

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4808 HLAB HB 172 - HB 175

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STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

November 28, 1986

Members of the Legislative Budget
and Audit Committee:

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

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
BOARD OF MARINE PILOTS

November 28, 1986

Audit Control Number

08-1272-87-R



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

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PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Marine Pilots to determine if the Board has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Board of Marine Pilots should be reestablished. The law currently specifies that this Board will terminate on June 30, 1987 but will continue until June 30, 1988 for the purpose of concluding its affairs.

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

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the Division of Occupational Licensing (OL) employees.
4. Complaints filed with OL, 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's Opinions applicable to professional boards.
8. Interviews with personnel from the U.S. Coast Guard.

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ORGANIZATION AND FUNCTION

Responsibility for the regulation of marine pilotage is shared by the Federal and State governments. The Federal government, through the U.S. Coast Guard (USCG), regulates pilotage on enrolled vessels, while the individual states are given the right, in the United States Code, to regulate pilotage on registered vessels. Enrolled vessels are vessels registered in the United States and engaged in commerce between American ports; registered vessels are those vessels engaged in foreign trade. The individual states have the right to regulate pilotage on vessels engaged in foreign trade.

The Alaska Board of Marine Pilots was created under AS 08.62 to carry out the State of Alaska's responsibility of regulating pilotage on registered vessels. The Statute became effective in 1970.

The board is made up of seven members - two marine pilots, two agents or managers of vessels, two public members, and the Commissioner of the Department of Commerce and Economic Development. The purpose of the Board of Marine Pilots is to license qualified pilots, to take disciplinary action against negligent or incompetent pilots, and to establish standards for pilotage fees.

Once a marine pilot has received a license from the Board, he is authorized to pilot registered vessels within the established boundaries of compulsory pilotage waters for the State. The compulsory pilotage waters and the exclusions for entering compulsory pilotage waters are defined by regulations. Alaska Statute 08.62.160 requires registered vessels to carry State licensed pilots when inside these boundaries. It is the pilot's job to direct a vessel safely through Alaska's designated inside waters, dock and undock the vessel.

To obtain an unlimited pilot's license an applicant must first obtain both a pilot's license and a master's license issued by the U.S. Coast Guard. In addition, the applicant must perform ten to twenty supervised dockings and undockings and pass written and oral examinations administered by the Board.

The Board also issues limited pilot's licenses and channel pilot's licenses. The holders of limited pilot's licenses may pilot vessels of 2,000 gross tons or less. Channel pilots may pilot vessels in main ship channels only, and can perform dockings and undockings under the direct supervision of pilots holding unlimited pilot's licenses. Proof of dockings and undockings is required to obtain the limited

and unlimited classes of licenses. Applicants for any of the three licenses can obtain temporary licenses by meeting all the licensure requirements and taking a temporary license examination. A second, more extensive, examination is required for permanent licensure which is administered at the subsequent Board meeting.

To obtain license renewal, a pilot must have worked within the area(s) for which he was licensed within the last two biennial periods or petition the Board for determination that he has sufficient knowledge and experience to resume pilotage in the area(s). License renewal is required biennially. It is a pilot's duty to report quarterly the names of all vessels served that were subject to the services of a licensed pilot.

Another function of the Board is to establish standards for setting pilotage fees for services. Any changes of the fees charged by pilots for their services must be approved by the Board.

The Board is assisted in performing its licensing and other administrative functions by staff support from the Division of Occupational Licensing (OL). OL processes applications, maintains files, answers correspondence dealing with the Board, and provides other administrative support as needed by the Board. In addition, OL investigates complaints or accident reports involving marine pilots.

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 recommendation presented in this report so the potential impact of policy changes can be evaluated.

Report Conclusion

In our opinion, the Board of Marine Pilots 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 experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurances that those licensed act in a competent manner is provided by investigation of complaints and revocation or suspension of licenses when appropriate.

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FINDINGS AND RECOMMENDATION

Recommendation No. 1

The Division of Occupational Licensing's investigative unit should ensure timely, effective, and efficient investigations of licensing complaints.

The Division of Occupational Licensing (OL) is responsible for monitoring and enforcing ethical and professional licensing standards and requirements for various professional boards. Complaints alleging improper practices on the part of licensees as well as those contesting board licensing decisions are investigated by OL. The effective performance of this function is necessary to promote the welfare of the public and protect the rights of licensees.

During the December 15, 1985 special report on OL, several cases were found where there was up to a year's delay in the appointment of a hearing officer; up to six months between the completion of an investigation and the time an accusation was drawn and served; and up to three months between the time a licensing board made a final decision and notice of the decision was served the disciplined licensee. It was determined that the primary cause of those delays was the absence of an effective case management system. There was no system in place to effectively track investigations from the time of the first complaint through its various stages until final resolution. Also noted was that cases were assigned and prioritized through an informal system with little centralized management control.

The conditions found in 1985 were present for much of our audit period. In addition, the investigative unit had significant delays in processing complaints regarding marine pilots in 1985-1986. Review of the 9 complaints received in Juneau by OL from July 1, 1985 (the cutoff test date of the prior audit) showed 4 complaints received in OL 30 - 70 days prior to processing by the investigative unit. OL has recently initiated a process to log in and update complaint file status utilizing computer resources. Centrally available case information and the newly established investigative procedure manual should provide a basis from which OL can enhance complaint processing by the unit.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

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

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board of Marine Pilots has operated in the public interest by examining and licensing qualified applicants and proposing changes in regulations that are necessary to enforce State statutes and assure the protection of shipping, human lives, property, and the environment from the dangers posed by vessels in Alaskan waters. To accomplish these functions, the Board has held 6 board meetings, 2 teleconferences, and 6 examination sessions for marine pilots during the past 4 fiscal years.
 - B. Two applicants were issued temporary upgraded licenses prior to fulfilling the docking and undocking certification as required in regulations 12 AAC 56.030 and 12 AAC 56.040.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Governor, when making appointments to a board or commission, requests that the appointee attend at least 75% of the meetings. From December 1982 through November 1985, one of the seven members had attended only 50% of the meetings. In addition, late appointment caused Board members to fall to 6 (including Commissioner's designee) for two Board meetings.
 - B. The Board pilot members regularly review the examination content and revise it as needed. The State areas differ slightly from the USCG endorsements available and therefore, the Board needs to ensure that applicant requirements are clear regarding these areas. Also under revision is the accident report form.

