

ALASKA LEGISLATURE COMMITTEE FILES 1983 - 1984 8672

2665 SLC SB 537 - SB 545

Current Situation

The real estate industry in Alaska consists of some 4000 licensees who support sensible legislation to regulate the industry and to protect the public against illegal real estate practices. This sense of professional responsibility has not changed throughout the 20-year historical summary period outlined above.

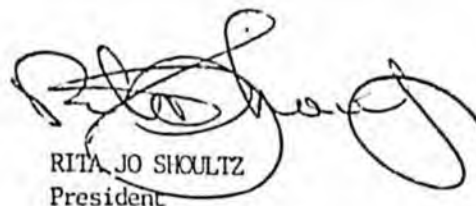
Currently there are no filing fees or costs if a claim is denied, nor is the claimant required to exhaust other remedies before receiving satisfaction from the Surety Fund. Thus, the "no-risk" and "no-costs incurred" status of claimants simply encourages claims. Further, the state entity, either contracted or appointed, is in the position of being both judge and jury.

It is the consensus of the industry that a concentrated effort must be made immediately to restore the integrity of the surety fund, both in concept and in actual administration.

Points to Achieve

1. Ensure the rights of all parties to due process through the court system with the determination of a claim's validity and resultant damage assessment in the courts.
2. Maintain the Surety Fund as a resource to be drawn upon only when funds are not collectable from the judgment debtor by any other means.
3. Charge the Real Estate Commission with the responsibility of timely license action on the licensee whose action has resulted in a draw from the Fund.
4. Direct the Real Estate Commission to provide quality education programs to licensees and the public as to licensees' responsibilities under the real estate statutes and regulations.

ALASKA ASSOCIATION OF REALTORS


RITA JO SHULTZ
President

SB 537 TITLE & SPONSOR SUMMARY
AMENDED TITLE:
AN ACT RELATING TO THE REAL ESTATE SURETY FUND

14:37 5/22/84 PAGE 1 OF 2

PRIME SPONSOR: SENATE LABOR&COMM COMMITTEE

CO-SPONSORS:

CURRENT STATUS: 3/28/84 IN (S) LABOR & COM REFERRAL: FINANCE

SB 537 SENATE ACTION

14:37 5/22/84 PAGE 2 OF 2

DATE SEQ PAGE

LEGISLATIVE ACTION

03/28/84 01 2503 FIRST READING -- COMMITTEE REPORTS
LABOR & COMMERCE
FINANCE
RULES

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OFFICIAL BUSINESS

ALASKA STATE LEGISLATURE - SENATE

COMMITTEE ON LABOR AND COMMERCE

SENATOR RICHARD I. ELIASCN
CHAIRMAN

POUCH V • JUNEAU, ALASKA 99811
(907) 465-3844

TO: Senator Jalmar Kerttula

FROM: Senator Dick Eliason, Chair *[Signature]*
Senate Labor and Commerce Committee

RE: HB 705 - An Act relating to the real estate surety fund

DATE: May 12, 1984

The above-mentioned legislation would require a claim against the real estate surety fund to be processed through the court system instead of the current procedure involving a hearing officer under the jurisdiction of the Real Estate Commission. The Alaska Association of Realtors view the passage of this legislation as the answer to their concerns regarding the number of frivolous claims filed against the surety fund as well as the length of time required to settle the disputes.

However, since the introduction of HB 705 the Alaska Supreme Court issued an opinion regarding the Alaska Real Estate Surety Fund. The Court ruled that this surety fund cannot be used for claims involving "innocent" misrepresentation. The fund can only cover payment to claims resulting from "willful" misrepresentation, fraud, or deceit on the part of the realtor. The immediate result of this decision will be to substantially reduce the number of claims filed by the public as well as the number of claims honored by payment from the surety fund. Jim Magowan, Executive Director of the Real Estate Commission, estimates that approximately half of the justifiable claims stem from innocent misrepresentation.

As a result of this Supreme Court decision, Jim estimates that the Commission will receive approximately 80-100 claims annually. These claims will be handled by a full-time hearing officer under the direction of the Commission. This new position has just recently been approved by both the Senate and the House. It is estimated that all claims should be finalized within a 3-4 month period of time.

The Supreme Court decision and the approval of the full-time hearing officer appears to have answered two main concerns expressed by the realtors. An additional disincentive to file frivolous claims would be to impose a significant filing fee to be paid by each claimant prior to processing a claim against the surety fund. If the claimant does not prevail, then the filing fee would be lost. A filing fee could be set at a \$50.00 minimum or 5% of the claim whichever is greater to a maximum of

\$250.00. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

Individuals who voiced opposition to HB 705 are concerned that court proceedings are time consuming and expensive. Jim Magowan has indicated that the average claim against the surety fund is \$4,000 with approximately 25% of the claims \$2,000 or less. If an individual had to turn to the court system for regress, the costs involved would be prohibitive for these relatively small claims. Unfortunately, the small claims court is not a guaranteed answer as each party involved in the suit has the right to require that the "formal rules of civil procedure" prevail which would necessitate involving the district court. This action could increase the costs and time involved in finalizing the claim. Karla Forsythe, General Counsel, Alaska Court System, estimates that a standard civil law suit in Anchorage could take a least one year to finalize.

The Alaska Real Estate Commission held a public hearing on April 24, 1984, in Anchorage. After five hours of public testimony, it was the opinion of the Commission that important issues and questions had been raised by licensees and non-licensees. However, it was felt that HB 705 did not adequately resolve the issues and further review and input was necessary to address all concerns. The Commission recognized the importance of recommending alternative legislation next session and stated that this area of need would be a high priority.

As the need for this legislation does not seem to be as great as at the time of introduction, possibly the legislature should consider postponing any action in this area until the Real Estate Commission formulates its position.

MEMORANDUM

State of Alaska

TO: Dick Monkman
Assistant Attorney General
Commercial Section, Anchorage

DATE: April 3, 1984

FILE NO:

TELEPHONE NO:

276-3550

FROM: Norman C. Gorsuch
Attorney General

SUBJECT: House Bill 705 -
Real Estate Surety
Fund

By: *Karen*
Karen M. Procter
Paralegal Assistant
Commercial Section-Anchorage

I attended this morning's legislative teleconference on House Bill 705 held at the Anchorage Legislative Affairs office. The purpose of the teleconference was to accept public testimony on the bill before the House Labor and Commerce Committee. The Committee was represented by Chairman Cowdery, Representatives Pestinger, Furnace, and Ringstad. Present in the Anchorage audience were Jim Magowan, Executive Director of the Real Estate Commission; Liz Johnson, a private attorney who does hearing officer work before the Commission; Frank Austin, a past public member of the Commission; and about 15 members of the real estate industry.

Testimony was offered by Liz Johnson, Frank Austin, and Dave Ribacchi in Anchorage; Jeff Cook and Linda Stromming (?) in Fairbanks; Grace Volkay in Juneau; and Hilton Marchant and Hazel Reinhardt in Soldotna. Karen Morris of Fairbanks made herself available to questions. The testimony was briefly as follows:

Liz Johnson, private attorney and state-appointed hearing officer. Johnson supported the hearing officer system over the proposed court system approach because it is most efficient, cheapest, and fastest; also, in the present system a complaint is against the fund rather than an individual. She characterized the two systems as "direct recovery vs. an entire court proceeding." A court proceeding would require that the claimant prove "innocent" or "intentional" misrepresentation, an unfair burden on the claimant, and one which would stand in the way of a fair resolution of the claim.

Frank Austin, former public member of the Alaska Real Estate Commission. Austin said there was little in the proposed bill that served the public. The Commission originally decided the court system was not serving the industry and the hearing officer system was instituted. He said the use of hearing officers has sped up the claim process dramatically. Only about one-fourth of the claims filed with the fund are paid, demonstrating that the fund does not pay frivolous claims and

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that the present process serves the industry well. Austin commented that the public should be protected from "innocent" as well as "intentional" misrepresentation. The surety fund is part of the public domain, not the industry domain. He expressed concern that there was very little or no public notice of today's hearing.

Dave Ribacchi, a licensee and member of the Alaska Real Estate Commission. Ribacchi felt strongly that the Legislature should not move too quickly on this one p

iece of legislation when there are so many complex problems with real estate statutes and regulations that must be corrected. Ribacchi said that the Commission itself has not taken a stand on this issue because there is so much that must be considered first. He was concerned that this bill does not address questions of liability. Ribacchi stated that the Commission has initiated action to deal with these problems.

Jeff Cook, Alaska Association of Realtors, Fairbanks, and a past industry member of the Alaska Real Estate Commission. Cook said he did not approve of the hearing officer system when it was instituted, and that it has not worked. He complained that the surety fund bears all costs, i.e., the licensees pay the costs of frivolous claims. The hearing officer system does not provide for screening of claims; there are no filing fees; there is no reimbursement of costs. It is a no-risk system for the claimant. He said the inclusion in the bill of the language "intentional" did not bother him.

Linda Stromming, Greater Fairbanks Area Realtors. Stromming supports H.B. 705 because it will allow realtors due process. She claimed that hearing officers rarely have the expertise that judges have, and that licensees do not get full protection of the law under the hearing officer system.

Grace Volkay, Alaska Association of Realtors, Juneau. Volkay felt that the hearing officer system had greatly increased the number of surety fund claims, and that the time taken to process a claim is not always shorter than it would be under the court system. The proposed legislation's requirement of obtaining a judgment before pursuing assets is good because it validates the consumer's claim. Volkay said that a hearing officer is just "one person," "unchallenged," whereas a judge can hear testimony from both sides and render points of law. She said it was time to take the State out of the dual role of judge and jury. Hearing officers have held licensees responsible for "innocent" misrepresentation, and this isn't fair, she said. She urged passage of the bill as is.

Hilton Reinhardt, Alaska Association of Realtors, Soldotna. He felt that dropping the word "intentional" from the bill would be okay. The hearing system has some merit in terms of time frame, but otherwise it is not fair.

Hazel Reinhardt, Fairbanks realtor. Reinhardt expressed agreement with Hilton.

Following testimony, the committee voted to pass the bill. It now moves into the Senate Labor and Commerce Committee. An audio presentation of discussion between the Senate committee and Jim Magowan may be heard today at 1:30 p.m. at Legislative Affairs. There will be no audience participation in the discussion.

It is interesting to note that, in regard to Austin's concerns about public notice of this hearing, the committee members felt that the "public showing" at the teleconference demonstrated that word did get out. As you can see, though, the Anchorage audience was almost entirely composed of licensees; it is probably safe to assume the same of the other audiences.



