

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5353 SLAB SB 21 - SB 39

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SB

21

Senator John B. (Jack) Coghill  
Alaska State Legislature

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Juneau, Alaska 99811  
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A large, stylized handwritten signature in black ink, likely belonging to Senator John B. (Jack) Coghill.

TO: LABOR AND COMMERCE COMMITTEE

FROM: SENATOR JACK COGHILL

DATE: 1/30/87

RE: SB 21

The crux of this legislation would be the amendment of Section 1(b) of AS 08.18.011. The results would be as follows:

- 1) Would make specialty and subcontractors work under some of the same rules as general contractors.
- 2) Provides a buffer between a general contractor and unscrupulous subcontractors who often further sub-out work to those who are unregistered and/or non-resident illegal subs. As the law now stands, general contractors are liable for the illegal actions of their subcontractors. This change would make the subcontractor liable if he hires unregistered additional subs.
- 3) This change would also benefit legitimate or so-called "righteous" specialty subcontractors by removing unlicensed competitors who are now able to low-ball bids because of reduced overhead.

In general, this change would enhance the prospects of local hire by strengthening the positions of in-state, legitimate subcontractors.

The additions of Section 2(c) and Section 3(c) would clarify which areas a specialty contractor may bid and work on by removing any vague or ambiguous language. The amendment to Section 4(b) would clear up the perceived ambiguity and consolidate the language of this section.

SB 21: An Act relating to construction contractors.


SB 21, An Act relating to construction contractors proposes to amend AS 08.18, the construction contractor registration act by making prohibitions within the statutes apply to all construction contractors regardless of type. The bill clarifies the limits placed on the conditions under which a specialty contractor may bid or work.

The current statute prohibits a general contractor from contracting with a specialty contractor if the specialty contractor is unlicensed. However, the statutes do not address requirements for a specialty contractor who contracts with a general contractor or with another specialty contractor. This bill will amend the statute so that all contractors are treated fairly. Revision of the requirements under which a specialty contractor may bid or work will discourage use of the specialty license to avoid compliance with general contractor licensing requirements.

The bill also requires contractors to show a business mailing address on all advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared for the contracting business.

The bill will affect approximately 8,000 currently registered construction contractors. Ch 83, SLA 1985 requires contractors to indicate their contractor's name, mailing address, principal place of business and registration number on all business documents. The department would like to see the wording changed on page 1, lines 24 - 26 to "business mailing address or address of the contractor's principal place of business in Alaska, . . ."

The Department of Commerce and Economic Development, Division of Occupational Licensing, supports this legislation because it clarifies the contractor statutes and strengthens provisions concerning specialty contractors.

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

Date: 1/30/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST: \_\_\_\_\_

Bill Version: SB 21  
Publish Date: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to construction contractors.  
Sponsor: Senator Coghill  
Requestor: \_\_\_\_\_

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

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	0	0	0	0	0	0
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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)

The bill makes various amendments to strengthen and clarify the construction contractor statutes, AS 08.18, however new funding is not required to implement the bill.

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

Phone: 465-2144  
Date: 1-22-87

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

Date: 1/27/87

Distribution (by preparer):

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

Bill No. Senate Bill 21  
Title "An Act relating to construction  
contractors."

Date January 29, 1987

Contact: Eileen Plate  
465-2700

Tom Stuart, Jr.  
465-4870

Senate Bill 21 seeks to strengthen and clarify the contractor licensing law which is enforced by the Department of Labor and the Department of Commerce.

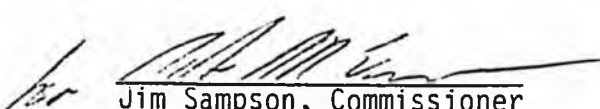
Specifically, Senate Bill 21:

1. Extends the prohibition against contracting with unlicensed persons to speciality contractors. Under present law, only a general contractor is prohibited from contracting with an unlicensed person.
2. Provides that a specialty contractor may work only in those areas of contracting for which he/she is specifically licensed, as evidenced by the specialities listed on the certificate of registration.
3. Requires that the Department of Commerce list on the certificate of registration issued to a specialty contractor each specialty area of contracting that is covered by the certificate; and
4. Clarifies the information that is required on a contractor's business documents and advertising.

Each of these amendments to the contractor licensing law has merit. However, of particular significance is the amendment to AS 08.18.011(b) which makes it unlawful for all contractors to contract with unlicensed persons. Presently only a general contractor is subject to remedial action for contracting with an unlicensed person. It will therefore preclude the use of the speciality contractor licensing classification as a means of circumventing the law. The amendment will also render the contracting licensing law more equitable, with both general and specialty contractors sharing the responsibility for assuring that the persons who contract with them are properly licensed.

The Department of Labor supports Senate Bill 21. It will not have a fiscal impact on the Department.

APPROVED:

  
Jim Sampson, Commissioner  
Department of Labor

**POSITION PAPER/Department of Labor**

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

**REQUEST:** \_\_\_\_\_

Bill Version : SB 21  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to construction contractors."

