Expenditures	13
Agency Response:	
Department of Commerce and Economic Development	15

PURPOSE AND SCOPE OF THE REPORT

Purpose

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have examined the activities of the Board of Examiners in Optometry for the past three fiscal years to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Examiners in Optometry should be reestablished. The law now specifies that the Board will terminate June 30, 1984, and have one year from that date to conclude its affairs.

Scope

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the license examiners.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's Opinions applicable to professional boards.

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ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry is a regulatory board consisting of five persons; four optometrists and one public member, appointed by the Governor. Board members serve staggered terms of four years.

The Board regulates the practice of optometry. The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling optometry practices.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated optometry statutes or regulations.

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REPORT CONCLUSION

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

Report Conclusion

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Board of Examiners in Optometry should repeal its anti-competitive and restrictive regulations [12 AAC 48.070(a)-(e)].

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Legislative Audit's 1978 report on the Board recommended repeal of 12 AAC 48.070 subsections (b) and (c) because of their restrictive and anti-competitive nature.

Regulation 12 AAC 48.063 requires certain information to be contained in advertising in the same type size as the main body of the advertisement. Regulation 12 AAC 48.070(a)(1), (2), (3), (6), and (8) limit advertising. Advertising is not allowable except as delineated by 12 AAC 48. This includes limitations on type size in ads, display of merchandise, shape and size of signs, and house-to-house solicitation.

Regulation 12 AAC 48.070(b), working for a corporation, states in part:

An optometrist may not practice the profession for a commercial establishment or business primarily engaged in trade or commerce for profit.

Similarly, regulation 12 AAC 48.070(c), prohibiting the practice of optometry and the advertising of same as an employee, lessee, sublessee of, or in connection with, a commercial or mercantile establishment, states in part:

It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile establishment.

Regulation 12 AAC 48.070(d), which prohibits the practice of optometry on premises where any other materials are dispensed, states in part:

No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

Finally, regulation 12 AAC 48.070(e), which limits the nature of signs, states in part:

No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours. It may be used only on office windows or at an entrance to his office.

The point of view that these regulations are restrictive, anticompetitive, and absent of clear statutory policy to restrain competition is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part that:

There must exist clear statutory policy to restrain competition before a state regulatory agency may promulgate regulations to restrain competition if federal antitrust immunity is to occur, 12 AAC 48.063 may be construed to limit advertising to print media, and is anticompetitive and violative of antitrust law since no such restriction is found in the statute prohibiting false or misleading advertising. 12 AAC 48.070 subsections (a)(1), (2), (3), and (6) impede competition and go beyond what is necessary to limit false and misleading advertising, the only specific statutory prohibition, they are violative of antitrust law. Subsection (a)(8) is likewise anticompetitive. Subsection (b) restrains competitive opportunity among optometrists and there is an absence of specific statutory policy to support the regulation. Therefore, it is unlawful. Subsection (c) is violative of antitrust law on the same basis as subsection (b). Subsection (d) clearly limits competitive opportunity and has no basis in specific statutory authority. It is, therefore, violative of antitrust law. Subsection (e) is anticompetitive, without statutory authorization, and, consequently, violative of antitrust law.

In a memorandum dated October 6, 1978 addressing 12 AAC 48.070 (b) and (c), the attorney for the Legislative Affairs Agency states that those subsections may be unauthorized and restrictive.

In addition, if no action is taken by the Board, we recommend that the State Legislature consider the repeal of the regulations.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

- I. The extent to which the board, commission or program has operated in the public interest.
 - A. The Board has expanded regulations governing continuing education requirements for license renewal.
 - B. The Board has adopted regulations concerning working for a corporation and leasing of commercial property which unduly restricts the practice of optometry by licensed, qualified optometrists which may be in violation of antitrust laws (see Recommendation No. 1).
- 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.
 - A. The Governor has not appointed the public member to the Board. It has been operating for almost a year with only four members.
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
 - A. The Board recommended CSSB 551 to help clarify the optometry law by requiring the written portion of the exam to be the National Board of Examiners in Optometry examination.
- 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.
 - A. The Board placed advertisements requesting input on proposed regulation changes.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board's meetings and examinations are advertised in newspapers by OL to encourage public participation.
- 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 or the Ombudsman have been processed and resolved.
- A. The Office of the Ombudsman and the Attorney General's Office has no consumer complaints regarding the Optometry Board.
- 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.
- A. A low number of complaints were filed with OL against optometrists in the last three years.
- B. We found no instances where the Board had licensed unqualified practitioners.
- 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.
- A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.
- 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.

Please refer to the previous section, Findings and Recommendation.

APPENDIX

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APPENDIX A

BOARD OF EXAMINERS IN OPTOMETRY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended 1982
(UNAUDITED)
(Note 1)

Average Revenue (Note 2)	\$ 6,515
Expenditures (Note 3)	<u>34,514</u>
Excess of Expenditures Over Revenues	<u>\$ (27,999)</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application
Reexamination Fee For Written Portion	\$ 50	With application for reexamination
Waiver of Examination Fee	\$ 50	With application
Certificate Fee	\$100	With issuance of license
Renewal Fee	\$200	Every four years
Branch Office Registration Fee	\$100	Every four years
Late Fee Fine	\$ 10	With late payment

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average for the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by board members, such as travel and per diem, and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments such as the Department of Law, assisting the boards and the Division.

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 12, 1983

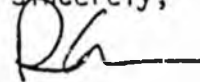
Mr. Gerald L. Wilkerson, CPA
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99811

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the State Board of Examiners in Optometry.

The department has reviewed your findings regarding the anticompetitive nature of certain regulations and we concur with your recommendations. Thank you again for this opportunity to comment.