Official Business

Alaska State Legislature

Senate

Office of the President

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

To: Senator Dick Eliason
Chair, Senate Labor & Commerce Committee

From: Senate Jay Kerttula
Senate President

Date: April 16, 1984

Subject: SB 537

A handwritten signature in cursive script, appearing to read "Jay".

Would you please consider moving Senate Bill 537 from Labor & Commerce to the Finance Committee at the ~~earliest~~ ^{earliest} possible? This bill relates to the real estate surety fund.

Your consideration is appreciated.

Just increase the amounts perhaps?

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DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535
MAY 11 1964
FEDERAL BUREAU OF INVESTIGATION

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 05-23-83 BY SP-8 JRS/STP



ALASKA ASSOCIATION OF REALTORS®

1818 W. Northern Lights Blvd., Suite 104 • Anchorage, Alaska 99503
Telephone 907-272-8016

TO: Members of the Alaska Legislature
FROM: Rita Jo Shoultz, President Alaska Association of REALTORS
DATE: April 13, 1984

The attached remarks by attorney Julian L. Mason were made during the January 20, 1984 Real Estate Commission meeting.

At that meeting the Real Estate Commission asked the Alaska Association of REALTORS to develop a "White Paper" or position paper with regard to the Real Estate Surety Fund. The Association prepared that requested white paper, distributed it personally to the commissioners and Mr. Magowan on March 4-5 and presented the paper formally to the Real Estate Commission at their meeting March 6, 1984. As a result of the White paper, legislation was introduced (HB 765 and SB 537). The transcript is being provided as background material.

Currently, it can take up to three years for claims to be heard and settled. The claims are heard by one hearing officer, making that one person the judge and jury. That officer gives his or her report to the commissioners and they make a decision based on that one opinion without the benefit of the testimony from either side.

The Alaska Association of REALTORS has always worked for regulation of the industry and protection of the public. We feel the proposed legislation will serve to promote these goals.

Enclosure: Transcript Julian Mason - Remarks of Real Estate Commission 1/20/84 mtg.



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DEBORAH SENW
OF COUNSEL
ADMITTED IN
ILLINOIS AND WASHINGTON
NOT ADMITTED IN ALASKA

February 27, 1984

Trish Hurley Smith
Anchorage Board of Realtors
1818 W. Northern Lights Blvd.
Suite 103
Anchorage, AK 99503

Dear Trish:

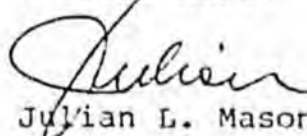
I believe that the transcript of my remarks at the Real Estate Commission hearing on January 20, with some exceptions, is accurate. However, transcriptions of extemporaneous statements lose voice inflections and oral punctuation and therefore are frequently unclear. If the remarks are to be published, I think they should be edited slightly for clarity.

I have enclosed an edited transcript which is in substance true to the original, but which corrects transcription errors and is more clear than the original.

I listened carefully to the tape and must offer my congratulations to the person who did the transcribing. I spent about two hours listening to the tape and working on the transcription and I'm the person who uttered the words. I assume that the person who did the transcription has gone crazy and fled the state.

Very truly yours,

BAILY & MASON


Julian L. Mason

JLM/nk

Enc.

Transcript of Julian Mason's remarks at Real Estate
Commission Meeting, January 20, 1984

(Edited for Clarity)

Commissioner Ribacchi:

"Generally, do we have a problem with our statutes, with our regulations or with our own operating procedures or do we have a problem with all of them?"

Julian Mason:

I think there is a combination of answers to that. Let me break it down into some pieces.

The specific concern of the real estate community is that the surety fund statute in its present form is not achieving the result which was originally intended and, in fact, is achieving results which the real estate people feel are contrary to public policy. But there's a statute in place and the statute in some cases, I'm sure, has been misinterpreted and in other cases has been interpreted correctly; you can't change that by regulation.

In my judgment, there need to be statutory amendments. One possible amendment is reimposition of the requirement that a person get a judgment before the surety fund can be tapped. That's one of a number of solutions. But any change in the statutes must be made legislatively; it cannot be made by regulation. You can't pass a regulation contrary to the statutes.

There are procedures that can be changed by the Commission in two ways; one way is by regulation - make regulatory changes. I think the last regulation changes went into effect on April 10 of this year, if I remember correctly. One was mentioned earlier, the two year statute of limitations. That's a relatively time consuming process, but it has the beauty of certainty, unlike the legislative process.

The second way that procedures can be changed is by giving policy directions to the hearing officer. I'm not really prepared today to make specific suggestions to you, but I would point out that the way the statute is constructed you actually operate under two statutes. You operate under Title 8 which is the Real Estate Commission Act ~~in the statute~~ and you also operate under the Administrative Procedure Act. The Administrative Procedure Act allows you to delegate

essentially all or less than all of your authority to act, and it's that provision under which you use hearing officers to gather evidence and make or partially make decisions on your behalf. There is, incidentally, some interesting confusion about the way the Act is constructed. You probably could delegate the whole process to the hearing officer and, untouched by Commission hands, decisions would be made. You can stop far short of that and, if you believe the hearing officers are misconstruing the Act, I see no reason why you can't direct the hearing officers to construe the Act in certain ways. Now, if you do that, and if you misconstrue the Act, claimants are free to challenge your construction. I see no reason that you must allow a hearing officer repeatedly to construe the Act in ways that are contrary to your understanding of the Act.

The administrative process is an interesting one, and it's one that's widely misunderstood. If you go back only a very short time - really just 30 or 40 years - there were no administrative agencies. What you do was done, if it was done at all, by the Executive branch of government. The conclusion was reached that it's too big a task and that there should be delegation within the executive branch. So, you as members of the Real Estate Commission are charged with the responsibility for administering certain statutes and balancing a variety of interests, both those of the real estate community and those of the public at large, and you have enormous responsibility in doing that and enormous authority to act. There is absolutely no requirement whatsoever that you allow the process to continue in ways that you think are contrary to the public interest or contrary to the statutes, or contrary to your own regulations. You are required to follow the law and that includes the regulations, which properly enacted have the force and effect of law. You're certainly free to give direction to hearing officers and anyone else who is in the administrative process to construe things as you think they should be construed in the public interest - not in the interest of a particular claimant, not in the interest of the real estate community, but in a broader public interest. That's something you can do fairly quickly. If the surety fund statute is being misconstrued, you can decree here today or tomorrow, or at your next meeting that it be construed properly and tell hearing officers to operate under what you believe is the correct construction of the Act. You can change some things by regulation, although I don't think that regulatory changes are going to change the problems we talked about here today. You made some changes in the regulations; the statute of limitations was one that was very helpful. I don't think there are other regulatory changes that you need to make right now. You have to go from first delivering some

ultimatums in the hearing process and skip to the statutory changes.

Mr. Ribacchi asked a minute ago whether additional public input is required. I don't want to be presumptuous and put myself in the position of advising the Commission. I'll just put on my own personal hat and say that to me, that's an anathema. The Real Estate Commission is formulated and charged with safeguarding the public interest. You are free to consult anyone that you wish and get his or her advice and feelings about how a particular problem should be handled. It makes no sense at all to encumber yourselves by making a larger, and larger, and larger committee. In fact, in the end, you are compelled to exercise your own judgment and your own discretion. You can't rely on that of others. There is no committee that you can create to replace the Real Estate Commission. If the Real Estate Commission feels that a statutory change should be made then, in my judgment, it is free to make that recommendation to the Legislature. If the Anchorage Board or the State Association of REALTORS, feels the statutes should be changed, it is free to make that recommendation to the Legislature, just as I am or any other member of the public. We should all draw on the resources that are available to us to decide what those changes should be, but it seems to me to be ducking a responsibility to add people off of the Commission to an enlarged committee of the whole. You're perfectly free to consult them - other people - and I assume that each and every one of you will, but the responsibility for determining whether statutory changes should be made is one that you should make yourselves. I urge you to keep your committee a committee of the Real Estate Commission or smaller.

The advice that was given earlier was good advice. The gentleman said: 'If you want to change the thing, get together and decide on one course of action, and then go to Juneau; don't send people down to go in different ways.' I think the real estate community is perfectly capable of proposing statutory changes and asking the Commission to join in recommending these changes to the Legislature. That's the process to which I'm accustomed and certainly one in which I've participated with other state agencies. I do a lot of utility work as you know and frequently recommend changes in public utilities statutes but a policy which my clients have is that we don't go around asking for statutory changes without telling the affected regulatory body. I think that the real estate community should be developing proposed statutory changes by consulting with this Commission, and it should attempt to go hand in glove with this Commission to Juneau so we have a unified approach to effect changes.

Commissioner _____:

Was it statutory changes that moved awards from the surety fund away from the court?

Julian Mason:

That's correct, that was the change made in either 1979 or 1980.

Commissioner _____:

That was absolutely a statutory change, that wasn't a regulatory change?

Julian Mason:

That was a statutory change and it was one that in a sense, as one Commissioner pointed out, snuck by the real estate community and the Commission. As I recall, it was tacked in as part of the sunset legislation. It was a statutory change.

Attached is a summary of a problem area of vital concern to the real estate industry. The ALASKA ASSOCIATION OF REALTORS is suggesting content for a bill which will address the issue. We seek your consideration and support.

History

From its creation in 1964, as reflected in AS 08.88, the Real Estate Commission's primary purpose has been the protection of the public through the examining and licensing of real estate practitioners. Through 1975, the public's guarantee of monetary relief was a required bond in the amount of \$1000/Salesman and \$5000/broker.

Through the early '70's there were few claims against the bonds; however, the industry realized that the bonding level was not adequately protecting the public's interests. Following the example of twelve other states, (Footnote: 1974 NARELLO Report, page 25) the industry together with the Real Estate Commission actively lobbied for the 1974 legislation (Attachment A: 45.85.010-11C & 08.88.281, .071, & .401) to create a surety fund with a two-fold purpose:

1) to provide indemnification up to \$10,000/transaction for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

The 1974 legislation, which was patterned after the California model, required court action and a judgment against a licensee prior to any disbursement of Surety Fund dollars. However, Alaska's enacted version did not require an attempt to collect money from or attach the assets of the named licensee, nor did it provide for any review by the Commission prior to payment from the fund.

Thus from the 1976 license renewal cycle when the first fees were paid into the surety fund, judges were able to order payment directly from the fund to satisfy a judgment.

