

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 8672

3482 HLAB HB 232 - HB 251 358

Vice Chairman Ribacchi asked that letters be sent to Commissioner Lyon and the Administration informing them of the commission's decision as well as to the Alaska Association of Realtors and soliciting suggestions for amendments and ways to revise the real estate surety fund.

It was decided by the commission that the next commission meeting would be held on May 24th and 25th instead of May 17th and 18th as previously announced.

Commissioner Collins asked the Realtors to prepare a supplement to the Phase I, White Paper and forward it to the commission, for their review at the next commission meeting. She also asked if they would be willing to pursue other avenues of improvement of surety fund procedures.

It was moved by Commissioner Serrano, seconded and unanimously passed for the commission meeting to adjourn.

The meeting was ajourned.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUESTBill/Resolution No.: HB 232Title: An Act relating to claimsagainst the real estate surety fundSponsor: Clocksie

Requestor: _____

Date of Request: _____

FISCAL DETAILAgency Affected: Commerce & Economic Dev.

Program Category Affected: _____

Consumer Protection

BRU, Program or Subprogram(s) Affected: _____

Real Estate Commission

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		77.0	80.0	85.0	125.0	131.0
200 TRAVEL		8.0	10.0	12.0	18.0	20.0
300 CONTRACTUAL		15.0	16.0	18.0	25.0	29.0
400 SUPPLIES		3.0	3.5	4.0	5.0	5.5
500 EQUIPMENT		12.0	.5	1.5	3.5	.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS		250.0	300.0	300.0	375.0	425.0
800 MISCELLANEOUS						
TOTAL OPERATING		365.0	410.0	419.0	551.5	611.0

CAPITAL		0	0	0	0	0
----------------	--	---	---	---	---	---

REVENUE		5.0	6.9	8.5	10.0	11.9
----------------	--	-----	-----	-----	------	------

FUNDING: (Thousands of Dollars)

GENERAL FUND		115.0	110.0	119.0	176.5	186.0
FEDERAL FUNDS		0	0	0	0	0
OTHER		250.0	300.0	300.0	375.0	425.0
TOTAL		365.0	410.0	419.0	551.5	611.0

POSITIONS:

FULL-TIME		2	2	2	2	2
PART-TIME		0	0	0	1	0
TEMPORARY		0	0	0	0	0

ANALYSIS: Attach a separate page if necessaryPrepared By: James I. Magowan Phone: 563-2169Division: Real Estate Commission Date: 03/04/85Approved by Commissioner: James Magowan Date: 3/14/85Agency: Alaska Real Estate Commission

Distribution (by Agency preparing fiscal note):

Legislative Finance

Legislative Sponsor

Requestor

Office of Management and Budget

Impacted Agency(ies)

7/1/84

BILL ANALYSIS HB 232

The two main effects of this bill are:

1. To eliminate the filing fee as a deterrent to the filing of a surety claim regardless of the merits of the claim.
2. To broaden the grounds for payment of a surety claim to include losses due to innocent and negligent acts by a licensee.

Prior to the May 1984 Loken-Johnson v AREC decision, there was no filing fee and claims for innocent and negligent misrepresentation were being paid. Prior to October 1984, there was no filing fee and the commission was receiving about 200 claims per year and that number was probably on the increase. Of the claims received, about 30% were being awarded, 70% were being denied.

Since October 2, 1984, the commission has received six claims, one of which was submitted with an NSF check for the filing fee. None of these has been heard yet, due to the backlog created when 200 claims per year were being filed, therefore there is no data on the percentage paid, however, it is expected to be very high.

The decrease in the filing fee would probably result in 150-200 or more additional claims per year being filed. It would be better to evaluate filing fees for public injury claims in general and make them all the same rather than the current system with no uniformity or conceptual basis for fees.

The change in grounds for payment would result in an additional 20-50% of these being eligible for payment. This would add up to between 40 and 100 consumers per year recovering an estimated average of \$2,500 - 3,000 for innocent/negligent misrepresentations. Most of these could probably recover, even now, through a small claims action. The commission would have to hold three additional hearings for every additional claim paid for innocent/misrepresentation.

The commission would require additional clerical staff (two full-time positions) as well as the potential of an additional full time hearing examiner to carry out the above.

The high rate of dismissed claims in the past stems, in part, from the public not evaluating its cases before filing them. Why expend the effort when the State will do it?

The interaction between grounds for payment of a claim and the fee for filing a fee has generated some confusion.

The amount of the fee helps determine the degree of scrutiny a claimant will engage in prior to filing a claim. This translates into the ratio of claims paid to claims denied. The ideal fee should discourage all invalid claims but no valid claims.

If the willingness and ability of the consumer to file a claim is to be virtually unchecked by the fee there should be one or more additional checks and balances incorporated into the process.

1. If the fee is reduced to \$25.00, there should be provision for initial administrative review and dismissal of claims with no discernable merit. Currently, all claims must be granted a hearing. Without the review it could add thousands of dollars of cost with little or no added public benefit.
2. There should be a provision for the claimant to be charged back the cost of a hearing in which the claim is found to be fraudulently filed.

If innocent or negligent misrepresentations are included as grounds for payment of a claim the provision of automatic suspension of a license without further hearing should be modified. and not applicable in cases of innocent misrepresentation. There is great concern by licensees that their licenses might be jeopardized by innocent errors. This is definitely an area that needs to be safeguarded against.

As the Supreme Court pointed out in its decision, the impact of *Bevins v. Ballard* on the surety fund if it is to pay on innocent misrepresentations could be enormous. The nature of Alaska soils, climate and building conditions makes it very difficult to know and predict everything that can happen to a property. For this reason, innocent misrepresentations may occur at a higher rate than in other parts of the country.

This bill gives the licensee great exposure for damages resulting from acts by others, acts of which the licensee has no knowledge and over which, no control. This, in effect, makes the licensee the preferred "target" when a contractor or other seller is at fault. The surety fund provides protection when a seller is gone and the fund is the only place to turn. The inexpensive access to the fund, however, also makes it the preferred action to take even when the "guilty" party is available and not a licensee. Making it easier to "go after" a licensee for an innocent act than it is to go after, say, a contractor who knowingly created the problem is manifestly unfair to the licensees.

0730E

HB 232 File Contents

March 13, 1985

- 1) Bill Summary -- Legislative Reporting Service
- 2) Overview -- Roger Poppe, Committee Staff
- 3) Overview and Sectional Analysis -- Memo from Rep. Clocksin to Rep. Navarre, March 4, 1985
- 4) Questions and Answers regarding Surety Fund -- Memo from J. Ellis to Rep. Clocksin -- February 22, 1985
- 5) Chapter 150 Session Laws of 1984
- 6) State v. Johnston -- Supreme Court of Alaska, May 4, 1984, Pacific Reporter, pp. 382-387
- 7) Letter to Real Estate Clients -- W. Richard Fossey -- August 9, 1984
- 8) Various materials relating to SCS for CS HB 705 (L & C) am S (which became Chapter 150 of the Session Laws of 1984)
 - a) Written Comments of Elizabeth Johnson in opposition to HB 705 to House L & C Chair John Cowdery (April 9, 1984).
 - b) Testimony for the record on HB 705 by Gary Wilken -- April 24, 1984 before the House Labor & Commerce Committee
 - c) Memo from James Magowan to Commissioner Lyon re: Minutes of Hearing of Real Estate Commission on HB 705 and SB 537 April 26, 1984.
 - d) Written Comments from Frank Austin to Barbara Hill, Chairperson of the Alaska Real Estate Commission - April 5, 1984
- 9) Fiscal Note -- Dept. of Commerce & ED; Real Estate Commission

M E M O R A N D U M

TO: Representative Mike Navarre DATE: March 4, 1985

FROM: Representative Don Clocksin SUBJECT: HB 232 - Real
Estate Surety Fund

This memo is to request action on HB 232 relating to the Real Estate Surety Fund.

The Fund is established in AS 08.88.450 - .500 to provide a source of funds to reimburse consumers who have been "taken" by real estate licensees. Prior to 1984, the Fund consisted of fees paid by real estate licensees.

Last year the Legislature, over my objection, 1) imposed a \$250 fee before consumers could file a complaint; and 2) allowed a real estate licensee to force the consumer to file a lawsuit rather than an administrative proceeding; and 3) equalized licensee fees. Chapter 150, SLA 1984 (copy attached).

The result has been a larger than necessary fund, the reduction of fees of real estate brokers, and the discouragement of consumer complaints. As of last month, only four complaints had been filed since October, 1984, when the new law went into effect! Broker fees dropped from \$125 to \$80 and the Fund contained over \$630,000 - \$130,000 over the statutory maximum.

In addition, in 1984 the Alaska Supreme Court ruled that a consumer could not recover from the Real Estate Surety Fund for innocent misrepresentations. State of Alaska v. Johnston, 682 P.2d 383 (Alaska 1984). (copy attached).

House Bill 232 seeks to reverse portions of the legislation from last year and correct the unfairness to consumers caused by the Johnston decision.

Sections one and three of the bill would expand the law to allow recovery from the fund for innocent and negligent misrepresentation.

Section two of the bill reduces the filing fee from \$250 to \$25.

Section four allows a consumer who obtains a court judgment against a real estate licensee to collect that judgment from the Fund. Current law only allows that remedy for small claims court actions which the real estate licensee forced the consumer to file.

11-2-85

Representative Mike Navarre
Page Two
March 4, 1985

Section five leaves unchanged those court cases already removed under last year's law.

Section six provides for a refund of the excess filing fee in pending cases.

Section seven repeals the provision forcing a consumer into court - .460(c) - and a conforming section - .465 (f).

Thank you for your attention to this bill.

DC:blg

Attachments: - Chapter 150, SLA 1984
- State v. Johnston
- Memo from J. Ellis

M E M O R A N D U M

TO: All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: March 14, 1985

SUBJECT: Overview, HB 232

On March 14 at 1:15 pm the House Labor and Commerce Committee met in Room 102 of the Capitol Building on HB 232 by Clocksin: Relating to the Real Estate Surety Fund:

Last session, there were bills in the House and the Senate dealing with this issue: HB 705 and SB 537, which were introduced in the separate houses by the respective Labor and Commerce Committees. HB 705 with numerous amendments, became law as Chapter 150 SLA 1984 (see your file).

The HB 232 before the Committee is an attempt to make some further adjustments in that legislation from last year, and sponsor Clocksin has both a sectional analysis and a succinct overview that cover the issues succinctly (see file -- Memo from Clocksin to Navarre March 4, 85).

Also included in your file is some of the written testimony from last year on HB 705 in either House Labor and Commerce Committee Hearings or else the related Real Estate Commission Hearings; many of the points covered in this bill are raised as issues and concerns by various parties in testimony last year.

James McGowan, head of the Real Estate Commission, will be testifying on this bill from the Anchorage LIO. Additionally, several representatives of the real estate industry in Anchorage and Juneau are expected to testify in opposition to the legislation. The Committee may also wish to refer to some comments by W. Richard Fossey to real estate clients, in which he points out several ways in which last year's legislation is not advantageous to the real estate industry.