Agency Affected: Labor  
BRU: Labor Standards and Safety

Sponsor: Coghill  
Requestor: Senate Labor and Commerce

Components: Wage & Hour Administration  
Mechanical Inspection

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary)

Prepared by: AB Tom Stuart, Director JEA  
Division: Labor Standards and Safety

Phone: 465-4870  
Date: 1/27/87

Approved by Commissioner: AB Jim Sampson  
Agency: Labor

Date: 1/27/87

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

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To: Senator Tim Kelly  
Chairman  
Senate Labor & Commerce Committee  
Alaska Legislature

Date: March 12, 1987

From: Ted Moninski  
Executive Director  
Alaska Public Utilities Commission

Subject: SSSB22

At yesterday's Committee meeting, Senator Szymanski raised a question regarding the applicability of SSSB22 to the possible deregulation of Alascom, Inc. This question was generated as a result of comments submitted by the APUC regarding the potential effect of including a "customer count" threshold in determining the regulatory status of electric and telephone utilities.

As I stated in my testimony before the Committee yesterday, there was some confusion about Alascom's customer count in light of its fairly recently adopted practice to direct bill certain end users. A check with Alascom has verified the fact that this practice has been significantly expanded with Alascom now direct billing over 10,000 customers. Assuming this practice continues, SSSB22, even as amended, will not result in the deregulation of Alascom.

I would appreciate your circulating this memorandum to all of the Committee members and, in particular, to Senator Szymanski.

5 March 1987

TO: Senator Tim Kelly, Chairman  
Labor & Commerce Committee

FROM: Ted Lehne, Executive Director

RE: SB 22



Thank you for the opportunity to testify on this legislation from Anchorage. Our association represents 20 of the 23 local telephone companies in Alaska. Our members serve about 98% of the Alaskans with telephones. The three very small companies that are not members all currently qualify for an exemption from regulation under the \$50,000 standard.

Our association supports limiting regulation for very small telephone companies. A typical tariff case with the APUC can cost a company \$20,000 or more for consultants and legal representation. This is a prohibitive amount for a small company with 50 or fewer customers. The real regulation of those companies is by their communities. The phrase "good community citizen" takes on new meaning for a company operating in a rural village of 200 people!

Section 3 of SB 22 adds language which would extend the exemption from regulation to utilities with 250 or fewer subscribers, in addition to the \$50,000 gross receipts test. The average phone bill in Alaska is about \$67, meaning the \$50,000 test would mean a firm with about 63 customers.

So the addition of a 250 subscriber test would appear to be a substantial extension of deregulation. But the four smallest companies in the state have 50 or fewer subscribers and are currently exempt, while the next largest has 337 customers. Here is a breakdown by number of access lines:

<u>Lines</u>	<u>Companies</u>
0 - 50	4
51 - 250	0
251 - 500	3
501 - 1,000	1
1,001 - 1,500	5
1,501 - 2,000	1
2,001 - 10,000	3
over 10,001	6

As the companies get larger they have an incentive to get a certificate from the APUC to protect their territory and their investment. But until they get to 1,000 customers or more it is still very difficult to afford tariff cases with the APUC because the cost must be spread over so few customers. Therefore we recommend that a new sentence be added to the bill to extend economic deregulation to a few more companies, while still requiring a certificate to operate. This is not a hardship since these

(\*)

companies already have a certificate from the APUC. But the opportunity to make rate adjustments - both up and down - without the terrible expense of an APUC case, would help these companies keep their rates down. In short, the consumer would benefit by not having the expense of tariff filings built into their bill.

Here is the sentence we suggest adding:

\* [ "An electric or telephone utility with more than 250 but fewer than 500 subscribers is exempt from the provisions of this chapter, other than AS 42.05.221 - 42.05.281, unless 25 percent of the subscribers petition the commission for regulation."

We respectfully recommend that this be added between the first and second sentences of the section so the language in the last sentence applies to both of these exemptions.

If this sentence is added, it will extend economic deregulation to Bush-Tell Telephone Company in Aniak, which serves seven small communities in that area, Mukluk Telephone in Teller which serves ten small communities, and Yukon Telephone which serves Tanana, Ruby and Whittier.

This should give the legislature a fair test of economic deregulation of small utilities in Alaska. If there are abuses, the provision can be repealed and the utility will again come under APUC economic regulation. On the other hand, if the social pressure of the small communities is indeed the best regulator, then the cost of rate cases will disappear and the only costs will be those necessary to provide service. And the APUC, which is struggling with staff reductions, can concentrate its regulatory expertise in areas where it will benefit the most Alaskans.

We hope you will see this as a constructive addition to this legislation.

VERBATIM TESTIMONY OF DAVE HUTCHINS  
SENATE L&C  
MARCH 4, 1987

Mr. Dave Hutchins: I am the Executive Director of the Alaska Rural Electric Coop Association and I appreciate your letting me testify today because I won't be here after this week. Let me respond first to the question that Senator Szymanski raised and that Mr. Lane dealt with about Mr. Szymanski's friend out in Butte. It would be correct that a person can go serve some neighbors under this without being certified by the APUC if they are in an area where there is no certification. If the area is already certified to another utility for the same kind of service, as would be the case with your friend in the Butte area where the area is certified to MEA, he would not be able to engage in the commercial business of providing electric utility service in competition with MEA. There is the PURPA option open to him, whereby he could sell his power to MEA under the federal law that is administered in Alaska by the APUC. This is something you might suggest to him as an option to consider.

In regard to the basic proposal here of the deregulating utilities that serve less than 250 consumers, we think that this is a good idea. Similar legislation was under consideration last year and at that time we thought we had one or two members who would perhaps be deregulated as a result of that. They have since that time grown and are clearly above the 250 level so we don't have a single member in our association that would be directly affected by that provision. But in principal we think it is a good idea. We think that during a time of tight budget this is a way that you can cut back some on expenses at APUC without anyway jeopardizing the public interest because so long as the consumer does in fact have the option of bringing the utility under APUC regulation if they get out of line by petition. We don't see any danger involved in this at all.

