

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2597 HLC SB 286 - SB 470 307

13. Page 5, Line 1:

insert the word "warranty" following "and".

14. Page 6, Line 8:

Delete the words "includes a dealer or other person" and insert the words "means a person".

AMENDMENTS MADE TO CSSB 286 BY THE
HOUSE LABOR AND COMMERCE COMMITTEE SUB-COMMITTEE

1. Page 1, Line 29:
Insert the word "certified" following "by".
2. Page 2, Line 1:
Insert the words "dealer or" following "its".
3. Page 2, Line 11:
Delete "30 days or more" and in its place insert "within 60 days".
4. Page 2, Line 12:
A new sentence is added to paragraph (4) which reads "Within 30 days after receiving the notice required by this subsection the manufacturer may make a final attempt to conform the vehicle before a refund is made under (b) of this section."
5. Page 2, Line 13:
Delete paragraph (d).
6. Page 2, Line 23:
Insert the words "dealer or" before the word "repairing".
7. Page 2, Line 26:
Insert the words "dealer or" before the word "repairing".
8. Page 3, Line 6:
A new paragraph (2) is added which reads " the nonconformity makes the vehicle unsafe to operate and the same nonconformity has been subject to repair at least twice by the manufacturer, distributor, dealer, or repairing agent during the express warranty term or the one-year period referred to in (1) of this section, whichever period terminates first, but the nonconformity continues to exist; or"
9. Page 3, Line 6:
The original paragraph (2) is re-titled (3) and is inserted following the new paragraph (2).
10. Page 3, Line 20:
Insert the word "full" following "the".
11. Page 3, Line 25:
Insert the word "or" following manufacturer, delete "or repairing agent" and insert the words "in the state" following distributor. Both commas on this line are also deleted.
12. Page 4, Line 4:
Delete "sold in the state shall maintain repair facilities or authorize repairing agents" and insert "who authorize the sale of the manufacturer's or distributor's motor vehicles in the state shall maintain authorized dealership facilities".

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Deleting finance charges from refund, continued--

Under the "Rule of 78s" which Alaska law says must be used to compute interest on early payment of a retail sales installment loan, here is an example of how a consumer will be penalized for the use of a lemon, if the finance charges are deleted from the bill.

Buyback of a lemon, used 12 out of 13 months:

Original cost of vehicle	\$12,000.00
Maximum allowance for consumer use (deduction)	- 1,710.00
<u>Buyback Refund</u>	<u>\$10,290.00</u>

If accrued finance charges are dropped from the bill, consumer's true purchase cost (without additional damages) is:

Down Payment	\$ 2,000.00
12 payments (of 36)	3,350.04
Loan payoff	8,096.42
Total cost	<u>\$13,446.46</u>
<u>Less Buyback Refund</u>	<u>\$10,290.00</u>
Consumer's cost to use car 12 months:	<u>\$ 3,156.46</u>

PRECEDENT:

Massachusetts, Delaware, and New Jersey specifically include finance charges in the refund. Six or seven more states allow refund of "full purchase price" plus a broad category of collateral charges (interest not specifically included or excluded).

By REP. MIKE MILLER

One of the most important consumer protection bills before the legislature this year would, if passed, force automobile manufacturers to repair or replace "lemons" sold to Alaskan car purchasers.

This legislation is literally a matter of life and death. One Kenai Peninsula resident lost family members because of defects in a car he purchased as new. This is just one of many actual and potential tragedies on our roads due to defective automobiles — vehicles supposedly brand new and just off the showroom floor.

According to the Consumer Protection Division of the Alaska Attorney General's Office, between 800 and 900 Alaskans purchase defective vehicles each year.

Most of us are car owners, and purchasing a new car is one of the major financial commitments we make. As sponsor of the House version of the "lemon bill," I feel very strongly that automobile manufacturers have a responsibility to those who purchase their cars. Unfortunately, case after case shows that the manufacturers often turn a deaf ear to the owners of the cars that spend most of their time in the shop.

CSSB 286, the Senate version of the lemon bill, was introduced by Sen. Bill Ray and has passed the Senate. The House Labor and Commerce Committee is currently conducting public hearings on this legislation. I strongly encourage citizens to testify in favor of this crucial legislation.

Unfortunately, powerful economic interest groups are currently trying to water the bill down, so that business can go on as usual. That is the reason strong citizen response is so important right now.

The bill passed by the Senate gives strong protection to the purchaser of a defective car, while putting the responsibility on the manufacturer, not the Alaskan dealer. The bill requires the

manufacturer to buy back defective vehicles if the defect is not repaired — under the terms of the manufacturer's own warranty — within a year after purchase. A car is considered a "lemon" if the same defect has been subject to repair three or more times within that year, or if the vehicle has been in the repair shop for a total of 30 or more business days during the year.

If these conditions are not met, the owner of the lemon vehicle then has the right to full refund of the purchase price of the car, including finance charges, less depreciation and any damage done while in the owner's possession.

Among other provisions, the bill requires manufacturers to notify the buyers of their rights under the legislation.

What could be more fair? This is already being done in Massachusetts and California, and there is no reason for Alaska not to protect its citizens in this manner.

Unfortunately, both dealers and manufacturers are attempting to take the teeth out of the bill.

Dealers want the bill amended to change the number of allowed repairs from three to four; to delete finance charges from the reimbursement requirement; and to place responsibility of notifying consumers of their warranty rights with the state, not the manufacturer.

Manufacturers also want the bill weakened. Currently, Alaska is the only state in the nation in which the car owner must pay air freight if parts must be ordered from outside. The bill would close this loophole by requiring the manufacturer to pay air freight just as they do in the other 49 states. Manufacturers want this section of the bill deleted.

Manufacturers also want to delete the section that requires them to pay back finance charges to the lemon owner. The reason for requiring the repayment of financing interest charges is simple: According to the Attorney General's testimony, 75 percent of

all cars purchased in Alaska are financed. Many cars are financed through dealerships and manufacturer's subsidiaries. In fact, General Motors Acceptance Corp. finances 80 percent of all GM cars sold in the state. Dealers make money if a car is financed in this way. They certainly don't want to have to give it back, even if the car they sold is a lemon.

I also have some amendments that I would like to see, because in contrast with the opinions of the dealers and manufacturers, I don't think the bill goes far enough.

I think that purchasers of lemons should also be reimbursed for their out-of-pocket expenses for necessary car rental while their lemon is being repaired, and also for any towing charges resulting from warranted failures.

If the defect is one affecting the life safety of passengers, I think the dealer should be allowed only two attempts at repair instead of three before the refund process triggers.

Your local Legislative Information Office can provide you with a copy of the bill, and with dates and times of upcoming committee hearings, the next one being Wednesday at 8:15 a.m. You can also call the L.I.O. to send a Public Opinion Message to your legislators in support of this all-important consumer protection issue, as written or stronger.

I can think of few issues this year that will affect public safety and wellbeing as much as the passage of this bill.

Unfortunately, I am afraid that economic interests may be talking louder than the public interest.

Don't let the House Labor and Commerce Committee turn the lemon car bill into a law that is itself a weak lemon!

Rep. Mike Miller of Juneau is House Democratic minority leader and a six-term veteran in the state House of Representatives.

TUNRU Empire 4/17/84

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296

MARCH 22, 1984

TO: JOHN

FROM: KEN

RE: CSSB 296 "RELATING TO CERTAIN LICENSES, PERMITS, AND REGISTRATIONS"

THE PURPOSE OF SENATE BILL 296 IS TO REDUCE THE AMOUNT PAPERWORK AND PREPARATION REQUIRED TO OBTAIN OR RENEW A LICENSE, PERMIT, OR REGISTRATION. UNDER CURRENT STATUTES REGISTRATION AND RENEWAL FEES ARE PAID ON AN ANNUAL BASIS. THIS LEGISLATION SET UP A BIENNIAL RENEWAL SYSTEM AND DOUBLE THE DOUBLE THE FEES.