These conditions were in effect until 1980 when the statute was amended, initiated by the Legislative Audit Committee during the Sunset Review, to charge the Real Estate Commission with the responsibility to both hear cases and award payments but without ensuring the full protection of due process and judicial precedent (Attachment B).

The use of hearing officers (as allowed by the Administrative Procedures Act) starting in January 1982 and the regulations adopted by the Commission in December 1982 (effective April 1983) have further attempted to work within the current statute (Attachment C).

- Attachments: A) 1974 Surety Fund Statute
B) 1980 Amended Surety Fund Statute
C) 1982 Surety Fund Regulations

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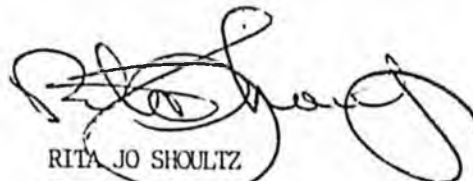
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ALASKA ASSOCIATION OF REALTORS


RITA JO SHOULTZ
President

Means to Achieve

The following is proposed to be introduced as an amendment to HB 389.

Add a Section 11: Article 5 (AS 08.88.450-500) is amended so that in its entirety it would read:

Sec. 08.88.450 Real estate surety fund. There is created a special account in the general fund known as the real estate surety fund to carry out the purposes of this chapter. The fund shall be composed of payments made by licensed real estate brokers and salesmen under AS 08.88.455. The fund may not exceed \$500,000 and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.88.091. (1 ch 148 SLA 1974, am 34 ch 167 SLA 1980; AS 45.85.010)

NO CHANGE

AS 08.88.455 Payments by real estate brokers and salesmen.

(a) A licensed real estate broker, associate broker, of salesman when obtaining or renewing a real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commission in addition to the license fee, a Surety Fund fee not to exceed \$125. After the fund reaches \$250,000, the commission shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than \$250,000.

Already in CSHB389 for equalization of fee structure.

NO CHANGE

(b) All fees collected under this section shall be paid at least once a month by the commission into the general fund. These payments shall be credited to the real estate surety fund. (1 ch 143 SLA 1974; am 35 ch 167 SLA 1980; AS 45.85.020)

AS 08.88.460 Claim for payment.

NEW

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under AS 08.88, under grounds of fraud, deceit, intentional misrepresentation or conversion of trust funds, arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a licensee is required under AS 08.88, the aggrieved person may, upon the judgment becoming final, file a verified application in the court in which the judgment was entered for an order directing payment out of the Real Estate Surety Fund of the amount of actual and direct loss in the transaction up to the sum of ten thousand dollars (\$10,000) of the amount unpaid upon the judgment.

In the case of a small claims court judgment, the aggrieved person shall file the verified application in the district court in which the judgment was entered in favor of the aggrieved person. The court shall then make a determination as to whether the small claims court judgment was based on facts constituting grounds for recovery under this section and may enter an order directing payment of the small claims court judgment out of the Real Estate Surety Fund.

A copy of the verified application shall be served upon the commission and the judgment debtor and a certificate or affidavit of that service filed with the court.

(b) Nothing in this section shall be interpreted to authorize payment from the Real Estate Surety Fund for transactions or events which solely involves innocent misrepresentation on the part of a real estate licensee.

(c) Application for payment from the fund shall be made within one year from the date that the judgment becomes final.

AS 08.88.465 Time for action by court on application for payment: required showing of person aggrieved.

NEW
(a) The court shall conduct a hearing upon such application 30 days after service of the application upon the commission. Upon petition by the commission and showing of good cause, the court may continue the hearing for such further period as it deems appropriate. At the hearing, the aggrieved person shall be required to show that:

(1) he is not a spouse of the debtor, or the personal representative of such spouse.

(2) he has complied with all requirements of this article.

(3) he has obtained a judgment as set out in AS 08.88.460, stating the amount thereof and the amount owing thereon at the date of the application.

(4) he has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets, liable to be sold or applied in satisfaction of the judgment.

(5) he has discovered no personal or real property or other assets liable to be sold or applied, or that he has discovered certain of them owned by the judgment debtor and liable to be so applied, and that he has taken all necessary action and proceedings for the realization thereof, and that the amount thereby realized was insufficient to satisfy the judgment, stating the amount so realized and the balance remaining due on the judgment.

(6) he has diligently pursued his remedies against all the judgment debtors and all other persons liable to him in the transaction for which he seeks recovery from the Real Estate Surety Fund.

(7) he is making said application no more than one year after the judgment becomes final.

AS 08.88.470 Order of Court; grounds; defense of actions; burden of proof; presumption; dismissals; compromise of claims.

(a) Whenever the court proceeds upon an application as set forth in AS 08.88.465 it shall order payment out of the Real Estate Surety Fund only upon a determination that the aggrieved party has a valid cause of action within the purview of AS 08.88.460 and has complied with the provisions of AS 08.88.465.

If the judgment in favor of the applicant was by default, stipulation, or consent, or if the action against the licensee was defended by a trustee in bankruptcy, the applicant shall have the burden of proving that the cause of action against the licensee was for fraud, intentional misrepresentation, deceit, or conversion of trust funds. Otherwise the judgment shall create a rebuttable presumption of the fraud, intentional misrepresentation, deceit, or conversion of trust funds by the licensee, which presumption shall affect the burden of producing evidence.

The commission may move the court at any time to dismiss the application when it appears there are no triable issues and the petition is without merit. The motion may be supported by affidavit of any person or persons having knowledge of the facts, and may be made on the basis that the petition, and the judgment referred to therein, does not form the basis for a meritorious recovery claim within the purview of AS 08.88.460; provided, however, that the commission shall give written notice at least 10 days before such motion.

AS 08.89.471 Defense of actions: conclusive adjudications of issues.

NEW

(a) If the judgment is found against more than one individual licensed under AS 08.88 for performance of acts for which a license is required under that chapter, it shall be the responsibility of the commission, in the absence of proration by the court, to prorate the award charges among the said judgment debtors.

AS 08.88.472 Order directing payment out of fund: limitation of liability.

NEW

If the court finds after the hearing that the claim should be levied against the Real Estate Surety Fund, the court shall enter an order directed to the commission requiring payment from the Real Estate Surety Fund of the amount payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

Notwithstanding any other provisions of this chapter, the liability of the Real Estate Surety Fund for the purposes of this chapter shall not exceed ten thousand dollars (\$10,000) for any one transaction for which the cause of action occurred, regardless of the number of persons injured, the number of licensees involved, or the number of parcels of real estate involved in the transaction.

NO CHANGE

Sec. 08.99.475 Maximum liability. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

NO CHANGE

Sec. 08.88.480. Order of claim payment. If the money deposited in the real estate surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commission shall, when sufficient money has been deposited in the fund and appropriated, satisfy unpaid claims in the order that the claims were originally filed, plus accumulated interest at the rate of eight percent a year. (1 ch 143 SLA 1974; am ch 167 SLA 1980; AS 45.85.070)

AS 08.88.490. Right to Subrogation.

No Substantive
Change

When upon the order of the court, the commission has paid from the Real Estate Surety Fund any sum to the judgment creditor, the commission shall be subrogated to all of the right of the judgment creditor and the judgment creditor shall assign all his right, title and interest in the judgment to the commission. Any amount and interest recovered by the commission on the judgment shall be deposited in the Real Estate Surety Fund.

AS 08.88.495. Disciplinary action against brokers and salesmen.

Nothing contained herein shall limit the authority of the commission to take disciplinary action against any licensee for a violation of any of the provisions of AS 08.88 or the regulations promulgated by the commission. The repayment in full of all obligations to the Real Estate Surety Fund by any licensee does not nullify or modify the effect of disciplinary proceeding brought under the provisions of AS 08.88.

NO CHANGE

Sec. 08.88.500. Definition. In this chapter a commission means the Real Estate Commission established under this chapter. (40 ch 167 SLA 1980; AS 45.85.120)

NEW

(a) "final judgment" means a judgment not subject to further judicial review.

Observations of Julian Mason:

1. At such time as the first version of suggested changes may be enacted by the legislature, the commission as a matter of housekeeping should rescind the Surety Fund regulations which would no longer be relevant.

2. To my knowledge, no other regulatory body in the state can award damages to a third party without a jury trial. They can fine and/or assess losers to pay attorney fees.

3. Small claims court defendants can opt for district court in order to have a jury trial.

Recommended Hearing Officer Briefing and Instructions

The 1974 legislations which provided for the creation of a surety fund, starting with fees collected in the 1976 license renewal cycle, was the culmination of joint efforts of the commission and the industry to more adequately protect the public from illegal actions of licensees. Its intended purpose was two-fold:

(1) to provide indemnification up to \$10,000/transaction and \$50,000/Licensee for judgments awarded by the courts to persons who suffered financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation, or conversion of trust funds, and

(2) to provide funding for real estate education of both the public and the licensees from funds collected in excess of the specified \$250,000 minimum balance in the fund.

When the 1980 amendments to the statute removed the necessity of a court judgment to access the fund, it shifted the responsibility for providing a fair and impartial hearing and a decision based on facts to our arena. It is this hearing, held in accordance with the Administrative Procedures Act, and a proposed decision with its accompanying rationale that we, the Alaska Real Estate Commission, require of you.

It is worthy of note that most states which have similar recovery funds provide some means of attempting to collect from the wrongdoer-licensee prior to considering a claim against their respective funds. Other provisions common to many states require proof of fraud, intentional misrepresentation, or intentional improper actions; most states do not support collection based on negligence, and this commission has reservations about awards based on reasons other than intentional misrepresentation.

It is the policy of this commission to stay proceedings pursuant to AS 08.88.465 (a) when a court action is pending.

When writing your findings in an assigned case, please use the following format for submitting the proposed decision to the commission.

1. Case file number
2. Identity of Claimant and Respondent
3. Summary paragraph which includes:
 - a) claimant's requested amount
 - b) respondent licensee's alleged violation, i.e. fraud, deceit, misrepresentation, or conversion of trust funds.
 - c) Dates--of the transaction, of the claim, and of the hearing
4. Any other pertinent introductory material should be in a second paragraph.
5. Findings of fact elicited in the hearing.
6. Conclusions of law with rationale and case precedent as needed.
7. Recommendation:
 - a) to pay in total
 - b) to pay in part
 - c) to deny payment
8. If more than one licensee is named as respondent and payment is recommended, specify which licensee(s) were actually guilty of the fraud, deceit, misrepresentation, or conversion of trust funds.

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



LAWS OF ALASKA

1974

Source

SOS OSIB 248 (Judiciary)

Chapter No.