BANKSTON & McCOLLUM

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

550 WEST SEVENTH AVENUE, SUITE 1800

ANCHORAGE, ALASKA 99501

(907) 276-1711

WILLIAM M. BANKSTON

JAMES H. McCOLLUM

W. RICHARD FOSSEY

J. B. MCCOMBS

H. CRAIG SCHMIDT

DAVID T. ALTENBERN

CHRIS D. GRONNING

August 9, 1984

Dear Real Estate Clients:

During the last Legislative session, the Alaska Legislature amended the Real Estate Surety Fund statute. The changes in the law are significant.

First, under the new law, the Real Estate Commission has the option of considering a Surety Fund hearing to be a hearing on the suspension of a licensee's real estate license. If a Surety Fund claimant receives an award from the surety fund after a hearing, the Commission may suspend the license of a broker, associate broker, or real estate salesman until the licensee repays the surety fund award plus the cost of the Surety Fund hearing.

Second, if a Real Estate Surety Fund claim is less than \$2,000, the real estate licensee now has the option of requiring the claimant to bring a small claims action in District Court rather than proceed through the Surety Fund hearing process. It is not clear from the statute whether a broker could elect to convert the small claims action to a court action under the Rules of Civil Procedure.

Third, the new law requires a Real Estate Surety Fund claimant to pay a filing fee of \$250. This fee will only be refunded if the claimant wins an award from the Surety Fund, the claim is dismissed prior to a hearing, or the claim is transferred from the Real Estate Commission to the District Court as a small claims action.

On the whole, we believe this is a bad piece of legislation for real estate licensees. Under the new law, a real estate licensee faces the prospect of having his license suspended if there is a Surety Fund award against him unless he makes arrangements to pay the award. Thus, it is no longer true that a Real Estate Surety Fund claim is a claim against the Surety Fund and not the licensee. The Commission now has the option of requiring the licensee to pay the award as a condition of keeping his license.

The new law gives a broker the option for forcing the

claimant to bring a small claims action if the claim is \$2,000 or less. This provision merely encourages a claimant to increase the amount of his claim to more than \$2,000 if he wants to avoid proceeding through the courts. Moreover, it is unclear under the new law whether a small claims judgment for a Real Estate Surety Fund claimant could lead to a license suspension. If that is the case, then a real estate licensee's license could be suspended by the Real Estate Commission after an informal small claims hearing by a district court judge. Since the district judges are often plaintiff oriented in small claims proceedings, electing the small claims procedures could be risky business for a real estate licensee.

The only good feature of this new legislation is the \$250 filing fee. This fee may discourage the patently frivolous Real Estate Surety Fund claims that are currently being filed by claimants.

As you know, the Real Estate Surety Fund statutes have caused real estate licensees nothing but trouble since the law was changed in 1980 to allow the real estate commission to pay claims from the fund without requiring claimants to proceed through the courts. Since 1980, the Surety Fund statutes have been changed twice, both times to the detriment of real estate licensees. In 1982, the law was changed to require, in certain circumstances, a real estate licensee to pay the cost of Real Estate Surety Fund hearings if an award is made against him.

To summarize, under the new Real Estate Surety Fund statutes, the Real Estate Commission may treat a Real Estate Surety Fund claim hearing as a license suspension proceeding. If an award is made against a real estate licensee, the Commission has the option of suspending the licensee's license until the licensee agrees to pay the Surety Fund award plus the cost of the hearing under terms that are acceptable to the Real Estate Commission. Thus, a real estate licensee must take every Real Estate Surety Fund claim seriously because an adverse result could lead to suspension of the licensee's license.

In our view, the Real Estate Surety Fund statutes as presently enacted are an unnecessary burden to the real estate industry. Real estate licensees are forced to defend minor and sometimes frivolous claims at great expense. The recent statutory amendments make a bad situation worse because a Surety Fund hearing may lead to suspension of a licensee's real estate license.

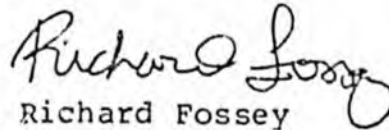
We have said again and again that the Real Estate Surety Fund statutes must be repealed. We have drafted legislation requiring Real Estate Surety Fund claimants to go to court and get a judgment against a real estate licensee before applying to the Real Estate Commission for payment from the Real Estate Surety Fund. To the best of our knowledge, Alaska is the only state that allows Surety Fund claims to be processed by hearing

officers rather than requiring claimants to proceed through the courts. It is vital that the real estate industry get this law amended. Until the law is changed, real estate licensees are going to be spending alot of time and money defending Real Estate Surety Fund claims before Real Estate Commission hearing officers.

If you have any questions on this matter, please do not hesitate to contact me.

Very truly yours,

BANKSTON & McCOLLUM

A handwritten signature in cursive script that reads "Richard Fossey". The signature is written in dark ink and is positioned above the typed name.

W. Richard Fossey

WRF:dr
Encl.

Section 1. Application for payment out of fund of damages remaining unpaid upon judgment against licensee for fraud, etc; maximum liability per transaction.

(a) When any aggrieved person obtains a final judgment in any court of competent jurisdiction against any person or persons licensed under A.S. 08.88, under grounds of intentional fraud or or intentional conversion of trust funds arising directly out of any transaction when the judgment debtor was licensed and performed acts for which a license is required under A.S. 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; provided that nothing shall be construed to obligate that separate account for more than ten thousand dollars (\$10,000) per transaction regardless of the number of persons aggrieved or parcels of real estate involved in the transaction.

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 separate account in the Real Estate Surety Fund.

Section 1. Time for action by court on application for payment; required showing of person aggrieved.

The court shall conduct a hearing upon such application 30 days after service of the application upon the Real Estate Commission. Upon petition of the Real Estate Commission, the court shall continue the hearing up to 60 days further; and upon a showing of good cause may continue the hearing for such further period as the court deems appropriate. At the hearing the aggrieved person shall be required to show:

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

(b) He has complied with all requirements of this article.

(c) He has obtained a judgment as set out in Section 1, stating the amount thereof and the amount owing thereon at the date of the application.

(d) 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.

(e) That by such search 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, describing 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 after application of the

amount realized.

(f) That 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.

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

Section 3. Order of Court; grounds; defense of actions; burden of proof; presumption; dismissals; compromise of claims.

Whenever the court proceeds upon an application as set forth in Section 2, 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 Section 1 has complied with the provisions of Section 2.

The commission may defend any such action on behalf of the Real Estate Surety Fund and shall have recourse to all appropriate means of defense and review, including examination of witnesses and the right to re-litigate any issues, material and relevant in the proceeding against the Real Estate Surety Fund, which were determined in the underlying action on which the judgment in favor of the applicant was based. If the judgment in favor of the applicant was by default, stipulation, or consent, or whenever 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 commissioner 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 Section 1; provided, however, that the commissioner shall give written notice at least 10 days before such motion.

The commissioner may, subject to court approval, compromise a claim based upon the application of an aggrieved party. He shall not be bound by any prior compromise or stipulation of the judgment debtor.

Section 4. Defense of actions; conclusive adjudication of issues.

The judgment debtor may defend an action against the Real Estate Surety Fund on his or her own behalf and shall have recourse to all appropriate means of defense and review, including examination of witnesses. All matters, excluding the issues of fraud, intentional misrepresentation, deceit or conversion of trust funds, which are finally adjudicated in the underlying action are conclusive as to the judgment debtor and the applicant in the proceeding against the Real Estate Surety Fund.

Section 5. Order directing payment out of fund; limitation of liability.

If the court finds after the hearing that the claim should be levied against the portion of the Real Estate Surety Fund allocated for the purpose of carrying out the provisions of this chapter, the court shall enter an order directed to the commissioner requiring payment from the Real Estate Surety Fund whatever sum it shall find to be payable upon the claim pursuant to the provisions of and in accordance with the limitations contained in this chapter.

Notwithstanding any other provision of this chapter, the liability of the Real Estate Surety Fund for the purposes of this chapter shall not exceed twenty thousand dollars (\$20,000) for any one licensee for which the cause of action occurred.

Section 6. Liability of fund insufficient to pay claims; distribution of monies; ratio; joinder.

If the amount of liability of the Real Estate Surety Fund, as provided for in Section 5, is insufficient to pay in full the valid claims of all aggrieved persons by whom claims have been filed against any one licensee, such amount shall be distributed among them in the ratio that their respective claims bear to the aggregate of such valid claims, or in such other manner as the court deems equitable. Distribution of such monies shall be among the persons entitled to share therein, without regard to the order of priority in which their respective judgment may have been obtained or their claims have been filed. Upon petition of the Real Estate Surety Fund, the court may require all claimants and prospective claimants against one licensee to be joined in one action, to the end that the respective rights of all such claimants to the separate account in the Real Estate Surety Fund for education, research, and recovery purposes may be equitably adjudicated and settled.

Section 7. Insufficient money in fund to pay claims; priority of payment when sufficient sums deposited; interest.

If, at any time, the money deposited in the Real Estate Surety Fund is insufficient to satisfy any duly authorized claim or portion thereof, the commissioner shall, when sufficient money has been deposited in the Real Estate Surety Fund, satisfy such unpaid claims or portions thereof, in the order that such claims or portions thereof were originally filed, plus accumulated interest at the rate of ten and one-half percent per annum.

Section 8. Subrogation.

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

Section 9. Effect of chapter upon disciplinary proceedings.

Nothing contained herein shall limit the authority of the commissioner to take disciplinary action against any licensee for a violation of any of the provisions of A.S. 08.88 or the regulations promulgated by the commission, nor shall the repayment in full of all obligations to the Real Estate Surety Fund by any licensee nullify or modify the effect of any other disciplinary proceeding brought against the provisions of A.S. 08.88.



Elizabeth I. Johnson
Counsellor and Attorney at Law

540 "L" Street Suite 304
Anchorage, Alaska 99501
(907) 277-3025

April 9, 1984

RECEIVED

APR 20 1984

Representative John Cowdery, Chairperson
House Labor and Commerce Committee
Alaska State Legislature
Pouch B
Juneau, Alaska 99811

AK. REAL ESTATE COMM.

RE: House Bill 705, Senate Bill 537
Relating to the Real Estate Surety Fund

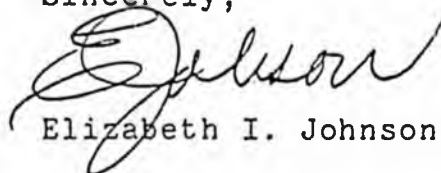
Dear Representative Cowdery:

Enclosed please find a summary of my oral testimony before the House Labor and Commerce Committee last Tuesday. I understand that the Bill was passed out of the Committee unanimously.

As you will recall I am adamantly opposed to not only the concept of House Bill 705 but to specific provisions. I am sending copies of this letter to other legislators in the hope that they will review the legislation more carefully.

I thank you for the opportunity to testify but believe there has been inadequate public comment on this bill and that it deserves more attention from both the House and Senate.