Sincerely,



Richard A. Lyon
Commissioner

RAL/mc5/3b
812a

Board of Examiners in Optometry

Current Number of Licensees - 81

FY '83 - Allocated 6.2 (Board Travel and Per Diem)

Revenues (7/1/82 - 7/1/83)	1.4	
Contractual	9.4	
Board Travel and Per Diem		3.1
**Personal Services		5.0
*Contractual		<u>1.3</u>
	Total	9.4

FY '84 - Allocated 3.4 (Board Travel and Per Diem)

Revenues (7/1/83 - 2/1/84)	1.2	
Contractual	5.2	
Board Travel and Per Diem		1.4
**Personal Services (7/1/83 - 2/1/84)		3.1
*Contractual		<u>.7</u>
	Total	5.2

FY '85 - Board Component - Division Budget Total - 95.0
Board of Optometry Allocation - 1.9

- * The above items are funded in the division's budget under the Administrative component.
- ** Personal services are 1/5 of one licensing examiner's position.

SOLDOTNA OPTOMETRY CLINIC
JOHN A. DEMSKE, O.D.
DOCTOR OF OPTOMETRY
WOODRUEF BLDG. - SUITE 202, 155 SMITH WAY
SOLDOTNA, AK 99669

TELEPHONE (907) 262-3168

March 6, 1982

The Honorable Richard Eliason
Alaska State Senate
Pouch V
Juneau, Ak. 99811

Dear Senator Eliason,

Per our conversation during the hearing of last week concerning SB 437, Continuation of the Board of Examiners in Optometry, I have discussed the issue of the application photograph with the other members of the board.

Both board members expressed a desire to retain the applicants photograph for proof of identification. The photograph is our only method to ensure that the individual sitting for the exam is indeed the applicant who filed the required documents by mail. The only other alternative that we can think of is to have fingerprints.

If you have an alternative that is more agreeable with the EEO, we would appreciate your recommendations. Thank you for your time in this matter.

Sincerely,



cc: Maynard Falconer, O.D.
Chairman, Optometry Board

Wanda Fleming, Licensing Examiner

Member

American Optometric Association

(E) ocular motility and neurological integrity;

(F) a far point subjective examination, a static retinoscopy, and a subjective refraction;

(G) a near point subjective examination, a dynamic retinoscopy and a subjective refraction;

(H) tests of accommodation and convergence and binocular coordination at far and near, preferably made with a phoropter; and

(I) confrontation fields and tonometry tests;

(2) if contact lenses are prescribed, a routine vision examination includes, in addition to the requirements of subsection (1)

(A) a slit lamp evaluation;

(B) a fluorescein examination;

(C) a diagnostic evaluation when soft lenses are prescribed; and

(D) evaluation within three months in the case of firm lenses and within six months in the case of soft lenses. (Eff. 2/14/78, Reg. 65; am 4/22/83, Reg. 86)

Authority: AS 08.72.050
AS 08.72.060

12 AAC 48.070. UNPROFESSIONAL CONDUCT. (a) An optometrist may not engage in unprofessional conduct within the meaning of AS 08.72.240(3). Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) except as provided by sec. 63 of this chapter, soliciting patients by advertising of any nature or description regardless of means or media employed; however, upon the opening, reopening or removal of any office for the practice of optometry, an optometrist may publish, in local newspapers, an announcement, which announcement is limited to a statement of his name, title, profession, degrees, specialty, address, telephone number and office hours; the announcement may not be published for more

than 90 days after the opening, reopening, or removal of the office; the announcement may not exceed eight square inches in area;

(2) displaying any spectacle, eyeglasses or eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or display cases outside the office, where the display of the merchandise, material or display would make it visible from outside the office;

(3) using display or boldface type or type that is in any way dissimilar in size, shape or color to that used for others of the healing arts in the same directory;

(4) using any false, deceptive, or misleading representation in connection with any advertising concerning ophthalmic prosthetic products or optometric services;

(5) using "bait" advertising;

(6) using signs whether painted, neon, decalcomania, colored or otherwise, and whether constructed in the form of eyes or structures resembling them, or frames or mountings for any type of lenses or other ophthalmic prosthetic products displayed in any manner or place connected with the practice of optometry;

(7) using publicly, a sign, card, stationery, or other publicity medium which fails to clearly identify the individual optometrist or optometrists engaged in practice in an office or practice location, or using a name other than the name under which the optometrist is licensed including such designations as "optical company," "optical laboratory," or words or phrases of like import which are out of keeping with the use of the title "Doctor of Optometry" and the practice of optometry as a profession;

(8) soliciting, personally or through agents, from house to house for the rendering of optometric services or sale of ophthalmic prosthetic products;

(9) advertising self-styled superiority or the performance of services in a manner presumed to be superior, or the making of untruthful, improbable or impossible claims regarding treatments, cures, or values;

(10) lending, leasing, renting, or in any other manner placing a certificate of registration at the disposal of or in the service of any person not licensed to practice optometry in this state.

(b) An optometrist may not practice the profession on a salary or commission basis for a commercial establishment or business primarily engaged in trade or commerce for profit, or associate with such an establishment or business for the practice of optometry. However, this subsection does not prohibit professional incorporation under the Professional Corporation Act, AS 10.45. The fact that an officer, trustee, director, agent, or employee of a commercial establishment or business is an optometrist does not permit the establishment or business to do the acts prohibited in this subsection, nor is that fact a defense to board action against any of the persons mentioned in this subsection for a violation of this subsection. However, this subsection does not apply to a partnership of two or more registered and licensed optometrists who practice under their own names.

(c) It is unlawful for an optometrist to practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or to practice optometry in connection with one, or to advertise either in person or through a commercial or mercantile establishment that he is a registered practitioner and is practicing or will practice optometry as an employee, lessee, or sublessee of a commercial or mercantile establishment or in connection with one. Nothing in this subsection prohibits the rendering of professional services to the officers and employees of a person, firm, or corporation by an optometrist, whether or not the compensation for the services is paid by the officers and employees or by the employer or jointly by all or any of them.

(d) No optometrist may practice in or on premises where any materials other than those necessary to render his professional services are dispensed to the public.

(e) No optometrist may display a sign containing other than his name, profession, recognized specialty, and office hours, which sign may be used only on office windows or at an entrance to his office. Letters may not be luminous or illuminated.