143

AN ACT

Establishing a real estate surety fund; and providing for an effective date.

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

Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 85. REAL ESTATE SURETY FUND.

Sec. 45.85.010. REAL ESTATE SURETY FUND. There is created a special account in the general fund known as the real estate surety fund to carry out the purposes of this chapter. The fund shall be composed of payments made by licensed real estate brokers and salesmen under sec. 20 of this chapter. The fund may not exceed \$100,000, and amounts in the fund in excess of \$250,000 may be appropriated for real estate educational purposes as provided in AS 08.69.091.

Sec. 45.85.020. PAYMENTS BY REAL ESTATE BROKERS AND SALESMEN. (a) A licensed real estate broker or associate broker, when obtaining or renewing his real estate license, in lieu of obtaining a corporate surety bond, shall pay to the commissioner of commerce in addition to the license fee, a bond fee not to exceed \$125, and a licensed salesman, when obtaining or renewing his license, in lieu of obtaining a corporate surety bond, shall pay to the commissioner in addition to the license fee, a bond fee not to exceed \$40. After the fund reaches \$250,000 the commissioner shall by regulation adjust the bond fees so that, taking into account anticipated expenditures for claims against the fund and real estate educational purposes, the fund is maintained at a level not less than \$250,000.

(b) All fees collected under this section shall be paid at least once a month by the commissioner into the

general fund. These payments shall be credited to the real estate surety fund.

Sec. 45.85.030. APPLICATION FOR PAYMENT. (a) When a person obtains a final judgment in a court against a real estate broker or salesman licensed under AS 08.69 on grounds of fraud, misrepresentation, deceit or conversion of trust funds arising directly out of a transaction when the judgment debtor was licensed and performed acts for which a license is required under AS 08.69, the person may file a verified application in the court in which the judgment was entered for an order directing payment out of the real estate surety fund of the amount of actual direct damages, plus costs of obtaining judgment, up to the sum of \$10,000 of the amount unpaid upon the judgment and costs. However, not more than \$10,000 may be paid for each transaction regardless of the number of persons injured or the number of parcels of real estate involved in the transaction. A copy of the verified application shall be served upon the commissioner and a certificate or affidavit of service filed with the court.

(b) Applications for payment from the fund shall be made to the commissioner within one year from the date that the judgment becomes final.

Sec. 45.85.040. PAYMENT. (a) If judgment has not been paid within 30 days after its entry, the court shall order payment out of the real estate surety fund.

(b) The commissioner may, subject to court approval, compromise a claim based upon the application and judgment. He is not bound by a prior compromise or stipulation of the judgment debtor.

Sec. 45.85.050. COURT ORDER. If the court finds after the hearing that the claim should be levied against the fund allocated for the purpose of carrying out the provisions of this chapter, it shall enter an order directed to the commissioner requiring payment from the real estate surety fund of the sum it finds to be payable on the claim in accordance with this chapter.

Sec. 45.85.060. MAXIMUM LIABILITY. (a) The maximum liability of the real estate surety fund does not exceed \$50,000 for any one broker or salesman.

(b) If the \$50,000 liability of the fund as provided in (a) of this section is insufficient to pay in full the valid claims of all persons who have filed claims against one broker or salesman, the \$50,000 shall be distributed among the claimants in the ratio that their individual claims bear to the aggregate of valid claims, or in another manner that the court considers equitable. Distribution shall be among the persons entitled to share in the recovery, without regard to the order of priority in which their judgments were obtained or their claims filed.

Sec. 45.85.070. ORDER OF CLAIM PAYMENT. If the money deposited in the real estate surety fund is insufficient at a given time to satisfy a duly authorized claim against the fund, the commissioner shall, when sufficient money has been

permitted in the fund and appropriations, satisfy credits in the fund that the claims were originally filed, plus accumulated interest at the rate of eight percent a year.

Sec. 45.85.080. FALSE CLAIMS OR DOCUMENTS. A person who files with the commissioner a notice, statement or other document required under this chapter which contains a willful material misstatement of fact, is guilty of a misdemeanor and is punishable by imprisonment for a period of not more than one year, or a fine of not more than \$1,000, or by both.

Sec. 45.85.090. RIGHT TO SUBROGATION. When the commissioner has paid to a judgment creditor from the real estate fund the sum ordered by the court, the commissioner shall be subrogated to all of the rights of the judgment creditor to the amount paid and the judgment creditor shall assign all of his rights, title and interest in that portion of the judgment to the commissioner. Amounts subsequently realized by the commissioner on the judgment shall be deposited to the fund.

Sec. 45.85.100. PURCHASE OF BOND. Until the amount in the fund reaches \$750,000, the commissioner shall purchase for the fund a bond in an amount sufficient to provide for liability of the fund up to a total of \$250,000.

Sec. 45.85.110. DISCIPLINARY ACTION AGAINST BROKERS AND SALESMEN. This chapter neither limits the authority of the Real Estate Commission to take disciplinary action against any person licensed under AS 45.85, nor does payment in full of all obligations to the real estate surety fund nullify or modify the effect of disciplinary proceedings brought under the provisions of AS 45.85.

• Sec. 2. AS 08.33.021 is repealed and re-enacted to read:

Sec. 08.33.021. REAL ESTATE SURETY FUND. Before issuing a license to an applicant under this chapter, the board shall determine that the applicant has complied with the provisions of AS 45.85.020 and is covered by the real estate surety fund established in AS 45.85.

• Sec. 3. AS 08.33.071 is amended by adding a new subsection to read:

(b) When a payment is made from the real estate surety fund under AS 45.85 in settlement of a claim or toward satisfaction of a judgment against a licensed broker, associate broker or salesman for fraud, misrepresentation, deceit or conversion of trust funds, the commission, after a proper hearing establishing the misconduct, shall suspend or revoke the license of the broker, associate broker or salesman. The broker, associate broker or salesman may not be reinstated until he has satisfied in full any judgment based on any of the grounds listed in sec. 32 of this chapter.

• Sec. 4. AS 05.39.001(c) is amended to read:

(c) No person may

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

(2) with knowledge that an advertisement, pamphlet, or letter concerning land or a subdivision or other real estate contains a written statement that is false or fraudulent, issue, circulate, publish, or distribute it or cause it to be issued, circulated, published, or distributed.

• Sec. 5. This Act takes effect January 1, 1976.

ARTICLE 6.
SURETY FUND CLAIMS

Section	
280.	Procedures
285.	Claims
290.	Notification of claim
295.	Deadlines
300.	Current address of claimants
305.	Hearings
310.	Role of interested licensee
315.	Withdrawal of claim
320.	Motion for reconsideration
325.	Findings and conclusions
330.	Waiver of provisions

12 AAC 64.280. PROCEDURES. 12 AAC 64.280 - 12 AAC 64.330 govern the proceedings for hearings relating to real estate surety fund claim matters under AS 08.88.450 - 08.88.500 (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.285. CLAIMS. Claims for reimbursement from the real estate surety fund must

(1) be submitted on a form provided by the commission;

(2) be for a loss suffered in a real estate transaction by the claimant as a result of fraud, misrepresentation, deceit, or the conversion of trust funds by a licensed real estate broker, associate broker or salesman;

(3) include all the information required by AS 08.88.460(a) and by the claim form itself; and

(4) be executed under penalty of perjury. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.290. NOTIFICATION OF CLAIM. (a) Upon receipt of a claim filed according to the provisions of AS 08.88.460(a), the commission will mail a copy of the claim, all documentary material filed with the claim, and a response form to the interested licensees by certified mail, return receipt requested. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.295. DEADLINES. For a claim to be considered valid for the purposes of reimbursement from the surety fund, the claimant must file a claim in accordance with AS 08.88.460 within one year after the date the alleged loss was discovered or could have been discovered, but in any event, not later than two years after the transaction is recorded or the transfer of interest date. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.300. CURRENT ADDRESS OF CLAIMANTS. It is the responsibility of each claimant to keep his or her current mailing address and telephone number on file with the commission until the claim is resolved. Failure to maintain a current mailing address and telephone number with the commission while a

claim is pending may result in dismissal of the claim. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.305. HEARINGS. (a) In accordance with the provisions of AS 44.62.350, the commission will delegate a claim filed against the surety fund to a hearing officer. In an order of delegation the commission will specify whether the hearing officer will hear the claim case alone or whether the commission will hear the claim case with the hearing officer.

(b) Hearings will be conducted according to the procedures set out in AS 44.62.330 - 44.62.630 except that

(1) the copy of a claim mailed to an interested licensee under 12 AAC 64.290 and AS 08.88.460(b) is substituted for an accusatory statement under AS 44.62.360 or a statement of issues under AS 44.62.370;

(2) the written statement in opposition to a claim or application for presentation of additional evidence under 12 AAC 64.310(c) and AS 08.88.465(c) is substituted for a notice of defense under AS 44.62.390; and

(3) AS 08.88.450 - 08.88.500 and 12 AAC 64.280 - 12 AAC 64.330 control over AS 44.62.330 - 44.62.630, in the case of any other conflicts or inconsistencies. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.310. ROLE OF INTERESTED LICENSEE. (a) At the time the commission sends notice of a claim to an interested licensee under 12 AAC 64.290, the interested licensee for all legal purposes, a named party in proceedings held by the commission regarding the claim.

(b) If the individual named in a claim filed against the surety fund is a real estate associate broker or a real estate salesman, the real estate broker responsible for supervising the activities of the associate broker or salesman at the time of the alleged occurrence will also be sent notice of the claim according to the provisions of 12 AAC 64.290, and, for all legal purposes also a named party in any proceedings held by the commission regarding the claim.

JULY 1983

PROFESSIONAL AND
VOCATIONAL REGULATIONS

12 AAC 64.310
12 AAC 64.950

Interested licensee shall have 10 days from receipt of notice of a claim to respond in writing. Filing of the response in the U.S. mails with a return receipt requested, shall constitute a timely response.

(d) If an interested licensee fails to respond in writing to notification of a claim within 10 days after receipt of the notification, as permitted by AS 08.88.455(c), the commission will, in its discretion, proceed with disposition of the claim. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.315. WITHDRAWAL OF CLAIM.

(a) A claimant may withdraw a claim filed under AS 08.88.440 at any time before the proposed decision is filed with the commission.

(b) Withdrawal of a claim by the claimant does not preclude disciplinary proceedings by the commission against the interested licensee under the provisions of AS 08.88 (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.320. MOTION FOR RECONSIDERATION. A motion for reconsideration of a decision concerning a contested claim must be filed in accordance with AS 44.62.540 (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.325. FINDINGS AND CONCLUSIONS. (a) After disposition of a claim, the commission shall make in writing its findings and conclusions in accordance with the provisions of AS 08.88.470.