- C. The Board and OL license examiners are utilizing a procedures manual thereby enhancing effective communication between the administrative function and the Board.
- D. The following has hampered or enhanced the Board's effectiveness due to administrative actions by OL:
 - 1. The Board received assistance in drafting legislation and regulatory changes from OL.
 - 2. Alaska Statute 08.01.070(7) requires the Board to forward Board minutes to OL within 20 days of the meetings. This time requirement was not met for the May 1985 Board meeting.
 - 3. OL does not have an allocation plan for indirect costs for each individual board. They do have procedures to recoup costs in total. Available records indicate the Board is not self-supporting.
 - 4. Alaska Statute 08.01.050(9) states licenses will be issued as authorized by the Board. Two licenses were issued in December 1981 with no apparent Board resolution existing in the Board minutes.
 - 5. Board Regulation 12 AAC 56.060(c) requires temporary exams to be administered by two Board members. Two exams were administered with OL Commissioner's designee's authority in Unalaska in 1984 due to the applicant's expression of financial hardship.

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 changed or deleted definition vagueness in 12 AAC 56.080 and 12 AAC 56.160 concerning experience requirements for biennial license renewal and duties of pilots. This action was in response to a Division of Legislative Audit recommendation in the FY 82 Sunset Review.
- B. The Board has revised its regulations effective December 14, 1986 to include a clause (12 AAC 56.075) under which applicants can request a waiver from qualification requirements due to extenuating circumstances. This regulation was needed to lessen the restrictive nature of the Board of Marine Pilots' regulations.

- C. The Board redefined the Southwest compulsory pilotage water boundaries in order to eliminate confusion as to area requirements. This action provides more concise information to those individuals in the profession or striving to be, therefore, improving adherence to marine pilot regulations.
- D. The Board has proposed legislation affecting AS 08.62.150 which would expand the Board's authority regarding disciplinary action. The enactment of this legislation would allow the Board to reprimand licensees for inattention to duty and negligence.

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 public is informed of examination dates and regulation changes by notices in 5 newspapers throughout the State.
- B. Minutes of Board meetings include "guest" names which consist of industry representatives and/or support staff in attendance.

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

- A. As stated in Criteria IV, Letter A, the public is invited to the Board of Marine Pilots' meetings to give input about Board business and proposed 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. There were no complaints filed with the Office of the Ombudsman, State Office of Equal Employment Opportunity or the Human Rights Commission.
- B. A case management system and procedures is currently being established by the Division of Occupational Licensing, Investigative Unit. This implementation should enhance complaint handling. (see Recommendation No. 1).

C. The Division of Occupational Licensing has not always handled complaints and/or accident reports for the Board in a timely manner (see Recommendation No. 1). This could cause unnecessary delays in revoking a negligent pilot's license or in acquiring case facts and therefore affect the due process rights of an individual.

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

A. The Board currently regulates 72 pilots and 18 agents. There have been 22 new licenses issued since December 1981. Nine licenses lapsed since 1982; 7 of which were voluntarily not renewed, 2 of which were subsequently renewed after the license expiration date.

B. The Board requires, from pilots, quarterly reports documenting vessels serviced that require State licensed pilots.

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 Office of Equal Employment Opportunity does not feel the weight, height, or date of birth questions are necessary with the application form and may encourage discrimination. However, neither the Human Rights Commission nor the Equal Employment Opportunity Office have received 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 subsection.

A. Please refer to the previous section, Findings and Recommendation.

APPENDIX

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APPENDIX A
 BOARD OF MARINE PILOTS
REVENUES COMPARED WITH EXPENDITURES
 For the Fiscal Year Ended June 30, 1986
 (Unaudited)
 (Note 1)

Average Revenue (See Schedule 1 and Note 2)	\$11,489
Expenditures (See Note 3)	<u>14,611</u>
Excess of Revenues over Expenditures	<u><u>\$(3,122)</u></u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount Prior to 11/20/86</u>	<u>Amount Effective 11/20/86</u>	<u>Collection Time</u>
Application and Examination Fee	\$ 50.00	\$120.00	With submittal of application
Temporary License Fee	\$ 50.00	\$ 20.00	With submittal of application
License Fee	\$300.00	\$180.00	Biennially
Extension of Route or Upgrade Fee		\$ 20.00	With submittal of application

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

A significant portion of revenues is composed of license renewal fees. Licenses are renewed biennially and the last renewal date was December 31, 1984. Because of the renewals, revenues vary substantially every other year. Therefore, we averaged revenues collected in fiscal year 85 and fiscal year 86 in order to obtain a representative amount of average annual revenues collected.

Note 3

Expenditures consist of direct costs resulting from Board activities, which includes travel, per diem, and miscellaneous contractual expenditures incurred by the Board members and the Board's licensing examiner. This amount does not include indirect administrative expenditures of the Division of Occupational Licensing or expenditures for efforts of other departments assisting the Board.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2500

OFFICE OF THE COMMISSIONER

February 6, 1987

RECEIVED
FEB 17 1987

Mr. Gerald Wilkerson
Legislative Auditor
Legislative Audit Division
P.O. Box W
Juneau, AK 99801

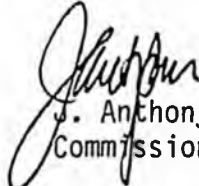
Dear Mr. Wilkerson:

Thank you for the opportunity to respond to the preliminary performance report on the Board of Marine Pilots. The department concurs that the board should be reestablished and agrees with the recommendation that the Division of Occupational Licensing's investigative unit should ensure timely, effective, and efficient investigations of licensing complaints. As you acknowledged in the report, the division has implemented the following procedures over the past six months which are targeted at increasing the effectiveness of the investigative unit:

1. all current cases in investigation and litigation have been computerized;
2. an in-depth investigation and litigation manual has been prepared and adopted; and
3. all complaints received by licensing examiners are now logged into the investigative unit within three days of receipt.

These procedures have increased the effectiveness of case tracking and processing but will not impact the timely processing of all complaints. There are currently four investigators who have the responsibility for investigating allegations of incompetence and unlicensed activity in 25 occupational areas. Each investigator currently has an average caseload of 50 investigations. This has necessitated the development of a system of prioritizing cases based on the degree of risk to the public. Unfortunately, not all cases can be handled in a timely manner.

Sincerely,


J. Anthony Smith
Commissioner

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February 10, 1987

BOARD OF MARINE PILOTS RESPONSE TO PRELIMINARY SUNSET AUDIT DATED NOVEMBER 28, 1987, BY CAPTAIN W.E. MURPHY, MEMBER.

The preliminary audit report is generally a fair and reasonable statement of the Board's performance and problems. Some areas, however, need to be clarified and expanded upon.