FOR YOUR CONSIDERATION:

JOHN LINDAUER HAS PROPOSED A NUMBER OF AMENDMENTS TO THIS BILL WHICH WOULD AIDE THE DEPARTMENT OF LABOR IN THEIR FEE AND CERTIFICATE STRUCTURE. THE DEPARTMENT OF COURSE SUPPORTS THE AMENDMENTS. HALFORD AND BENNETT, WHO SPONSORED THE BILL ORIGINALLY, SAY THEY SEE NOTHING WRONG WITH ALLOWING THE AMENDMENTS TO BE ADDED.

QUESTIONS:

1. WHY DOES SB 296 RESTRICT ITS APPLICATION TO ONLY THESE
BILLS ?

2. WHY HAS THE DEPARTMENT CHOSEN 296 FOR THESE SUGGESTED
AMENDMENTS AND WHY ARE THEY NECESSARY ?

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/21/84

REQUEST
Bill/Resolution No.: CS SB 296
Title: "An Act relating to
annual-biennial licensing"
Sponsor: Labor & Commerce Comm
Requestor: Senator Eliason
Date of Request: 2/20/84

FISCAL DETAIL
Agency Affected: Commerce & Economic Dev.
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
GENERAL SERVICES						
ACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

N/A

ANALYSIS: Attach a separate page for analysis (see attached)

Prepared By: Darrell Miller Phone: 465-2535
 Division: Occupational Licensing Date: 2/21/84
 Approved by Commissioner: Richard A. Lyon Date: 2/21/84
 Agency: Commerce & Economic Development

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL ANALYSIS:

The analysis of this bill is confined to Sec. 1 & 2, registration and renewal fees for construction contractors; Sec. 3, initial license and renewal fees for guides; and Sec. 8, renewal of registration for concert promoters. The remainder of this bill has no impact on the Division of Occupational Licensing functions.

The provisions of this bill has no impact on expenditures and provides a net zero fiscal impact on revenue generated from licen sing in succeeding fiscal years.

Under existing statutes, contractor registration, guide licenses and concert promoter registrations must b renewed annually. This bill provides an amendment to those statutes to extend the renewal of the licenses/registrations to biennial.

This bill provides for initial and renewal fees for contractor registration, guide licensing, and the renewal fee only for concert promoters registration, to be increased 100%.

In effect this is no net increase in the fee structure. The increased fees would cover a two year period instead of the present annual period. This would be reflected in the amount of revenue generated in a license/registration renewal year versus that of the off year. Over a period of two fiscal years the revenue generated would be identical to that if the annual renewal requirement is maintained.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS SB 296 (L&C)
Title: An Act relating to certain licenses, permits, and registrations...
Sponsor: Halford
Requestor: Senate L & C
Date of Request: 2-21-84

FISCAL DETAIL

Agency Affected: Public Safety
Program Category Affected: Life & Property Protection
BPU, Program or Subprogram(s) Affected:
Division of Motor Vehicles

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:

ANALYSIS: Attach a separate page for analysis

Prepared By: Bill Brown *BB*
Division: Motor Vehicles

Phone: 465-4335
Date: 2-21-84

Approved by Commissioner: *[Signature]*
Agency: Public Safety

Date: 2/21/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date 2/21/84

REQUEST

Bill/Resolution No: CSSB 296 (L4C)
 Title: Extending the periods for which certain licns, prmts & registrtrns are valid & adjusting fees for certain licns, prmts & registrtrns.
 Sponsor: Halford & Bennett
 Requestor: Senate Labor & Commerce Cmt.
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Revenue
 Program Category Affected: Revenue Management & Collection

BRU, Program or Subprogram(s) Affected: Public Services Division BRU

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 LANDS & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-0-	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
CAPITAL	-	-	-	-	-	-
REVENUE (General Fund)		12.0	(12.0)	12.0	(12.0)	12.0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Revenue figures reflect timing of biennial license sales.

Prepared By: Martin J. Richard
 Division: Public Services Division

Phone: 465-2392
 Date: 2/21/84

Approved by Commissioner: *Roll Offutt*
 Agency: Revenue

Date: 2/21/84

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

Bill/Resolution No.: SB 296
 Title: an act relating to certain licenses, permits, and registrations
 Sponsor: Hal Ford & Bennett
 Requestor: Elison (L & C)
 Date of Request: 2/21/84

FISCAL DETAIL

Agency Affected: Dept. of Fish & Game
 Program Category Affected: Natural Resource Management
 BRU, Program or Subprogram(s) Affected: Commercial Fisheries Entry Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES		14.1	0	0	0	
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		14.1	0	0	0	
CAPITAL		0	0	0	0	
REVENUE		0	0	0	0	

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

NONE REQUESTED

ANALYSIS: Attach a separate page for analysis

Prepared By: Christine Kelly, Licensing Admn. Phone: 465-4081
 Division: Commercial Fisheries Entry Comm. Date: 2/24/84
 Approved by Commissioner: [Signature] Date: 2/24/84
 Agency: Commercial Fisheries Entry Comm.

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL NOTE: SB 296

ANALYSIS

The implementation of optional two year licensing of commercial fishing vessels will increase operating costs by approximately \$14.1 in the first year of implementation as system analysis and programming necessary to adapt on-line licensing files is estimated to take three months. In subsequent years there will be no increase in operating costs.

Revenue will not increase or decrease as a result of this legislation because the number of vessel licenses issued per year will not be affected. Vessel owners that choose the two year option will receive the license for the first year immediately upon the Commission's receipt of the application and the license for the second year will automatically be issued prior to the start of that year.

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Ulmer



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Homer, Alaska 99503 • (907) 235-8594

23 March 1984

Honorable Joe L. Hayes
SPEAKER OF THE HOUSE
of Representatives
Pouch V
Juneau , Alaska 99811

Dear Joe,

Many thanks for your letter of March 17. It is gratifying to me to know that you , Representative Cowdery, and Senator Eliason are taking a hard look at what is happening regarding implementation of Alaska's Controlled Substance Act and particularly AS 17.. of that Act.

The Board of Pharmacy was handed the ball by the Legislature, along with funding to hire an Executive Secretary and Investigator. Unfortunately these titles were not included as specific wording in the law , although these positions were repeatedly mentioned when the legislation was being considered and passed.

Board requests for an Executive Secretary , have repeatedly been ignored by the Governor, the Commissioner of Commerce , and the Director of Occupational Licensing (DOL). I believe all of them have a misconception of the intent , the importance , and the timely implementation of the Law.

Federal statistics, on file with the Alaska Department of Law , show that controlled substance from the legitimate industry account for some 60 % of deaths of patients brought to hospital emergency rooms with drug related problems (nation wide). Statistics also show , over 60% of drug related problems of patients being treated in hospital emergency rooms, come from drugs from the legitimate industry. These drugs are obtained by armed robbery, by after hour breakins, by prescriptions from unscrupulous practitioners, by forgery of prescriptions, or by sale by unscrupulous pharmacists.....but all from the legitimate industry.

The federal Drug Enforcement Administration (DEA) and state and local drug enforcement units have their hands full dealing with the "street traffic" illegitimate entrance of and use of controlled substances in all states . They rely on state laws, such as Alaska's AS 17.30 to deal with the legitimate industry. Most states effectively do this through their Boards of Pharmacy. No big bureaucracy is needed . Wyoming does it quietly, and cost effectively with one Executive Secretary and one Investigator, Under the direction of its Board of Pharmacy. Alaska would do well to emulate this program and the Board planned just that.

Ulmer



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23 March 1984

Honorable Joe L. Hayes
page 2.

You and Representative Cowdery and Senator Eliason all have documented evidence of the valient effort by the Board of Pharmacy to carry out the intent of the Legislature. I will not repeat all of that here, but it is important for you to know that I did spend many long hours drafting bothproposed regulations and job qualifications and a job description for the Executive Secretary. The later may be of value to you when you propose legislation to mandate creation of the position.

Again thanks for your letter , your interest , and your help in drafting and passing legislation that will clarify legislative intent . If I can be of assistance in this effort , please call me.