(b) The commission must furnish a copy of its findings and conclusions to

(1) the claimant;

(2) the claimant's legal representative, if applicable;

(3) the interested licensee, and

(4) the interested licensee's legal representative, if applicable. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081

12 AAC 64.330. WAIVER OF PROVISIONS.

The commission will, in its discretion, waive a provision of 12 AAC 64.250 - 12 AAC 64.330 if it determines that the public interest and the satisfaction of the purpose of the provision are reasonably assured and that the requirements of AS 08.88.450 - 08.88.500 are satisfied. (Eff. 4/10/83, Reg. 86)

Authority: AS 08.88.081



105 ADAK, FAIRBANKS, ALASKA 99701
Area Code (907) 452-5186

Plus 32 identical
letters

March 31, 1984

Senator Eliason
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

I am writing to express my approval of House Bill 705 and Senate Bill 537 regarding the Real Estate Surety Fund.

I feel that these bills would provide for a more equitable use of this fund than the system presently in effect.

For further comments, I can be reached at 452-5186.

Sincerely,

REALTY INCORPORATED

Ernie
Ernie Carter
Sales Associate

ECC/kw

Hi!

Best wishes to you - haven't seen you since we had a few Olyp when you first went to Juneau - I was a city Councilman from Fairbanks trying to see that we got our share of the pie!

5/16/84

To: Dick / From: Sheila

Re: Additional info on surety fund from
Tim Magowan

1) # of claims filed against the surety fund
and not yet settled - 157 claims

2) total \$ amount asked for by these
claims - \$901,657

3) total \$ amount currently in the surety
fund - over \$600,000

4) Past history shows 30% claims are
awarded with 25% dollars awarded.
(More smaller claims are awarded, therefore
the difference in %) THEREFORE the fund is
solvent!!

5) Currently there are approximately 4,200
licenses in the state as compared
to approximately 2,500 two years ago.
With the increase # of realtors, the
of claims should increase. The
increase of claims does not necessarily
mean that frivolous claims are being
filed.

6) The Commission estimates each claim is processed for \$400-600. ~~\$~~

5/11/84

To: Dick / From: Sheila

Re: Surety Fund for realtors

I talked to Jim Magowan, Ex Dir. of the Real Estate Csmn & he provided the following information:

The recent Supreme Court ruling states that innocent misrepresentations are not covered by the surety fund. Willful misrepresentation, fraud, & deceit are covered by this fund. Currently 30% of the claims filed ~~will~~ receive payment, i.e. the csmn decides in favor of the claimant.

With this new court decision, it is estimated that 80-100 claims a yr will be received by the csmn. A full time hearing officer has been budgeted for & Jim is looking to a period of 3-4 mths to finalize claims

The average claim is for \$4,000 with approximately 25% of the claims under

\$2,000. A problem with a claimant going to small claims involves the realtors right to "check the box" which indicates the desire to go "to court" instead. This action would certainly discourage the claimant from proceeding further action

It was Jim's opinion that when attorney fees are awarded it is only 15-40% of the actual cost involved. So the consumer would have to fit the bill.

Jim's Suggestions

1) Set a filing fee of a minimum of ~~\$50~~^{\$50} or 5% of claim which ever is greater to a maximum of \$250. This fee would be returned if the claimant wins.

2) Allow the csmn to establish a "summary dismissal procedure" so that obvious unfounded cases could be dismissed.

3) Explore possibility of a full-time

hearing officer with a volunteer
3 member jury panel. This system would
relieve the concern of the realators
as far as being heard by only one
individual.

Real Estate/Classified E

Anchorage Daily News Saturday, February 11, 1984

Claims on real estate surety fund increase

by JIM ERICKSON
Daily News business reporter

An increasing number of claims are being filed against a special state fund to reimburse homebuyers who were bilked by their real estate agent.

But Alaska Real Estate Commission officials say the increase is not because agents in general are shady or incompetent.

"We are experiencing an increase in claims and complaints, but we're also experiencing increases in number of real estate licensees," said James Magowan, executive director

of the regulatory and licensing body.

There are between 3,500 and 4,000 licensees in the state, roughly double the number here in 1980.

Last year 123 claims were filed against the \$500,000 surety fund, which lawmakers established in 1980 to reimburse consumers who could prove they were cheated in real estate transactions.

In 1982, 93 claims were filed. There have been 18 filed through January of this year.

On a per-license basis, the numbers aren't terribly bad, especially

in light of the record number of home sales in the last two years, Magowan said. More sales increase the likelihood of mistakes, he said.

Of claims filed in the last year, 14 were approved and \$67,644 was paid to homebuyers who made their case. In 1982, 18 claims totaling \$62,612 were approved.

In all, 286 claims have been filed since 1981 asking for \$1.3 million total. Roughly one claim in 10 is withdrawn. And about half of the claims haven't been settled yet, Magowan said.

About 30 percent of all complain-

ants eventually win a settlement.

The increasing number of claims filed also is due to "greater public awareness that the surety fund is there and real estate commission is there," said Commissioner Dave Ribacchi, a marketing specialist with Century 21/Heritage Homes.

Some real estate agents are concerned the fund can function as an unguarded treasure trove, a source of cash for homebuyers who may not have legitimate complaints. Some argue the fund could be used as a vehicle for harassment.

"That's one side of the coin,"

Magowan said.

"The other side of the coin is when somebody out there is bad the fund is there so people can readily file a claim," instead of taking the matter to a lawyer.

"When there are bad actors in the business, we find out about them real quick," Magowan said.

An advantage of the surety fund is it can help brokers and client get together outside of the system and work out differences.

"This fund has had an amazing influence in affecting the way things get settled."

S

B

542

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CS SB 542
Title: "An Act relating to exposure to microwave radiation. . ."
Sponsor: HESS
Requestor: HESS
Date of Request: 4/17/84

FISCAL DETAIL

Agency Affected: Labor
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Occupational Safety and Health

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONNEL SERVICES						
200 TRAVEL		2.2				
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT		11.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		13.4	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		13.4				
FEDERAL FUNDS						
OTHER						
TOTAL		13.4	0	0	0	0

POSITIONS:

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

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: AS Bob Bacolas, Director Phone: 465-4870
Division: Labor Standards and Safety Date: 4/18/84
Approved by Commissioner: AS Jim Robison Date: 4/18/84
Agency: Labor

LEG:A:46

Distribution (by Agency preparing fiscal note):

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

12/1/83

FISCAL NOTE

THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE

BILL/RESOLUTION NO: CS SB 542

TITLE: "An Act relating to exposure to microwave radiation . . ."

AGENCY AFFECTED: Department of Labor

Page 2

To best implement this bill the Department of Labor would require microwave radiation detection equipment and training in the equipment's use. The following pieces of equipment would fit this need:

1. "Holiday's" Microwave Meter - to measure microwave oven radiation
2. E Field Meter - to measure video display terminal radiation
3. Norda Meter - to measure radio frequency wave radiation

Training for two industrial hygienists in the operation of this equipment would occur in a three day course offered in Salt Lake City.

An effective date of July 1, 1984 is assumed.

LEG:A:46

Bill No. Senate Bill No. 542

Date

Title "An Act relating to exposure to microwave radiation in the workplace."

Contact: Richard Arab
465-4856

Jacquelyn McClintock
465-2790

Sections one through five of Senate Bill 542 provide special employer reporting requirements when an employee is over-exposed to microwave radiation; require that employees who may be exposed to microwave radiation be informed of the potential exposure and trained to safely work around such radiation; and require that microwave radiation information be included on the "Right to Know" poster printed and distributed by the department.

Senate Bill 542 has been introduced as a result of a recent incident in which several workers were over-exposed to microwave radiation while repairing a radar dish. An estimated 700 workers in Alaska do this type of work. However, the provisions of Senate Bill 542 would provide safeguards to far more workers as microwave ovens are commonly used in restaurants and bars throughout the state.

The Department supports the provisions of Sections one through five. The reporting of incidents involving over-exposure to microwave radiation will assist the department in assuring correction of work conditions which caused the exposure; and employee education and training, as prescribed in the bill, is one of the best methods of preventing injuries.

We would, however, offer the following amendments for clarification purposes:

1. Deletion of the amendment proposed to AS 18.60.068(b) in section 4. Microwave radiation is a "physical" rather than a "chemical" hazard and, therefore, material safety data sheets (OSHA form 20) covering microwave radiation are not available. Accordingly, employers would not be able to comply with the provisions of AS 18.60.068(b), as proposed in SB 542.

2. Amendment of AS 18.60.105(a)(1)(B) in section 5 to read:

(B) In the case of microwave radiation, to be in a field of microwave radiation that exceeds the level of intensity established as the radiation protection guide under regulations adopted by the Department in section 04.0106 of subchapter 4, Occupational Health and Environmental Control Code.

Section 5 would thus properly reference the state regulation rather than the federal regulation.

Section 6 of Senate Bill 542 attempts to broaden the workers' compensation rebuttable presumption for employees in the communications field by adding the specific language that if an employee sustains an injury consistent with symptoms of exposure to microwave radiation, the injury was the result of that exposure.

Existing language in the Workers' Compensation Act provides coverage for accidental injury or death arising out of and in the course of employment, and an occupational disease or infection which arises naturally out of the employment or which naturally or unavoidably results from an accidental injury.

POSITION PAPER/Department of Labor

POSITION PAPER
SENATE BILL NO. 542
PAGE 2

The Department recognizes the hazards connected with this particular occupation; however, we feel the present language of the Act fully protects them for occupational injury or disease claims. Accordingly, without identification of specific problems with the general presumption presently provided by law, the Department could not support Section 6 of this bill.

A small fiscal note is attached to provide the Occupational Safety and Health Section with funds for training and equipment needed to best implement the bill.