Sincerely,



Elizabeth I. Johnson

EIJ/kkr

Letters to the editor

Real estate sales legislation

Dear Editor:

As a former public member of the Alaska Real Estate Commission (1976-82), I am concerned about changes being proposed to the laws governing the Real Estate Surety Fund.

On April 3, the House Labor Committee held a teleconference hearing on HB-705, "an act relating to the real estate surety fund." This bill will make substantial changes to the process used to reimburse individuals who are damaged monetarily in a real estate sales transaction when a licensee is involved.

The bill will also change the law so that an individual will only be able to claim damages if the loss is due to intentional misrepresentation. At present the licensee is held responsible even if the misrepresentation is unintentional.

Also, an individual will have to get a judgment in court before a claim against the surety fund can be filed. At present an administrative hearing is required. These are major changes to the law that should have a great deal of public discussion before they are enacted.

I was surprised and then shocked by the action of the House Labor Committee on this bill. It was introduced by the committee on March 26. Eight days later the committee held a teleconference hearing and at the end of the hearing passed the bill from the committee. I understand that it was a unanimous do-pass by the members of the committee present.

Other than the testimony by Elizabeth Johnson, an attorney who has conducted many of the administrative hearings on surety fund claims, the most distinguishing feature of the hearing was what I would describe as the committee's lack of understanding of the bill. I think this will be supported by the report of the hearing if one is prepared.

During the hearing several of the committee members asked that those testifying provide them with written comments so

stand the relations between the comments and the bill. Their action in passing the bill out of the committee with a do-pass recommendation makes these requests ludicrous.

Why was the bill moved so fast? The following is my guess. The language in the bill was developed by the Alaska Association of Realtors. I understand that it was first presented to the state Real Estate Commission for consideration at its last meeting.

I was also told by a current public member on the commission that the commission decided to study the proposal and determine what action it would take on the proposal at the next meeting. This is not an unusual action for the commission.

The proposal next surfaced as HB-705 and a companion bill in the Senate. However before this happened the state Realtors association held its annual cocktail party for legislators in Juneau.

I have seen no problem with the Labor Committee's introduction of HB-705. I also see no problem with the legislators attending the Realtors' annual cocktail party. Realtors are constituents and deserve no less. However, I am shocked that a bill with such potential impact on the public would be moved from the committee with so little regard for public input.

The record will show that of the persons in attendance at the teleconference hearing (persons attended at Fairbanks, Homer and Anchorage), less than 10 per-

cent were not real estate licensees. The hearing was scheduled so fast that it was not even listed on the weekly list of hearings mailed out by the Legislative Affairs office.

Why is the association so interested in getting HB-705 passed? Testimony at the hearing indicated that they think that the surety fund is paying out too many claims under the present system. A comparison was made between the claims paid by the California fund and our fund to emphasize this. They feel that the hearing office is responsible for this.

This is also ludicrous since the hearing office presents findings to the commission (five real estate brokers and two public members) who can adopt, change or reject the findings. Also, so far less than 30 percent of the claims filed against the fund have been paid. The present process gets the job done in less than six months. If HB-705 passes the process will go back to the civil courts and have to compete with other matters on the court calendar.

These proposed changes have the potential of affecting every person who buys or sells real estate in Alaska. It should have much more public discussion. I would also suggest that it is important enough for the state real estate commission to hold a special meeting to hold a public hearing on the changes.

FRANK AUSTIN

38 Apollo Drive

WRITTEN COMMENTS
REGARDING HOUSE BILL 705 AND SENATE BILL 537
RELATING TO THE REAL ESTATE SURETY FUND

Since 1980 a fund created by the Alaska Real Estate Commission has allowed payment up to \$10,000.00 per transaction to consumers who have suffered financial loss because of a real estate licensee's action that involved fraud, deceit, misrepresentation, or conversion of trust funds. The fund is maintained by payment of a yearly surety fee not to exceed \$125.00 for each licensee. After the fund reaches \$250,000.00 the Real Estate Commission adjusts the fees so that the fund is maintained at a level not less than \$250,000.00.

Prior to 1980 persons making a claim against the fund had to first secure a court judgment against the licensee. In 1980 after Sunset review of the legislation, the requirement of a judgment was dropped and the Real Estate Commission set up a procedure whereby complainants could make a claim directly against the fund.

Once a complaint is received an administrative hearing is held. The hearing consists of presentations by the claimant and the licensee or licensees. The Administrative Hearing Officer has the power to subpoena evidence including documents and to require the attendance of witnesses. Both parties are allowed counsel if they so choose.

At the conclusion of the hearing, Findings of Fact and Conclusions of Law are entered with a recommendation to the Real Estate Commission on whether the claim should be paid.

It should be noted that once a Hearing Officer has made a recommended decision the Real Estate Commission reviews the case and decides whether the claim should be paid. After the final decision, the licensee still has the option to appeal to the Superior Court.

Attached is a summary of the claims paid since the inception of the administrative proceedings in 1980.

House Bill No. 705 and Senate Bill No. 537 substantially amend the current procedure to again require that members of the public obtain a judgment against the licensee prior to making a claim against the fund. The legislation then requires a second hearing by the court to determine that the judgment creditor has no other assets available and that payment from the fund is proper. The proposed legislation also restricts the type of claims which are paid from the fund.

Page -3-
Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

(d) Page 2, lines 12-14 -- specifically prohibits payment on claims for innocent misrepresentation.

Section 3, page 2, AS 08.88.465 requires a second hearing after entry of a judgment and before amount is paid from Surety Fund.

(a) Page 2, lines 20 and 21 -- requirement of hearing within 30 days is virtually impossible to enforce administratively with the current backlog in the court system.

(b)(4) Page 3, lines 4-6 -- What is a "reasonable attempt"? Open to judicial interpretation and "mini trial" on attempt to find judgment creditor and determine assets.

(b)(5) Page 3 -- requires a separate court hearing on whether creditor has been able to locate assets and has taken the "necessary action" to apply the assets to the judgment. What is "necessary action"?

(b)(6) Page 3, lines 13-16 -- requires the court to make an independent determination that the claimant has "diligently pursued other remedies." What is meant by this phrase? Requires a separate showing that there is no other person that could be liable in the transaction -- in other words the claimant could obtain a judgment against licensee A and during the hearing under this section, a different judge could conclude that licensee B is responsible and deny payment from the fund. This is a peculiar provision which could result in contradictory findings by judges with regard to the same transaction, thereby allowing licensees to shift responsibility and avoid payment from the fund.

Section 4 AS 08.88.470 repealed and reenacted:

(a) Page 3, lines 17-21 -- requires a separate court hearing and in effect a "mini trial" on the validity of the claim.

(b) Page 3, lines 22-27 -- requires the claimant to prove his case twice. Note that if the action was defended by a Trustee in Bankruptcy there has to be an entirely new hearing, although many times there will have already been a complete trial in Bankruptcy Court.

Page -4-

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

Section 7 AS 08.88.475(b):

(b) Page 4, lines 16-20 -- there is no definition of "transaction". This section appears to read that no matter how many people are involved nor how much money is lost, if the licensee can claim that there was only one "transaction" then the \$10,000.00 limit applies. For example, in the case of the sale of shares in a limited partnership, if the licensee makes fraudulent sales to 50 people, obtains \$5,000.00 from each, and takes the money, is this construed as "one transaction" where the \$10,000.00 limit would apply?

Comments:

Suggestion for changes in current statute and administrative proceedings.

Some of the primary complaints I've heard about the Surety Fund can be solved easily within the context of the present procedure administered by the Real Estate Commission by making changes to the current statute.

1. Elimination of "frivolous" claims. Some licensees have complained that they are burdened with responding to "frivolous" claims which are then denied. It has been my experience that there are very few "frivolous" claims. Many claims are settled or withdrawn prior to hearing or during the hearing process. If there is a problem with inadequate initial screening of complaints, I would suggest the following:

a. Establish a mandatory filing fee of perhaps \$50.00 to discourage those persons who feel the fund is a source of free money.

b. Allow the staff of the Real Estate Commission to do an initial screening of the complaint. If the complaint is not recommended for an administrative hearing and the claimant wishes to go forward, they must post a bond of \$250.00 to secure payment of hearing cost and partial attorney's fees to the licensee if the claim is denied.

2. Denial of Due Process -- there have been some feelings by claimants that because they are not entitled to a jury trial, the administrative proceeding denies them due process. No administrative proceeding provides for a jury trial and as a practical matter all the rights and privileges accorded in a court hearing are preserved in the administrative procedure process. The only exception is the relaxed standard for the rules of evidence. This has not been a significant problem in any case I have handled, in which either an attorney appeared or in which licensees represented themselves.

Page -5-

Written Comments Regarding
House Bill 705 and Senate Bill
537 Relating to the Real
Estate Surety Fund

If this is perceived as a problem, the current statute can be amended to provide for de novo review by the Superior Court as is done in school employment cases.

3. Allowance of claims based on innocent or negligent misrepresentation. Some of the most vociferous opposition to the Surety Fund has been to claims which have been allowed on the basis of innocent or negligent misrepresentation. This theory of recovery is consistent with the holdings of the Alaska Supreme Court. Thus, licensees are going to continue to be held responsible for mistakes which are innocently made regardless of the status of the Surety Fund.

In short, with the above-noted exceptions, the Surety Fund works well in protecting the public interest and insuring that licensees receive a fair hearing. In addition, the administration of the Surety Fund over the past three years has caused the industry to "self police" to a great degree. The problems with the fund can be more readily addressed by amending the current procedure than requiring consumers to prosecute claims through civil court.

9. Surety Claim Recovery:

Hoey, Thomas	Recovery complete.	1,000
Congdon, Renwick	Recovery complete 030383.	1,139
Lankford, Daniel	Billed 011883, no response.	
McCormick, Gail	Recovery complete 052683.	11,275
Motonaga, Gary	Recovery complete.	4,225
Calvo, Tony	Claim repaid; hearing costs unpaid.	10,000
Odell, Mina	Claimant paid, hearing costs unpaid.	1,000
McCourt, James	Billed 830718; no response.	
Jones, Jerry	Claimant paid, hearing costs unpaid.	800
Ruszkowski, Alvin	Claimant paid, hearing costs unpaid.	1,000
Rink, Robert	Claimant paid, hearing costs unpaid.	1,000
		<u>31,429</u>

10. Surety claims statistics:

	Fiscal Year			Calender Year		
	Filed		Paid	Filed		Paid
1981	31	0		52	3	\$ 11,943
1982	70	13	\$ 41,853	93	18	62,612
1983	99	20	80,346	123	14	67,644
1984	97	3	30,006	29	1	10,000
Totals to date	<u>297</u>	<u>36</u>	<u>\$152,199*</u>	<u>297</u>	<u>36</u>	<u>\$152,199*</u>

* This amount includes paid claims that have since been recovered from the licences, and therefore differs from the total that is stated on the Surety Claim Case summary and as shown below.