(f) No optometrist may represent himself or herself as a specialist in an optometric field unless he or she is certified, as a diplomate of the American Academy of Optometry or as a fellow of the College of Vision Development, in a recognized specialty. The board recognizes American Academy certification in contact lenses, binocular vision, geriatric care, and low vision, and College of Vision Development fellowships in vision training and developmental vision. (In effect before 7/28/59; am 9/10/65, Reg. 21; am 4/24/71, Reg. 37; am 2/14/78, Reg. 65; am 7/6/78, Reg. 67; am 6/14/80, Reg. 74)

Authority: AS 08.72.050(4)
AS 08.72.060(e)
AS 08.72.240(3)

12 AAC 48.080. DEFINITIONS. Unless the content in this chapter otherwise states:

(1) "Act," "law," or "statute" refers to AS 08.72.;

(2) "regulations" referred to are those made by the board in keeping with AS 08.72.;

(3) "registration" means registration under AS 08.72.;

(4) "chain exploitation" means establish-

SUNSET
REVIEW
BOARD of
PUBLIC
ACCOUNT-
ANCY

5

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 10, 1984

FEB 10 1984

The Honorable Joe Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Enclosed are six of the seven sunset audit reports of regulatory boards that will terminate June 30, 1984. I am forwarding these reports to you so that they may be distributed to the appropriate standing committees you will designate to perform the legislative oversight function.

The boards are:

1. Board of Chiropractic Examiners (AS 08.20.010)
2. Board of Examiners in Optometry (AS 08.72.010)
3. Board of Pharmacy (AS 08.80.010)
4. Board of Barbers and Hairdressers (AS 08.13.010)
5. State Board of Registration for Architects, Engineers, and Land Surveyors (08.48.011)
6. Board of Public Accountancy (AS 08.04.010)

The audit on the Alcoholic Beverage Control Board (AS 04.06-.010) is in process and will be available once released by the Legislative Budget and Audit Committee.

Please note that AS 08.03.020(a) provides that upon termination, each board continues in existence until June 30th of the next succeeding year for the purpose of concluding its affairs.

Sincerely,



Rep. Robert Bettisworth,
Chairman
Legislative Budget and Audit
Committee

A PERFORMANCE REVIEW
OF THE
BOARD OF PUBLIC ACCOUNTANCY

November 7, 1983

Commissioner of the Department of Commerce and Economic Development	-	RICHARD A. LYON
Deputy Commissioner of the Department of Commerce and Economic Development	-	J. VINCENT O'REILLY
Director of the Division of Occupational Licensing	-	HARRY D. TRAEGER

Members of the
Board of Public Accountancy

President	-	J. Shelby Stastny
Member	-	L. Pete Hogan*
Member	-	Deloris Dash*
Member	-	Michael T. Cook*
Member	-	Vernon R. Johnson
Member	-	Sandra L. Langland
Member	-	Kaye May

* term expired April 25, 1983

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

November 7, 1983

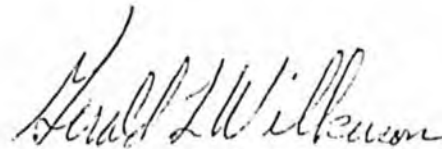
Members of the
Legislative Budget and Audit Committee:

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

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

The Division contracted with R.W. Pavitt and Associates, Inc. to perform this review. This firm is a reputable management consultant business that has been in operation for several years. In addition, it conducted the review for us in 1979.

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



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

R. W. PAVITT AND ASSOCIATES, INC.
PLANNING CONSULTANTS

November 7, 1983

LEGISLATIVE AUDIT DIVISION
State of Alaska
Pouch W
Juneau, Alaska 99811

Attention Merle R. Jenson, Deputy Legislative Auditor

Dear Mr. Jenson:

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

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

Respectfully,



R. W. Pavitt, AICP
President

RWP/bp

A PERFORMANCE REVIEW OF THE BOARD OF PUBLIC ACCOUNTANCY

Table of Contents

	<u>Page</u>
PURPOSE AND SCOPE OF THE REVIEW	- 1 -
ORGANIZATION AND FUNCTION	- 2 -
REPORT CONCLUSION	- 3 -
FINDINGS AND RECOMMENDATIONS	- 4 -
ANALYSIS OF PUBLIC NEED	- 8 -

Appendix

REVENUES COMPARED WITH EXPENDITURES	- 10 -
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Responses

Agency Response:

Department of Commerce and Economic
Development

PURPOSE AND SCOPE OF THE REVIEW

Purpose

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

As required by AS 44.66.050, this report shall be considered during the legislative oversight procedure in determining whether the Board of Public Accountancy should be continued or reestablished. The law currently specifies that this Board will terminate on June 30, 1984, but will continue until June 30, 1985 for the purpose of concluding its affairs.

Scope

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

- (1) Applicable Alaska Statutes and Alaska Administrative Code regulations;
- (2) Records, minutes and documents of the Board and the Division of Occupational Licensing;
- (3) Licensing and certification requirements of other jurisdictions;
- (4) Interviews with Board members
- (5) Interviews conducted with personnel of:
Division of Occupational Licensing
Office of the Ombudsman
Human Rights Commission
- (6) Complaints filed with:
Human Rights Commission
Office of the Ombudsman

ORGANIZATION AND FUNCTION

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

The Act was further amended in 1980 (Chapter 82 SLA 1980) to provide that of the seven board members, five shall be certified public accountants and two members shall be public members. Other changes, both technical and substantive, were made in the 1980 amendments, but the Accountancy Act as amended continues to assign to the board the following major responsibilities:

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

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

REPORT CONCLUSION

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

That conclusion is supported by the following rationale:

- Financial statements, audited and attested by certified public accountants, are relied on by many persons required to make judgments on important financial and business transactions. Users of such financial statements cannot reasonably be expected to investigate the individual qualifications and competency of every accountant who performs the attest function.
- State licensing and regulation protects the public from incompetent and fraudulent practitioners.
- State licensing and regulation assures the public that only individuals who have proven themselves skilled and knowledgeable of technical accounting principles and procedures may perform the attest function.
- The public interest is advanced when individuals, financial institutions, businesses and government agencies are able to identify and rely on public accountants who have demonstrated professional skill and competence.