In regard to the other sections of the bill that are new we are very much in support of those as well. The amendment put in the APUC statute last year that has caused the consternation in the rush between APE and APUC is section 1 of the bill. Other than the underlined language at the first of that section, and I was one very heavily involved with that legislation and I would like to simply give you my account of what happened as I recall, it might be useful to the committee to understand the background of what did happen. Our association was interested in getting what is the second sentence of this section, "After wholesale power

agreement is in effect, the commission may not invalidate any purchase or sale obligation under the agreement." We sought that because after the wholesale power agreement between Chugach and Matanuska and Homer had been in effect for a number of years, the APUC assumed jurisdiction over those contracts and invalidated them in effect, changed one half of the contract and invalidated the other. We felt that this was something that was really unfair, it was a very destabilizing effect on the railbelt utilities. They went through a very painful readjustment period coming out from under the problems that were created by that action by the APUC. They have pretty well worked themselves out of that problem now but it took a long time. We wanted to have the legislature tell the APUC that you can't do that in the future. Once a contract is in effect, you have to leave it alone. Let it operate under the terms of the contract. The APUC opposed that proposal and while the bill was in a House Finance subcommittee chaired by Representative Steve Frank, we were asked to negotiate with the APUC to try to work out a compromise. The language that you have here was provided by Marvin Weatherly with one exception. He wanted to add the first sentence that would provide that the wholesale power agreement is subject to advance approval of the commission. This was something that our attorneys suggested for the very purpose of making sure that it did not apply to the APA, because in our mind, an entity is not a public facility unless it is certificated by the APUC. It is not a utility unless APUC says it is, is basically what this says. We wanted to make sure that this did not apply to APA. We were quite shocked when the A.G.'s opinion said that it did in fact cover the power authority. I might add that in that A.G.'s opinion you will notice that part of the rationale they used to come to that conclusion is the language in the APUC statutes which says that their statutes should be liberally construed. This was another change that we wanted to get is to eliminate that phrase in the APUC statutes, but we were unsuccessful last year, and we hope that someday the legislature will agree that that 'liberally construed' language should be removed from the APUC statutes. It has caused mischief in many other cases as well.

The final sentence of that section was also added at Mr. Weatherly's request where there be a reopener of some sort after these contracts were in effect. The problem that the APA will face without this legislation are, 1) delay, I think you can look to anywhere from 6 months to a year and a half for say the Bradley Lake prior sales agreement to before the APUC before a decision be rendered, probably a year is a good estimate, 2) once they have decided that yes these contracts can be approved by the APUC then you have this reopener down here, the last sentence of section one, that leaves out an important party in this kind of case and that is the bond holders that bought the bonds issued by

the APA to finance the project. When they see this as a condition under which they will have to be buying bonds, I don't think you can sell bonds without a tremendous penalty on the interest rates. Maybe no at all, but certainly there will be a tremendous penalty. I think it is essential that this should be clarified and we strongly support this legislation.

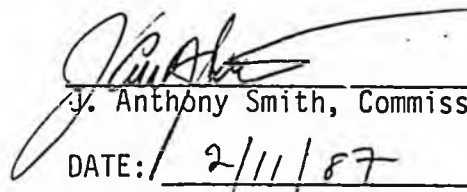
The final sentence of section 1 was also added at Mr. Weatherly's request where there would be a reopener of some sort after these contracts were in effect. The problem that the APA will face with out this legislation will be, 1) delay, anywhere from six months to a year and a half for say, the Bradley Lake prior sales agreement to be before the APUC before a decision will be rendered, 2) the second thing is that once they've decided that these contracts can be approved by the APUC, then you have this reopener down here, the last section of sentence one, that leaves out an important party, in this kind of case

SB 22 "An Act exempting certain telephone and electric utilities from regulation by the Alaska Public Utilities Commission."

The Commission opposes SB 22. From a public policy perspective, the Commission believes the current statute AS 42.05.711(f) is superior to the proposed legislation because it allows consumers of small electric and telephone utilities the choice of whether or not the benefits of regulation (i.e., public protection) outweigh the costs of regulation by providing for a deregulation election to be held. (NOTE: This legislation does not address the impact on utilities which have previously held deregulation elections and their consumers have voted to maintain economic regulation of their utilities by this Commission, i.e., Tanana Power Company and Iliamna-Newhalen Electric Cooperative.)

In addition, the proposed legislation appears to have the effect of deregulating Alaska Electric Generation and Transmission Cooperative, a generation electric utility which has two customers but provides wholesale power to potentially all the ratepayers of the Railbelt utilities. It is also not clear what effect this legislation would have on Alascom, which may directly provide service to less than 250 subscribers but through the local exchange telephone utilities provides long distance service throughout Alaska.

In its fiscal note, the APUC stated that this proposal, if adopted, would affect only 13 of 307 certificated utilities. Given the relatively small number of impacted utilities and the nearly 25% reduction in staff resources already absorbed by the Commission over the past three fiscal years, a further reduction in staffing would not be expected as a result of the changes proposed in this bill.