PURPOSE OF THE REPORT

The auditors claim that in making their report they "reviewed and evaluated" discussions with Board members. In fact, I know of no Board member who had any dialogue with an auditor relative to their sunset investigation. Contact between Board members and sunset auditors was noticeable by its absence. An auditor did sit in on a Board meeting but did not interview Board members.

ORGANIZATION AND FUNCTION

Under this section the report describes the Board's purpose and duties but does not state its primary duty, established by statute. That is Alaska Statute 08.62.040 which states, in part, "The Board shall (1) provide for the maintenance of an efficient and competent pilot service on all waters covered by this chapter to assure the protection of shipping and the safety of human life and property." This is the most important of the statutes which the Board's performance should be measured against.

The preliminary report, in describing the Board's licensing functions, refers to limited pilot license of under 2000 gross tons. Recently new licensing regulations were put into effect by the Board which creates 4 license categories: channel pilot; step 1 license for vessels of less than 20000 gross tons; step 2 license for vessels of under 40000 gross tons; and unlimited tonnage license.

REPORT CONCLUSION

POLICY ISSUES

The meaning of this paragraph is not clear. Therefore no comment is offered.

REPORT CONCLUSION

The Board concurs with the auditors' conclusion that it should be reestablished. While not without problems, the Board does a good job of protecting the public's interest by regulating pilotage in this state. The demise of the Board would spell the end of any state control over the competence of the navigation of the many foreign vessels and very large tankers which ply Alaska's waters.

FINDINGS AND RECOMMENDATIONS

The Board could not agree more that timely, effective and efficient investigation of licensing complaints should be ensured. Board members have been extremely frustrated with the inordinate amount of time license suspension/revocation proceedings have taken, a process over which the Board exercises no control. The problem goes beyond investigative delay, however. In two recent cases months passed after the investigations were completed before a hearing officer was assigned. The hearing officer, once appointed, granted a series of delays and continuances to both counsel which further slowed the proceedings.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

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STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

Bd. of Marine Pilots Response to Preliminary Audit
February 10, 1987
page 2

About two years passed before the cases were resolved, during which time the Board suffered much criticism. The perception of the maritime public was that the Board was refusing to act, while in fact the Board could do nothing until the hearing process was finished. This is an example of how bureaucratic inertia can undermine public confidence in a regulatory board. It is a very real problem for this board.

The director of Occupational Licensing is aware of this problem and has instituted reforms which the Board feels will improve the timeliness of both investigations and hearings.

ANALYSIS OF PUBLIC NEED

II D (3)

The audit report points out that the Pilot Board is not self supporting. Board members are aware of this and were mystified when, in 1986, Occupational Licensing lowered the fees for marine pilot licenses. It is the Board's position that it should indeed be self sustaining.

VI C See comments under findings and recommendations.

VIII A The Board has eliminated from its applications questions which might tend to be discriminatory. Weight, height and date of birth information was left on the application at the request of the investigative unit in order to assist it in identifying a licensee it might be required to investigate.

APPENDIX A

BOARD OF MARINE PILOTS REVENUES COMPARED WITH EXPENDITURES

As stated previously the Board feels it should be self supporting but does not have the authority to set its own fees. This is done by Occupational Licensing. The Board did not recommend and cannot explain why fees were reduced in 1986

STATE OF ALASKA
DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT

FEB 11 1987

DIVISION OF
OCCUPATIONAL LICENSING

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE BUDGET AND AUDIT COMMITTEE

February 19, 1987

Members of the Legislative Budget
and Audit Committee:

We have reviewed the Board of Marine Pilots' response to our preliminary report. Our comments follow:

Purpose of the Report

In his response, Board member Captain W. E. Murphy indicated that no Board member was contacted regarding the sunset review. However, both current and past members were contacted for discussion of current and past Board activity. Members contacted were Judith M. Brady, Marvin Taylor, Captain Donald Oldow, and Kenneth Peavyhouse.

Organization and Function

The new licensing regulations referred to by Captain W. E. Murphy became effective December 14, 1986.



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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 172
Publish Date: 3/6/87

REQUEST: _____

Revision Date: _____
Title: An Act extending the termination date of the Board of Marine Pilots:
Sponsor: House Labor & Commerce
Requestor: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing

Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSON SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Marine Pilots is budgeted in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing

Phone: 465-2144

Date: 3/16/87

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: _____

Distribution (by preparer):

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

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 172
Publish Date: 3/6/87

Revision Date: _____
Title: An Act extending the termination date of the Board of Marine Pilots:
Sponsor: House Labor & Commerce
Requestor: _____

Agency Affected: Commerce & Econ. Dev.
BRU: Occupational Licensing
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Marine Pilots is budgeted in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: 3/16/87

Approved by Commissioner: J. Anthony Smith
Agency: Commerce and Economic Development

Date: _____

Distribution (by preparer):

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: CSHB 172 (L&C)
Publish Date: 3/20/87

REQUEST: _____

Revision Date: _____

Agency Affected: Commerce & Economic Dev.

Title: An Act relating to the regulation of marine pilots; extending the termination date...

BRU: Occupational Licensing

Sponsor: House Labor & Commerce

Components: All

Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the Board of Marine Pilots is budgeted for in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management Analyst

Phone: 465-2144

Division: Occupational Licensing

Date: 4/3/87

Approved by Commissioner: Anthony Smith

Date: _____

Agency: Commerce and Economic Development

Distribution (by preparer):

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

HB

175

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/11/87

FURTHER REFERRALS: Finance

DATE: 3/17/87

The Labor & Commerce Committee has considered HB 175

"An Act extending the termination date of the State Medical Board; and providing for an effective date

RECOMMENDS:

- replace with HB175 the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING TO PASS:

[Signature]

[Signature]

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SIGNING OTHER RECOMMENDATIONS:

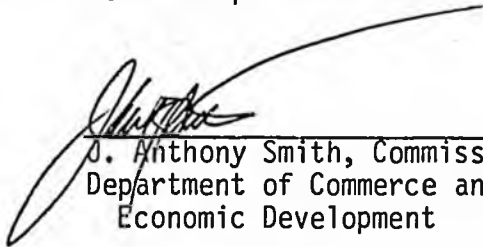
[Signature]
Chairman's signature

HB 175: An Act extending the termination date of the State Medical Board; and providing for an effective date.

HB 175 extends the Medical Board from June 30, 1987 to June 30, 1991. In January, the Legislative Budget and Audit Committee issued a performance report on the Medical Board which recommended it be reestablished. The Department of Commerce and Economic Development concurs with the audit recommendation.