All fifty states of these United States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands require that a person must pass the Uniform CPA Examination in order to qualify for a CPA license. Every jurisdiction has found it in the public interest to pass laws regulating public accountancy, and each has established a board of accountancy to administer and enforce the laws. Although the requirements of those laws with respect to experience, education, age, citizenship and residency vary somewhat from one jurisdiction to another, the requirements of the Alaska Accountancy Act of 1960, as amended, appear reasonable and prudent when reviewed along with the accountancy laws of other jurisdictions.

The Alaska Statute governing public accountancy is clearly designed to set apart those who have met certain qualifications for a license, and

to restrict the use of the titles "Certified Public Accountant" and "Public Accountant" to those who have so qualified. The policies and practices of the Board of Public Accountancy observed in the conduct of this review appear to be consistent with that objective.

FINDINGS AND RECOMMENDATIONS

FINDINGS

An exhaustive performance audit of the Board of Public Accountancy was conducted in the fall of 1979. Eight specific recommendations were made in that review. The recommendations made, and actions taken pursuant to the legislative oversight hearings of 1980 follow:

Recommendation No. 1

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

Action

Recommendation accomplished in Chapter 82, SLA 1980)

Recommendation No. 2

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

Action

None. Over 6 months have passed since the terms of 3 members of the board have expired. The board has submitted a list of names to the Governor's Office, but as of November 7, 1983, no appointments have been made. (see Recommendation No. 1; this review)

Recommendation No. 3

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

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 4

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

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 5

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

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 6

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

Action

Recommendation accomplished in Chapter 82, SLA 1980

Recommendation No. 7

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

Action

DOL's record-keeping methods and procedures have shown substantial improvement. Much of the essential data is now maintained on DOL's computer system, and appears to be easily accessible and retrievable.

Recommendation No. 8

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

Action

Board minutes, and interviews with board members and DOL personnel indicate that great improvement has been made regarding the investigatory function of DOL as related to public accountancy. Reports on cases in progress are now made at nearly every board meeting, and much of the backlog of public accountancy cases has been cleared up and the cases closed. (see Recommendation No. 2; this review)

In summary, it is the finding of this review that nearly all of the recommendations made in the 1979 sunset review of the Board of Public Accountancy have been implemented. The Board currently appears to be operating smoothly and efficiently in accomplishing its statutory responsibilities.

RECOMMENDATIONS

Following are the recommendations of this review:

Recommendation No. 1

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

Slow appointment procedures make it difficult for the Board to operate at peak efficiency. While it is true that "a member continues to serve until a successor is appointed" (AS 08.04.040), it is unreasonable to expect those members whose terms have expired to invest the many hours of time required of board members over an extended period of time.

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

It is recommended that the Office of the Governor expeditiously appoint qualified new members to the three expired Board seats, and continue to make appointments or reappointments to this Board in a timely manner.

Recommendation No. 2

The records of the investigations unit of DOL should be systematized and automated.

Although much of the work done by the investigatory personnel of DOL is confidential in nature, the same is true of the Ombudsman's Office, the Human Rights Commission and numerous other State agencies. They have

invariably found, however, that statistical information regarding investigations is made immeasurably faster and simpler to store and retrieve using modern computer technology.

Considering the many boards, commissions and functions served by the investigations unit, automation of these records and statistics would be of substantial assistance to the overall effectiveness and efficiency of the Division of Occupational Licensing.

*

ANALYSIS OF PUBLIC NEED

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

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

- II. The extent to which the operation of the board, commission or agency program has been impeded or enhanced by existing statutes, procedures and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 1. Operation of the Board has been enhanced by improvements in DOL's administration, record-keeping and statistical capabilities.
 2. Operation of the Board has been enhanced by improvements in DOL's investigations of public accountancy matters, and by the development of better rapport between the Board and its investigatory arm.

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

1. The Board has recommended several amendments to the Accountability Act of 1960 which appear to be consistent with other jurisdictions and generally in the public 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. Individuals who contact Board members or the Licensing Examiner who wish to present information, ask questions or register complaints are invited and encouraged to attend Board meetings.

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

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

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

1. In the past four years, two complaints concerning the Board's activities were filed with the Ombudsman's Office. A complaint in 1980 charging the board with unfair handling of an application

was found by the ombudsman to be unsupported, and a 1982 complaint dealing with an anticipated reapplication problem proved to be a misunderstanding that was rapidly resolved to the complainant's satisfaction.

2. No complaints regarding the Board's practices or activities have been recorded in the past four years by the Human Rights Commission or the Equal Opportunity Office.

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

1. The Board has proposed and adopted regulations and standards with respect to acceptable experience necessary for certification.
2. The Board has proposed and adopted regulations for continuing professional education (CPE) as a requisite for license renewal.
3. The Board exercises diligence to assure that only those individuals who fully comply with the requirements of the statute and regulations are certificated to practice public accountancy.

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

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

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.

Please see RECOMMENDATIONS subsection of this review.

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

January 26, 1984



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

Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the November 7, 1983 audit findings entitled A Performance Report of the Board of Public Accountancy. The Department of Commerce and Economic Development feels that the licensing of certified public accountants and the continuation of the Board of Public Accountancy is in the public interest. The following are our comments with regard to the specific recommendations outlined in your findings.

Recommendation No. 1: The Board of Public Accountancy should be brought to its full complement of seven members and maintained at that strength by means of timely appointments of qualified professional and public members.

The department does not object to this recommendation.

Recommendation No. 2: The records of the investigations unit of DOL should be systematized and automated.

The department concurs with this recommendation. The investigations section is in the planning stages for computerizing files for tracking and statistical use. Actual entry into the computer system will occur following completion of the entries of all licensing data and design of security measures. Investigation entries could occur within a year.

Thank you again for this opportunity to comment on the findings.