Since the Governor removed me from the Board, and refused to reappoint the member from Sitka and has indicated that he will not reappoint the present experienced Secretary of the Board, the Board will be down to one professional and one lay member with any real experience . The new inexperienced Board will desperately need the Executive Secretary .

Sincerely,

Eldon R. Ulmer, R.Ph

Copy: ✓ Representative John Cowdery
Senator Dick Eliason
Charles Rush , R.PH. Secretary Board of Pharmacy

Handwritten notes and signatures at the bottom of the page:
JAN - TRANSFER FROM EVIDENCE FILE
TO JOE L. HAYES
[Signature]

A PERFORMANCE REPORT
ON THE
BOARD OF PHARMACY

July 1, 1980 to February 28, 1983

Audit Control Number

08-1114-51-83-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 Pharmacy

Chairman
Secretary
Member
Member
Member
Member
Member

Eldon Ulmer
Margaret Soden
Susan Roberts
Robert Sni^g
James McCircle
Charles Rush
Sidney Fry

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 17, 1983

Members of the
Legislative Budget and Audit Committee:

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

A PERFORMANCE REPORT ON THE BOARD OF PHARMACY

July 1, 1980 to February 28, 1983



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

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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 reviewed the activities of the Board of Pharmacy for the past three fiscal years. Our examination was conducted 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 Pharmacy 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. Interviews with the license examiners.
3. Tests of files and documents of licensees.
4. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman Office.
5. Discussions with Board members.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General Opinions applicable to professional boards.

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Pharmacy is a regulatory board with seven members; two public members having no direct financial interest in the health care industry, and five professional members with three years practical experience and licensed in Alaska. Whenever possible, each judicial district should be represented by a Board member.

The Board regulates five types of licenses; pharmacists, retail pharmacies, wholesale pharmacies, hospital pharmacies and drug rooms. 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 pharmacy practices.
3. Revoking, annulling or suspending licenses in accordance with the Administrative Procedures Act when a person has violated pharmacy statutes or regulations.

Applicants for registration as a pharmacist are required to pass the National Association of the Boards of Pharmacy Licensing Examination (NABPLEX), and a jurisprudence exam covering Alaska pharmacy law and the Federal Controlled Substance Act.

Pharmacists licensed to practice in another state who apply for licensure in Alaska, can be licensed by credentials, except for those applicants from California or Louisiana. These two states require applicants to pass a state exam, not the national exam. Consequently, these applicants must take the national exam when applying in Alaska.

The Board may also issue temporary or emergency permits. Temporary permits allow qualified applicants to practice until the Board can formally license them; emergency permits allow pharmacists licensed in another state to practice in Alaska in an emergency. Both permits are limited in their duration and application.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require 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 Pharmacy 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.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Pharmacy should allow the Division of Occupational Licensing (OL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

The Secretary of the Board receives license fees and applications, keeps applicant files, sends notification of exam results, and issues temporary permits. Each of these responsibilities has been assigned by the Legislature to the Department of Commerce and Economic Development, Division of Occupational Licensing. The above situation exists because the previous Secretary believed he could be more efficient in maintaining the files and processing the applications. We disagree.

The Division of Occupational Licensing is able to provide continuous, uninterrupted service while Board membership changes causing address changes and file transfers.

Additionally, the Secretary of the Board may not be equipped with the space or security needed to maintain confidentiality of files and to safeguard State assets. Furthermore, applicants become confused about where to send their documents.

Noncompliance with AS 08.01.050 is the major cause of the following problems:

- A. In seven of ten files reviewed for proper permanent licensure, we were unable to assure ourselves the applicant had passed the jurisprudence exam.
- B. In two of the files, we were unable to verify the applicants had satisfied the internship requirement. The Board reviewed these files and was unable to satisfy us that the requirements had been met. One file was missing documentation and the other file had documentation we considered insufficient in relation to that required of other applicants. Most applicants were required to have certified copies of hours worked from supervising pharmacists. In this case, documentation consisted of an internship permit issued by the Board with no evidence any hours had been worked.
- C. Temporary permits are being issued by individual Board members without complete documentation on file in DOL. This procedure has resulted in inconsistent issuances of temporary permits. Furthermore, it allows for the possibility of unqualified individuals being licensed.

Prior to the February 1983 Board meeting, we reviewed each application for permanent licensure scheduled for Board consideration. Each applicant had already been issued a temporary permit. In five of eleven cases, there was insufficient documentation in the applicant's file to show that all requirements for temporary licensure had been met.

By the time of the February 1983 meeting, all necessary documentation to support issuance of temporary permits, except for a jurisprudence exam, had either been received by OL or brought to the meeting by the Secretary of the Board. With the additional documentation, we determined that no temporary permit had been issued to an unqualified applicant. However, the possibility exists for a person to be improperly licensed for a short time.

The Board should ensure all documentation is sent directly to OL. When the file is complete, a member of the Board can either issue the permit or direct OL to issue the permit. This procedure will ensure that all necessary documentation is on file at OL before issuance of temporary permits.

- D. Alaska Statute 08.80.157 requires proof that an applicant for a retail or wholesale pharmacy license has the land, facilities and equipment necessary to carry on business. Also, that the applicant be free of any conviction of a federal or state drug offense and free of any addiction.

We reviewed seven pharmacy files and none of the files contained sufficient documentation to issue a license. We discussed our finding with the Board and determined it was not their policy to include this documentation. They knew who had the facilities and relied on a telephone call from the Drug Enforcement Administration to satisfy the conviction requirement.

We believe the Board should adopt a policy to document satisfaction of the licensing requirements. The procedures need not be elaborate, but should supply sufficient proof that the applicant complies with law.

We recommend the Board ensure that all files, applications, fees and exam results are sent directly to OL. Also, that temporary permits are only issued after all documentation has been received by OL.

Recommendation No. 2

The Board of Pharmacy should reevaluate its regulations governing continuing education.

The following requirements of continuing education should be reviewed.

- A. Regulations require nonacademic programs to have an examination or another method of assuring satisfactory completion of the program before continuing education credit will be given. The Board allowed continuing education credit to be given to an individual when the nonacademic requirement had not been met. The reason given for allowing these credits was that the regulations were too stringent.

If the Board believes its regulations to be arbitrary or unreasonable, those regulations should be changed before accepting nonregulation continuing education credits. Compliance with existing regulations will ensure that all licensees are treated equally and consistently until changes can be made.

- B. The Board has described four instances when they will excuse a licensee from continued competency requirements. These causes are chronic illness, retirement, military service, or hardships as individually determined by the Board.

In our opinion, it is more reasonable to require individuals who have been chronically ill, retired or in the military to demonstrate their continued competency, than those who have not interrupted their practice. We also understand that those persons who have been chronically ill should not be penalized for their illness.

However, the Board has the ability, under the hardship clause, to determine each case individually. They should evaluate the changes in the profession and develop a plan for the individual that would allow him or her to practice while fulfilling the continuing education requirements. This would fulfill the Board's primary purpose to protect the public while not unduly penalizing the professional.

Recommendation No. 3

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

Alaska Statute 08.01.050(19) places the responsibility for

performing investigations with the Division; Alaska Statute 08.01.070 assigns to the Board the requesting authority. However, AS 08.80.030(3) also gives the Board the authority to conduct investigations. This conflict has caused friction between the Division and the Board.

The Board is concerned that the Division is not informing them of complaints or investigations concerning pharmacy, while the Division is concerned that the Board not become involved in the investigation to such an extent as to prejudice the case. Also, the Board must remain impartial in case they become involved in any disciplinary action against the licensee.

Legislation is necessary to clarify the responsibilities of the Board and the Division so both will be confident they are properly performing their statutory duties.

Recommendation No. 4

The Office of the Governor should ensure that Board members are properly appointed.

In July of 1980, the Legislature limited the number of consecutive terms a Board member could serve to two and reduced the term from five years to four. The intent of AS 08.80.020 as amended, was to make service on the Board accessible to more individuals in the profession.