Surety claim totals:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	12.5%	\$ 124,974.24	8.1%
Paid, recovered	*	*	29,025.00	1.9%
PD-Approved	3	1.0%	18,012.00	1.2%
Denied	69	23.2%	317,898.97	20.5%
PD-Denied	1	0.3%	11,000.00	0.7%
Withdrawn	30	10.1%	134,878.25	8.5%
In process	157	52.9%	901,657.39	58.2%
Total filed	<u>297</u>	<u>100.0%</u>	<u>\$1,547,945.85</u>	<u>100.0%</u>

Decided claims:	Numbers of claims		Dollar amounts of claims	
Paid, unrecovered	37	26.4%	\$124,974.24	19.3%
Paid, recovered	*	*	29,025.00	4.5%
PD-Approved	3	2.1%	18,012.00	2.8%
Denied	69	49.4%	317,898.97	50.8%
PD-Denied	1	0.7%	11,000.00	1.7%
Withdrawn	30	21.4%	134,878.25	20.9%
Total decided claims	<u>140</u>	<u>100.0%</u>	<u>\$646,288.46</u>	<u>100.0%</u>

* These numbers are included in the paid, unrecovered, category because there is overlap where the hearing costs are outstanding after repayment of the claim.

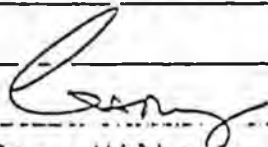
Mrs. Barb Hill

Please accept the attached letter
as my testimony for the public
hearing regarding HB 705.

I respectfully request that the
testimony be read into the record.

Thanks for the opportunity to
participate.

Sincerely yours,


Gary Wilken

April 24, 1984

TO: Alaska Real Estate Commission

RE: Testimony: HB 705 and SB 537

24 APR 84
JOR
for Record

Regarding the existing surety fund structure, I have had the opportunity to read both the State Association's position paper and the corresponding pending legislation to which this testimony is addressed.

My first concern is the broad brush method by which the legislation would apply to the existing Surety Fund. One does not, when one's automobile requires a tune-up, replace the entire engine. Instead, one performs the required adjustments to continue on. The analogy appears to be very appropriate to HB 705 in regard to the Surety Fund. The legislation would replace the heart of the system when indeed only a tune-up is required.

I am sympathetic to the Association's concerns and claims of frivolous and/or vindictive claims being filed against licensed real estate agents. I believe this to be a legitimate concern and one that must be addressed. When the current Surety Fund system was formulated in 1979-1980, the experience of a significant number of less than valid claims was not fully anticipated.

The concept of a filing fee is a step in the right direction for remedy. The suggestion that it be \$50 to \$100 is good, however, in my opinion the amount is not sufficient. I am in favor of a filing fee of some greater amount, perhaps \$250-\$500, a portion of which is refundable if the plaintiff prevails in his argument. As we have seen, there must be some consideration on the part of the plaintiff as to their liability in filing a claim against the Surety Fund. If a plaintiff understands from the outset that a substantial fee is required to file, and that if unsuccessful, the fee is considered a cost of litigation, the vast majority of those people now filing frivolous or vindictive claims will be markedly reduced.

This concept embodies two factors. First, the plaintiff understands that there will be a filing fee that will not be refundable, let us say \$100 out of the deposit. Secondly, the plaintiff must consider the remaining amount to be a "gamble", if you will, that he will prevail. In brief, the large filing policy requires some serious economic forethought on the part of the complainant.

My second concern centers around the numerous references to innocent misrepresentation which appears to exclude such action from the protection of the Fund. I think back to the lady in Wasilla that, upon closing a deal for her new country residential acreage, discovered that when it came time to build, half of her property was over a cliff and she had purchased a wonderful set of mud flats. The agent had flagged the corners incorrectly. He did not mean to. He really believed he was selling her the correctly staked land and told her so. He did not do his job properly and consequently, the lady's property was worth one-half of what she paid for it.

I recall the family in Juneau that purchased a previously occupied house with the assurance from the selling agent that the foundation was high and dry. Reality surfaced when a high tide increased the water level to the point it flooded the basement and created a difficult problem with the potential rotting of the supporting members. The agent had represented the house to be free of flooding problems and he really believed it was because he did not do his job as well as he should have: he never inspected the crawl space and the supports for existing water damage and potential of same.

Should the lady in Wasilla or the family in Juneau suffer economic hardships on what could well be the biggest financial transaction of their lives because two agents did not do their job as completely as they should have? I do not believe so. The agent or the industry, must provide a vehicle to make these two people whole and a reasonable accessible Surety Fund is that vehicle. The buyers in these instances, are the last people that should suffer due to what would be termed innocent misrepresentation.

Thirdly, it has been suggested a small claims court action may be utilized to resolve a dispute. While this may appear on the surface to be viable, even with the existing \$2000 limit or with an increase thereof, one who has worked within the small claims system knows that a simple checkmark in the proper box on the defendants reply form turns a small claims proceeding into a full district court case. Thus the benefits of the small claims system are easily lost.

In summary, it is my opinion the proposed changes are a backward step in the protection of the public from damage incurred in a real estate transaction. The judgement method, used prior to the existing Surety Fund method has proven itself to be totally ineffective from both a time and money standpoint in dealing with alleged wrongs on the part of real estate agents. It is difficult to consider returning to that system as a means to remedy the current ills of the Surety fund.

STATE OF ALASKA

RECEIVED DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

APR 26 1984

AK. REAL ESTATE COMM.

April 24, 1984

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

James L. Magowan, Executive Director
Alaska Real Estate Commission
3601 C Street Suite 722
Frontier Building
Anchorage, AK 99503

Re: Alaska Association of Realtors
"White Paper" on the surety
fund

Dear Mr. Magowan:

At your request on behalf of the Real Estate Commission, we have reviewed the White Paper dated March 5, 1984, by the Alaska Association of Realtors pertaining to the real estate surety fund. Some of the comments and concepts advanced by the Alaska Association of Realtors in the White Paper are now embodied in proposals before the 13th Legislature, specifically HB 705 and SB 537.

The current real estate surety fund claims program as outlined in AS 08.88.450 et seq. has benefited hundreds of Alaskan consumers and real estate professionals since it was enacted in 1980. The program has provided a swift, inexpensive, and fair method of resolving many real estate sales disputes. It has allowed hundreds of consumers to bring their grievances before a qualified, impartial tribunal without the frustration, delay and high cost of going to court. In our view, the program has given a measure of protection to consumers while providing real estate professionals with a full and fair opportunity to contest the merits of any claim made against the surety fund. The existing surety fund has done much to enhance the public trust and confidence in the real estate profession in general, a goal we support and encourage.

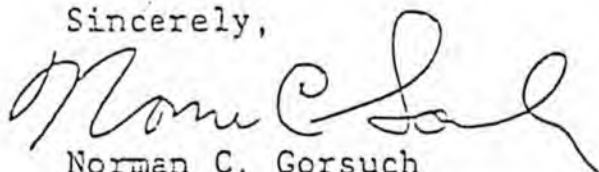
To be sure, the surety program could be improved in some respects. I agree with the point made by the Alaska Association of Realtors that some means must be found to reduce frivolous claims against the surety fund. It is my belief that frivolous claims can be essentially halted by imposing a significant

filing fee, perhaps up to \$150, 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. Such a filing fee would most likely chill frivolous claims without unnecessarily impeding valid claims made against the fund.

I recognize that this is a policy call rather than a legal determination. I would therefore simply urge the commission to carefully weigh the effects of the approach taken in the White Paper and by the two pending bills and carefully consider their effects on both the real estate consumers and on the real estate profession. As a general rule, I am not enamoured with placing more disputes in our already overworked judicial system. Of course, any aggrieved party from a real estate surety fund proceeding does and ought to have the ability to appeal the findings and award to a superior court.

If we can be of additional assistance to the commission concerning any aspect of the surety fund, please contact us.

Sincerely,



Norman C. Gorsuch
Attorney General

NCG:er

cc: The Honorable Dick Elaison
Senator

The Honorable Jalmar Kerrettula
President of the Senate

The Honorable Joe Hayes
Speaker of the House

Ray Gillespie
Special Staff Assistant
to the Governor

The Honorable Dick Lyon, Commissioner
Department of Commerce and Economic Development

22

APRIL 5, 1984

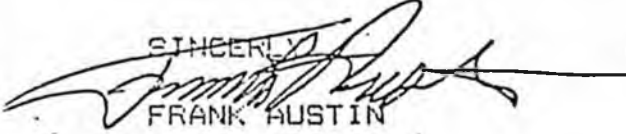
Frank Austin
3838 Apollo Drive
Anchorage, AK 99504

MRS. BARBARA HILL, CHAIRPERSON
ALASKA REAL ESTATE COMMISSION
3601 C STREET
ANCHORAGE, ALASKA 99503

DEAR BARB,

I AM CONCERN AT THE PROCESS THAT HB-705 SEAMS TO BE FOLLOWING. THE RECENT HEARING BY THE HOUSE LABOR COMMITTEE WAS VERY DISTURBING IN THE LACK OF PUBLIC COMMENT THAT WAS OFFERED ON A BILL THAT WILL HAVE SUCH A POTENTIAL EFFECT ON THE PUBLIC. I FEEL THAT IT IS THE RESPONSIBILITY OF THE COMMISSION TO SEE THAT THIS DOES NOT SET THE TONE FOR THE FINANCE COMMITTEE HEARINGS. TO ENSURE THAT THERE IS PUBLIC COMMENT ON THIS BILL I URGE YOU TO CALL A SPECIAL SESSION OF THE COMMISSION AT WHICH PUBLIC COMMENT ON HB-705 MIGHT BE OFFERED TO THE COMMISSION. I ALSO URGE THE COMMISSION TO REVIEW HB-705 AND FORWARD A POSITION ON THIS BILL TO THE FINANCE COMMITTEE.

I AM HAND DELIVERING THIS TO THE COMMISSION OFFICE FOR EXPEDITIOUS HANDLING. THANK YOU FOR ANY CONSIDERATION GIVEN TO MY REQUEST. I HAVE ALSO ATTACHED A COPY OF A LETTER TO THE EDITOR ON THE LABOR COMMITTEE HEARINGS AND MY CONCERNS ABOUT HB-705.

SINCERELY

FRANK AUSTIN

ATTACHMENT

cc: Commission Members

APRIL 5, 1984

Frank Austin
3839 Apollo Drive
Anchorage, AK 99504

ANCHORAGE TIME
LETTERS TO THE EDITOR
P.O. BOX 40
ANCHORAGE, AK 99510-0040

DEAR EDITOR,

PLEASE INCLUDE THE FOLLOWING IN YOUR LETTERS TO THE EDITOR COLUMN.

REAL ESTATE SALES LEGISLATION

AS A FORMER PUBLIC MEMBER OF THE STATE REAL ESTATE COMMISSION (1976-82) I AM CONCERNED ABOUT CHANGES THAT ARE BEING PROPOSED TO THE LAWS GOVERNING THE REAL ESTATE SURETY FUND.