  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
DATE: 2/11/87

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

**REQUEST:** \_\_\_\_\_ Bill Version: SB 22  
 \_\_\_\_\_ Publish Date: \_\_\_\_\_  
 Revision Date: 1/29/87 Agency Affected: Commerce & Econ. Dev.  
 Title: Exemption of a telephone or electronic utility from regulation by the APUC BRU: APUC  
 Sponsor: Coghill Components: 5303030100, Admin.  
 Requestor: Becky Bear, DCEO

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

This legislation affects only 13 of the total 307 utilities. It will not result in any reduction in personnel because of its relatively low percentage of Commission workload. The potentially minor reduction in workload will be more than offset by increasingly constrained processing schedules and the almost 25% reduction in staff resources absorbed over the last three fiscal years.

Prepared by: T.S. Moninski, II, Executive Director Phone: 276-6222  
 Division: Alaska Public Utilities Commission Date: 2/11/87

Approved by Commissioner: Anthony Smith Date: 2/11/87  
 Agency: Department of Commerce and Economic Development

**Distribution (by preparer):**

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)  
 Senate Secretary  
 5352W21187b

Senator John B. (Jack) Coghill  
Alaska State Legislature

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March 4, 1987

MEMORANDUM

To: Members of the Labor and Commerce Committee

From: Senator Jack Coghill

Re: SSSB 22, "An Act relating to the exemption of certain telephone and electric utilities and certain transactions from APUC regulations"

The purpose of this bill is two-fold, but each part relates to the powers of the Alaska Public Utilities Commission.

I will address each purpose separately. First, my original concept was to exempt small electric and telephone companies, those having less than 250 subscribers, from regulation by the APUC.

Many small electric and telephone companies have contacted me in the last two years to vent their frustrations concerning the cost of regulation. These utilities have to go through much the same process that the big companies do. These costs have been passed along to the consumer. Many others can not even afford to begin the process, so they are saddled with uneconomical rate structures.

I believe that if the APUC can not come up with a reasonable process to assist these small owners, then they should be exempted. I believe that consumers are more apt to petition the APUC for regulation if rates become outrageous, than petition to ask for deregulation.

Secondly, within the last month, a serious problem has developed between the APUC and the Alaska Power Authority. Secs. 1, 2, 4, 5, and 6 address this problem.

Up until last year and the passage of HB 314, the APUC "sunset" legislation, a wholesale power purchase contract between the APA and a

regulated utility was not within the jurisdiction of the APUC. Under AS 42.05.431(b) the Commission now has the authority to approve power purchase contracts. Included in your packet is an attorney general's opinion on the issue.

This legislation removes the APUC's jurisdiction over these wholesale agreements for the sale of power between the APA and a public utility.

Leaving this situation unchanged will seriously affect the Bradley Lake hydroelectric project and future large projects. It also could allow the APUC to retroactively call for review of any old APA wholesale power agreements, for example the four dam pool.

I believe the consequences of not taking this matter in hand will have a drastic effect on the future of our energy projects.

I urge you to support this bill.

# MEMORANDUM

State of Alaska

TO: Marvin R. Weatherly, Chairman  
Alaska Public Utilities Commission  
420 "L" Street #100  
Anchorage, Alaska 99501

DATE: February 18, 1987

FILE NO: 663-87-0365

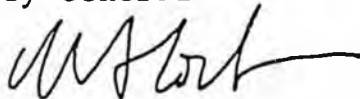
TELEPHONE NO. (907)465-3600

THRU:

SUBJECT: Power purchase contract between Alaska Power Authority and Municipal Light & Power

FROM: Grace Berg Schaible  
Attorney General

By:



Richard D. Monkman  
Assistant Attorney General

You have asked for our opinion on whether a power purchase contract between the Alaska Power Authority (Authority) and Municipal Light & Power (ML&P) is subject to approval by the Alaska Public Utilities Commission (Commission) under AS 42.05.431(b). In brief, our review indicates that the analysis in the Commission's Order No. 3 in Case U-86-96 is correct, and that this contract is subject to review by the Commission under AS 42.05.431(b).

First, it appears undisputed that the Authority is a "public utility" as that term is defined in AS 42.05.720(4)(A). The Authority is a public corporation empowered to operate and maintain power projects and "to enter into contracts with any person . . . for the purchase, sale, exchange, transmission, or use of power from a project[.]" AS 44.83.020; AS 44.83.080(5), (11). This fits squarely within the definition of a public utility: a corporation (including a public corporation) "that owns, operates, manages or controls any plant, pipeline or system for . . . furnishing, by generation, transmission or distribution, electrical service to the public for compensation[.]" AS 42.05.720(4)(A). 1/

The Authority is an unregulated public utility, exempt from the Commission's jurisdiction by operation of

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1/ The "public" is defined in AS 42.05.720(3)(B) as including "any utility" which resells power to a group of 10 or more consumers, a definition which would include Anchorage's Municipal Light & Power.

Marvin R. Weatherly, Chairman  
Power Purchase Contract Between Alaska Power  
Authority and Municipal Light & Power  
Our File: 663-87-0365

February 18, 1987  
Page 2

AS 44.83.090(b). The exemption was apparently intended to enhance the ability of the Authority to obtain bond financing for its projects. See 1984 Memorandum to Larry Crawford (July 31; C. Jones, AAG) ("APUC jurisdiction over APA power sales agreements"), attached, and legislative history cited therein.

However, while the Authority is exempt from Commission jurisdiction by AS 44.83.090(b), ML&P is not. ML&P is a regulated public utility and is subject to the Commission's jurisdiction. The exemption provided to the Authority by AS 44.83.090(b) specifically states that:

Nothing in AS 44.83.101 -- 44.83.425 [the Alaska Power Authority statutes]. . . diminishes or otherwise alters the jurisdiction of the Alaska Public Utilities Commission with respect to any public utility, including any right the commission may have to review and approve or disapprove contracts for the purchase of electricity by a public utility.