In discussions with Legislative Affairs' attorneys, it became clear that the intent of the Legislature was to include service prior to July, 1980, in determining the limitation. Three members of the Board of Pharmacy have served longer than is allowed when prior service is applied.

One member has served for sixteen years as of March 31, 1983, thirteen of these years prior to July, 1980. This same member was reappointed after the effective date of AS-08.80.020. At the end of his present term, he will have served nineteen years. Two other members will have served twelve and ten years at the end of their present terms on March 31, 1984 and March 31, 1985, respectively.

Additionally, three members of the Board appointed after the effective date of the legislation, have been appointed for five year terms instead of four.

We recommend the Office of the Governor ensure that Board members are appointed in accordance with statute.

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 Board has held public meetings three times a year.
 - B. The Board administers the pharmacy test yearly.
 - C. The Board has passed regulations concerning dangerous drugs, continuing education as proof of continued competency, false or misleading advertisement of drugs, and prepackaging of drugs in hospital drug rooms.
 - D. The Board was instrumental in passage of the Controlled Substance Act and the Marijuana Therapeutic Research Program.
- 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 Board adopted continuing education regulations that may be too stringent. The Board is reconsidering these regulations (see Recommendation No. 2).
- 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 actively supported passage of the Controlled Substance Act; it became effective January 1, 1983.
 - B. The Board succeeded in having various obsolete or vague statutory requirements repealed which provided for smoother operation of the Board.

- 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. Board meetings are announced to the public. Comments on regulation changes are solicited by announcement in public newspapers. The Board does not actively solicit comments on its effectiveness.
- 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 announces proposed regulation changes or additions in newspapers 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. We found no problems in this area.
- 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. We found no instances where the Board had licensed unqualified practitioners.
- B. The Board has licensed 83 pharmacists in the last three years, all but eight were licensed by credentials.
- 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 as a pharmacist 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 factors enumerated in this subsection.

Please refer to the recommendation section of this report.

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APPENDIX A

BOARD OF PHARMACY
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1982

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	\$42,763
Less: Expenditures (Note 3)	<u>46,166</u>
Excess of Expenditures Over Revenues	<u>\$ 3,403</u>

<u>Revenue Type</u>	<u>Amount</u>	<u>Collection Time</u>
Examination Fee	\$ 50	With application
Re-examination Fee	15	With application
Investigation Fee	25	With application
Pharmacist Fee	200	With license issuance
Pharmacist Renewal Fee	200	Every four years
Temporary License Fee	20	With permit issuance
Wholesale Drug Dealer Fee	200	With license issuance
Wholesale Drug Dealer Renewal Fee	200	Every four years
Retail Pharmacy Fee	200	With license renewal
Retail Pharmacy Renewal Fee	200	Every four years
Pharmacy Interim Fee	10	With license issuance
Emergency Permit Fee	10	With permit issuance
Hospital Pharmacy Fee	200	With license issuance
Hospital Pharmacy Renewal Fee	100	Every four years
Hospital Drug Room Fee	100	With license issuance
Hospital Drug Room Renewal Fee	100	Every four years
Nursing Home and Related Facility Fee	100	With license issuance
Nursing Home and Related Facility Renewal Fee	100	Every four years
License Amendments or Renewal Fee	10	When applicable

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

June 28, 1983

RECEIVED
JUL 06 1983
LEGISLATIVE
POST

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

Dear Mr. Wilkerson:

Re: Board of Pharmacy -
Performance Report

Thank you for the opportunity to respond to the performance audit of the Board of Pharmacy and the Division of Occupational Licensing which is dated July 1, 1980 to February 28, 1983.

We concur with your evaluation that the Board of Pharmacy should continue to exist in interest of the public's health and safety. Your suggestions will be evaluated for implementation. Those determined to improve the efficiency and effectiveness of the division and the board will be strongly supported and recommended. We have reviewed each of your recommendations and will provide you with this agency's position if we do not agree.

RECOMMENDATION #1.

The board of Pharmacy should allow the Division of Occupational Licensing (DOL) to perform its administrative duties as described in AS 08.01.050 to improve documentation and file management.

We concur in this recommendation, and cooperative efforts have recently improved. As mandated by legislation, and in the interest of efficiency, DOL is committed to assisting the Board of Pharmacy in all areas.

RECOMMENDATION #2.

The Board of Pharmacy should reevaluate its regulations governing continuing education.

June 28, 1983

This agency is continuing a review on requirement of continuing education by licensing agencies (boards). We do not agree that continued education ensures continued competency. As a licensing agency we determine that competency is the most important. Competency ensures the safety of the consumer. We also take the position that initial licensing is based on minimum qualifications; retesting on the entrance level may serve the purpose of ensuring continued competency. Continued education would, or should, be viewed as the professional association's responsibility to ensure knowledgeable professionals. This would also be in keeping with less government regulations and letting industry regulate itself.

RECOMMENDATION #3.

The Board of Pharmacy and the Division of Occupational Licensing should introduce legislation that will clarify certain statutory requirements.

We concur with this recommendation. This agency has been working with the Legislative Code Revision Committee in rewriting Title 8. This would have deleted the fragmentation throughout Title 8 and the various chapters. This effort was resisted by the board as an effort to diminish its authority. We will seek to have legislation submitted to clarify the issue of conflict within the statutes.


RECOMMENDATION #4.

The Office of the Governor should ensure that board members are properly appointed.

We would assure the auditors this has been addressed by the Governor's Office and by the Department of Law.

Again, thank you for the opportunity to respond to your report. Please feel free to contact this agency or the Division of Occupational Licensing if additional information or clarification is needed. We assure, we determine your comments and findings to be fair and in the interest of Alaskan consumers and professional pharmacist.

Sincerely,



Richard A. Lyon
Commissioner

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SENATE
LETTER OF INTENT

It is the intent of the Senate Labor and Commerce Committee to extend the existence of the Board of Barbers and Hairdressers one year until July 1, 1985. During this period of time a committee composed of, but not limited to, representatives from the current Board Members, practicing barbers and/or hairdressers, Office of the Governor, Division of Occupational Licensing, and Legislature will review the current statutes and regulations governing the operations of the Board of Barbers and Hairdressers.

This committee will review: 1) recommendations proposed by the Division of Legislative Audit in the Performance Report of April 29, 1983; 2) public testimony taken during the current Sunset Review process; and 3) other concerns brought to the attention of this committee. Necessary statutory and/or regulatory changes will be proposed by the committee to the 14th Legislature for consideration.

Adopted by the Senate 4/26/84.

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STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

To: All Committee Members

From: Committee Staff

RE: CSSB 438 "Relating to the State Board of Architects, Engineers, and Land Surveyors."

As a result of "Sunset Review", legislation was drafted which would extend the the Board of Architects, Engineers, and Land Surveyors through 1988 and make changes in statutes which govern the board. The legislation, SB 438 was amended by the Senate Labor and Commerce Committee to include the following changes:

1. The term of a board member is reduced from six years to four years.
2. A public member is added and the requirement that a mining engineer be named to the board was deleted.
3. A requirement for proven continued competency was added to statute.

The House Labor and Commerce Committee substitute deletes the last two statute changes made in the Senate Labor and Commerce Committee substitute.

A PERFORMANCE REPORT
ON THE
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS,
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Audit Control Number
08-1114-54-83-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 Registration for
Architects, Engineers, and Land Surveyors

President
Member
Member
Member
Member
Member
Member
Member
Member

Wallace I. Deboff
Wayne K. Jenson
Paul Stutzman
Gordin Unwin
Wallace Wellenstein
Gordon S. Best
Robert Boswell
Odin Strandberg
Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE


April 15, 1983

Members of the
Legislative Budget and Audit Committee:

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

A PERFORMANCE REPORT
ON THE
BOARD OF REGISTRATION FOR
ARCHITECTS, ENGINEERS,
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983



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

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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 reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors for the past three fiscal years. Our examination was conducted 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 Registration for Architects, Engineers, and Land Surveyors should be reestablished. The law now specifies that this Board will terminate on 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. Interviews with Board members.
3. Tests of files and documents of licensees.
4. Interviews with license examiners.
5. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.
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 Architects, Engineers, and Land Surveyors is a regulatory board with nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession, and three architects.