Sincerely,

A handwritten signature in dark ink, appearing to be "Richard A. Lyon".

Richard A. Lyon
Commissioner

RAL/cw#23W1
12684b

F.O. # 58

VETERANS AFFAIRS

(PREPARED BY OMB)

BACKGROUND

- 13 statutory references to veterans
- Major veterans programs in the State anticipate FY 85 funding of \$58.68 million (State) and \$656,100 (Federal). These programs include:
 - Department of Commerce. Handles on a "pass through" basis funding for veterans services provided by VFW and American Legion (\$219,000) and Burial Allowances (\$222,700). These two programs are being transferred to Department of Military Affairs.
 - Alaska Housing Finance Corporation. Handles Veterans Mortgage Program. Loan subsidy and operating budget projected to be about \$50 million.
 - Department of Health and Social Services. Funds mental health diagnosis and treatment services for Vietnam veterans in Juneau. Funding is projected to be \$109,000.
 - Department of Community and Regional Affairs. Provides funding for Nonconforming and Rural Housing Loan programs. The veterans portion of loan subsidy and operating costs for these programs is expected to be about \$8.1 million.
 - Department of Labor. Handles four programs designed to assist veterans in obtaining employment. The programs are federally funded at \$547,000.
 - Alaska Commission on Post-Secondary Education. Acts as the State Approval Agency for veterans educational programs. The program is federally funded at \$109,100.
 - Department of Military Affairs. Has responsibility for veterans memorial. \$30,000 currently projected for FY 85.
 - The Alaska Region of Federal Veterans' Administration has a projected budget of about \$38 million. This provides medical, compensation, pension and home loan assistance to qualified veterans.

PROBLEMS

- The Alaska veterans are concerned about lack of representation within state government.
- No central point of contact within the state to:

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465-3600

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 23, 1984

SUBJECT: Sectional analysis of executive order no. 58
(Work Order No. 13 - 1819)

TO: Representative John Cowdery
Chairman House Labor and Commerce Committee

FROM: Edward H. Hein *EH*
Legislative Counsel

Section 1 states the governor's intention to transfer the veterans' service and the veterans' burial allowance programs from the Department of Commerce and Economic Development to the Department of Military Affairs, and to rename the latter the Department of Military and Veterans' Affairs.

Sections 2 - 7, 14 - 20 and 22 - 24 are simply clean-up sections that change references to the Department of Military Affairs to read Department of Military and Veterans' Affairs.

Sections 8 - 11 change references to the Department of Commerce to read the Department of Military and Veterans' Affairs. This effectively transfers from one department to the other the responsibilities under four sections relating to regulations and reports; acceptance of gifts, donations, and grants; training in rehabilitation and service work; and approval of payment. Section 8 also deletes the superfluous reference to "rules" at page 3, line 4. Section 10 corrects the word "those" to "that" at page 3, line 23.

Section 12 transfers the veteran's burial allowance program from the Department of Commerce, division of veterans' affairs, to the Department of Military and Veterans' Affairs.

Section 13 amends the powers and duties of the Department of Commerce relating to cooperation with the federal government in matters concerning Alaska veterans. The Department of Commerce retains its responsibility for veterans' loans.

Representative John Cowdery
Page 2
January 23, 1984

Section 21 transfers to the Department of Military and Veterans' Affairs the responsibility for cooperating with the federal government in (1) matters concerning Alaska veterans, other than veterans' loans; and (2) establishing, extending or strengthening services for Alaska veterans.

Section 24 repeals the Department of Commerce's responsibility for cooperating with the federal government in establishing, extending or strengthening services for veterans in Alaska.

Section 26 provides that the transfer of functions from the Department of Commerce to the Department of Military and Veterans' Affairs does not affect pending legal proceedings related to the functions being transferred, regulations adopted under authority of a section being amended or repealed, or contracts, rights, liabilities and obligations created under a law being amended or repealed by the executive order. This section also provides for the transfer of state property from one department to the other.

Section 27 directs the revisor of statutes in the Legislative Affairs Agency and the regulations attorney in the Department of Law to correct statutory and regulatory references required by the changes made by the executive order.

Section 28 states the effective date of the executive order as March 9, 1984.

EHH:ojb
J2/067

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: # 58
 Title: Transfer of Veteran's Services Program & Vet Burial Allowance
 Sponsor: _____
 Requestor: Governor Sheffield
 Date of Request: _____

ex order

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
 Program Category Affected: Economic Development
 BRU, Program or Subprogram(s) Affected: Accounting & Collections

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Net zero fiscal impact (fiscal impact too small to be measured). This division currently spends four hours or less per month of Accounting Clerk III effort requesting vouchers for veterans' burial claims. This effort would be transferred to the new department if this bill becomes law.

ANALYSIS: Attach a separate page for analysis

Prepared By: Margaret I. Hamley, Director Phone: 465-2555
 Division: Accounting and Collections Date: 1/6/84
 Approved by Commissioner: Richard A. Lyon Date: 1/6/84
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST ^{#1} Executive Order FISCAL DETAIL
 Bill/Resolution No.: #58 Agency Affected: Commerce & Economic Development
 Title: Consolidation of Veteran Pcms. Program Category Affected:
in new Dept. of Military & Vet. Affairs Economic Development
 Sponsor: Governor Sheffield BRU, Program or Subprogram(s) Affected:
 Requestor: Governor Sheffield Veterans Services
 Date of Request: 1/5/84

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL		[15.8]				
300 CONTRACTUAL		[203.6]				
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		[222.7]				
800 MISCELLANEOUS						
TOTAL OPERATING		[442.1]				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	[442.1]					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

The fiscal impact of this executive order will be transferred to the new Department of Military and Veterans' Affairs.