AS 44.83.090(b) (emphasis supplied).

The question posed, therefore, is whether the Commission has "any right . . . to review and approve or disapprove contracts for the purchase of electricity" by ML&P, including the contract at issue.

Our 1984 memorandum concluded that the Commission did not have authority at that time to review, approve, or disapprove electric power purchase contracts by a public utility. 1984 Memorandum, supra (attached). 2/ Since the Commission did not have "any right . . . to approve or disapprove contracts for the purchase of electricity" by a public utility, electric power purchase contracts between regulated public utilities and the Authority were not subject to the Commission's review.

However, as you note, the legislature has since passed AS 42.05.431(b), sec. 5, ch. 104, SLA 1986. This section states

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2/ "[W]e can find no authority in AS 42.05 which would permit the Commission to review these wholesale purchase agreements from the point of view of the utility as a purchaser" (emphasis in original).

Marvin R. Weatherly, Chairman  
Power Purchase Contract Between Alaska Power  
Authority and Municipal Light & Power  
Our File: 663-87-0365

February 18, 1987  
Page 3

that a "wholesale power agreement between public utilities is subject to advance approval" of the Commission. The new statute gives the Commission the "right" to review electric power purchase contracts by regulated public utilities which was lacking at the time of our 1984 opinion.

The primary guide in statutory interpretation is "the language used, construed in light of the purpose of the enactment." Commercial Fisheries Entry Commission v. Apokedak, 680 P.2d 486, 489-90 (Alaska 1984). The proposed power purchase contract is "for the purchase of electricity by a public utility." AS 44.83.090(b). It is a contract between "public utilities," and all such contracts are "subject to advance approval of the commission." AS 42.05.431(b). The plain words of these statutes indicate that the proposed agreement would be subject to review and prior approval by the Commission.

The "purpose of the enactment" in this instance does not conflict with the plain language. The 1986 enactment of AS 42.05.431(b) was in House Bill 314, which began as a short "sunset" re-authorization bill for the Commission. HB 314 grew into a complex, lengthy, and controversial package of amendments to the Commission statute, see, e.g., 1986 House J. 3181-50, 3197-209, but was drastically shortened again before final passage. Compare HB 314 with CSHB 314(Fin) and SCS HB 314(Fin). AS 42.05.431(b) surfaced without comment in the House Finance Committee version of the bill, and remained unchanged in all material respects from the date of its introduction until final passage.

The only comment we have found on the purpose of this section is in a letter from Attorney General Brown to Governor Sheffield, reviewing HB 314 after it was passed by the legislature. The letter states, "The commission's authority to approve wholesale power agreements would be made explicit" by AS 42.05.431(b). Letter, June 4, 1986, A.G. File No. 883-86-0135. This is in accord with our conclusion that the plain meaning of the statute gives the Commission authority to review the contract at issue.

We note also that the powers of the Commission are to be "liberally construed." AS 42.05.141. Review of a ten-year electric power purchase contract by a regulated public utility appears to be within the authority of the Commission under AS 42.05.431(b). Therefore, we conclude that the Commission does have the authority to review this contract.

Marvin R. Weatherly, Chairman  
Power Purchase Contract Between Alaska Power  
Authority and Municipal Light & Power  
Our File: 663-87-0365

February 18, 1987  
Page 4

We are informed by the Authority that Commission review of its contract with ML&P will adversely affect the Authority's ability to obtain bond financing for the Bradley Lake hydroelectric dam project in a timely manner. We suggest that the Commission promptly contact the Authority and discuss possible legislative action which would resolve the situation in the best interests of the public.

RDM:nb

attachment

cc: Alaska Power Authority

# STATE OF ALASKA

STEVE COWPER, GOVERNOR

## ALASKA PUBLIC UTILITIES COMMISSION DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

420 "L" STREET  
SUITE 100  
ANCHORAGE, ALASKA 99501  
(907) 276-6222

February 2, 1987

Honorable Grace Schaible  
Attorney General  
State of Alaska  
Box K  
Juneau, Alaska 99811

Dear Madame Attorney General:

This letter is to request a Formal Opinion on the issue of whether or not a wholesale power contract between the Alaska Power Authority (APA) and a regulated public utility is subject to the approval of the Alaska Public Utilities Commission (Commission). Although prior to 1986 it may have been clear that the Commission had no authority to approve such a contract, it appears that this may have changed with the passage of AS 42.05.431(b) in 1986.

This issue has been presented to the Commission in the context of a case involving an independent power producer who wishes to sell power to the Municipality of Anchorage d/b/a Municipal Light and Power Department (ML&P) pursuant to the Public Utility Regulatory Policies Act of 1978 and who has requested the Commission to prohibit ML&P from entering a contract for the purchase of power from the Bradley Lake Hydroelectric Project. A copy of our preliminary decision in that matter is enclosed. If you need any further information on the subject, please contact James Jackson, Hearing Officer, in this office.

I would respectfully request that primary responsibility for the drafting of the Opinion on this issue not be assigned to any of the Assistant Attorneys General assigned to either the APA or the Commission. In that way the Opinion cannot be questioned based on any alleged bias of the author.

I appreciate your assistance in this matter.