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 architect, engineer, and land surveyor practices.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated architect, engineer, and land surveyor statutes or regulations.

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REPORT CONCLUSION

Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require 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 Registration for Architects, Engineers, and Land Surveyors 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, assurance 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 RECOMMENDATIONS

Recommendation No. 1

Legislation should be introduced requiring continuing education for architects, engineers, and land surveyors.

Architects, engineers, and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

In our questionnaire to registered professionals, 93% of the architects, 78% of the engineers, and 64% of the land surveyors responding reported that they had attended courses and/or seminars in the last two years. Most were concerned, however, that continuing education requirements would be too narrowly defined or too difficult to satisfy. To address these concerns, there must be active involvement by individuals and professional societies in the development of continuing education standards.

Architects, engineers, and land surveyors are acutely aware of the public's trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the profession.

Recommendation No. 2

The Board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Regulation 12 AAC 36.230(b) provides that an architect, engineer, or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. We find this regulation restrictive, anticompetitive, and absent of clear and statutory policy to restrain competition.

This point of view is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part:

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. No direct

authorization for such an anticompetitive provision [12 AAC 36.230(b)] appears in the statutes. In such a situation, federal courts have specifically held such regulations to be violative of antitrust law.

This regulation is now being challenged by the United States' Department of Justice in the Anchorage Federal District Court (U.S. v. AK Board of Registration for Architects, Engineers, and Land Surveyors).

Recommendation No. 3

The Board should approve for examination only those applicants eligible to take the examination.

The Board has approved applicants for the fundamentals of engineering examination when they do not meet the eligibility requirements for the examination. 12 AAC 36.062 requires successful completion of at least 85% of an accredited engineering curriculum, or, if curriculum is unaccredited, a number of years in experience. At a November, 1982, Board meeting and a February, 1983, Board meeting, applicants were approved for examination who were in an unaccredited curriculum and did not have the requisite experience.

While we do not question the quality of the applicants approved for examination, we do believe that if the Board no longer believes that these requirements are necessary, they should propose regulation changes that would ensure that all applicants would be treated in a consistent and fair manner.

Recommendation No. 4

In order to ensure that the Board adequately represents the general public, the qualifications and conditions of Board membership should be reviewed and amended.

AS 08.48.011-.031 creates the State Board of Registration for Architects, Engineers, and Land Surveyors, specifies the qualifications and professions of the nine Board members, and establishes the members' terms of office. In order that the Board better represent the general public, these statutory provisions should be reevaluated. Some specific areas that should be reevaluated are:

- A. The Board is the only licensing board that has no lay representation. In general, lay members with no direct financial interest in the regulated professions can and should contribute to policy formulation and enforcement decisions. It should be recognized that the public is the ultimate interest group and we recommend, as we did in the 1979 audit, that at least two lay members be included on the Board.

- B. The term of Board members is currently set at 6 years with no limitation on the number of terms that can be served by one individual. This Board is the only licensing board that has a six year term for its members and only two other State licensing boards have an unlimited number of terms that can be served by their members. Such conditions might hamper the flow of new ideas since individuals could serve for an extended period of time. We recommend that a statutory change be considered to limit the number of terms a Board member can serve as well as reducing the years in a Board member's term.

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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 examination.

- I. The extent to which the board, commission or program has operated in the public interest.
 - A. The Board holds at least four regular meetings each year.
 - E. The Board holds written exams at least twice each year, except for certain national examinations that are held only once a year.
- 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 Board approved engineer in training (EIT) applicants for the fundamentals of engineering examination when the applicants did not meet the eligibility requirements of 12 AAC 36.062 (see Recommendation No. 5).
- 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 adopted regulations that clarified various vague statutory and regulatory requirements.
- 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 has advertised certain proposed regulations changes in only one city. The Board does not actively solicit comments on its effectiveness.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. Certain examinations and meetings have not been advertised in an adequate and timely manner.
- 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. The Attorney General's Office has record of a case filed against the Board by the United States' Department of Justice concerning the Board's regulation banning competitive bidding. (12 AAC 36.230(b)). This case is pending in U.S. District Court (see Recommendation No. 4).
- 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. We found no instances where the Board had licensed unqualified practitioners.
- B. Architects, engineers, and land surveyors are not required to demonstrate their continued competence through a continuing education program (see Recommendation No. 1).
- 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 Recommendations.

APPENDIX

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APPENDIX A

BOARD OF REGISTRATION FOR ARCHITECTS
ENGINEERS, AND LAND SURVEYORS
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ending June 30, 1982
(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	\$108,052
Less: Expenditures (Note 3)	<u>99,967</u>
Excess Revenues Over Expenditures	<u>\$ 8.085</u>

Schedule 1
Type of Revenues (See Note 2)

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Application for Examination Fee		
(A) NCARB Examination		
(i) Qualifying Exam	\$50	With application
(ii) Section A	\$50	With application
(iii) Section B	\$75	With application
(B) NCEE Examination	\$50/exam	With application
Reexamination Fee	\$50/exam	Upon reexam
Comity Application Fee	\$50	With application
Corporate Authorization Application Fee	\$100	With Application
Individual Registration Fee	\$15/year	Renewals paid biennially; new registrants pay \$15/year for bal- ance of biennial period.
Corporate Authorization Registration Fee	\$50/year	Renewals paid biennially; new registrants pay \$50/year for bal- ance of biennial period.
Amendment to Corporate Authorization	\$20	With amendment
Delinquent Renewal Fee	\$30	With reinstatement
Postponement of Examination Fee	\$20	With request for postponement
Late Fee Fine	\$10	With late payment
Improper Payment Fine	\$10	When payment is found to be improper

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 revenue 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 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.

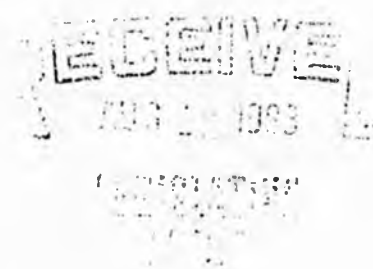
**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 11, 1983

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



Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the Board of Registration for Architects, Engineers and Land Surveyors. The following comments address each recommendation individually:

Recommendation No. 1: Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

The department is in substantial agreement with the intent of this recommendation. However, we feel that the emphasis of legislation should be put on continuing competency rather than on continuing education per se. It is appropriate for the State as a licensing agency to be concerned with continuing competency and with continuing education only to the extent that it is a vehicle for assuring competency and necessary public protection.

By focusing on continuing education exclusively, we are equating education and competency. The effectiveness in continuing education as a vehicle for assuring continuing competency is still open to debate. It would be premature to end that debate through legislation.

Additionally, both administrative costs and increased costs to the consumer must be considered.

Any additional costs that a professional incurs gets passed on to the consumer in the form of higher fees. The costs of services will increase to the extent that professionals are not presently taking continuing education courses. Yet, it is not known whether there will actually be an increase in public protection.

August 11, 1983

Similarly, continuing education programs can be very expensive to administer and would probably require that an additional staff person be hired. There are presently 4,000 active licensees under the Board of Registration for Architects, Engineers and Land Surveyors. Assuming that the continuing education regulations are straightforward enough to be completely administered by the licensing examiner, this means that at a minimum, the Division of Occupational Licensing will have to manage an additional 4,000 pieces of paper every two years.

In this connection, it should also be borne in mind that approximately 95% of the active files are presently stored in Archives. Continuing competency requirements would most likely generate a need for the files to be kept in the office to be managed properly. There would also be a significant increase in both telephone calls and written correspondence, especially during the phasing in of the new regulations.

If the board review were required as part of the new continuing education requirements, the workload would increase that much more dramatically. Between FY '80 and FY '82, the State has experienced an increase of over 100% in the number of new applications for licensure received. At the present, this board is understaffed.