In addition, the Medical Board requested the attached legislative proposals be introduced in conjunction with its continuation bill. These proposals were taken from a model medical practices act developed by the National Federation of State Medical Boards. The proposals are primarily housekeeping in nature but will clarify and improve the existing statute.

In summary, the department maintains its support for continuing the Medical Board. The board performs many important functions which protect the public, such as setting minimum standards for licensure and disciplining incompetent and dishonest professionals.


J. Anthony Smith, Commissioner
Department of Commerce and
Economic Development

3/17/87
Date _____

JAS/KM/ss0549Z
031787b
Attachments

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 175
Publish Date: 3/11/87

Revision Date: _____
Title: An Act extending the termination date of the State Medical Board;
Sponsor: House Labor & Commerce
Requestor: _____

Agency Affected: Commerce & Economic Dev.
BRU: Occupational Licensing
Components: All

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Funding for continuation of the State Medical Board is budgeted in the department's FY 88 operating budget request and is anticipated to be covered primarily through program receipts.

Prepared by: Jennifer Strickler, Management Analyst
Division: Occupational Licensing

Phone: 465-2144
Date: 3/16/87

Approved by Commissioner: A. Anthony Smith
Agency: Commerce and Economic Development

Date: _____

Distribution (by preparer):

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

1 Bill No. _____

2 IN THE LEGISLATURE OF THE STATE OF ALASKA

3 FIFTEENTH LEGISLATURE - FIRST SESSION

4 A BILL

5
6 For an Act entitled: An Act making miscellaneous amendments to
7 AS 08.64, relating to the State Medical Board.

8 * Section 1. AS 08.64.010 is amended to read:

9 AS 08.64.010. Creation and membership of State Medical Board.

10 The Governor shall appoint a board of medical examiners, to be known
11 as the State Medical Board, consisting of five physicians licensed in
12 the state who have practiced in Alaska for five years preceding
13 appointment, and residing in as many separate geographical areas of
14 the state as possible, and two persons with no direct financial
15 interest in the health care industry.

16 * Section 2. AS 08.64.370 is repealed and reenacted to read:

17 AS 08.64.370. Persons not affected. This chapter does not
18 apply to

19 (1) students while engaged in training in a medical
20 school approved by the medical licensing board or while engaged in
21 graduate medical training under the supervision of the medical staff
22 of a hospital or other health care facility in the state;

23 (2) those providing service in cases of emergency where
24 no fee or other consideration is contemplated, charged, or received;

25 (3) commissioned medical officers of the armed forces of
26 the United States and medical officers of the United States Public
27 Health Service or the Veterans Administration of the United States in
28 the discharge of their official duties and/or within federally
29 controlled facilities, provided that such persons who hold medical
30 licenses in the jurisdiction should be subject to the provisions of
31 the act;

32 (4) those practicing optometry, psychology, dentistry,

1 nursing or any other of the healing arts in accord with and as
2 provided by the laws of the jurisdiction;

3 (5) those practicing the religious tenets of a church in
4 ministering to the sick or suffering by mental or spiritual means,
5 provided that no person should be exempt from the sanitary and
6 quarantine laws of the jurisdiction or the federal government;

7 (6) a person administering a lawful domestic or family
8 remedy to a member of his or her own family.

9 (7) a physician or osteopath who is not a resident of
10 this state, who is asked by a physician or osteopath licensed in this
11 state to help in the diagnosis or treatment of a case;

12 (8) a person who is registered as a lay midwife by the
13 Department of Health and Social Services under AS 18.05.040 or who is
14 excluded from registration under AS 18.05.057 while engaged in the
15 practice of lay midwifery whether or not the person accepts
16 compensation for those services.

17 * Section 3. AS 08.64.380(2) is amended to read:

18 AS 08.64.380(2). "Practice of medicine" or "practice of
19 osteopathy" means

20 (A) advertising, holding out to the public, or
21 representing in any manner that one is authorized to practice medicine
22 in the jurisdiction;

23 (B) offering or undertaking to prescribe, give, or
24 administer any drug or medicine for the use of any other person;

25 (C) offering or undertaking to prevent or to diagnose,
26 correct, and/or treat in any manner or by any means, methods, devices,
27 or instrumentalities any disease, illness, pain, wound, fracture,
28 infirmity, deformity, defect, or abnormal physical or mental condition
29 of any person, including the management of pregnancy and parturition;

30 (D) offering or undertaking to perform any surgical
31 operation upon any person;

32 /

1 (E) using the designation Doctor, Doctor of Medicine,
2 Doctor of Osteopathy, Physician, Surgeon, Physician and Surgeon, Dr.,
3 M.D., D.O., or any combination thereof in the conduct of any
4 occupation or profession pertaining to the prevention, diagnosis, or
5 treatment of human disease or condition unless such a designation
6 additionally contains the description of another branch of the healing
7 arts for which one holds a valid license in the jurisdiction.

8 [(A) FOR A FEE, DONATION OR OTHER CONSIDERATION, TO
9 DIAGNOSE, TREAT, OPERATE ON, PRESCRIBE FOR, OR ADMINISTER TO, ANY
10 HUMAN AILMENT, BLEMISH, DEFORMITY, DISEASE, DISFIGUREMENT, DISORDER,
11 INJURY, OR OTHER MENTAL OR PHYSICAL CCNDITION; OR TO ATTEMPT TO
12 PERFORM OR REPRESENT THAT A PERSON IS AUTHORIZED TO PERFORM ANY OF THE
13 ACTS SET OUT IN THIS SUBPARAGRAPH.

14 (B) TO USE OR PUBLICLY DISFLAY A TITLE IN CONNECTION WITH
15 A PERSON'S NAME INCLUDING "DOCTOR OF MEDICINE," PHYSICIAN," "M.D.," OR
16 "DOCTOR OF OSTEOPATHIC MEDICINE" OR D.O." OR A SPECIALIST DESIGNATION
17 INCLUDING "SURGEON," "DERMATOLOGIST," OR A SIMILAR TITLE, OR ANY TITLE
18 WHICH TENDS TO SHOW THAT THE PERSON IS WILLING OR QUALIFIED TO
19 DIAGNOSE OR TREAT THE SICK OR INJURED;]

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STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

January 13, 1987

21414

SUMMARY OF: A Performance Report on the Department of
Commerce and Economic Development, State
Medical Board, January 7, 1987.

08.03

PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Medical Board. Our examination was conducted to determine if the Board has been operating in an efficient, effective manner and whether the Board should be reestablished. The law now specifies that the Board will terminate June 30, 1987.