APPROVED:

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

542 TITLE & SPONSOR SUMMARY

16:48 6/04/84 PAGE 1 OF 2

PROPOSED TITLE:

AN ACT RELATING TO EXPOSURE TO MICROWAVE RADIATION IN THE WORKPLACE

PRIME SPONSOR: SENATE HESS COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 5/04/84 IN (S) FINANCE

542 SENATE ACTION

16:48 6/04/84 PAGE 2 OF 2

DATE	SEQ	PAGE
4/04/84	01	2634
4/26/84	02	2831
4/26/84	03	2831
4/27/84	04	2833
5/04/84	05	2927

LEGISLATIVE ACTION

DATE	SEQ	PAGE	LEGISLATIVE ACTION
4/04/84	01	2634	FIRST READING -- COMMITTEE REPORTS
4/26/84	02	2831	HESS -- CS93
4/26/84	03	2831	HESS F/NOTE SEN SUPPL #77
4/27/84	04	2833	FIN COMM REFERRAL ADDED BY UNAN CONSENT
5/04/84	05	2927	L&C -- HESS CS01, NR02 FINANCE RULES

*** ** ** ** **

SECTIONAL ANALYSIS OF SB 542

SECTIONAL ANALYSIS OF CSSB 542 - AN ACT RELATING TO MICROWAVE
EXPOSURE IN THE WORKPLACE BY THE SENATE HESS COMMITTEE

THIS BILL AMENDS THE DEPARTMENT OF LABOR STATUTES RELATING TO THE
PREVENTION OF ACCIDENT AND HEALTH HAZARDS WHICH INCLUDES THE "WORKER
RIGHT TO KNOW" LEGISLATION PASSED IN 1983.

- SECTION 1 Requires that an accident involving microwave exposure
 which results in the hospitalization or death of any
 employee must be reported to the Department of Labor.
- SECTION 2 Requires that employee safety education programs on
 exposure to hazardous and toxic substances include
 microwave radiation.
- SECTION 3 Requires that information on microwave exposure be made
 available on posters to be distributed by the Department
 for posting in the workplace.
- SECTION 4 Requires that an employer must display information on
 microwave exposure if that hazardous substance is used in
 the workplace.
- SECTION 5 Defines microwave exposure as exceeding the level of
 intensity defined by state standards.

STATE OF ALASKA

MAR 1 1984
BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LABOR

BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-2700

February 28, 1984

The Honorable Pappy Moss
State Capitol, Pouch V
Juneau, Alaska 99811

Dear Senator Moss:

Enclosed is a copy of a report that the Department of Labor has prepared to summarize its investigation of the microwave radiation exposure that occurred on September 14, 1983 at Clear Air Force Base.

I am sending you a copy because of your interest in this case. I would like to emphasize that the department has not formally made any settlement with the employer, FELEC Services, Inc. The department will not close this case until we are satisfied that proper and adequate corrective measures have been initiated by the employer to prevent such accidents from occurring in the future.

If you have any questions, please do not hesitate to give me a call.

Sincerely,


Robert Landau
Assistant Commissioner

Enclosure

cc: Lennie Boston, Office of the Governor

Summary of "Clear" instance

CHRONOLOGY OF DEPARTMENT OF LABOR INVESTIGATION OF MICROWAVE RADIATION
EXPOSURE AT CLEAR AIR FORCE BASE

The following is a chronology of events relating to the State of Alaska's investigation of an accidental microwave radiation exposure of employees of FELEC Services, Inc. at Clear Air Force Base at Clear, Alaska on September 14, 1983.

The Alaska Department of Labor's Occupational Safety and Health Section (OSH) first became aware of the September 14 microwave radiation exposure incident at Clear Air Force Base with the forwarding of a Workers' Compensation report of occupational injury from the Workers' Compensation Division on September 26, 1983.

On September 29, OSH sent a letter to FELEC Services, Inc. inquiring about the extent of injury and whether or not hospitalization of employees had occurred. A letter of inquiry concerning degree of exposure during the incident was also sent to the U.S. Department of Defense headquarters at Norton AFB in California.

FELEC Services, Inc. was also advised on September 30 of the department's intent to conduct its own investigation. Requests for data on the exposure incident were renewed on October 6 through communication with FELEC Services, Inc. at Clear AFB.

On October 24, two formal complaints were received from FELEC Services, Inc. employees concerning the September 14 incident. A third complaint was received on October 31. On October 25, OSH received notification from the Air Force that its radiation exposure survey would be made available to the department when its report had been completed. On October 28, security clearances for restricted areas were sought by OSH for an on-site inspection at Clear AFB to investigate the employee complaints. Approval was granted for an on-site inspection by the site commander on October 31 after security clearances had been finalized. On November 1, Federal OSHA Region X was verbally requested to provide personnel and/or equipment to assist in an exposure evaluation at Clear AFB.

On November 2, a department compliance officer met with Air Force bio-environmental engineers concerning their simulated exposure measurements taken at Clear AFB on September 22. On the same date, Federal OSHA notified the state that it would not participate in the State of Alaska's investigation until the Air Force reports were finalized and reviewed.

On November 3, an OSH Section compliance officer was dispatched to visit the site to expand the investigation. Employees who had been exposed to microwave radiation were interviewed, as well as management representatives. Potential citations to FELEC Services Inc. were discussed with employees, management representatives, and Air Force representatives.

On November 8, further verbal requests were made to Federal OSHA Region X for the use of meters and for an expert on microwave radiation to take another survey. On December 5, the Air Force bioenvironmental engineer's survey report was received by OSH along with a report on the incident prepared by FELEC Services, Inc. and submitted to the Air Force. On December 20, the OSH received written employee statements on lock-out procedures at Clear AFB related to the exposure incident.

On December 21, a formal written request was made by OSH to Federal OSHA requesting assistance in possible exposure evaluation at Clear AFB.

On December 29, the Department of Labor issued citations to FELEC Services, Inc. for inadequate lock-out procedures at its workplace at Clear AFB and the resultant overexposure of its employees to microwave radiation. In its citations the department assessed total penalties of \$840 against FELEC Services, Inc.

By letter dated January 9, 1984, FELEC Services, Inc. served notice of its intention to contest the department's citations and penalties pursuant to the Alaska Occupational Safety and Health Act.

On February 6, 1984, the department held an informal conference in Fairbanks with affected employees and their representatives. On February 7, 1984, a similar conference was held in Anchorage with FELEC Services, Inc. At these meetings, the department's citations and penalties were discussed, along with the adequacy of the lock-out procedures used by FELEC Services, Inc. pertaining to access to the radome area at Clear AFB.

At the present time, the department is conducting an evaluation of the appropriate abatement requirements for the affected work areas. The department is also continuing to explore possible informal settlement of the matter together with the employer and its affected employees. If the matter cannot be informally settled, it will be scheduled for a formal administrative hearing before the Alaska Occupational Safety and Health Review Board.

(2/27/84)

Moss seeks investigation of Clear radar incident

Staff and Wire Report

JUNEAU—Sen. Pappy Moss has called on Gov. Bill Sheffield to order an investigation into whether state laws were broken last fall when a group of workers at Clear Air Force Station were exposed to microwave radiation.

The U.S. Air Force is currently conducting an investigation into the accident at the request of Alaska Congressman Don Young.

In a letter to the governor, Moss, D-Delta Junction, asked for a state investigation as well.

"I am concerned there may be further exposure of work personnel or community residents to microwave damage," Moss said.

The state Department of Labor has already fined Felce Services Inc., the contractor which maintains the radar at Clear, \$420 for safety violations. The contractor plans to appeal the fine.

Moss said he wants the investigation to address why the state reduced the fine from its original \$840.

"It seems to me the fine should have gone up, not split in two," Moss said.

Workers were exposed to the radiation while repairing a large radar tracking dish last Sept. 14. Several of the workers became ill and are still suffering symptoms they believe were caused by the overexposure. All eight men working on the radar unit were exposed to 1.5 million watts of microwave energy for about eight minutes. Microwaves are not radioactive.

Moss also suggested that state health agencies investigate reports of deformed shrews and voles at the air force station.

"It is my understanding that animals such as shrews and mice in the area are found by the hundreds in a deformed state," Moss' letter said.

Moss said he was told last fall of

mutated rodents near the base, about 80 miles southwest of Fairbanks, but that his request for an investigation was prompted by recent newspaper articles.

At least one of the exposed workers said he has reported the deformed rodents to the federal Occupational Safety and Health Administration, Air Force Space Command in Colorado Springs and the base commander at Clear.

Shortly after the accident, air force officials expressed interest in capturing some of the rodents, but have since ignored requests for help in capturing them, one worker said.

When a spokesman at Space Command, Peterson Air Force Base in Colorado, was asked about the rodents in late November, the spokesman would say only that the Air Force had no information available to answer that question.

ALASKA CLIPPING

SERVICE

Juneau Empire

Juneau, AK

FEB 21 1984

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Sen. Moss asks for probe into microwave radiation

The Associated Press

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ALASKA CLIPPING

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FEB 21 1984

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FEB 21 1984

Probe On Microwaves Is Sought

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Young vows to continue probe of radiation leak

by David Ramsey
Times Washington Bureau

Washington — Alaska Rep. Don Young, dissatisfied with an Air Force response to his call for a new investigation of a microwave radiation accident at Clear Air Force Base, says he may ask other federal agencies to look into the issue.

"We're not dropping it at all," Young press aide Chuck Davis said Wednesday. "We're going to pursue other avenues which may include going over the head of the secretary of the Air Force."

Davis said his boss has talked with federal Occupational Safety and Health Administration officials and could ask the congressional watchdog agency, the General Accounting Office, for an investigation.

At issue is a Sept. 14, 1983 accident in which eight civilian workers were exposed to microwave radiation at the Clear Air Force radar installation about 80 miles south of Fairbanks.

Some of the workers have complained of lasting effects,

such as eye problems, dizziness and muscle spasms. And they have criticized the treatment they have gotten by their employer, Felec Services, Inc., an ITT subsidiary, that is responsible for maintaining the radar system used to detect enemy missiles as well as track satellites in outer space.

The Air Force conducted tests following the incident and discovered that the workers had been overexposed to the microwave radiation, but the workers have been dissatisfied with the test results and claim the instruments used gave readings lower than the radiation doses they actually received.

In response to requests by some of the workers, Young asked for another investigation of the incident.

The Air Force, in a letter delivered to Young Monday, declined his request.

"They did not answer our specific charges," Davis said of the response. "It dealt pretty much in general terms."

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Senator calls for probe

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ALASKA CLIPPING SERVICE

Ketchikan Daily News

Ketchikan, AK

FEB 21 1984

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Moss asks probe of radiation leak

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Moss seeks microwave site probe

Associated Press

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See Radiation, page A-8

Radiation

Continued from page A-1

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Bill No.

Committee Substitute for
Senate Bill No. 542 (HESS)

Title

"An Act relating to exposure to microwave
radiation in the workplace."

Date

April 30, 1984

Contact:

Richard Arab
465-4856

Eileen Plate
465-2700

Committee Substitute for Senate Bill 542 provides special employer reporting requirements when an employee is over-exposed to microwave radiation; requires that employees who may be exposed to microwave radiation be informed of the potential exposure and trained to safely work around such radiation; and requires that microwave radiation information be included on the "Right to Know" poster printed and distributed by the department.