Since it is not known whether continuing education leads to a greater public benefit through continuing competency, serious consideration should also be given to funding research to determine whether present and proposed regulation in this area is actually effective.

Recommendation No. 2: The board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

The department concurs with this recommendation.

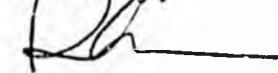
Recommendation No. 3: The board should approve for examination only those applicants eligible to take the examination.

The department concurs with this recommendation.

Recommendation No. 4: In order to ensure that the board adequately represents the general public, the qualifications and conditions of board membership should be reviewed and amended.

The department concurs with the recommendation and specifically with the suggestions contained therein for the addition of at least two public members and limitations on the terms of board members.

Sincerely,



Richard A. Lyon
Commissioner

RAL/kkk/C32
81183a

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)
AS 08.48.111

12 AAC 36.220. CONFLICT OF INTEREST.

(a) Each architect, engineer, or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.225. PUBLIC SERVICE. When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

12 AAC 36.230. SOLICITATION OF EMPLOYMENT. (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Deleted 11/18/83.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or her associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident

to an architect's, engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101
AS 08.48.111

ARTICLE 3. GENERAL PROVISIONS

Section 250. Definitions

12 AAC 36.250. DEFINITIONS. For the purposes of this chapter and AS 08.48, unless the context requires otherwise

Editor's Note: As of Register 88, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney under AS 44.62.125 (b)(6) and in accordance with a Stipulation and proposed Final Judgment filed on November 18, 1983 by the Board of Architects, Engineers and Land Surveyors and the United States Department of Justice in the United States District Court for the District of Alaska in United States v. Alaska Board of Registration for Architects, Engineers and Land Surveyors, Civil Action No. A82-423 CIV. This Stipulation and proposed Judgment were filed because 12 AAC 36.230(b) was in violation of section 1 of the Sherman Antitrust Act [15 U.S.C. § 1 (1977)]. The proposed Final Judgment which may become final on or soon after January 16, 1984 will, also prohibit further enforcement of any ban or board policy against competitive bidding.

12 AAC 36.235. ADVERTISING. An architect, engineer, or land surveyor may not advertise his or her services in a deceptive or untruthful manner. (Eff. 9/30/78, Reg. 67; am 5/30/82, Reg. 82)

Authority: AS 08.48.101(a)(5)

12 AAC 36.240. IMPROPER CONDUCT. (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

APRIL 3, 1984

TO: JOHN

FROM: KEN

RE: CSSB 438 "RELATING TO THE STATE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS"

THE HOUSE LABOR AND COMMERCE COMMITTEE FIRST HEARD LEGISLATION PERTAINING TO THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS ON MARCH 16th. A NUMBER OF BOARD MEMBERS AND REPRESENTATIVES OF THE INDUSTRY AND THE DIVISION OF LICENSING TESTIFIED. FOLLOWING THE HEARING THE COMMITTEE DRAFTED SUBSTITUTE LEGISLATION WHICH ADDRESSES MANY OF THE CONCERNS BROUGHT OUT IN THE HEARING. AN ANALYSIS HAS BEEN PREPARED BY STAFF WHICH OUTLINES THE DIFFERENCES IN THE SENATE BILL AND THE HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE.

S B

4526

APRIL 16, 1984

TO: JOHN

FROM: KEN

RE: SB 456 RELATING TO EMBALMER AND FUNERAL DIRECTOR
TRAINEES

UNDER THE CURRENT ALASKA STATUTES A PERSON INTERESTED IN PURSUING A CAREER AS AN EMBALMER OR A FUNERAL DIRECTOR MUST GRADUATE FROM A SCHOOL OF MORTUARY SCIENCE BEFORE BEING ALLOWED TO DO AN APPRENTICESHIP IN THE STATE. SINCE THERE ARE NO SCHOOLS OF THIS NATURE IN ALASKA ONE MUST TAKE RESIDENCE OUTSIDE TO STUDY IN THIS FIELD. SB 456 WOULD ALLOW ALASKANS TO APPRENTICE BEFORE GOING OUTSIDE FOR SCHOOLING SO HE OR SHE COULD GET A BETTER IDEA OF WHAT THE PROFESSION IS REALLY LIKE BEFORE LAYING OUT THE TIME AND MONEY FOR THE EDUCATION.

QUESTIONS:

1. HOW MANY EMBALMER OR FUNERAL TRAINEES ARE GOING TO BE AFFECTED BY THIS LEGISLATION ?
2. ISN'T THERE SOME NEED FOR FORMAL TRAINING BEFORE ENTERING AN APPRENTICESHIP ? SUCH PROGRAMS ARE TRADITIONALLY DONE AFTER THE EDUCATION ?

3. *no fees? How many of these Trainees HAVE NO Fee's charged.*

Bill No. Committee Substitute for House Bill No. 540 Date
(L&C)
Title "An Act relating to contractors' payment bonds." Contact: Eileen Plate
465-2700
Bob Bacolas
465-4870

Committee Substitute for House Bill No. 540 makes editorial changes to provisions in Title 36 with respect to action against a contractor's payment bond by persons performing labor for subcontractors on public construction projects. In this regard, the bill provides a sample form for a person performing labor for a subcontractor to notice the contractor when a claim for payment of labor is filed against the contractor's bond. The sample form will assist persons performing labor in filing adequate notice as it depicts the specific information which must be included.

The committee substitute also contains a number of more significant changes to Title 36 with respect to action against a contractor's payment bond by persons who supply materials, supplies, or equipment to subcontractors on public construction projects. Inasmuch as persons who supply materials, supplies or equipment on public construction projects fall outside of the department's authority or responsibility as far as collection of monies due them, we have no comments on these particular provisions.

The Department's position on Committee Substitute for House Bill 540 is neutral. It will not have a fiscal impact on the Department.

APPROVED

Robert W. Jancian, Asst. Comm.
for Jim Robison
Commissioner

POSITION PAPER/Department of Labor

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST

Bill/Resolution No.: CSHB 540
 Title: "An Act relating to contractors' payment bonds."
 Sponsor: Bettisworth
 Requestor: (H) Labor and Commerce
 Date of Request: 4/13/84

FISCAL DETAIL

Agency Affected: Labor
 Program Category Affected: Public Protection
 BRU, Program or Subprogram(s) Affected: Labor Standards and Safety BRU, Wage and Hour

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	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not Applicable

ANALYSIS: Attach a separate page for analysis

Prepared By: Robert J. Bacolas, Sr., Director Phone: 465-4870
 Division: Labor Standards and Safety Date: 4/14/84
 Approved by Commissioner: Jim Robison Date: 4/14/84

Agency: Labor

I.F.G.A:44
 Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Alaska State Legislature

Senator Paul A. Fischer
Senate District D
Box 784
Soldotna, Alaska 99669
(907) 262-9420 W.
262-9269 H



State Senate

While in Juneau

Pouch V
Juneau, Alaska 99811
(907) 465-3791

April 16, 1984

MEMO TO: Representative John Cowdry, Chair
House Labor and Commerce Committee

FROM: Senator Paul Fischer *PF*.

SUBJECT: Senate Bill 456

SB 456, "An Act relating to embalmer and funeral director trainees," enables a person at least 18 years of age to undertake a traineeship with a suitably licensed embalmer or funeral director prior to that person's completing the necessary schooling required for licensure. The purpose of this bill is to permit a person to gain some experience in the profession of embalming or funeral directing without having to leave Alaska, prior to undertaking the formal academic program in fulfillment of the requirements for licensure.

As presently structured, Alaska Statutes require a person seeking to become an embalmer or funeral director to complete a required academic curriculum prior to undertaking any traineeship. An embalmer is required to graduate from an accredited college of mortuary science, a minimum two-year program. There are no such schools in Alaska, and the individual must therefore make a great expenditure of time and funds to receive the degree prior to returning to Alaska to undertake a traineeship. A funeral director candidate must have completed a year of college prior to undertaking a traineeship.