REPORT CONCLUSION

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

STATE OF ALASKA



DIVISION OF LEGISLATIVE AUDIT
Juneau, Alaska

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD

January 7, 1987

Audit Control Number

08-1271-87-R

Commissioner, Department of
Commerce and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of
Commerce and Economic Development

Greg Baker
Terry Elder

Members of the
State Medical Board

Chairperson
Member
Member
Member
Member
Member
Member

T.L. Conley, M.D.
Jeffrey A. Partnow, M.D.
George R. Brenneman, M.D.
George S. Rhyneer, M.D.
Bonnie Coghlan
Abigail Hensley
Vacant

STATE OF ALASKA

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

January 7, 1987

Members of the Legislative Budget
and Audit Committee:

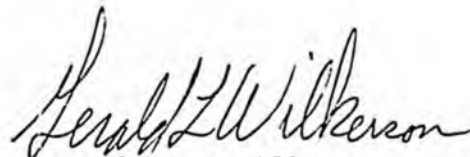
In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD

January 7, 1987

Audit Control Number

08-1271-87-R



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

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Department of Commerce and Economic Development	17

PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Medical Board to determine if the Board has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the State Medical Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1987 but will continue until June 30, 1988 for the purpose of concluding its affairs.

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

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the licensing examiner.
4. Complaints filed with the Division of Occupational Licensing, 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's Opinions applicable to professional boards.

ORGANIZATION AND FUNCTION

The State Medical Board is a regulatory board with 7 members: 5 licensed physicians, and 2 public members with no direct financial interest in the health care industry. It is preferable that the licensed physicians reside in as many separate Alaska judicial districts as possible.

The function of the Board is to determine the minimum quality of medical care by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary and desirable to enforce the statutes of the State.
3. Holding hearings in order to revoke, probate, or suspend the license of a person violating the medical statutes and regulations.

The Board regulates the following groups engaged in medical practice in Alaska: physicians, osteopaths, physician assistants (PAs), podiatrists, and paramedics. Most licensing requirements are established by statute. However, statutes have granted power to waive some requirements in favor of conditions concerning special licenses - those by endorsement, those for temporary licensure up to 8 months or until the Board meets to consider the application, whichever occurs first, and a temporary locum tenens permit which is valid for 120 consecutive days, to name a few.

An applicant for registration as a medical practitioner must have passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards. An oral interview is also administered by a member of the Board. Foreign medical graduates who graduated from medical colleges not accredited by the American Medical Association or one of its agencies must be certified by the Educational Council of Foreign Medical Graduates or be licensed by examination in another state or territory of the United States or a province in Canada.

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.

Report Conclusion

In our opinion, the State Medical Board 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 investigation of complaints and revocation or suspension of licenses when appropriate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

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

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board reviewed and approved the qualifications of 414 physicians, 76 physician assistants, and 49 paramedics from FY 83 through FY 86.
 - B. The Board provided an examination twice a year for physician candidates.
 - C. The Board did not comply with AS 08.64.085 which requires four meetings a year despite their funding for three face-to-face meetings and a teleconference. They held three face-to-face meetings.
 - D. The Board, in 1983, licensed two physicians who did not submit notarized verifications of the good standing of their other medical licenses. The application, under authority of AS 08.64.200(4), requests such verifications. The Board presently continues to require such verifications as well as Federation of State Medical Boards' clearance regarding disciplinary actions/sanctions against the applicants' licenses.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Board received legal assistance from the Attorney General's Office.
 - B. For three Board meetings, from 1982 - 1985, late appointment of Board members caused the number of members to fall one below the seven required by AS 08.64.010.

- B. Minutes of Board meetings include "guest" names which consist of industry representatives, applicants, and support staff in attendance.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As stated in Criteria IV, Letter A, the public is invited to the Medical Board meetings to give input about Board business and proposed 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. The December 15, 1985 special report on OL recommended that OL's investigative unit should ensure timely, effective and efficient investigations of licensing complaints. The conditions found in 1985 were present for much of our audit period. However, OL has recently initiated a process to log in and update complaint file status utilizing computer resources which should enhance complaint processing by the unit.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
- A. The Board, as of June 30, 1986, regulated 945 physicians, 111 physician assistants, and 85 paramedics.
 - B. The Board provides for licensing by endorsing physicians from other states.
 - C. The Board currently requires continuing medical education of physicians, physician assistants, and paramedics.
- 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 Office of Equal Employment Opportunity (EEO) does not feel the weight, sex, height, or date/place of birth questions are necessary on the

APPENDIXES

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Medical Board to determine if the Board has been operating in an efficient and effective manner.

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

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 - D. The Board, in 1983, licensed two physicians who did not submit notarized verifications of the good standing of their other medical licenses. The application, under authority of AS 08.64.200(4), requests such verifications. The Board presently continues to require such verifications as well as Federation of State Medical Boards' clearance regarding disciplinary actions/sanctions against the applicants' licenses.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Board received legal assistance from the Attorney General's Office.
 - B. For three Board meetings, from 1982 - 1985, late appointment of Board members caused the number of members to fall one below the seven required by AS 08.64.010.

C. The following has hampered or enhanced the Board's effectiveness due to administrative actions by OL:

1. The Board received assistance in drafting legislation and regulatory changes from OL.
2. OL does not have an allocation plan for indirect costs for each individual board. Therefore, available information does not indicate whether the Board is truly self-supporting. OL does have procedures to recoup costs in total.
3. Alaska Statute 08.01.050(9) states licenses/certificates will be issued as authorized by the Board. One 1986 physician's license was issued with no apparent Board resolution existing in the Board minutes.
4. OL reported a total of 4 disciplinary actions against licenses to the Federation of State Medical Boards (FSMB) in an untimely manner. The actions occurred in 1982 and 1983 and were included in FSMB's September 1986 report.

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

- A. The Board has recommended legislation that would remove the requirement of submitting applications for examination at least 40 days before the examination (AS 08.64.210). Since the examination cannot be ordered on that amount of notice, 12 AAC 40.015 has the contradictory requirement of submitting the application 120 days before the examination. The latter requirement is enforced by the Board.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is informed of examination dates and regulation changes by notices in major newspapers throughout the State.