This bill was introduced as a result of a recent incident in which several workers were over-exposed to microwave radiation while repairing a radar dish. An estimated 700 workers in Alaska do this type of work. However, the provisions of Senate Bill 542 would provide safeguards to far more workers as microwave ovens are commonly used in restaurants and bars throughout the state.

The Department supports the provisions of Committee Substitute for Senate Bill 542. The reporting of incidents involving over-exposure to microwave radiation will assist the department in assuring correction of work conditions which caused the exposure; and employee education and training, as prescribed in the bill, is one of the best methods of preventing injuries.

A small fiscal note is attached to provide the Occupational Safety and Health Section with funds for training and equipment needed to best implement the bill.

APPROVED:



Jim Robison
Commissioner

April 24, 1984

Senator Richard I. Eliason, Chairman
Senate Labor & Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

RE: Senate Bill 542: An Act relating to exposure to
microwave radiation in the work place

Dear Senator Eliason:

On behalf of the Labor/Management Ad Hoc Committee on Workers' Compensation in Alaska, we are writing this letter to state the ad hoc committee's opposition to Senate Bill 542. Our objections can be summarized as follows:

- 1) Microwave radiation is an extremely small portion of the electromagnetic spectrum. Current Alaska Department of Labor Occupational Safety and Health Standards contained in Article 1, Subchapter 04.0106 more than adequately address the safety precautions involved with nonionizing radiation.
- 2) AS 23.30.120(a) is already full of presumptions and if we continue to change and add special injury presumptions, our Workers' Compensation laws will soon take a newborn from the cradle to the grave.
- 3) There is no evidence that the existing provisions in the Alaska Workers' Compensation laws have not provided compensation for those electronic technicians or others who may be suffering from any exposure to nonionizing radiation arising out of the course and scope of employment.
- 4) The proposed legislation affects only a narrow group of workers; this approach may establish a dangerous precedent for other "special legislation" affecting those exposed to "noise", for example.
- 5) The interpretation of SB 542, as it relates to AS 23.30.120(a), may create unintended benefits to claimants.

The current Workers' Compensation act contains language of presumptive coverage that is more liberally construed on behalf of the employee than in any other state. The ad hoc committee members are not aware of any other state Workers' Compensation laws which contain special handling for injured workers suffering from nonionizing radiation.

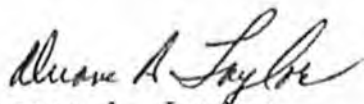
Senator Richard I. Eliason
Page 2
April 24, 1984

One of the more offensive aspects of SB 542 is the precedent of "special legislation" affecting our current Workers' Compensation system. It is suggested, that before any amendments are made, there be some finding which indicates that the present system is not working. At the present time, the information available to us does not support making that amendment. An injured worker is an injured worker and special legislation affecting those exposed to microwave radiation is not required nor desired for incorporation into AS 23.30.120(a).

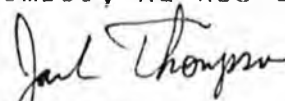
In summary, we urge your committee to table action on this bill. It is the ad hoc committee's position that this special legislation is the result of the "Clear Air Force Base Radar Station Incident", and that the Department of Labor is handling the situation to the satisfaction of all concerned within the limits of the law. Spectacular publicity to the incident does not require an addition to the Occupational Safety & Health Standards or to the Workers' Compensation laws of this state.

Sincerely,

Labor Management Ad Hoc Committee



Duane A. Taylor
President, Workers' Compensation Committee of Alaska
Member, Ad Hoc Committee



Jack Thompson
Member, Ad Hoc Committee

DAT/gj

COMMITTEE REPORT

SENATE

FURTHER:

11/26/04

Date 5/2/09

Mr. President

The Committee on considered

expedited to the floor for consideration in the next session.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 592 (HESS)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

S

B

544

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

ST

Revision Date: _____

(Page 1 of 2)

REQUEST

Bill/Resolution No.: SR 544
Title: "An Act relating to PERS"

FISCAL DETAIL

Agency Affected: All State Agencies
Program Category Affected: PERS

Sponsor: Labor & Commerce
Requestor: _____
Date of Request: _____

BRU, Program or Subprogram(s) Affected: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs						
100 Rtmnt & Bnfts		39.0	39.0	39.0	39.0	39.0
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING		39.0	39.0	39.0	39.0	39.0

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

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

FUNDING: (Thousands of Dollars)

General Fund		39.0	39.0	39.0	39.0	39.0
Federal Funds						
Other						
Total						

POSITIONS:

Full-Time						
Part-Time						
Temporary						

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460
Division: Retirement & Benefits Date: 4-17-84

Approved by Commissioner: Lisa Rudd Date: 4/18/84
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

Senate Bill 544
Fiscal Note Analysis
Prepared by the Division of Retirement & Benefits
Department of Administration

April 17, 1984

IV Analysis: Passage of this bill would remove the deadline of July 1, 1980 for claiming up to ten years of temporary legislative service. This bill also removes the date when interest begins to accrue on that indebtedness and provides for interest accrual from the date of claiming.

There are estimated to be 35 members who potentially qualify under this bill with approximately four years of eligible service each. This is estimated to result in a level past service cost of \$39,000.00 per year for 25 years. The present value of this benefit is \$430,000.00 with no measurable decrease in funding ratio.

SB 544 TITLE & SPONSOR SUMMARY

AMENDED TITLE:
AN ACT RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM;
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE LABOR&COMM COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/09/84 IN (S) LABOR & COM

REFERRAL: FINANCE
14:38 5/22/84

SB 544 SENATE ACTION
DATE SEQ PAGE

LEGISLATIVE ACTION

04/09/84 01 2638

FIRST READING --- COMMITTEE REPORTS
LABOR & COMMERCE
FINANCE
RULES

XXXX XX XX

XXX XXX XXX

Position Paper

SB 544

This bill would remove both the deadline of July 1, 1980 for claiming temporary legislative service and the interest accrual threshold date of July 1, 1980.

The Department opposes this bill without an amendment. There should be a specific interest accrual date because, without one, there is no incentive for a qualified member to claim that indebtedness prior to retirement; interest is now accruing on indebtedness established prior to the deadline. We estimate that 35 members potentially qualify to claim service under this bill.

J.K. Humphreys, Esq.
J.K. Humphreys, Director, Division of Retirement & Benefits

4/17/84
Date

Lisa Rudd
Lisa Rudd, Commissioner, Department of Administration

4/18/84
Date

April 16, 1984

REPORT NO. 14INTRODUCTION OF BILLS (Senate)

Legislative
Employees
(credited
service-PERS)

SENATE BILL NO. 544, by the Labor & Commerce Committee.
Would remove the requirement that in order to receive retroactive credited service a person who served as a temporary employee of the legislature before July 1, 1979 must claim the service before July 1, 1980. Would allow former employees to claim the service at any time. Indebtedness would be established when the employee claims the service and interest would accrue from the date the indebtedness is established. Provides Act takes effect immediately.

Introduced April 9 and referred to Labor & Commerce and Finance.

Elected
Officials
(credited
service-PERS)

SENATE BILL NO. 545, by the Labor & Commerce Committee.
Would remove the requirement that in order to claim prior service and make retroactive contributions to the Public Employees' Retirement System (PERS) the official must claim that service before February 1, 1983. Service could be included retroactively as credited service if the elected official or former elected official makes retroactive contributions to the system equal to what would have been made if the official had been included when the oath of office was taken, plus accrued interest from July 1, 1984. Provides Act takes effect July 1, 1984.

Introduced April 9 and referred to Labor & Commerce and Finance.

Automobile
Service
Corporations

SENATE BILL NO. 546, by the Labor and Commerce Committee.
Sets out statutory requirements for automobile service corporations under Title 21 (Insurance):

--Would require a person providing or intending to provide automobile service corporation services to be incorporated as a nonprofit corporation and be currently authorized as an automobile service corporation under a certificate of authority issued by the Director of the Division of Insurance. Articles of incorporation are to be submitted to the Director before they are filed with the Commissioner of Commerce and Economic Development, and the Commissioner is not allowed to file the articles or amendments unless the Director's approval is endorsed.

--The Director is not allowed to issue a certificate of authority and is required to revoke an existing certificate unless the corporation, if newly formed, possesses sufficient available working funds to pay all reasonably anticipated costs of acquisition of new business and operating expenses, other than losses, for a period of not less than six months following the date

S

B

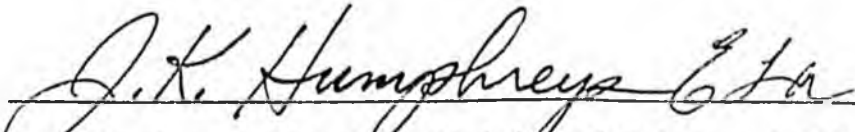
545

Position Paper

SB 545

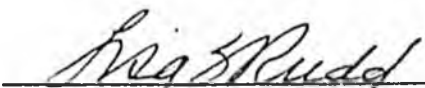
This bill would remove the deadline of February, 1983 for elected officials to claim credit for service as an elected official prior to January 1, 1981.

The Division of Retirement and Benefits publicized the original change in the law which made it possible to claim such service but it was not possible to identify and positively notify all members who were eligible to claim credit before the deadline. We estimate that 20 eligible members have asked to apply for service after the current deadline and we estimate that there would be 20 more eligible members. The department supports this bill.



J.K. Humphreys, Director, Division of Retirement & Benefits

4/ 13/ 84
Date



Lisa Rudd, Commissioner, Department of Administration

4/17/84
Date

Position Paper

HB 586 / SB 545

This bill would remove the deadline of February, 1983 for elected officials to claim credit for service as an elected official prior to January 1, 1981.

The Division of Retirement and Benefits publicized the original change in the law which made it possible to claim such service but it was not possible to identify and positively notify all members who were eligible to claim credit before the deadline. There are currently 20 eligible members who have applied for service after the current deadline and we estimate that there are an additional 20 eligible members who have not yet applied. The department supports this bill.