ANALYSIS: Attach a separate page for analysis

Prepared By: Paul B. Arnoldt, Director Phone: 465-2510
 Division: Division of Investments & Veterans' Affairs Date: 1/6/84

Approved by Commissioner: Richard A. Lyon Date: 1/6/84
 Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

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

12/1/84

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST # 2
Bill/Resolution No.: _____
Title: Executive Order & #58
Sponsor: _____
Requestor: Office of the Governor
Date of Request: _____

FISCAL DETAIL
Agency Affected: Department of Military Affairs
Program Category Affected: _____
Public Protection
BRU, Program or Subprogram(s) Affected: _____
Life & Property Protection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 PERSONAL SERVICES		86.5				
200 TRAVEL		6.0				
300 CONTRACTUAL		28.4				
400 SUPPLIES		4.0				
500 EQUIPMENT		20.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		145.3				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		145.3				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		2				
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

State Operating Budget

The attached fiscal note from Commerce & Economic Development in the amount of \$442.1 represents the costs of transferring to DMA.
ANALYSIS: Attach a separate page for analysis

Prepared By: Richard C. Rountree, Director Phone: 465-4600
Division: Admin. & Support Services Division Date: 1/5/84

Approved by Commissioner: M. G. Edward G. Pagano Date: 1/5/84
Agency: Department of Military Affairs

Distribution (by Agency preparing fiscal note):

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

12/1/83

1.	POSITION TITLE Special Assistant to the Commissioner II				RANGE/STEP 23 A	BARG. UNIT	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PX	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION EBA	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION	1	
4.	TYPE OF EXPENDITURE		AMOUNT	
	1	2	3	
	PERSONAL SERVICES			
5.	Salary	50.0		
6.	Benefits	4.1		
7.	Supplemental Benefits	3.1		
8.	Fixed Benefits	2.6		
9.	TOTAL PERSONAL SERVICES	01	59.8	
10.	Travel	02	6.0	
11.	Contractual	03	28.4	
12.	Commodities	04	4.0	
13.	Equipment	05	10.6	
14.	Other			
15.	TOTAL COST		108.8	

JUSTIFICATION

This position will be responsible for the administration of the State Division of Veterans Affairs within the Department of Military and Veterans' Affairs. The position will be tasked with the coordination of all Veterans' programs within the State of Alaska. It will also be tasked with the coordination between the State and Federal Veterans' Administration as well as Veterans' Organizations. The position will cooperate with the federal government in matters of mutual concern pertaining to the welfare of Alaskan veterans, including establishing, extending, or strengthening services for veterans, in Alaska.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	108.8
19.		1-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&H USE ONLY
4A KEY NUMBER - - - - -

13 REQUEST FOR
NEW POSITION

AGENCY Department of Military and Veterans' Affairs
 PROGRAM Life and Property Protection
 BRU Veterans' Affairs
 COMPONENT Administration

Page of
Revised Date

FY 85

1.	POSITION TITLE Secretary I				RANGE/STEP 10A	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.						
2.	TYPE OF POSITION GGU	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION ERA	ELECTION DISTRICT	LEG.								
3.	CONTINUATION LEVEL				JUSTIFICATION											
4.	TYPE OF EXPENDITURE				<p>This position will provide the clerical and technical support for the Division of Veterans' Affairs. As clerical support to the Administrator of the Division, the position will maintain all files, type, respond to routine correspondence, and act as receptionist for the Division.</p>											
	1		2								3					
	PERSONAL SERVICES															
5.	Salary		21.0													
6.	Benefits		1.7													
7.	Supplemental Benefits		1.3													
8.	Fixed Benefits		2.7													
9.	TOTAL PERSONAL SERVICES		01								26.7					
10.	Travel		02								0					
11.	Contractual		03								0					
12.	Commodities		04								0					
13.	Equipment		05								9.8					
14.	Other															
15.	TOTAL COST										36.5					
	RECEIPT CODE										FUNDING SOURCE					
16.					Federal Receipts 1002											
17.					G.F. Match 1003											
18.					General Funds 1004				36.5							
19.					I-A Receipts 1005											
20.					Program Receipts 1020											
21.					Other											
FOR B&M USE ONLY																
4A KEY NUMBER _____																

13 REQUEST FOR
NEW POSITION

AGENCY Department of Military and Veterans' Affairs
PROGRAM Life and Property Protection
BRU Veterans' Affairs
COMPONENT Administration

Page _____ of _____
Revised Date _____

FY 85

ANALYSIS

This fiscal note is tempered with the assumption that funding to operate the Veterans' programs at their present level of service will be transferred to the Department of Military & Veterans' Affairs along with the responsibilities.

Therefore this fiscal note only addresses funding needed to provide an increased level of service.

5. What are the main advantages for veterans to having this transfer approved ?
6. What is the initial cost of the transfer to the state ?
7. Will the State re-coup this cost over a period years due to more efficiency in the veterans programs ?
8. Will some people lose their jobs as a result of the transfer ?

*Conclusions
Checked*



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that transfers two veterans' programs from the Department of Commerce and Economic Development to the Department of Military Affairs and renames that department as the Department of Military and Veterans' Affairs.

The veterans' services program (AS 26.10.010) -- 26.10.050) and the veterans' burial allowance program (AS 26.10.080) are both currently assigned to the division of investments within the Department of Commerce and Economic Development. This executive order would transfer these two programs to the renamed Department of Military and Veterans' Affairs.

The transfer places these programs where they logically belong and the departmental name change corresponds more nearly with the name of Title 26 of the Alaska Statutes, "Military Affairs and Veterans." Most of that title already relates to the Department of Military Affairs. After transfer of these two programs, AS 26.15, concerning the veterans' loan program in the Department of Commerce and Economic Development, will be the only part of AS 26 that relates to another agency. The amendment of AS 26.-15.030(c)(1) in sec. 13 recognizes that change by slightly modifying one of the duties of the Department of Commerce and Economic Development. The language being added to AS 44.35.020 in sec. 21 of the order, listing duties of the Department of Military and Veterans' Affairs, is a consolidation of current AS 26.15.030(c)(1) and (3) (the latter of which is being repealed in sec. 25 of the order).