- B. Minutes of Board meetings include "guest" names which consist of industry representatives, applicants, and support staff in attendance.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
 - A. As stated in Criteria IV, Letter A, the public is invited to the Medical Board meetings to give input about Board business and proposed 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. The December 15, 1985 special report on OL recommended that OL's investigative unit should ensure timely, effective and efficient investigations of licensing complaints. The conditions found in 1985 were present for much of our audit period. However, OL has recently initiated a process to log in and update complaint file status utilizing computer resources which should enhance complaint processing by the unit.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
 - A. The Board, as of June 30, 1986, regulated 945 physicians, 111 physician assistants, and 85 paramedics.
 - B. The Board provides for licensing by endorsing physicians from other states.
 - C. The Board currently requires continuing medical education of physicians, physician assistants, and paramedics.
- 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 Office of Equal Employment Opportunity (EEO) does not feel the weight, sex, height, or date/place of birth questions are necessary on the

Medical Board application forms. However, the Board believes this information is needed to facilitate its background investigations for licensure. Neither the Human Rights Commission nor EEO have received 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 subsection.

- A. Please refer to Criteria III, Letter A for the statutory change requested by the Board.
- B. Alaska Statute 08.64.255 requires all applicants be interviewed in person by at least one board member before a license will be issued. Board procedure has been to require additional interview by the full Board if the initial interview does not result in an outright recommendation/denial of licensure. Since this policy does not deal solely with the internal workings of the Board, it should be noted in statute or regulation. The Board resolved in its March 1986 meeting that they would create policies relating to this practice. No regulation project has yet been initiated.

APPENDIXES

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APPENDIX A
MEDICAL BOARD
REVENUES COMPARED WITH EXPENDITURES
For the Fiscal Year Ended June 30, 1986
(Unaudited)
(Note 1)

Average Revenue (See Schedule 1 and Note 2)	\$146,401
Expenditures (See Note 3)	<u>23,603</u>
Excess of Revenues over Expenditures	<u>\$122,798</u>

Schedule 1
Types of Revenues

<u>Revenues</u>	<u>Amount</u>	<u>Collection Time</u>
Application Fee	\$ 50	With application
Examination Fee (or)	\$200	With application
Credential Review Fee Physicians	\$200	With application
Re-examination Fee Physicians	\$150	With application
License Renewal Active (or)	\$600	Every Four Years
License Renewal Inactive Physicians	\$200	Every Four Years
Temporary Permit	\$ 50	With application
Locum Tenens Permit	\$ 50	With application
Authorization Paramedics and Physician Assistants	\$ 50	With application
Authorization Renewal Paramedics and Physician Assistants	\$ 50	Every Two Years
Penalty fee-late	\$ 20	If renewal date lapsed over 60 days

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

A significant portion of revenues is composed of physician license renewal fees. Physician licenses are renewed every four years and the last renewal date was December 31, 1984. Because of the renewals, revenues vary substantially every fourth year. Therefore, we included one fourth of the renewal year's revenues in order to obtain a more representative amount of average annual revenues collected.

Note 3

Expenditures consist of direct costs resulting from Board activities, which includes travel, per diem, and miscellaneous contractual expenditures incurred by the Board members and the Board's licensing examiner. This amount does not include indirect administrative expenditures of the Division of Occupational Licensing or expenditures for efforts of other departments assisting the Board.

APPENDIX B
MEDICAL BOARD
ADMINISTRATIVE STATISTICS

Schedule 1
 Number of Licenses/Authorizations

	<u>As of June 30, 1986</u>
Licensed Physicians	945
Authorized Physician Assistants	111
Authorized Paramedics	<u>85</u>
Total	<u><u>1,141</u></u>

Schedule 2
 Licenses/Authorizations Issued by Fiscal Year

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>
Physicians	91	119	98	106
Physician Assistants	17	17	21	21
Paramedics	<u>13</u>	<u>14</u>	<u>12</u>	<u>10</u>
Total	<u><u>121</u></u>	<u><u>150</u></u>	<u><u>131</u></u>	<u><u>137</u></u>

(Intentionally left blank)

STATE OF ALASKA

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

February 5, 1987

FEB 17 1987

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
P.O. Box W
Juneau, AK 99811-3300

Dear Mr. Wilkerson:

Thank you for the opportunity to review and comment upon the preliminary performance report of the State Medical Board (audit control number 08-1271-87-R).

The Department of Commerce and Economic Development concurs with the report's conclusion that the State Medical Board should be reestablished for the public's health, safety, and welfare.

Although there were no recommendations included in the report, several issues were identified in the analysis of public need which deserve clarification. You mentioned that the board did not comply with AS 08.64.085 which requires four meetings a year despite their funding for three face-to-face meetings and a teleconference. The board held only three face-to-face meetings and elected not to hold the teleconference. Teleconference meetings are extremely difficult for the Medical Board since each member must review between 50-75 applications of 6 to 20 pages each at the board meetings. It is not feasible to photocopy each application for the seven board members for review prior to a teleconference. In addition, review of applicant files is conducted in executive session. It can be extremely difficult to guarantee all parties are off the line during a teleconference executive session. For these reasons, the department is committed to ensuring the Medical Board has four face-to-face meetings as long as funding permits.

The report also indicated that it was not possible to determine if the board was self-supporting. Although it is correct that the Division of Occupational Licensing did not have an allocation plan for distributing indirect costs for each individual board during the audit period, such a plan is now in place. All actual revenues and expenditures are accounted for each board and the indirect costs are allocated based on the percentage of the number of licensees. The Medical Board's current expenditures are supported totally by the revenue generated from its license fees.

Mr. Gerald Wilkerson

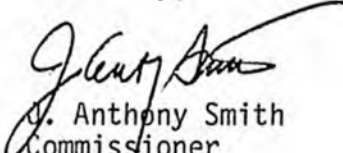
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February 5, 1987

Finally, the department agrees that the Medical Board needs to establish in regulation interview procedures for applicants. The Division of Occupational Licensing will present them with a proposal at the March 1987 board meeting.

If the department can provide you with any additional information, please do not hesitate to contact me.

Sincerely,


J. Anthony Smith
Commissioner

JAS/wfs5320W
2587c

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

March 16, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee
From: Representative Dave Donley, Chair
House Labor and Commerce Committee
Re: Proposed amendments to HB 175 - Medical Board

HB 175, extending the Medical Board, is before the House Labor and Commerce Committee on Tuesday, March 17.

The Medical Board has requested that the Committee amend HB 175 to include changes that 1) place a five year residency and Alaska practice requirement for physicians serving on the Board, 2) exempt certain persons from licensure under particular circumstances (parents prescribing "home remedies", providing medical assistance under emergency circumstances, etc.) and, 3) expands and clarifies the definition of the practice of medicine.