J. K. Humphreys
J. K. Humphreys, Director, Division of Retirement & Benefits

2/22/84
Date

Lisa Rudd
Lisa Rudd, Commissioner, Department of Administration

2/22/84
Date

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

(Page 1 of 2)

REQUEST

545 FISCAL DETAIL

Bill/Resolution No.: HB 586/58 Agency Affected: All State Agencies
Title: "An Act relating to PERS" Program Category Affected: PERS

Sponsor: Zharoff BRU, Program or Subprogram(s) Affected: _____
Requestor: _____
Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

Operating	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
100 Personal Svcs						
100 Rtmnt & Bnfts	-0-	47.0	50.7	54.8	59.2	63.9
200 Travel						
300 Contractual						
400 Supplies						
500 Equipment						
600 Land & Struct						
700 Grants, Claims						
700 TRS Match						
TOTAL OPERATING	-0-	47.0	50.7	54.8	59.2	63.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

General Fund	42.5	45.9	49.6	53.5	57.8
Federal Funds	2.2	2.4	2.6	2.8	3.0
Other	2.3	2.4	2.6	2.9	3.1
Total	47.0	50.7	54.8	59.2	63.9

POSITIONS:

Full-Time					
Part-Time					
Temporary					

SOURCE OF FUNDS TO OFFSET IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: J.K. Humphreys, Director Phone: 465-4460
Division: Retirement & Benefits Date: 2-22-84

Approved by Commissioner: Lisa Rudd Date: 2/22/84
Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

Fiscal Note

SB 545 TITLE & SPONSOR SUMMARY

16:48 6/04/84 PAGE 1 OF 2

RENDED TITLE:

AN ACT RELATING TO BENEFITS FOR ELECTED OFFICIALS UNDER
THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM,
AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: SENATE LABOR&COMM COMMITTEE.

CO-SPONSORS:

CURRENT STATUS: 4/18/84 IN (S) FINANCE

SB 545 SENATE ACTION

16:48 6/04/84 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
6/09/84	01	2668	FIRST READING -- COMMITTEE REPORTS
6/18/84	02	2761	L&C -- DPO4
6/18/84	03	2761	L&C F/NOTE SEN SUPPL #74 FINANCE RULES
XXXX	XX	XX	XXX XXX XXX

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/9/54

Date 4/17/54

Mr. President

The Committee on FINANCE & CREDIT considered SB 545

benefits for elected officials under the public employees' retirement system, etc.

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

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for _____
- new title
- same title and recommends _____
- and attached a "LETTER OF INTENT" NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

 Chairman

 Chairman recommendation

Fred C. Brechan

BOX 1275
KODIAK, ALASKA 99615
(907) 486-3215

January 26, 1984

Mr. Fred Zharoff
State Representative for
13th District
Juneau, Alaska 99811

Dear Fred:

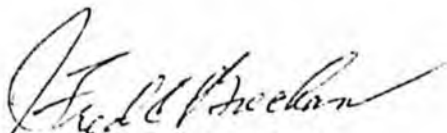
Enclosed is a copy of my most recent correspondence regarding the nine years service in Borough and City government.

I would have paid contributions and made my claim if I had ever been notified of my eligibility.

I feel that I am entitled to participate in the Public Employees Retirement program; or is this just a program for the chosen few.

I appreciate anything you can do in this regard.

Sincerely yours,



Fred C. Brechan

FCB:njm
Enclosures

Reason for Introduction

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR

JUNEAU, ALASKA 99811

(907) 465-4463

Public Employees Retirement System
Teachers Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Tribal Retirement System
Retired Volunteer State Game Auditor Plan
Supplemental Benefits System
Group Health Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

Bill Sheffield, Governor

January 24, 1984

Mr. Fred Brechan
P.O. Box 1275
Kodiak, AK 99615

Dear Mr. Brechan:

This is in reply to your request for information on claiming your nine prior years service as an elected official with Kodiak Island Borough and the Kodiak City Council before January of 1974.

At this time, the PERS statutes do not allow retroactive credit for service prior to January 1, 1981. This was possible if you had made your claim and paid the contributions prior to February 1, 1983. Unfortunately, you missed that deadline and prior elected official service is not currently creditable.

Sincerely,



Sue Palmer
Retirement Field Representative

SF/je
20/801/0123-01
Enclosure

Fred C. Breehan
BOX 1275
KODIAK, ALASKA 99515
(907) 886-3215

December 23, 1983

State of Alaska
Dept. of Administration
Division of Public Account Services
Pouch CR
Juneau, Alaska 99811

Attention: Ms. Sue Palmer

Dear Ms. Palmer:

To answer your letter of December 19, 1983, I am not an elected official at present. I am interested in prior service. Enclosed are letters pertaining to my years of service in Borough and City government.

I served two three-year terms on the City Council and one three-year term on Kodiak Island Borough.

Sincerely yours,

Fred C. Breehan
Fred C. Breehan
887557-10-0239

rvb:njm

Enclosure

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

POUCH CR

JUNEAU, ALASKA 99811

(907) 465-4463

Teachers' Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Trustees Retirement System
Retirees Voluntary Dental Medical Insurance Plan
Supplemental Disability System
Group Health Life Insurance Benefits
Deferred Compensation Plan
Public Employees Social Security Contributions

Bill Sheffield, Governor

December 19, 1983

Mr. Fred C. Brechan
P.O. Box 1275
Kodiak, AK 99815

Dear Mr. Brechan:

This is in response to your letter received November 16 regarding Public Employee Retirement System (PERS) credit for your service as an elected official with both the City of Kodiak and the Kodiak Island Borough, both of which participate in PERS.

For your information I am enclosing a copy of the PERS statute 39.05.125 which deals with participation of elected officials.

If you were a compensated (by City or Borough) elected official after January 1, 1981, you are required to participate in PERS unless you filed a waiver of participation with your employer.

Elected official service prior to January 1, 1981 could have been credited if it had been claimed and paid for by February 1, 1983.

You did not state whether you are currently an elected official or if you were only interested in prior service. This information should help clarify your situation in regard to PERS.

Sincerely,



Sue Palmer
Retirement Field Representative

SP/sn
27/CD3/1216-15

TRANSCRIPT - House State Affairs Committee, HB 586
Testimony by Ken Humphries

check with municipal leaders for support!

Humphries: Thank you Mr. Chairman, for the record my name is Ken Humphries, I'm Director for the Division of Retirement and Benefits. Briefly, what HB 586 does is to instead of extending again a deadline which was imposed in the law, it removes it altogether. We're willing to support this primarily because we were unable, even though we made as good an effort as we could, we were unable to positively contact all of the people who might claim such service. What it basically is, is prior to 1981, elected officials could either elect to be covered by the PERS or not as they chose. This caused problems in the system so in 1981, participation was made mandatory for elected officials unless they execute a waiver of coverage. An employer basically has to have something in the file or else go ahead and submit the contributions. It takes some of the doubt out of it and at the same time officials were allowed to claim service prior to that date. The original deadline was February 1982, that was subsequently extended to February 1983 and as of right now, we have received about 20 applications since that time which are after the deadline. People have failed to claim that service because we were unable to send all of them a letter and advise them. We ran ads in the newspapers, we notified employers, we asked people who knew people that might have such service to get in touch with them, but clearly it was just not possible to get them all. For this reason, if it's equitable to allow somebody to claim this service, its reasonable to allow them to claim it either now or two years down the road or at the time of retirement. The only thing we suggested was that at least let's establish a date certain here from which interest will accrue so that somebody is not advantaged by waiting by five years down the line to claim the service over someone who did hear about it and claimed it within the deadline, basically. So, for these reasons and the fact that the fiscal impact is not great, we're supporting the bill.

Rep. Lacher: Would this be costing the municipalities at all?

Humphries: This cost shown here is State costs and I apologize for not having that in the analysis, but I would estimate that the cost spread over all the municipalities would probably be \$40,000. Not an appreciable cost, it would probably be about the ratio of the membership, approximately 50/50, a little over 50% of the members are State, so I would say somewhat less than the 47,000 spread over all the municipalities. It's not substantial at this point.

Rep. Lacher: Would the municipalities pay that plus interest?

Humphries: Well, no, the interest that's spoken to in the bill refers only to the employee contributions. That is what is required in the member to pay at the time he claims the service. The cost to employers is reflected only in the experience as it percolates through the actuarial evaluational process.

Rep. Lacher: Then what you're saying is that your program would be deficient some dollars, whatever..

Humphries: Yes.

House Minutes on identical bill

Rep. Lacher: That's true? And so you're allowing it to be deficient the amount of dollars the municipalities might have been accumulating in interest but not the amount of dollars that the employer has to pay.

Humphries: Exactly. The actuary would increase the contribution rate by .01 percent to reflect this and then over time as is done with any other type of retroactive benefit change that has retroactive effect, after that initial rate-setting then rates are always set on the experience anyway. In other words, on an employer-by-employer basis, the actuary will go through, look at the proportionate assets that are allocated to that particular employer, the liabilities for that particular employer based on the age and service mix and so forth for that employer and determine the rate that will be applicable in the next fiscal year for that employer. So it's an experience-rated plan and not only can legislation like this make a difference, of course this is a slight difference, but for small employers as you are probably aware if you deal with the municipalities, the composition of the workforce for a small employer like that can make a lot more difference in the rate than a small change in the benefit structure.

Rep. Lacher: Just one more thing. Last year, if I remember correctly, we appropriated funds in order to make the retirement program well, or at least some retirement programs. It was necessary because over time there was not enough money to pay the benefits to all the people. Is that correct? Representative Miller was instrumental in that. Okay. I'm wondering if, in fact, the \$47,000 does indicate [pause] will this change anything for the program by adding this many more people and just getting the \$47,000 plus whatever the municipalities have to pay, would we then be reducing the costs of the benefits for other people?

Humphries: No. There's no way. We could produce a very, very slight decrease in the so-called funding ratio. There is no possibility that it could have any effect on anyone's benefits except to slightly increase it or maybe more than slightly increase the benefit of some former elected official who might claim this service.

Rep. Cowdery: Yes, does this, uh, we talked about former municipals, does this distinguish which elected officials we're talking about?

Humphries: I believe it applies to elected officials, period. And it could be former legislators as well who were not covered prior to 1981.

Rep. Cowdery: Does the other body or the Senate retirement program come under this:

Humphries: Yes. Unless its members are covered under EOFFRS (word unclear) I think there are still some 26 legislators who are active now who are covered under that system, but under PERS it would.

Rep. Larson: Basically, in relation to the fiscal note, it's my understanding the State will have to come up with an additional \$47,000 and the municipal government will have to come up with approximately \$40,000. But the individuals themselves, in order to claim prior time will also have to come with the amount that they would have had to pay if they in fact were in the system at that time.

Humphries: Yes.

Rep. Larson: But on their portion, their interest does not start until July 1, 1984.

Humphries: That's correct.

(No further questions.)