Sincerely,



Marvin R. Weatherly  
Chairman

APPENDIX A  
(U-86-96(3))

ELECTRIC AND TELEPHONE UTILITIES IMPACTED BY SB 22

I. 250 OF FEWER SUBSCRIBERS

Name of Electric Utility	Number of Users
Andreanof Electric Corporation	37
Aniak Light & Power Company, Inc.	170
Arctic Utilities, Inc.	25
Bettles Light & Power, Inc.	50
Egegik Light and Power Homer Lee Leonard d/b/a	65
I-N-N Electric Cooperative, Inc.	226
Levelock Electric Cooperative, Inc.	57
Manley Utility Company, Inc.	70
McGrath Light & Power Company <sup>1</sup>	220
Northway Power & Light, Inc.	91
Pelican Utility Company <sup>2</sup>	76
Tanana Power Company, Inc.	178
Teller Power Company <sup>1</sup>	73

Name of Telephone Utility	Number of Main Access Lines
Whittier Telephone Company	178

II. 251 TO 750 SUBSCRIBERS

Name of Electric Utility	Number of Users
Gwitchyaa Zhee Utility Company	296
Haines Light & Power Company, Inc.	740
Yakutat Power, Inc.	298

Name of Telephone Utility	Number of Main Access Lines
Bristol Bay Telephone Cooperative, Inc.	730
Bush-Tall, Incorporated	347
Yukon Telephone Company	333

Information derived from the Alaska Public Utilities Commission's 1985 Annual Report.

<sup>1</sup> Based on 1984 information

<sup>2</sup> Based on 1983 information

**ELECTRIC UTILITIES**  
 (1985 Calendar Year)

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue greater than \$5,000,000)</u>				
Alaska Electric Light & Power Company	\$ 26,526,452	\$ 16,551,630	\$ 158,097	10,710
Alaska Village Electric Cooperative, Inc. <sup>(1)</sup>	23,864,476	11,548,022	363,956	4,672
Chugach Electric Association, Inc.	360,541,250	97,051,827	14,533,318	58,713
Copper Valley Electric Association, Inc.	14,310,043	7,229,017	865,775	2,323
Golden Valley Electric Association, Inc.	122,259,215	42,647,009	3,373,060	25,059
Homer Electric Association, Inc.	70,947,394	28,477,467	2,655,173	16,165
Kodiak Electric Association, Inc.	26,568,384	12,106,789	2,804,601	4,024
Matanuska Electric Association, Inc.	99,197,479	38,021,882	4,316,796	26,678
Municipal Light & Power Department Municipality of Anchorage d/b/a	<u>144,442,370</u>	<u>56,579,459</u>	<u>1,011,063</u>	<u>30,558</u>
Subtotal	<u>\$898,657,065</u>	<u>\$310,213,102</u>	<u>\$30,881,739</u>	<u>178,982</u>
<u>(Gross Operating Revenue greater than \$1,500,000 but less than \$5,000,000)</u>				
Alaska Power & Telephone Company	\$ 2,902,490	\$ 3,047,178	\$ 352,082	1,529
Arctic Utilities, Inc. <sup>(2)</sup>	2,732,249	4,185,866	535,897	25
Barrow Utilities and Electric Cooperative, Inc.	1,105,062	2,200,768	928,716	1,231
Bethel Utilities Corporation, Inc.	2,781,816	4,240,333	128,504	1,631
Kotzebue Electric Association, Inc.	3,383,891	2,982,594	312,598	946
Nushagak Electric Cooperative, Inc.	4,844,043	2,282,667	104,124	1,002
Tlingit-Haida Regional Electrical Authority	<u>5,501,162</u>	<u>2,864,219</u>	<u>249,277</u>	<u>911</u>
Subtotal	<u>\$23,250,713</u>	<u>\$21,773,625</u>	<u>\$2,690,998</u>	<u>7,353</u>

<sup>(1)</sup> Communities being furnished electric utility service by Alaska Village Electric Cooperative, Inc.

- |              |                  |               |               |
|--------------|------------------|---------------|---------------|
| Alekanuk     | Hooper Bay       | New Stuyahok  | Scammon Bay   |
| Ambler       | Huslia           | Noatak        | Selawik       |
| Andreafsky   | Kaltag           | Noorvik       | Shageluk      |
| Anvik        | Kasigiuk         | Nulato        | Shaktolik     |
| Chevak       | Kiana            | Nunapituk     | Shishmaref    |
| Eek          | Kivalina         | Old Harbor    | Shungnak      |
| Elim         | Koyuk            | Pilot Station | Stebbins      |
| Emmonak      | Lower Kalskag    | Pitkas Point  | Togiak        |
| Gambell      | Marshall         | Quinhagak     | Toksook Bay   |
| Goodnews Bay | Nakoryuk         | St. Marys     | Tununak       |
| Grayling     | Minto            | St. Michael   | Upper Kalskag |
| Holy Cross   | Mountain Village | Savoonga      | Wales         |

<sup>(2)</sup> Information Presented for Year Ended 6/30/85.