ON TUESDAY APRIL 3RD THE HOUSE LABOR COMMITTEE HELD A TELECONFERENCE HEARING ON HB-705 "AN ACT RELATING TO THE REAL ESTATE SURETY FUND". THIS BILL WILL MAKE SUBSTANTIAL CHANGES TO THE PROCESS USED TO REIMBURSE INDIVIDUALS WHO ARE DAMAGE MONETARILY IN A REAL ESTATE SALES TRANSACTION WHEN A LICENSEE IS INVOLVED. THE BILL WILL ALSO CHANGE THE LAW SO THAT AN INDIVIDUAL WILL ONLY BE ABLE TO CLAIM DAMAGES IF THE LOSS IS DUE TO INTENTIONAL MISREPRESENTATION. AT PRESENT THE LICENSEE IS HELD RESPONSIBLE EVEN IF THE MISREPRESENTATION IS UNINTENTIONAL. ALSO, AN INDIVIDUAL WILL HAVE TO GET A JUDGEMENT IN COURT BEFORE A CLAIM AGAINST THE SURETY FUND CAN BE FILED. AT PRESENT AN ADMINISTRATIVE HEARING IS REQUIRED. THESE ARE MAJOR CHANGES TO THE LAW THAT SHOULD HAVE A GREAT DEAL OF PUBLIC DISCUSSION BEFORE THEY ARE ENACTED.

SPEAKING OF PUBLIC DISCUSSION. I WAS SURPRISED AND THEN SHOCKED BY THE ACTION OF THE HOUSE LABOR COMMITTEE ON THIS BILL. IT WAS INTRODUCED BY THE LABOR COMMITTEE ON MARCH 26TH. EIGHT DAYS LATER THEY HELD A TELECONFERENCE HEARING (APRIL 3ND) AND AT THE END OF THE HEARING PASSED THE BILL FROM THE COMMITTEE. I UNDERSTAND THAT IT WAS A UNANIMOUS PASS BY THE MEMBERS OF THE COMMITTEE PRESENT. OTHER THAN THE TESTIMONY BY MS. ELIZABETH JOHNSON, AN ATTORNEY WHO HAS CONDUCTED MANY OF THE ADMINISTRATIVE HEARINGS ON SURETY FUND CLAIMS, THE MOST DISTINGUISHING FEATURE OF THE HEARING WAS WHAT I WOULD DESCRIBE AS THE COMMITTEES LACK OF UNDERSTANDING OF THE BILL. I THINK THIS WILL BE SUPPORTED BY THE REPORT OF THE HEARING IF ONE IS PREPARED. DURING THE HEARING SEVERAL OF THE COMMITTEE MEMBERS ASKED THAT THOSE TESTIFYING PROVIDE THEM WITH WRITTEN COMMENTS SO THAT THEY COULD BETTER UNDERSTAND THE RELATIONS BETWEEN THE COMMENTS AND THE BILL. THEIR ACTION IN PASSING THE BILL OUT OF THE COMMITTEE WITH A DO PASS RECOMMENDATION MAKES THESE REQUEST LUDICROUS.

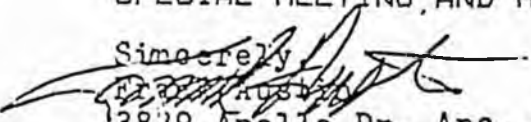
WHY WAS THE BILL MOVED SO FAST? THE FOLLOWING IS MY GUESS. THE LANGUAGE IN THE BILL WAS DEVELOPED BY THE ALASKA ASSOCIATION OF REALTORS. I UNDERSTAND THAT IT WAS FIRST PRESENTED TO THE STATE REAL ESTATE COMMISSION FOR THEIR CONSIDERATION AT THEIR LAST MEETING. I WAS ALSO TOLD BY A CURRENT PUBLIC MEMBER ON THE COMMISSION THAT THE COMMISSION DECIDED TO STUDY THE PROPOSAL AND DETERMINE WHAT ACTION IT WOULD TAKE ON THE PROPOSAL AT THEIR NEXT MEETING. THIS IS NOT AN UNUSAL ACTION FOR THE COMMISSION. THE PROPOSAL NEXT SURFACED AS HB-705 AND A COMPANION BILL IN THE SENATE. HOWEVER BEFORE THIS HAPPENED THE STATE REALTORS ASSOCIATION HELD ITS ANNUAL COCKTAIL PARTY FOR LEGISLATORS IN JUNEAU.

I HAVE SEE NO PROBLEM WITH THE LABOR COMMITTEE'S INTRODUCTION OF HB-705. I ALSO SEE NO PROBLEM WITH THE LEGISLATORS ATTENDING THE REALTORS ANNUAL COCKTAIL PARTY. REALTORS ARE CONSTITUENTS AND DESERVE NO LESS. HOWEVER, I AM SHOCKED THAT A BILL WITH SUCH POTENTIAL IMPACT ON THE PUBLIC WOULD BE MOVED FROM THE COMMITTEE WITH SO LITTLE REGARD FOR PUBLIC INPUT. IF THE RECORD IS CHECKED YOU WILL FIND THAT OF THE PERSONS IN ATTENDANCE AT THE TELECONFERENCE HEARING (PERSONS ATTENDED AT FAIRBANKS, HOMER AND ANCHORAGE) YOU WILL FIND THAT LESS THAT TEN PERCENT WERE PERSONS, WERE NOT REAL ESTATE LICENSEES. THE HEARING WAS SCHEDULED SO FAST THAT IT WAS NOT EVEN LISTED ON THE WEEKLY LIST OF HEARINGS MAILED OUT BY THE LEGISLATIVE AFFAIRS OFFICE.

WHY IS THE ASSOCIATION SO INTERESTED IN GETTING HB-705 PASSED? TESTIMONY AT THE HEARING INDICATED THAT THEY THINK THAT THE SURETY FUND IS PAYING OUT TO MANY CLAIMS UNDER THE PRESENT SYSTEM. A COMPARISON WAS MADE BETWEEN THE CLAIMS PAID BY THE CALIFORNIA FUND AND OUR FUND TO EMPHASIS THIS. THEY FEEL THAT THE HEARING OFFICE IS RESPONSIBLE FOR THIS. THIS IS ALSO LUDICROUS SINCE THE HEARING OFFICE PRESENTS FINDINGS TO THE COMMISSION (FIVE REAL ESTATE BROKERS AND TWO PUBLIC MEMBERS) WHO CAN ADOPT, CHANGE OR REJECT THE FINDINGS. ALSO, SO FAR LESS THAN 30 PERCENT OF THE CLAIMS FILED AGAINST THE FUND HAVE BEEN PAID. THE PRESENT PROCECS GETS THE JOB DONE IN LESS THAN SIX MONTHS. IF HB-705 PASSES THE PROCESS WILL GO BACK TO THE CIVIL COURTS AN.HAVE TO COMPETE WITH OTHER MATTERS ON THE COURT CALENDER.

THESE PROPOSED CHANGES HAVE THE POTENTIAL OF AFFECTING EVERY PERSON WHO BUYS OR SELL REAL ESTATE IN ALASKA. IT SHOULD HAVE MUCH MORE PUBLIC DISCUSSION. I WOULD ALSO SUGGEST THAT IT IS IMPORTANT ENOUGH FOR THE STATE REAL ESTATE COMMISSION TO HOLD A SPECIAL MEETING TO HOLD A PUBLIC HEARING ON THE CHANGES. I HAVE REQUESTED THAT THE CHAIRPERSON OF THE COMMISSION CALL A SPECIAL MEETING AND HOLD PUBLIC HEARINGS ON THIS MATTER.

Sincerely,


3839 Apollo Dr, Anc. 99504
(W) 264-4424



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

H B

251

HB 251 File Contents

- 1) Overview -- Committee Staff
- 2) Outline of Board Activities -- Governor's Boards & Commission's Office
- 3) Alaska Statutes on Board of Veterinary Examiners
- 4) Alaska Statutes on Sunset
- 5) Performance Report -- Legislative Budget and Audit

M E M O R A N D U M

TO; All Members, House Labor and Commerce Committee

FROM: Roger Poppe, Committee Staff

DATE: March 7, 1985

SUBJECT: Overview, HB 251

On Thursday, March 7, 1985, the House Labor and Commerce Committee met in Room 102 Capitol Building at 1:15-2:45 pm on HB 251: An Act extending the termination date of the Board of Veterinary Examiners.

There was no previous legislation on this last year. The last extension of the Board took place in 1980. There is no companion legislation in the Senate so far this year.

The LB & A report in your file recommends extension of the Board, and conclude that the Board should be extended, with no recommendations as to adjustments to make, which is a glowing recommendation in their terms.

They brought in more in revenues through fee charges than there were expenditures, so the Board is paying its own way currently. The Committee may wish to establish how many members they serve and what sort of activities they engage in at their board meetings.

Dr. Val Stuve, the Chairman of the Board, will try to provide input and be available for questions at the Fairbanks LIO if he can get away from his busy surgery schedule. If not, Dr. Paula Tuomi, a member of the Board in Anchorage, will try to be at the LIO site in Anchorage to answer questions if she can get time off from treating some of the dogs in the Iditarod race.

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

Cross references. — As to constitutionality of ch. 102, SLA 1979, see notes to AS 09.55.536 and Alaska Const. art. II, § 14.

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards.

Section	Section
10. Termination dates for regulatory boards	20. Procedures governing termination, transition and continuation

Cross references. — As to review of the activities of agencies, boards and commissions, see AS 44.66.010 et seq.

Sec. 08.03.010. Termination dates for regulatory boards. Boards listed in this subsection have a termination date of June 30, 1979:

- (1) Repealed by § 3 ch 36 SLA 1980.
- (2) Repealed by § 3 ch 40 SLA 1980.
- (3) Repealed by § 3 ch 87 SLA 1980.
- (4) Repealed by § 3 ch 74 SLA 1979.
- (5) Repealed by § 3 ch 39 SLA 1980.
- (6) Repealed by § 3 ch 37 SLA 1980.
- (7) Repealed by § 3 ch 38 SLA 1980.
- (8) Repealed by § 3 ch 41 SLA 1980.
- (9) Repealed by § 3 ch 67 SLA 1980.
- (10) Repealed by § 2 ch 43 SLA 1980.
- (11) Repealed by § 3 ch 42 SLA 1980.

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

- (1) Repealed by § 15 ch 82 SLA 1980.
- (2) Repealed by § 5 ch 159 SLA 1980.
- (3) Collection Agency Board (AS 08.24.011) (obsolete);
- (4) Repealed by § 5 ch 159 SLA 1980.
- (5) Repealed by § 11 ch 71 SLA 1980.
- (6) Repealed by § 7 ch 72 SLA 1980.
- (7) Repealed by § 2 ch 53 SLA 1981.
- (8) Repealed by § 8 ch 143 SLA 1980.
- (9) Repealed by § 42 ch 167 SLA 1980.
- (10) Repealed by § 2 ch 153 SLA 1980.
- (11) Repealed by § 13 ch 52 SLA 1981.

(c) The following boards have the termination date provided by this subsection:

- (1) Board of Nursing (AS 08.68.010) — June 30, 1983.
- (2) Board of Chiropractic Examiners (AS 08.20.010) — June 30, 1984.