By permitting traineeships prior to completion of the academic curriculum, an individual will have an opportunity to get a realistic idea of the requirements of the profession and determine whether or not to then pursue the necessary academic course of study to become a professional embalmer or funeral director. There are currently 102 licensed embalmers, funeral directors, and funeral establishments in Alaska.

If any additional information in support of SB 456 is needed, please let me know.

PF/mc

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB NO. 456

Title: "An Act relating to employer/federal director trainees"

Sponsor: Sen. P. Fischer

Requestor: State Affairs & L.&C.

Date of Request: February 13, 1984

FISCAL DETAIL

Agency Affected: Commerce & Economic Dev.

Program Category Affected: Public Protection

BRU, Program or Subprogram(s) Affected:

Occupational Licensing

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	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

No fiscal impact expected from this bill. The anticipated applications would be limited in number so as to reflect a minimal fiscal impact on the division. No revenue may be generated under the terms of this bill.

ANALYSIS: Attach a separate page for analysis

Prepared By: Darrell Miller

Division: Occupational Licensing

Phone: 465-2535

Date: February 15, 1983

Approved by Commissioner: Richard A. Lyon

Agency: Commerce & Economic Development

Date: 2/24/84

Distribution (by Agency preparing fiscal note):

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

12/1/83

Fiscal Note

S B

470

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners (NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:

- clarification of the duties and responsibilities of the licensee;
- higher financial requirements for the nonadmitted insurer;
- permission to form a surplus lines association with an active role in regulating the market; and,
- allowing admitted markets to compete with the nonadmitted markets.

Section 1. Page 1, lines 8-17.

Current law provides that when the state examines an insurance company, the insurance company pays for that examination. A surplus lines broker is also subject to examination but does not pay for that examination. The position of the surplus lines broker is in many respects similar to an insurer, particularly when the broker has utilized an insurer that is not able to meet its obligations. This section provides that the surplus lines broker must also meet the cost of its examination.

Section 2. Page 1, lines 18-29 & page 2, lines 1-7.

The change here is on page 1, lines 24-25. This section ties in with Section 1. It lists those entities subject to examination without charge.

Section 3. Page 2, lines 8-29 & page 3, lines 1-3.

This rewrite of the purpose section does not contain substantive changes. It is formatted in a more readable form and the application of the chapter to surplus lines brokers has been deleted.

Section 4. Page 3, lines 4-24.

The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

Section 5. Page 3, lines 25-29 & page 4, lines 1-13.

This section contains more of the same changes noted in Section 4. No substantive change.

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.
The changes in this section are similar to those in Section 4. No substantive changes.

Section 7. Page 5, lines 9-29 & page 6, lines 1-4.
The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.
Changes similar to those in Section 4.

Section 9. Page 6, lines 14-26.
The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and one that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

Section 10. Page 6, lines 27-29 & page 7, lines 1-29.
This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individual's ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

Section 11. Page 8, lines 1-24.
This is a new section and it limits a nonadmitted insurer's access to Alaska courts. This is as to those not placed through a surplus lines broker in AS 21.34. It clarifies the standing of those insurers.

Section 12. Page 8, lines 25-29 & page 9, lines 1-6.
This is the same kind of change noted in Section 9. One additional change is that access by the director to an insured's purchases in the admitted or authorized market has been removed. This ability to access admitted purchases is probably unreasonable when placed on the insured. Presumably access to these records through other sources is sufficient.

Section 13. Page 9, lines 7-13.
This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

Section 14. Page 9, lines 14-29 & page 10, lines 1-10.
"Unauthorized" has been changed to "nonadmitted" as noted in section 9.
The penalty provision has been revised so that it is more readily
calculable. This penalty will generally be stiffer than that now provided.

Section 15. Page 10, lines 11-25.
More editorial changes like those in section 9. Since the surplus lines
law has been removed from AS 21.33 and placed in AS 21.34, that reference
has been noted. The time for reporting has been shortened from 60 days to
30 days.

Section 16. Page 10, lines 27-29 & page 11, lines 1-6.
Same editorial change noted in section 9.

Section 17. Page 11, lines 7-15.
The penalty provision has been upgraded in the same fashion as section 14.

Section 18. Page 11, lines 16-21.
This section is intended to avoid any potential conflict with new
sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.
This section upgrades the penalty section by increasing the per violation
penalty from \$500 for the first offense to \$1,000 and by increasing the
second offense penalty from \$500 to \$2,000. A new penalty is also
structured for allowing a violation to continue uncorrected in the amount
of \$1,000 for each month of continuation.

Section 20. Page 12, lines 5-29 & page 13, lines 1-25.
This definition section is new. There is nothing representing a
substantive difference from current law except in (9)(A) where vessels of
50 displacement tons or less are not included in the definition of marine
and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines
1-16
This section adds a new chapter to the insurance code dealing with
surplus lines insurance. This chapter has essentially been removed from
AS 21.33. A number of changes have been made to provide for a stronger
regulation of the surplus lines market. This is accomplished by
strengthening the financial requirements of a company in that market
before it can be used in this state. The line of responsibility for the
surplus lines broker is clarified. The bill permits the creation of a
surplus lines association that can have a substantial self-regulatory
role which has experienced substantial success in California and in
Washington. This would allow the division to more effectively use its
resources to avoid problems for persons insured in that market.

Sec 21.34.010. Page 13, lines 28-29 & page 14, lines 1-14.
This is the purpose section for the new chapter

Sec 21.34.020. Page 14, lines 15-23
This section conditions what can be placed in the nonadmitted market.
There is no substantive difference from current law.

Sec 21.34.030. Page 14, lines 24-29 & page 15, lines 1-12.
This section permits workers compensation to be written in the surplus
lines market provided the director finds it to be in the public interest.
It is substantially the same as current law except that this proposal has
financial requirements that are higher than other placements in that
market.

Sec 21.34.040. Page 15, lines 13-29 & page 16, lines 1-29.
This section substantially increases the minimum capital and surplus
requirements used in the surplus lines market. It also recognizes
distinctions among insurers, Lloyds type organizations, and insurance
exchanges.

Sec 21.34.050. Page 17, lines 1-9.
This section is a new provision which substantially tracks current
practice. It provides for the listing of eligible surplus lines insurers.
It also permits the surplus lines association to perform that task when
approved by the director.

Sec 21.34.060. Page 17, lines 10-23.
This section requires that when a policy is written by more than one
insurer and one or more of those insurers are not eligible, the insured
must be notified. This prevents a practice where some brokers conceal the
fact that there are ineligible insurers on a risk. One way that this is
done is to list the insurers as "underwriters at Lloyd's and other
companies." The division does not accept this practice now, but is not
certain that even in those cases where we correct it, the insured is
adequately informed. A little information at this stage can prevent a lot
of problems later.

Sec 21.34.070. Page 17, lines 24-29 & page 18, lines 1-11.
This section establishes a procedure for removing an insurer from the
eligible list and sets forth a notice requirement to all licensees.

Sec 21.34.080. Page 18, lines 12-29.
This section is similar to an existing requirement to file affidavits of
coverage. It adds a requirement on the surplus lines broker to provide
evidence of insurance to an insured within 30 days of placement of the
coverage. It also provides that these filing requirements may be
transferred to the surplus lines association upon an order by the
director.

Sec 21.34.050. Page 19, lines 1-29 & page 20, lines 1-15.

This section permits the formation of a surplus lines association and sets forth the powers and purposes for which it may be formed. It establishes the requirements for its formation and makes it subject to examination by the director. It provides that the director may require membership in the association as a condition of licensure in this state.

Sec 21.34.100. Page 20, lines 16-29, all of page 21, & page 22, line 1. This section describes the evidence of insurance which a surplus lines broker must provide for an insured. The basic idea is to require a full disclosure of the facts relating to a placement in the nonadmitted market. This also applies to changes made in coverage. The broker is required to maintain a full copy of all documents pertinent to the insurance transaction. A warning is required to apprise the insured that a policy placed in the nonadmitted market is not covered by the Alaska Insurance Guaranty Association Act.