LIST OF UTILITIES (CONT.)  
1985 Calendar Year

Utility	Net Plant	Revenues		Users
		Total Revenues	Net Income	
<u>(Gross Operating Revenue greater than \$500,000 but less than \$1,500,000)</u>				
Aniak Light and Power Company, Inc.	\$ 314,789	\$ 618,573	\$ 93,597	170
G & K, Inc.		(Not Reported)		
Gwitchya Zhee Utility Company <sup>(3)</sup>	555,659	671,536	(26,331)	296
Haines Light & Power Company, Inc.	1,177,642	1,307,297	91,302	740
I-N-N Electric Cooperative, Inc.	1,535,948	636,877	28,603	226
McGrath Light & Power Company		(Not Reported)		
Sand Point Electric Company, Inc. <sup>(4)</sup>		(Not Reported)		
Tanana Power Company, Inc.	791,297	691,920	99,810	178
Yakutat Power, Inc.	657,880	744,488	54,336	298
Subtotal	<u>\$ 4,987,175</u>	<u>\$ 4,610,681</u>	<u>\$ 285,398</u>	<u>1,908</u>
<u>(Gross Operating Revenue less than \$500,000)</u>				
Andreanof Electric Corporation <sup>(2)</sup>	\$ 154,533	\$ 98,832	\$ 15,399	37
Bettles Light & Power, Inc.	305,347	443,071	24,903	50
Egegik Light and Power Homer Lee Leonard d/b/a	244,407	167,855	62,769	65
Levelock Electric Cooperative, Inc. <sup>(3)</sup>	64,082	155,592	17,665	57
Manley Utility Company, Inc. <sup>(5)</sup>	187,974	50,976	(15,710)	70
Manakotak Power Company, Inc.		(Not Reported)		
Napaklak Irceinaq Power Company	124,300	183,175	(4,675)	Not reported
Northway Power & Light, Inc.	194,639	328,534	26,724	91
Pelican Utility Company		(Not Reported)		
Teller Power Company Helen M. and Robert R. Blodgett d/b/a		(Not Reported)		
Subtotal	<u>\$ 1,211,200</u>	<u>\$ 1,272,443</u>	<u>\$ 109,406</u>	<u>313</u>
TOTALS	<u>\$928,106,153</u>	<u>\$337,869,85</u>	<u>\$33,967,531</u>	<u>188,476</u>

(2) Information Presented for Year Ended 6/30/85.

(3) Information Presented for nine-month period 7/1/84 - 4/30/85.

(4) Certificate No. 233 was transferred from Pelican Utility Company to Sand Point Electric Company, Inc., in 1986.

(5) United Companies, Inc., acquired controlling interest of Manley Utility Company, Inc., in 1985.

TELECOMMUNICATION UTILITIES  
(Long Lines and Local Exchange Carriers)  
(1985 Calendar Year)

Utility	Net Plant	Total Revenues	Net Income	Main Access Lines
<u>(Gross Operating Revenue greater than \$4,000,000)</u>				
Alascom, Inc.	\$394,863,699	\$290,913,750	\$40,896,931	N/A
Anchorage Telephone Utility Municipality of Anchorage d/b/a	194,981,783	101,332,244	19,722,151	115,524
General Telephone Company of Alaska	11,507,574	7,409,694	892,607	9,867
Glacier State Telephone <sup>(1)</sup> Company	81,032,595	38,183,932	6,815,238	26,212
Juneau and Douglas Telephone <sup>(2)</sup> Company	24,151,156	16,518,149	2,328,639	14,878
Matanuska Telephone Association, Inc.	84,761,609	24,846,697	2,289,692	-Not Reported-
Sitka Telephone Company <sup>(1)</sup>	17,098,806	7,678,049	394,816	6,550
United Utilities, Inc.	<u>10,987,615</u>	<u>5,150,501</u>	<u>484,279</u>	<u>3,160</u>
Subtotal	<u>\$819,384,837</u>	<u>\$492,035,016</u>	<u>\$75,824,353</u>	<u>176,191</u>
<u>(Gross Operating Revenue greater than \$1,000,000 but less than \$4,000,000)</u>				
Arctic Slope Telephone Association Cooperative, Inc.	\$ 4,301,006	\$ 4,390,249	\$ 829,683	1,215
Bristol Bay Telephone Cooperative, Inc.	3,312,409	1,417,223	(277,110)	730
Copper Valley Telephone Cooperative, Inc.	9,366,962	3,398,175	585,213	2,841
Interior Telephone Company	7,842,077	4,230,172	245,836	-Not Reported-
National Utilities, Inc.	1,271,048	1,305,041	279,430	1,081
Nushagak Telephone Cooperative, Inc.	3,078,305	1,606,325	223,807	1,120
OTZ Telephone Cooperative, Inc.	3,806,236	1,698,591	35,403	1,409
Telephone Utilities of <sup>(2)</sup> Alaska, Inc.	<u>2,620,592</u>	<u>1,638,047</u>	<u>206,915</u>	<u>1,450</u>
Subtotal	<u>\$35,598,635</u>	<u>\$19,683,823</u>	<u>\$2,129,185</u>	<u>9,646</u>

(1) In 1986, these utilities were consolidated into Telephone Utilities of the Northland, Inc.

(2) In 1986, Juneau and Douglas Telephone Company was consolidated with Telephone Utilities of Alaska, Inc.

COMMUNICATION UTILITIES (CONT.)  
 1985 Exchange Corporation  
 1985 Calendar Year

Utility	Net Plant	Total Revenues	Net Income	Main Access Lines
<u>(Gross Operating Revenue less than \$1,000,000)</u>				
Bush-Tell, Incorporated	\$ 1,911,480	\$ 663,813	\$ 14,081	347
Mukluk Telephone Company, Inc.	2,861,082	952,095	44,782	-Not Reported-
Whittier Telephone Company <sup>(3)</sup>	---	---	---	---
Yukon Telephone Company	<u>808,635</u>	<u>804,934</u>	<u>(151,792)</u>	<u>533<sup>(4)</sup></u>
Subtotal	<u>\$ 5,579,197</u>	<u>\$ 2,220,842</u>	<u>\$ (92,929)</u>	<u>680</u>
TOTAL	<u>\$860,552,669</u>	<u>\$513,939,681</u>	<u>\$75,850,609</u>	<u>186,517</u>

(3) Whittier Telephone Company was purchased by Yukon Telephone Company in 1985.