- (3) Board of Examiners in (1984).
- (4) Board of Pharmacy (AS (1984).
- (5) Board of Dispensing Opticians (1984).
- (6) Board of Dental Examiners (1984).
- (7) Board of Veterinary Examiners (1984).
- (8) State Physical Therapy Board (1984).
- (9) Board of Nursing Home Administrators (1984).
- (10) Board of Psychologists (AS 08.86.010) — June 30, 1984.
- (11) State Medical Board (AS 08.86.010) — June 30, 1984.
- (12) Board of Marine Pilots (1984).
- (13) Board of Welding Examiners (obsolete).
- (14) Board of Electrical Examiners (1984).
- (15) State Board of Registration of Professional Surveyors (AS 08.48.011) — June 30, 1984.
- (16) Board of Barbers and Hairdressers (1984).
- (17) Board of Public Accountants (1984).
- (18) Real Estate Commission (1984).
- (19) Board of Governors of the State (08.08.040) — June 30, 1985.
- (20) Guide Licensing and Control (1982).
- (d) Repealed by § 3 ch 74 SLA 1979; am §§ 1, 3 ch 74 SLA 1979; am §§ 1, 3 ch 38 SLA 1980; am §§ 1, 3 ch 40 SLA 1980; am §§ 1, 3 ch 71 SLA 1980; am §§ 6, 7 ch 71 SLA 1980; am §§ 1, 3 ch 87 SLA 1980; am §§ 2, 5 ch 153 SLA 1980; am §§ 1, 13 ch 52 SLA 1981; am § 1 ch 28 SLA 1982; am § 1 ch 28 SLA 1982).

Revisor's notes. — Subsection (c) is rearranged by the revisor of statutes pursuant to AS 01.05.031 to conform to a logical arrangement of the subject matter.

Cross references. — For present provisions covering the subject matter of this section (c) as it read prior to the 1984 amendment and of former subsections (d) and (e), see AS 08.03.020.

- (3) Board of Examiners in Optometry (AS 08.72.010) — June 30, 1984.
- (4) Board of Pharmacy (AS 08.80.010) — June 30, 1984.
- (5) Board of Dispensing Opticians (AS 08.71.010) — June 30, 1985.
- (6) Board of Dental Examiners (AS 08.36.010) — June 30, 1986.
- (7) Board of Veterinary Examiners (AS 08.98.010) — June 30, 1985.
- (8) State Physical Therapy Board (AS 08.84.010) — June 30, 1986.
- (9) Board of Nursing Home Administrators (AS 08.70.010) — June 30, 1986.
- (10) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010) — June 30, 1982.
- (11) State Medical Board (AS 08.64.010) — June 30, 1983.
- (12) Board of Marine Pilots (AS 08.62.010) — June 30, 1983.
- (13) Board of Welding Examiners (AS 08.99.010) — June 30, 1981 (obsolete).
- (14) Board of Electrical Examiners (AS 08.40.010) — June 30, 1986.
- (15) State Board of Registration for Architects, Engineers, and Land Surveyors (AS 08.48.011) — June 30, 1984.
- (16) Board of Barbers and Hairdressers (AS 08.13.010) — June 30, 1984.
- (17) Board of Public Accountancy (AS 08.04.010) — June 30, 1984.
- (18) Real Estate Commission (AS 08.88.011) — June 30, 1986.
- (19) Board of Governors of the Alaska Bar Association (AS 08.08.040) — June 30, 1985.
- (20) Guide Licensing and Control Board (AS 08.54.010) — June 30, 1982.
- (d) Repealed by § 3 ch 74 SLA 1979.
- (e) Repealed by § 3 ch 74 SLA 1979. (§ 2 ch 149 SLA 1977; am §§ 1, 3 ch 74 SLA 1978; am §§ 1, 3 ch 36 SLA 1980; am §§ 1, 3 ch 37 SLA 1980; am §§ 1, 3 ch 38 SLA 1980; am §§ 1, 3 ch 39 SLA 1980; am §§ 1, 3 ch 40 SLA 1980; am §§ 1, 3 ch 41 SLA 1980; am §§ 1, 3 ch 42 SLA 1980; am §§ 1, 2 ch 43 SLA 1980; am §§ 1, 3 ch 67 SLA 1980; am §§ 10, 11 ch 71 SLA 1980; am §§ 6, 7 ch 72 SLA 1980; am §§ 2, 15 ch 82 SLA 1980; am §§ 1, 3 ch 87 SLA 1980; am §§ 7, 8 ch 143 SLA 1980; am §§ 1, 2 ch 153 SLA 1980; am §§ 2, 5 ch 159 SLA 1980; am §§ 41, 42 ch 167 SLA 1980; am §§ 1, 13 ch 52 SLA 1981; am §§ 1, 2 ch 53 SLA 1981; am § 1 ch 28 SLA 1982; am § 1 ch 60 SLA 1982; am § 1 ch 96 SLA 1982)

Revisor's notes. — Subsection (c) was rearranged by the revisor of statutes pursuant to AS 01.05.031 to conform to a logical arrangement of the subject matter.

Cross references. — For present provisions covering the subject matter of subsection (c) as it read prior to the 1979 amendment and of former subsections (d) and (e), see AS 08.03.020.

Effect of amendments. — The 1979 amendment repealed paragraph (4) of subsection (a), which read: "Board of Nursing (AS 08.68.010)," rewrote subsection (c), and repealed subsections (d) and (e), which read: "The termination, dissolution, continuation or reestablishment of a regulatory board shall be governed by the legislative oversight procedures of AS

BOARD: VETERINARY EXAMINERS, BOARD OF

TITLE: Board of Veterinary Examiners

DEPT: Department of Commerce and Economic Development

AUTHORITY: AS 08.98.010

STATUS: 85/06/30

REQUIREMENTS: LEGISLATIVE CONFIRMATION

PROHIBITIONS: Cannot serve more than two successive complete terms

TERM: 4-year - staggered

DESCRIPTION: 5 members appointed by Governor: 4 licensed veterinarians in active practice in Alaska for 5 years; plus 1 public member; no person may serve who is, or was during the two years immediately preceding appointment, a member of a faculty, board of trustees, or advisory board of a veterinary school.

SPECIAL FACTS: May be removed for cause; quorum - majority

FUNCTION: Regulates and controls applications, licenses, and permits of veterinarians

COMPENSATION: Standard travel/per diem

MEETINGS: At least 3 annually; normally 3 times per year, 3 days maximum, plus 2-4 work sessions

*FOR FURTHER INFORMATION CONTACT: Licensing Examiner, Division of Occupational Licensing, Dept. of Commerce and Economic Development, Pouch D, Juneau, AK 99811 - 465-2544

Veterinary Examiners

<u>MEMBER</u>	<u>APPT</u>	<u>REAPPT</u>	<u>TERM</u>
Stephen A. Mersch, DVM P.O. Box 2170 Soldotna 99669 Veterinarian	84/03/30		87/01/31
Vern R. Starks, DVM Route 1, Bcx 863 Ketchikan 99901 Veterinarian	81/05/06		85/01/31
Val D. Stuve, DVM 1651 College Road Fairbanks 99701 Veterinarian - Chair	82/01/75		86/01/31
Pamela A. Tuomi, DVM 2036 E. Northern Lights Anchorage 99504 Veterinarian	80/04/01	84/04/09	88/01/31
Ray Preston 4990 Thane Road Juneau 99801 Public	85/01/31		88/01/31

A SPECIAL REPORT ON THE
SUNSET PROCESS IN ALASKA

September, 1977 - May, 1984

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

May 18, 1984

Members of the
Legislative Budget and Audit Committee:

In accordance with a special request of the Legislative Budget and Audit Committee and Title 24 of the Alaska Statutes, the attached report is submitted for your review.

A SPECIAL REPORT ON THE SUNSET PROCESS IN ALASKA

September, 1977 - May, 1984



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

TABLE OF CONTENTS

	<u>Page</u>
Purpose of the Report.	1
The Sunset Experience.	3
Appendixes:	
A. Sunset Reviews in Alaska	9
B. Footnotes.	10

PURPOSE OF THE REPORT

In accordance with a special request of the Legislative Budget and Audit Committee and Title 24 of the Alaska Statutes, this special report has been prepared to document the Sunset experience in Alaska and to gather information about Sunset results in other states.

(Intentionally left blank)

THE SUNSET EXPERIENCE

In 1977 the Alaska Legislature created Alaska's Sunset law which was patterned after the Colorado Sunset legislation. The design of Alaska's Sunset law provides legislative scrutiny of all programs and activities of the State. While most other states' Sunset laws only addressed boards and commissions, Alaska's law is comprehensive. It includes in addition to boards and commissions, all State programs.

The process in Alaska provides for the programs, boards, and commissions selected by the legislature to be reviewed by the legislature at least every four years, unless established for a shorter period of time. The Division of Legislative Audit provides a performance review of all agencies selected by the legislature for Sunset.

Since inception of the Alaska Sunset process in 1977, the legislature has reviewed 47 agencies. The Legislative Auditor has recommended termination of 12 boards or commissions. The Legislature has terminated two of the these boards and merged two others (see Appendix A).

Alaska is a young state and therefore has fewer old boards and commissions for which there is not a demonstrated public need. Nationwide, 35 states have adopted Sunset legislation in which approximately 1676 Sunset reviews have taken place. Of these, 283 (17%) boards, commissions, or agencies were terminated.

Benefits From Sunset Reviews - Nationwide

Although some have viewed termination of State entities as the measure of success of Sunset, the main benefits, according to a nationwide survey made by Common Cause The Status of Sunset In The States, have been to make government more efficient and more responsive and accountable to the public. Of the 1676 entities reviewed, 17% were terminated because no public purpose was being served. In 83% of the reviews conducted nationwide, modifications were needed in order to improve efficiency. In addition, 68% of the states surveyed believed the principle benefits were increased public accountability and efficiency. Furthermore, 56% believed increased legislative experience and interest in the oversight work was a major accomplishment in the Sunset implementation.

Alaskan Experience

Alaska's experience has paralleled that of other states. The process has not resulted in significant cost savings, but as the result of legislative reviews, the agencies', boards', and commissions' operations have become more effi-

1. See Footnotes, Appendix B, Page 10

cient and the entities are more aware and responsive to the public needs. They have also become more cognizant of their responsibilities for self-evaluation and have made improvements not required by the legislature. In addition, recommendations for improvements in the entities' efficiency and effectiveness, made by the legislature and auditors, have either been fully or partially implemented. Therefore, improvements in the existing programs have been more beneficial than the cost savings from terminating State programs or boards. Some of the improvements observed are as follows:

1. The number of State boards and licensed professionals has not increased. The legislature has used the Sunset experience to curb the growth of boards and commissions.
2. Legislative reviews have eliminated a number of self-serving regulations and practices. This has resulted in improved availability of services, the elimination of price protections, and the heightened awareness on the part of boards that what is in the public's best interest is not necessarily what the professions would like to see occur.
3. Investigations of licensure violation by the professionals has improved. Investigations are ranked according to possible harm to the public, and those which could cause the most harm are given priority. Prior to the Sunset review, the investigations of licensure violations or incompetent practices of professionals was almost nonexistent.
4. The legislative examination of programs under the Sunset law resulted in significant changes in the inspection programs in Alaska. Three programs were merged under one department, and the mission of the other was greatly changed.