Sec 21.34.110. Page 22, lines 2-13.

This section provides that the insured has no liability for premium until the broker has provided a notice to the insured to the effect that the insurer is nonadmitted, and there is no insolvency protection provided under state law. This is a new approach.

Sec 21.34.120. Page 22, lines 14-16.

This is similar to present law. It provides that contracts in the surplus lines market place are valid contracts.

Sec 21.34.130. Page 22, lines 17-22.

Section provides that payment to the broker is payment to the insurer.

Sec 21.34.140. Page 22, lines 23-29, all of page 23, and page 24, lines 1-6.

This section sets forth the licensing standards and requirements for a surplus lines brokers license. The requirements are not substantially different than those in current law. The bond requirement is higher. This proposal does permit nonresident surplus lines brokers licensees. (e) does provide a penalty for late renewal of license.

Sec 21.34.150. Page 24, lines 7-12.

This section clarifies the scope of a surplus lines brokers license. It allows the surplus lines broker to accept business from other surplus lines brokers and other brokers but not from agents.

Sec 21.34.160. Page 24, lines 13-29 & page 25, lines 1-11.

This section clearly outlines the kinds of records that must be maintained by a surplus lines broker and that such records must be open for examination by the director.

Sec 21.34.170. Page 25, lines 12-18.

This section requires a monthly report of business placed in the surplus lines market.

Sec 21.34.180. Page 25, lines 19-29 & page 26, lines 1-27.

This section is substantially the same as current law. The premium tax is established here and the director may have the tax collected by the surplus lines association. The director has the ability to establish adequate safeguards to protect the monies collected in this fashion.

Sec 21.34.190. Page 26, lines 26-29 & page 27, lines 1-3.

A filing fee of 1% is established. This is presently at 1/2%.

Sec 21.34.200. Page 27, lines 4-21.

This section provides for two alternate means of tax collection. The first is by the director in the usual manner. The second is by the surplus lines association upon an order by the director after establishing those safeguards deemed appropriate.

Sec 21.34.210. Page 27, lines 22-29 & page 28, lines 1-16.

In the current law, the director has discretionary suspension or revocation authority. The restructuring found in this section is more specific and lists those actions which can result in suspension or revocation.

Sec 21.34.220. Page 28, lines 17-28.

This section ties into AS 21.33 for service of process on a nonadmitted insurer used through the surplus lines market. The presence of a nonadmitted insurer on a surplus lines contract assumes that the insurer has subjected itself to AS 21.34.

Sec 21.34.230. Page 28, line 29 & page 29, lines 1-7.

This penalty section is an upgrade from the present law. It also includes an ability to take action under AS 21.33.320-330 in the unfair trade practices act.

Sec 21.34.240. Page 29, lines 8-12.

Separability section.

Sec 21.34.250. Page 29, lines 13-14.

This section enables the director to promulgate those regulations necessary to implement, define and enforce the provisions of this new chapter.

Sec 21.34.900. Page 29, lines 15-28, all of page 30, & page 31, lines 1-14.

The definitions here take the same explanation as those in Sec 20. There are a few additional definitions but these are not substantively different than current usage in the insurance code.

Sec 22. Page 31, lines 15-19.

This added section in the unfair trade practices act makes it an unfair trade practice to fail to make the required disclosures and reports.

Sec 23. Page 31, lines 20-29 & page 32, lines 1-2.

This section gives admitted insurance companies the ability to compete with the nonadmitted market. It ties in with sections 24 & 25.

Sec 24. Page 32, lines 3-9

This section ties in with Sec 23 and Sec 25 in allowing the admitted market to compete with the nonadmitted market. This is accomplished by providing these exceptions in the rate law which has to date acted as an impediment to that kind of competition.

Sec 25. Page 32, lines 10-15.

This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Sec 26. Page 32, lines 16-17.

This section repeals those sections in AS 21.33 which are no longer needed or have been replaced in the new chapter in section 21.

SB470 Section by Section Analysis.

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners (NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:

- clarification of the duties and responsibilities of the licensee;
- higher financial requirements for the nonadmitted insurer;
- permission to form a surplus lines association with an active role in regulating the market; and,
- allowing admitted markets to compete with the nonadmitted markets.

Section 1. Page 1, lines 8-17.

Current law provides that when the state examines an insurance company, the insurance company pays for that examination. A surplus lines broker is also subject to examination but does not pay for that examination. The position of the surplus lines broker is in many respects similar to an insurer, particularly when the broker has utilized an insurer that is not able to meet its obligations. This section provides that the surplus lines broker must also meet the cost of its examination.

Section 2. Page 1, lines 18-29 & page 2, lines 1-7.

The change here is on page 1, lines 24-25. This section ties in with Section 1. It lists those entities subject to examination without charge.

Section 3. Page 2, lines 8-29 & page 3, lines 1-3.

This rewrite of the purpose section does not contain substantive changes. It is formatted in a more readable form and the application of the chapter to surplus lines brokers has been deleted.

Section 4. Page 3, lines 4-24.

The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

Section 5. Page 3, lines 25-29 & page 4, lines 1-13.

This section contains more of the same changes noted in Section 4. No substantive change.

Summary

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.
The changes in this section are similar to those in Section 4. No substantive changes.

Section 7. Page 5, lines 9-29 & page 6, lines 1-4.
The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.
Changes similar to those in Section 4.

Section 9. Page 6, lines 14-26.
The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and one that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and, "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

Section 10. Page 6, lines 27-29 & page 7, lines 1-29.
This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individual's ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

Section 11. Page 8, lines 1-24.
This is a new section and it limits a nonadmitted insurer's access to Alaska courts. This is as to those not placed through a surplus lines broker in AS 21.34. It clarifies the standing of those insurers.

Section 12. Page 8, lines 25-29 & page 9, lines 1-6.
This is the same kind of change noted in Section 9. One additional change is that access by the director to an insured's purchases in the admitted or authorized market has been removed. This ability to access admitted purchases is probably unreasonable when placed on the insured. Presumably access to these records through other sources is sufficient.

Section 13. Page 9, lines 7-13.
This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

Section 14. Page 9, lines 14-29 & page 10, lines 1-10.
"Unauthorized" has been changed to "nonadmitted" as noted in section 9.
The penalty provision has been revised so that it is more readily
calculable. This penalty will generally be stiffer than that now provided.

Section 15. Page 10, lines 11-26.
More editorial changes like those in section 9. Since the surplus lines
law has been removed from AS 21.33 and placed in AS 21.34, that reference
has been noted. The time for reporting has been shortened from 60 days to
30 days.

Section 16. Page 10, lines 27-29 & page 11, lines 1-6.
Same editorial change noted in section 9.

Section 17. Page 11, lines 7-15.
The penalty provision has been upgraded in the same fashion as section 14.

Section 18. Page 11, lines 16-21.
This section is intended to avoid any potential conflict with new
sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.
This section upgrades the penalty section by increasing the per violation
penalty from \$500 for the first offense to \$1,000 and by increasing the
second offense penalty from \$500 to \$2,000. A new penalty is also
structured for allowing a violation to continue uncorrected in the amount
of \$1,000 for each month of continuation.

Section 20. Page 12, lines 5-29 & page 13, lines 1-25.
This definition section is new. There is nothing representing a
substantive difference from current law except in (9)(A) where vessels of
50 displacement tons or less are not included in the definition of marine
and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines
1-16.
This section adds a new chapter to the insurance code dealing with
surplus lines insurance. This chapter has essentially been removed from
AS 21.33. A number of changes have been made to provide for a stronger
regulation of the surplus lines market. This is accomplished by
strengthening the financial requirements of a company in that market
before it can be used in this state. The line of responsibility for the
surplus lines broker is clarified. The bill permits the creation of a
surplus lines association that can have a substantial self-regulatory
role which has experienced substantial success in California and in
Washington. This would allow the division to more effectively use its
resources to avoid problems for persons insured in that market.