Representative Hayes

- 2 -

January 9, 1984

I believe that this transfer will improve the efficiency and effectiveness of these two programs and will improve the quality of services delivered to veterans and their survivors. It is anticipated that a division of veteran's affairs will eventually be established to provide the services.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor



3059

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1984

The Honorable Joe Hayes
Speaker of the House
Pouch V
Juneau, AK 99811

Dear Representative Hayes:

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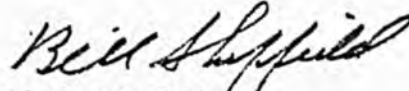
Representative Hayes

- 2 -

January 9, 1984

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Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

GOVERNOR'S ACTION, (cont'd)

EO 57, (cont'd)

In his message transmitting EO 57 to the Legislature, Governor Sheffield stated:

Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance with AS 24.30.130(b), I am transmitting an executive order that transfers the Alaska State Office from the Governor's Office to the Department of Commerce and Economic Development and renames it the Alaska Foreign Office.

Under current statutes (AS 44.19.074 -- 44.19.032), the Alaska State Office is in the Office of the Governor. Because the functions of the Alaska State Office are in the area of economic development, resource, and trade information, and contact between government and private industry, the appropriate administrative location for the office is the Department of Commerce and Economic Development. With a very slight re-wording, this Order just re-locates the current statutes to that department's chapter from the Governor's Office chapter. No substantive changes are being made. State employees in the Tokyo office remain in the exempt service by virtue of AS 39.25.110(17).

Renaming the office as the Alaska Foreign Office gives it an obviously more appropriate name.

I believe that this transfer will improve the efficiency of state government.

Dept. of
Military &
Vets' Affairs

EXECUTIVE ORDER NO. 58, by the Governor. Would transfer two veterans' programs--the vets' services program and the vets' burial allowance program--from the Dept. of Commerce & Economic Development to the Dept. of Military Affairs. Renames the latter the "Department of Military and Veterans' Affairs." Effective March 9, 1984.

Introduced January 9 and referred to Judiciary and Finance in the Senate and Labor & Commerce, State Affairs and Finance in the House.

In his message transmitting EO 58 to the Legislature, Governor Sheffield stated:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an executive order that transfers two veterans' programs from the Department of Commerce and Economic Development to the Department of Military Affairs and renames that Department as the Department of Military and Veterans' Affairs.

The veterans' services program (AS 26.10.010 -- 26.10.050) and the veterans' burial allowance program (AS 26.10.080) are both currently assigned to the division of investments within the Department of Commerce and Economic Development. This executive order would transfer these two programs to the renamed Department of Military and Veterans' Affairs.

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GOVERNOR'S ACTION, (cont'd)

EO 58, (cont'd)

I believe that this transfer will improve the efficiency and effectiveness of these two programs and will improve the quality of services delivered to veterans and their survivors. It is anticipated that a division of veteran's affairs will eventually be established to provide the services.

Sincerely,

/s/
Bill Sheffield
Governor

This report is a simple compilation of information and it is not, nor is it intended to present, a legal interpretation.

This report includes all bills and resolutions introduced and all action taken in the Alaska House and Senate from January 9 through January 15, 1984.

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H B

1

Letter of Intent

~~In Addition~~

The Legislature recognizes that an increase in rent by the landlord, ~~in effect~~, may constitute a form of termination, ~~in that~~ in that it terminates the rental agreement then in existence and offers a new rental agreement at different terms. The tenant, however, should be given ample time to locate a new dwelling and to move. Upon receipt of a notice of rent increase a tenant ~~could~~ should have the full 45 days to vacate provided under this bill if ~~they~~ ^{he chooses} choose not to accept the higher rent. The tenant would be under the obligation to inform the landlord of his intention to ~~terminate~~ ^{vacate} within the 45 day-period if the tenant does not intend to pay the higher rent.

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"

The Alaska Statutes governing Landlords/Tenants, (Title 34- Property), has not been clear in defining certain areas of concern to both the landlord and the tenant. Whether oral or written, both the landlord and tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. The following is a summary of HB 1, and how it answers some of these needs.

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

Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

This new paragraph is being added to stipulate a "periodic tenancy" termination. AS 09.45.090 (3) cites termination of an "estate at will" tenancy, which can be defined as a tenancy that transpires on a day to day basis on an indefinite term at the will of the lessor. In this case, the tenant has no say in the matter of how long the tenancy will last, and the landlord may, at any time, terminate the tenancy and the tenant has no right to a notice. (This type of tenancy was developed in a few hundred years ago in England, and rarely applies "modern day" tenancy.) For this reason, it is necessary to add Paragraph 4, as periodic tenancy, (month to month, or a predetermined period of time), is not referenced in the present context.

Section 2. AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

This amendment provides a more equitable time frame to tenants. The vacancy rate for apartments at the present time in the Anchorage, Fairbanks, Ketchikan and Juneau markets ranges from 0% to 4%. Because of this tight rental market, it is sometimes quite difficult for low income families, minorities, pet owners, families with children, and the elderly, (to name a few), to find adequate and habitable housing. General termination, (30 days), on the part of the landlord, in a time of a severe housing crunch does not always give the tenant sufficient notice to find other adequate housing.

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"
Page Two

"Rental due" date refers to Sec. 34.03.020 (c) which is the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due" date, and replacing "rental due" with "termination" date provides for either time frame.

Section 3. AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful and not in good faith the landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.20.020 applies.

An improper hold-over by a tenant has caused landlords financial hardships. If a tenant continues to occupy the dwelling after his tenancy expires, he has caused the owner loss of income needed to make mortgage payments, as well as loss of time to make necessary repairs, alterations, etc., before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

The new clause noted above provides for recovery of actual damages, (i.e. lost rent income, lost time needed to make necessary repairs, etc.), as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect is incentive to the individual(s) to vacate the premises.

Section 4. AS 34.03.310 is amended by adding a new subsection to read:

(f) A landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1) - (4).