Problems with Implementing Sunset

Although most states have expressed favorable reactions to Sunset laws, there have been some common complaints about the process. Again, citing the Common Cause report The Status of Sunset in the States, March 1982, 50% of the 35 states surveyed believed the major problem with Sunset involved the amount of time spent by legislators in preparing for and conducting public hearings; 35% cited the fact that response to the public hearing consisted of licensed professionals lobbying for benefits to them; and 29% believed the costs involved were too high compared to the benefits.

2. See Footnotes, Appendix B, Page 10

In Alaska and other states, attempts have been made to include the participation of the public. Very few hearings are well attended by other than licensed professionals. Solutions to this complaint have included appointing public members to the boards. This method has gained nationwide acceptance. In Alaska, almost all boards have at least two public members.

In addition, some legislators have held meetings after regular working hours in an attempt to make hearings more accessible to the general public. According to states that have tried this, there has been an increase in public attendance.

Concerns about the cost of Sunset in Alaska do have some merit. There have been little direct savings in State expenditures due to Sunset. However, due to the type of programs reviewed, little savings could have resulted. Most reviews have been of professional licensing boards which, in some cases, provide more revenue to the State through license fees than it costs to support the board. Also, even if a board is terminated, the registration of licensees is oftentimes retained so the greatest cost, administrative expense, continues.

Recommendation For The Future

We believe the Alaska Sunset law is an important Legislative tool which should be retained. Although the law may have been over-used in some cases, it is valuable in that it provides a formal process for legislative oversight. The following are reasons why we believe such oversight is valuable:

1. Whenever legislative authority is delegated to an appointed regulatory entity, oversight should be maintained and pursued to ensure the welfare of the public is safeguarded. Due to the very nature of the regulatory agencies, they do not demand the budgetary or audit attention that the high cost programs do. In addition, the interests of regulated professional groups may differ from the public's interest. Thus, Sunset review may be the only consistent method of ensuring public accountability.
2. Sunset reviews have provided a forum for evaluation of governmental entities on the basis of public need and a method to improve the efficiency of government. A pending legislative Sunset review encourages governmental entities to make voluntary improvements and implement legislative intent.

We believe that modification to the Alaska Sunset law and procedures would help make the Sunset process a more effective legislative tool.

1. AS 44.66.020 -.030 should be repealed as these statutes are no longer applicable. This portion of the Sunset statutes sets out provisions for the termination of programs selected by the legislature. However, there were no programs selected for Sunset under these provisions. As a result, according to legislative counsel, the times such programs could be selected was mandatory, and this portion of the statute is no longer in force.
2. The legislature should consider amending the Sunset legislation for the selection of agencies or programs to be reviewed. The Sunset law does not increase the powers of the legislature, and in fact, may reduce them in that it gives the Governor the right to veto proposed Sunset bills. The legislature could select a program or agency for consideration under Sunset by resolution. The Division of Legislative Audit could then perform a performance audit of the entity, at the direction of the Budget and Audit Committee.

The Sunset process can be an effective tool to examine in detail the performance and need of a government entity not just for the termination of an agency. We believe the Sunset process could be useful in the following areas:

1. When the legislature creates a new program or agency they can provide for a Sunset review after a period of time. In this way, the legislature has a formal method of ensuring that the new State program will function as envisioned when created. The legislature used this method in creating the Litter Program. As a result, the auditors found that program personnel were very aware of the need to perform in accordance with legislative intent.
2. A program or agency could be selected for a Sunset review when there is a substantial change in the funding or purpose of a program or agency, or if it is believed the entity has not complied with prior legislative intent. We have found that the process of selecting a program for a Sunset review heightens the entity's awareness of its purpose and legislative intent, even when the possibility for termination is marginal. There are almost always improvements in effectiveness and responsiveness to the public's needs which can be made by the government entity. In addition, the legislature has a formal method of ensuring the the State entity or program is performing their duties as planned.

3. The Sunset process can also be useful in eliminating duplicative programs or services, and excessive management. There is a recognized tendency for the management within any large organization to build up over time. As a result, programs can duplicate existing programs, or programs are retained in-house when they could be better performed by contracting with outside sources, and organization structures tend to increase in the number of managers and support services.

The legislature should increase the number of years for which a board is re-established, from four years to six or eight years for the following reasons:

1. Most boards and commissions under AS 08.03.010 have been through the review cycle twice since Sunset was enacted in 1977 and, in most cases, public need has been established. Boards are now cognizant of the review process and are more likely to perform their duties in a more efficient manner.
2. Increasing the number of years between reviews would decrease the cost to the State not only in direct costs of performing the reviews, but also in the time consumed by legislators in their oversight functions. Alaska's review cycle of four years is one of the shortest of all states. Most states' review cycle ranges from six to ten years.
3. Authority exists under Title 24.20 to request performance reviews of any program under 08.03 or 44.66 if the legislature believes evaluation is necessary prior to the regular Sunset review cycle.

(Intentionally left blank)

APPENDIX A
 STATE OF ALASKA
 SENATE REPORT
 HOUSE OF REPRESENTATIVES AND SENATE

Agency	Original Termination Date	Legislative Action Recommendation and Report Date	Disposition of Unexpended Appropriation	Legislative Action Taken and SIA Reference	1st Revised Termination Date	Legislative Audit Recommendation and Report Date	Disposition of Unexpended Appropriation	Legislative Action Taken and SIA Reference	2nd Revised Termination Date	Legislative Audit Recommendation and Report Date	Disposition of Unexpended Appropriation	Legislative Action Taken and SIA Reference	3rd Revised Termination Date
Board of Chiropractic Examiners	4/30/79	Terminate 10/14/79	Continue	Cont'd Ch. 36 SIA 80	4/30/86	Continue 2/26/81	Continue	(Note 1)					
Board of Dental Examiners	4/30/79	Continue 4/29/79	Continue	Cont'd Ch. 40 SIA 80	4/30/82	Continue 1/11/81	Continue	Cont'd Ch. 28 SIA 82	4/30/86				
State Council on Food	4/30/79	Continue 10/30/79	Continue	Cont'd Ch. 87 SIA 80	4/30/81	Continue 1/4/82	Continue	Cont'd Ch. 48 SIA 83	4/30/87				
Board of Nursing	4/30/79	Continue 10/26/79	Continue	Cont'd Ch. 24 SIA 79	4/30/83	Continue 1/23/82	Continue	Cont'd Ch. 9 SIA 83	4/30/87				
Board of Professional Engineers	4/30/79	Terminate 11/21/79	Terminate	Cont'd Ch. 39 SIA 80	4/30/85								
Board of Professional Geologists	4/30/79	Continue 11/21/79	Terminate	Cont'd Ch. 37 SIA 80	4/30/86	Continue 2/25/81	Continue	(Note 2)					
Board of Professional Surveyors	4/30/79	Continue 11/21/79	Continue	Cont'd Ch. 38 SIA 80	4/30/86	Continue 2/25/81	Continue	(Note 2)					
Board of Professional Engineers	4/30/79	Continue 10/31/79	Terminate	Cont'd Ch. 41 SIA 80	4/30/85								
Board of Professional Mechanical Engineers	4/30/79	Continue 10/31/79	Terminate	Cont'd Ch. 47 SIA 80	4/30/82	Terminate 8/17/81	Indeterminate	Cont'd Ch. 29 SIA 81	4/30/87				
Board of Professional Electricians	4/30/79	Continue 10/20/79	Terminate	Cont'd Ch. 41 SIA 80	4/30/86								
Board of Professional Plumbers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 42 SIA 80	4/30/86								
Board of Professional Architects	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 43 SIA 80	4/30/86	Review Contracted							
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 44 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 45 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 46 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 47 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 48 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 49 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 50 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 51 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 52 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 53 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 54 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 55 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 56 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 57 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 58 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 59 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 60 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 61 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 62 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 63 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 64 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 65 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 66 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 67 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 68 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 69 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 70 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 71 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 72 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 73 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 74 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 75 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 76 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 77 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 78 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 79 SIA 80	4/30/86								
Board of Professional Engineers	4/30/79	Continue 10/20/79	Continue	Cont'd Ch. 80 SIA 80	4/30/86								

Note 1 - Legislative Appropriations
 Note 2 - Legislative Review Exp. 1985
 Note 3 - The Council will terminate June 30, 1984 unless reauthorized by the Legislature

No. of Audits Performed - 41
 No. of Boards Recommended for Termination - 12
 No. of Programs Terminated - 7

APPENDIX B

Footnotes

1. The Status of Sunset in the States: A Common Cause Report, Common Cause, March 1982. page 42.
2. ibit, page 43
3. ibit, page 43-44

The Status of Sunset in the States: A Common Cause Report, summary and recommendation follow. The complete report summarizes a questionnaire sent to states with Sunset laws. The questionnaire which allows comparisons between states is contained in the body of the report. We recommend anyone with interests in comparing the Alaska experience with other state's experiences read this report in conjunction with our report. Copies of this report are available upon request from the Division of Legislative Audit.

THE STATUS OF SUNSET IN THE STATES

SUMMARY

Sunset legislation -- which requires the periodic review of state agencies under the threat of automatic termination unless affirmatively recreated by law -- has triggered state governments' interest in legislative oversight and enhanced their ability to conduct it.

Since the enactment of the first Sunset law in Colorado in 1976, 35 states have passed Sunset laws. One-third of these states have taken action to expand their Sunset laws to apply to additional agencies and programs. As recently as December, 1981 Pennsylvania passed a Sunset law for the first time. Only one state, North Carolina, has formally abandoned the automatic termination provision which distinguishes Sunset from other forms of legislative oversight.

Most state Sunset laws embrace the principles suggested by Common Cause in 1976; however, current Sunset laws differ in the type and number of agencies they cover and in their approach to organizing and implementing Sunset reviews. (The Common Cause Sunset Principles are listed on page 2.)

The following conclusions are based on the results of a questionnaire completed by all 35 states with Sunset laws, on in-depth case studies of the Florida and Texas Sunset laws, and on research of individual state Sunset statutes and reports prepared by the Sunset evaluation staff. Our review has determined that Sunset is largely achieving its goal of helping to make government work better. However,

problems with Sunset laws do exist and will require skillful handling by those involved with the implementation of Sunset laws in the states.

THE BENEFITS OF SUNSET

1. Improvements in Government Performance - The results of the Common Cause survey indicate that two-thirds of the respondents from states with Sunset laws believe that increased agency efficiency and public accountability have been principle benefits of Sunset. Improvements have taken the form of major across-the-board reforms and specific recommendations applied to individual agencies.
2. Financial Savings - The purpose of Sunset is not to slash state budgets, but rather to improve agency performance and to free citizens from excessive regulation. Saving money and conducting Sunset are not mutually exclusive, however. In at least one-sixth of the states conducting Sunset reviews, legislators have been able to document savings.
3. Increased Legislative Experience In Conducting Oversight - Over half of the states with Sunset laws stated in the Common Cause questionnaire that increased legislative experience and interest in legislative oversight have been important benefits of Sunset. A positive outcome of this experience is the emergence of state government officials who are competent and often innovative leaders in the emerging area of oversight.