There may be problems with the definition of the practice of medicine under these amendments. It appears that acupuncture, assisting with a home birth, prescribing an exercise program for weight loss, etc. would all be prohibited practices under this definition, unless you were licensed as a physician in Alaska. The Committee may want to discuss the impact of this proposed statute on existing programs and practices.

A copy of the proposed amendments to HB 175 are in your committee packet. A representative from occupational licensing will be present at tomorrow's meeting to answer any questions you may have.

1 Bill No. _____

2 IN THE LEGISLATURE OF THE STATE OF ALASKA

3 FIFTEENTH LEGISLATURE - FIRST SESSION

4 A BILL

5
6 For an Act entitled: An Act making miscellaneous amendments to
7 AS 08.64, relating to the State Medical Board.

8 * Section 1. AS 08.64.010 is amended to read:

9 AS 08.64.010. Creation and membership of State Medical Board.

10 The Governor shall appoint a board of medical examiners, to be known
11 as the State Medical Board, consisting of five physicians licensed in
12 the state who have practiced in Alaska for five years preceding
13 appointment, and residing in as many separate geographical areas of
14 the state as possible, and two persons with no direct financial
15 interest in the health care industry.

16 * Section 2. AS 08.64.370 is repealed and reenacted to read:

17 AS 08.64.370. Persons not affected. This chapter does not
18 apply to

19 (1) students while engaged in training in a medical
20 school approved by the medical licensing board or while engaged in
21 graduate medical training under the supervision of the medical staff
22 of a hospital or other health care facility in the state;

23 (2) those providing service in cases of emergency where
24 no fee or other consideration is contemplated, charged, or received;

25 (3) commissioned medical officers of the armed forces of
26 the United States and medical officers of the United States Public
27 Health Service or the Veterans Administration of the United States in
28 the discharge of their official duties and/or within federally
29 controlled facilities, provided that such persons who hold medical
30 licenses in the jurisdiction should be subject to the provisions of
31 the act;

32 (4) those practicing optometry, psychology, dentistry,

1 nursing or any other of the healing arts in accord with and as
2 provided by the laws of the jurisdiction;

3 (5) those practicing the religious tenets of a church in
4 ministering to the sick or suffering by mental or spiritual means,
5 provided that no person should be exempt from the sanitary and
6 quarantine laws of the jurisdiction or the federal government;

7 (6) a person administering a lawful domestic or family
8 remedy to a member of his or her own family.

9 (7) a physician or osteopath who is not a resident of
10 this state, who is asked by a physician or osteopath licensed in this
11 state to help in the diagnosis or treatment of a case;

12 (8) a person who is registered as a lay midwife by the
13 Department of Health and Social Services under AS 18.05.040 or who is
14 excluded from registration under AS 18.05.057 while engaged in the
15 practice of lay midwifery whether or not the person accepts
16 compensation for those services.

17 * Section 3. AS 08.64.380(2) is amended to read:

18 AS 08.64.380(2). "Practice of medicine" or "practice of
19 osteopathy" means

20 (A) advertising, holding out to the public, or
21 representing in any manner that one is authorized to practice medicine
22 in the jurisdiction;

23 (B) offering or undertaking to prescribe, give, or
24 administer any drug or medicine for the use of any other person;

25 (C) offering or undertaking to prevent or to diagnose,
26 correct, and/or treat in any manner or by any means, methods, devices,
27 or instrumentalities any disease, illness, pain, wound, fracture,
28 infirmity, deformity, defect, or abnormal physical or mental condition
29 of any person, including the management of pregnancy and parturition;

30 (D) offering or undertaking to perform any surgical
31 operation upon any person;

32 /

1 (E) using the designation Doctor, Doctor of Medicine,
2 Doctor of Osteopathy, Physician, Surgeon, Physician and Surgeon, Dr.,
3 M.D., D.O., or any combination thereof in the conduct of any
4 occupation or profession pertaining to the prevention, diagnosis, or
5 treatment of human disease or condition unless such a designation
6 additionally contains the description of another branch of the healing
7 arts for which one holds a valid license in the jurisdiction.

8 [(A) FOR A FEE, DONATION OR OTHER CONSIDERATION, TO
9 DIAGNOSE, TREAT, OPERATE ON, PRESCRIBE FOR, OR ADMINISTER TO, ANY
10 HUMAN AILMENT, BLEMISH, DEFORMITY, DISEASE, DISFIGUREMENT, DISORDER,
11 INJURY, OR OTHER MENTAL OR PHYSICAL CONDITION; OR TO ATTEMPT TO
12 PERFORM OR REPRESENT THAT A PERSON IS AUTHORIZED TO PERFORM ANY OF THE
13 ACTS SET OUT IN THIS SUBPARAGRAPH.

14 (B) TO USE OR PUBLICLY DISPLAY A TITLE IN CONNECTION WITH
15 A PERSON'S NAME INCLUDING "DOCTOR OF MEDICINE," PHYSICIAN," "M.D.," OR
16 "DOCTOR OF OSTEOPATHIC MEDICINE" OR D.O." OR A SPECIALIST DESIGNATION
17 INCLUDING "SURGEON," "DERMATOLOGIST," OR A SIMILAR TITLE, OR ANY TITLE
18 WHICH TENDS TO SHOW THAT THE PERSON IS WILLING OR QUALIFIED TO
19 DIAGNOSE OR TREAT THE SICK OR INJURED;]

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STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

January 13, 1987

SUMMARY OF: A Performance Report on the Department of
Commerce and Economic Development, State
Medical Board, January 7, 1987.

PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Medical Board. Our examination was conducted to determine if the Board has been operating in an efficient, effective manner and whether the Board should be reestablished. The law now specifies that the Board will terminate June 30, 1987.

REPORT CONCLUSION

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

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD

January 7, 1987

Audit Control Number

08-1271-87-R

Commissioner, Department of
Commerce and Economic Development

J. Anthony Smith

Deputy Commissioners, Department of
Commerce and Economic Development

Greg Baker
Terry Elder

Members of the
State Medical Board

Chairperson
Member
Member
Member
Member
Member
Member

T.L. Conley, M.D.
Jeffrey A. Partnow, M.D.
George R. Brenneman, M.D.
George S. Rhyneer, M.D.
Bonnie Coghlan
Abigail Hensley
Vacant

STATE OF ALASKA

THE LEGISLATURE
BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W
JUNEAU, ALASKA 99811-3300

January 7, 1987

Members of the Legislative Budget
and Audit Committee:

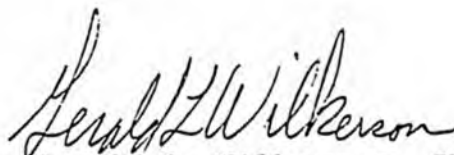
In accordance with the provisions of Titles 24 and 44 of the
Alaska Statutes (sunset legislation), the attached report is
submitted for your review.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
STATE MEDICAL BOARD

January 7, 1987

Audit Control Number

08-1271-87-R



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

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PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the State Medical Board to determine if the Board has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the State Medical Board should be reestablished. The law currently specifies that this Board will terminate on June 30, 1987 but will continue until June 30, 1988 for the purpose of concluding its affairs.