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"
Page Three

This new subsection protects the tenant from landlords who abuse the right to access or evict the tenant for retaliatory reasons. The tenant has a right to his/her privacy, and the landlord must give "reasonable" notice to the tenant before entering the premises, (See AS 34.03.010). This new subsection also provides that the tenant may not be evicted because they have made a complaint using the proper procedures, (See AS 34.03.140), i.e. complained to a government agency regarding unfair rent hikes, or requesting that certain necessary repairs be made to the premises or common area. Sixty days is a sufficient amount of time to correct a problem or answer a complaint. After the 60 day period has expired, the tenant should refer to AS 34.03.160 and the landlord should refer to AS 34.03.220 for remedies to their problem(s).

Introduced: 1/28/83
Referred: Labor & Commerce
and Judiciary

*FORCEABLE ENTRY
DETAINER*

*Referred to
Judgement*

1 IN THE HOUSE

BY ABOOD

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 1
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION
5 A BILL

F.E.D.

6 For an Act entitled: "An Act relating to landlords and tenants."

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

8 * Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

9 (4) when, after a notice to terminate the tenancy as pro-
10 vided in AS 34.03.290 with reference to termination of a periodic
11 tenancy a person continues in possession of a dwelling unit after
12 expiration of the time for determining the tenancy.

13 * Sec. 2. AS 34.03.290(b) is amended to read:

14 (b) The landlord or the tenant may terminate a month to month
15 tenancy by a written notice given to the other at least 45 [30] days
16 before the termination [RENTAL DUE] date specified in the notice.

17 * Sec. 3. AS 34.03.290(c) is amended to read:

18 (c) If the tenant remains in possession without the landlord's
19 consent after expiration of the term of the rental agreement or after
20 its termination, the landlord may bring an action for possession and
21 recovery of actual damages. If [IF] the tenant's holdover is wilful
22 and not in good faith the landlord, in addition, may recover an amount
23 not to exceed one and one-half times the actual damages. *SUB-SECTION*
24 landlord consents to the tenant's continued occupancy, AS 34.20.020 *If the*
25 applies. *(a+b)*
OR TENANT FAILS TO PROVIDE THE NOTICE REQUIRED
failure to give notice; termination

26 * Sec. 4. AS 34.03.310 is amended by adding a new subsection to read:

27 (f) A landlord is presumed to have violated (a) of this section
28 if the landlord increases rent, decreases service, or brings or
29 threatens to bring an action for possession within 60 days after a

OR

1 tenant has engaged in an action listed under (a)(1) - (4).

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"

The Alaska Statutes governing Landlords/Tenants, (Title 34- Property), has not been clear in defining certain areas of concern to both the landlord and the tenant. Whether oral or written, both the landlord and tenant hold certain unalienable rights in the property they own as a landlord or rent as a tenant. With the 0% to 4% vacancy rate in most of Alaska, and because over 35% of the population in Alaska rent their dwellings, it is necessary to update the laws to answer the needs of the landlord and tenant. The following is a summary of HB 1, and how it answers some of these needs.

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

Section 1. AS 09.45.090 is amended by adding a new paragraph to read:

(4) when, after a notice to terminate the tenancy as provided in AS 34.03.290 with reference to termination of a periodic tenancy, a person continues in possession of a dwelling unit after expiration of the time for determining the tenancy.

This new paragraph is being added to stipulate a "periodic tenancy" termination. AS 09.45.090 (3) cites termination of an "estate at will" tenancy, which can be defined as a tenancy that transpires on a day to day basis on an indefinite term at the will of the lessor. In this case, the tenant has no say in the matter of how long the tenancy will last, and the landlord may, at any time, terminate the tenancy and the tenant has no right to a notice. (This type of tenancy was developed in a few hundred years ago in England, and rarely applies "modern day" tenancy.) For this reason, it is necessary to add Paragraph 4, as periodic tenancy, (month to month, or a predetermined period of time), is not referenced in the present context.

Section 2. AS 34.03.290 (b) is amended to read:

(b) The landlord or the tenant may terminate a month to month tenancy by a written notice given to the other at least 45 [30] days before the termination [RENTAL DUE] date specified in the notice.

This amendment provides a more equitable time frame to tenants. The vacancy rate for apartments at the present time in the Anchorage, Fairbanks, Ketchikan and Juneau markets ranges from 0% to 4%. Because of this tight rental market, it is sometimes quite difficult for low income families, minorities, pet owners, families with children, and the elderly, (to name a few), to find adequate and habitable housing. General termination, (30 days), on the part of the landlord, in a time of a severe housing crunch does not always give the tenant sufficient notice to find other adequate housing.

An Overview of
Sponsor Substitute for HOUSE BILL NO. 1
"An Act relating to landlords and tenants"
Page Two

"Rental due" date refers to Sec. 34.03.020 (c) which is the date on the same day each month that rent is to be paid. The landlord may wish to give notice of termination to the tenant before the "rental due" date, and replacing "rental due" with "termination" date provides for either time frame.

Section 3.. AS 34.03.290 (c) is amended to read:

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or after its termination, the landlord may bring an action for possession and recovery of actual damages. If [IF] the tenant's holdover is wilful and not in good faith the Landlord, in addition, may recover an amount not to exceed one and one-half times the actual damages. If the landlord consents to the tenant's continued occupancy, AS 34.20.020 applies.

An improper hold-over by a tenant has caused landlords financial hardships. If a tenant continues to occupy the dwelling after his tenancy expires, he has caused the owner loss of income needed to make mortgage payments, as well as loss of time to make necessary repairs, alterations, etc., before renting the unit to the next party. Alaska law allows landlords to sue for damages, but the time, effort and money involved is not always feasible to pursue.

The new clause noted above provides for recovery of actual damages, (i.e. lost rent income, lost time needed to make necessary repairs, etc.), as well as one and one-half times the actual damages as compensation to the landlord. This deters the tenant from staying on past termination or the expiration of the rental agreement and in effect is incentive to the individual(s) to vacate the premises.

Section 4. AS 34.03.310 is amended by adding a new subsection to read:

(f) A landlord is presumed to have violated (a) of this section if the landlord increases rent, decreases service, or brings or threatens to bring an action for possession within 60 days after a tenant has engaged in an action listed under (a)(1) - (4).