PROBLEMS WITH SUNSET

1. False Expectations About What Sunset Can Do - States continue to look for an instant reduction in the size of state government. The number of agency terminations is the wrong yardstick of success for Sunset. Further, state legislatures expect to see instant dollar savings from Sunset. Since most states began Sunset reviews with the examination of regulatory agencies, massive savings were never possible. However, a number of states are beginning to achieve significant savings, particularly when they have begun reviews of large regulatory agencies or service delivery agencies or programs.
2. The Time-Consuming and Costly Nature of Oversight - The leading complaint about Sunset is that Sunset reviews are too time consuming. However, states are tackling the problems of managing the Sunset workload and costs creatively. They are reducing the number of agencies reviewed in each cycle, lengthening the review cycle itself, creating priority review, and streamlining auditing and reporting requirements.

3. Low Public Participation and the Disproportionate Influence of Regulated Professions . Seventy percent of the states surveyed reported that the average turnout for a public hearing has been 25 persons or fewer. That licensees attend public hearings is commendable, but industry involvement often extends beyond public testimony to include intense lobbying of state legislators. One-third of the survey respondents indicated that they only hear from licensed professionals about Sunset issues.
4. Inadequate Measurement Information on Agency Performance and Agency Value. Many states are struggling with appropriate evaluation criteria for examining an agency's performance in achieving its goals. Almost half of the states indicated that the lack of measurement information on agency performance and agency value has been a major problem. This issue is especially critical when examining non-regulatory agencies which are unlikely candidates for termination and which have a large impact on the state budget.

RECOMMENDATIONS

The following recommendations are discussed in detail on page 35. The recommendations were developed with the knowledge that states are at various stages of Sunset implementation. States which are looking ahead to an expanded role for Sunset frequently have an interest in the dual goals of establishing a manageable workload and in broadening the scope of their review schedules to include non-regulatory agencies (e.g., service delivery agencies and programs).

1. States involved in expanding the scope of their Sunset reviews beyond regulatory agencies should develop a timely, systematic procedure for establishing a manageable schedule of agency terminations.
2. States involved in broadening the scope of their Sunset laws should consider lengthening the termination schedules they have adopted to 8 or 10 years.
3. States may want to modify the evaluation criteria in their Sunset laws if they are adding non-regulatory agencies or programs to their review schedules.
4. To create a more manageable workload for Sunset reviews, states might consider establishing priorities for conducting their program evaluation process.
5. States should attempt to achieve a close integration of Sunset with the budget process.

6. Sunset findings should be presented in an organized, digestible format.
7. Public participation in the Sunset process should be encouraged.
8. Executive branch participation in the Sunset process should be increased.

A PERFORMANCE REPORT
ON THE
BOARD OF VETERINARY EXAMINERS
May 27, 1980, to June 30, 1984

Audit Control Number

08-1167-84-R

Commissioner, Department of
Commerce and Economic Development

Richard A. Lyon

Deputy Commissioners, Department of
Commerce and Economic Development

Vince O'Reilly
Terry Elder

Members of the Board of Veterinary Examiners

Chairman
Member
Member
Member
Member

Val D. Stuve, D.V.M.
Pamela Ann Tuomi, D.V.M.
Dody Froehlich
Vern R. Starks, D.V.M.
Stephen Mersch, D.V.M.

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

July 24, 1984

Members of the Legislative Budget
and Audit Committee:

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

A PERFORMANCE REPORT
ON THE
BOARD OF VETERINARY EXAMINERS
May 27, 1980, to June 30, 1984

Audit Control Number

08-1167-84-R



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

TABLE OF CONTENTS

	<u>Page</u>
Purpose and Scope of the Report.	1
Organization and Function.	3
Report Conclusion.	5
Analysis of Public Need.	7
Appendix:	
A. Board of Veterinary Examiners, Revenues Compared with Expenditures	11
Agency Response:	
Department of Commerce & Economic Development.	13

PURPOSE AND SCOPE OF THE REPORT

PURPOSE

In accordance with the intent of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the activities and accomplishments of the Board of Veterinary Examiners was conducted to determine if the Board has been operating in an efficient, effective, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Veterinary Examiners should be established. The law currently specifies that this Board will terminate on June 30, 1985, but will continue until June 30, 1986, for the purpose of concluding its affairs.

SCOPE

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

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

(Intentionally left blank)

ORGANIZATION AND FUNCTION

The Board of Veterinary Examiners is a regulatory board consisting of four licensed veterinarians and one public member. The authority of the Board is outlined within Alaska Statutes 08.98.010-.250.

The Board determines the minimum quality of veterinary care in the State by:

1. Examining and issuing licenses to qualified applicants;
2. Establishing or amending rules and regulations necessary to enforce State statutes; and
3. Holding hearings to revoke or suspend the license of a person violating the veterinary statutes and regulations.

The Board is organized under the Department of Commerce and Economic Development, Division of Occupational Licensing (OL). OL provides the Board with licensing and investigative support. The licensing section processes applications, maintains license files, answers inquiries, and provides other administrative help.

(Intentionally left blank)

REPORT CONCLUSION

Policy Issues

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

Report Conclusion

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

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

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

- I. The extent of which the board, commission, or program has operaced in the public interest.
 - A. The Board has served the public by examining and licensing qualified applicants, and proposing changes in regulations that are necessary to enforce State statutes and improve the quality of veterinary care. To conduct these functions the Board has held an average of three board meetings and two examination sessions a year for the past two calendar years.
 - B. Specifically, the Board has enhanced the practice of veterinary care by adopting regulations concerning:
 1. the maintenance of competency of practitioners through continuing education;
 2. the establishment of standards for the practice of veterinary medicine;
 3. the disbursement of prescription drugs; and
 4. the establishment and control of activities relating to veterinary technicians.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The public's confidence and well-being has been enhanced through a statute amendment of requiring a public member on the Board. Currently, the Board membership consists of four licensed veterinarians and one public member.

- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest.
- A. The Board has proposed statutory changes concerning qualifications for licensure, temporary licensing, temporary permits, and licensing applicants by credentials. To improve veterinary care, the Board has proposed to amend the statutes by adding a new section concerning emergency treatment for injured animals. These proposed changes are currently under review in the Department of Law and have not been submitted to the Legislature.
- IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.
- A. The Board has advertised proposed regulation changes in major newspapers in Anchorage, Fairbanks, and Juneau. The Board has not actively solicited comments on its operations and services it has provided.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. The Board has encouraged public participation through newspaper announcements concerning proposed changes and additions to regulations.
- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board, or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.
- A. In the last three years there has been one complaint filed against the Board with the Ombudsman Office. The complainant did not believe the Board would take action on his complaint. However, the Ombudsman Office found this to be an unsubstantiated complaint.
- B. There have been no complaints filed against the Board with the Attorney General's Office.

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

- A. The Board has issued 59 licenses, temporary permits, and temporary licenses in the last three fiscal years.
- B. The Board requires foreign medical graduates to have qualifications equivalent to other applicants. This is evidenced by the requirement of the foreign graduates to pass the examination of the American Veterinary Association's Education Commission for Foreign Veterinary Graduates.

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

- A. The Human Rights Commission and the Equal Employment Opportunity Office have received no complaints related to the Board's activities.

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

- A. Legislative Audit has no recommendations concerning the Board's compliance with the public need factors as enumerated in this section of the report.

(Intentionally left blank)

APPENDIX A

BOARD OF VETERINARY EXAMINERS
REVENUES COMPARED WITH EXPENDITURES

For the Fiscal Year Ended June 30, 1983

(UNAUDITED)
(Note 1)

Average Revenues (Note 2)	\$ 4940.00
Less: Expenditures (Note 3)	(\$ 4198.57)
Excess of Revenues Over Expenditures	<u>\$ 741.43</u>

<u>Revenue Type</u>	<u>Amount</u>	<u>Collection Time</u>
Application fee	\$ 25	With issuance of License
Examination fee	50	With taking the Examination
Investigation of Credentials fee	50	With issuance of License
License fee	200	With issuance of License
Renewal of License fee	200	Due every four years
Temporary License fee	50	With issuance of License
Temporary Permit fee	50	With issuance of Permit

Note 1

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

Note 2

The majority of revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and cause revenues in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1982 and 1983 in order to obtain a more accurate representation of revenues collected.

Note 3

Expenditures include those made by Board members, such as travel, per diem, and contractual items. They do not include expenditures for efforts of other departments assisting the Board or administrative overhead expenses incurred by the Division of Occupational Licensing.

(Intentionally left blank)

BILL SHELDON GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

October 4, 1984

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

OCT 05 1984

**LEGISLATIVE
AUDIT**

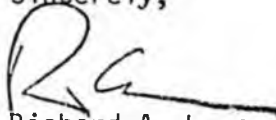
Dear Mr. Wilkerson:

We have reviewed the preliminary performance report on the Board of Veterinary Examiners, May 27, 1980 to June 30, 1984.

We concur with your findings that the board has operated in the best interests of the public. We also concur with your recommendation that the board be reestablished.

Thank you for your cooperation and the opportunity to comment on the report.

Sincerely,



Richard A. Lyon
Commissioner

RAL/lt0668t
100484b

AN ACT EXTENDING THE TERMINATION DATE OF THE BOARD OF VETERINARY EXAMINERS;
AND PROVIDING FOR AN EFFECTIVE DATE.

PRIME SPONSOR: LABOR&COMMERCE COMMITTEE

CO-SPONSORS:

\$000 GENERAL(FNOTE)

\$000 OTHER(FNOTE)

CURRENT STATUS: (S) L&C

DATE		PAGE	ACTION
03/01/85	(H)	484	READ THE FIRST TIME - REFERRAL(S)
03/08/85	(H)	541	L&C RPT 6DP
03/08/85	(H)	541	ZERO FISCAL NOTE
03/22/85	(H)	663	FIN RPT 10DP
03/22/85	(H)	663	RLS TO CALENDAR
03/22/85	(H)	682	READ THE SECOND TIME
03/22/85	(H)	683	ADVANCED TO THIRD READING UNAN CONSENT
03/22/85	(H)	683	READ THE THIRD TIME HB 251
03/22/85	(H)	683	PASSED Y34 N2 X2 A2
03/22/85	(H)	683	EFFECTIVE DATE SAME AS PASSAGE

HB 251

MEASURE HISTORY

PAGE 02 OF 02

DATE		PAGE	ACTION
03/22/85	(H)	687	TRANSMITTED TO (S)
03/25/85	(S)	627	READ THE FIRST TIME - REFERRAL(S) LABOR&COMMERCE RULES

~~-----~~ v

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL & C 3-7-85 1:35pm