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

1. Applicable statutes and regulations.
2. Tests of files and documents of licensees.
3. Interviews with the licensing examiner.
4. Complaints filed with the Division of Occupational Licensing, 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's Opinions applicable to professional boards.

ORGANIZATION AND FUNCTION

The State Medical Board is a regulatory board with 7 members: 5 licensed physicians, and 2 public members with no direct financial interest in the health care industry. It is preferable that the licensed physicians reside in as many separate Alaska judicial districts as possible.

The function of the Board is to determine the minimum quality of medical care by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary and desirable to enforce the statutes of the State.
3. Holding hearings in order to revoke, probate, or suspend the license of a person violating the medical statutes and regulations.

The Board regulates the following groups engaged in medical practice in Alaska: physicians, osteopaths, physician assistants (PAs), podiatrists, and paramedics. Most licensing requirements are established by statute. However, statutes have granted power to waive some requirements in favor of conditions concerning special licenses - those by endorsement, those for temporary licensure up to 8 months or until the Board meets to consider the application, whichever occurs first, and a temporary locum tenens permit which is valid for 120 consecutive days, to name a few.

An applicant for registration as a medical practitioner must have passed an examination given by the National Board of Medical Examiners or the Federation of State Medical Boards. An oral interview is also administered by a member of the Board. Foreign medical graduates who graduated from medical colleges not accredited by the American Medical Association or one of its agencies must be certified by the Educational Council of Foreign Medical Graduates or be licensed by examination in another state or territory of the United States or a province in Canada.

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.

Report Conclusion

In our opinion, the State Medical Board 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 investigation of complaints and revocation or suspension of licenses when appropriate.

ANALYSIS OF PUBLIC NEED

Limited Analysis

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

- I. The extent to which the board, commission, or program has operated in the public interest.
 - A. The Board reviewed and approved the qualifications of 414 physicians, 76 physician assistants, and 49 paramedics from FY 83 through FY 86.
 - B. The Board provided an examination twice a year for physician candidates.
 - C. The Board did not comply with AS 08.64.085 which requires four meetings a year despite their funding for three face-to-face meetings and a teleconference. They held three face-to-face meetings.
 - D. The Board, in 1983, licensed two physicians who did not submit notarized verifications of the good standing of their other medical licenses. The application, under authority of AS 08.64.200(4), requests such verifications. The Board presently continues to require such verifications as well as Federation of State Medical Boards' clearance regarding disciplinary actions/sanctions against the applicants' licenses.
- 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.

The Board received legal assistance from the Attorney General's Office.

- B. For three Board meetings, from 1982 - 1985, late appointment of Board members caused the number of members to fall one below the seven required by AS 08.64.010.

- B. Minutes of Board meetings include "guest" names which consist of industry representatives, applicants, and support staff in attendance.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
 - A. As stated in Criteria IV, Letter A, the public is invited to the Medical Board meetings to give input about Board business and proposed 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. The December 15, 1985 special report on OL recommended that OL's investigative unit should ensure timely, effective and efficient investigations of licensing complaints. The conditions found in 1985 were present for much of our audit period. However, OL has recently initiated a process to log in and update complaint file status utilizing computer resources which should enhance complaint processing by the unit.
- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.
 - A. The Board, as of June 30, 1986, regulated 945 physicians, 111 physician assistants, and 85 paramedics.
 - B. The Board provides for licensing by endorsing physicians from other states.
 - C. The Board currently requires continuing medical education of physicians, physician assistants, and paramedics.
- 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 Office of Equal Employment Opportunity (EEO) does not feel the weight, sex, height, or date/place of birth questions are necessary on the

CORRECTION

**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

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 - D. The Board, in 1983, licensed two physicians who did not submit notarized verifications of the good standing of their other medical licenses. The application, under authority of AS 08.64.200(4), requests such verifications. The Board presently continues to require such verifications as well as Federation of State Medical Boards' clearance regarding disciplinary actions/sanctions against the applicants' licenses.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
 - A. The Board received legal assistance from the Attorney General's Office.
 - B. For three Board meetings, from 1982 - 1985, late appointment of Board members caused the number of members to fall one below the seven required by AS 08.64.010.

C. The following has hampered or enhanced the Board's effectiveness due to administrative actions by OL:

1. The Board received assistance in drafting legislation and regulatory changes from OL.
2. OL does not have an allocation plan for indirect costs for each individual board. Therefore, available information does not indicate whether the Board is truly self-supporting. OL does have procedures to recoup costs in total.
3. Alaska Statute 08.01.050(9) states licenses/certificates will be issued as authorized by the Board. One 1986 physician's license was issued with no apparent Board resolution existing in the Board minutes.
4. OL reported a total of 4 disciplinary actions against licenses to the Federation of State Medical Boards (FSMB) in an untimely manner. The actions occurred in 1982 and 1983 and were included in FSMB's September 1986 report.

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

- A. The Board has recommended legislation that would remove the requirement of submitting applications for examination at least 40 days before the examination (AS 08.64.210). Since the examination cannot be ordered on that amount of notice, 12 AAC 40.015 has the contradictory requirement of submitting the application 120 days before the examination. The latter requirement is enforced by the Board.

IV. The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

- A. The public is informed of examination dates and regulation changes by notices in major newspapers throughout the State.

- B. Minutes of Board meetings include "guest" names which consist of industry representatives, applicants, and support staff in attendance.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.
- A. As stated in Criteria IV, Letter A, the public is invited to the Medical Board meetings to give input about Board business and proposed 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. The December 15, 1985 special report on OL recommended that OL's investigative unit should ensure timely, effective and efficient investigations of licensing complaints. The conditions found in 1985 were present for much of our audit period. However, OL has recently initiated a process to log in and update complaint file status utilizing computer resources which should enhance complaint processing by the unit.
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- C. The Board currently requires continuing medical education of physicians, physician assistants, and paramedics.
- 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 Office of Equal Employment Opportunity (EEO) does not feel the weight, sex, height, or date/place of birth questions are necessary on the