(4) Number of main telephones.

1 IN THE SENATE

BY COGHILL

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 22  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act exempting certain telephone and electric  
7 utilities and certain transactions from regulation by  
8 the Alaska Public Utilities Commission, and providing  
9 for an effective date."

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

11 \* Section 1. AS 42.05.431(b) is amended to read:

12 (b) Except as provided in (c) of this section, a [A] wholesale  
13 power agreement between public utilities is subject to advance ap-  
14 proval of the commission. After a wholesale power agreement is in  
15 effect, the commission may not invalidate any purchase or sale obliga-  
16 tion under the agreement. However, if the commission finds that rates  
17 set in accordance with the agreement are not just and reasonable, the  
18 commission may order the parties to negotiate an amendment to the  
19 agreement and if the parties fail to agree, to use the dispute resolu-  
20 tion procedures contained in the contract.

21 \* Sec. 2. AS 42.05.431 is amended by adding a new subsection to read:

22 (c) A wholesale agreement for the sale of power between the  
23 Alaska Power Authority and a public utility is not subject to review  
24 or approval by the commission.

25 \* Sec. 3. AS 42.05.711(e) is amended to read:

26 (e) Notwithstanding any other provisions of this chapter, an  
27 [ANY] electric or telephone utility that does not gross \$50,000 an-  
28 nually or that has fewer than 250 subscribers is exempt from regu-  
29 lation under this chapter unless 25 percent of the subscribers

1 petition the commission for regulation. The commission may not  
2 combine the revenue or subscribers of different utilities owned by the  
3 same company when determining whether a utility is exempt under this  
4 subsection.

5 \* Sec. 4. AS 42.05.711 is amended by adding a new subsection to read:

6 (m) The Alaska Power Authority is not a public utility under  
7 this chapter.

8 \* Sec. 5. AS 44.83.090(b) is amended to read:

9 (b) The authority is not subject to the jurisdiction of the  
10 Alaska Public Utilities Commission. Nothing in this chapter [AS 44.-  
11 83.010 - 44.83.425] grants the authority any jurisdiction over the  
12 services or rates of any public utility or diminishes or otherwise  
13 alters the jurisdiction of the Alaska Public Utilities Commission with  
14 respect to any public utility, including any right the commission may  
15 have to review and approve or disapprove contracts for the purchase of  
16 electricity by a public utility other than a wholesale power agreement  
17 for the purchase of power from the authority.

18 \* Sec. 6. Sections 1, 2, 4, and 5 of this Act are retroactive to  
19 June 7, 1986.

20 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
21  
22  
23  
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25  
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27  
28  
29

STATE OF ALASKA  
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 4, 1987

SUBJECT: Opinion and sectional analysis of SSSB 22  
(Exempting certain utilities and transactions  
from APUC regulation)

TO: Senator Tim Kelly  
Chairman, Senate Labor and Commerce Committee

FROM: Teresa B. Cramer *BC*  
Legislative Counsel

You have requested a sectional analysis of SSSB 22 and a discussion concerning its relationship to the opinion of February 18, 1987, from the Attorney General concerning power purchase contracts between the Alaska Power Authority and Municipal Light & Power.

Sections 1 and 2 of the bill amend AS 42.05.431 to exempt wholesale power agreements between the Alaska Power Authority and a public utility from review or approval by the Alaska Public Utilities Commission.

As pointed out in the opinion, AS 42.05.431(b), added in ch. 104, SLA 1986, makes a wholesale power agreement between public utilities subject to advance APUC approval. Although the Alaska Power Authority is exempt from regulation by the APUC under AS 44.83.090(b), it does satisfy the definition to "public utility" under AS 42.05.720. Therefore, after the 1986 amendment took effect on June 7, 1986, wholesale power agreements between the APA and a public utility were subject to review and approval by the APUC. The sponsor substitute amends AS 42.05.431(b) and adds subsection (c) to remove wholesale power agreements from the jurisdiction of the APUC.

Section 3 exempts electric or telephone utilities with fewer than 250 subscribers from regulation by the Alaska Public Utilities Commission unless 25 percent of the subscribers petition for regulation.

Senator Kelly  
Page 2  
March 4, 1987

Section 4 declares that the Alaska Power Authority is not a public utility under the Alaska Public Utility Commission Act. This would make clear that in any situation in which the commission is empowered to regulate conduct "between public utilities," as is the case in AS 42.05.431(b), the Alaska Power Authority could not be considered a public utility, giving rise to APUC jurisdiction.

Section 5 conforms AS 44.83.090(b) to the amended AS 42.05.431 by noting that APUC jurisdiction does not extend to wholesale power agreements for the purchase of power from the Alaska Power Authority.

Section 6 makes those sections of the bill relating to the relationship of the Alaska Power Authority and the Alaska Public Utilities Commission retroactive to June 7, 1986, the effective date of ch. 104, SLA 1986, which extended APUC jurisdiction.

Section 7 is an immediate effective date clause.

If I may be of further assistance, please advise.

TC:mkr  
m9/085

To: Senator Tim Kelly  
Chairman  
Senate Labor & Commerce Committee  
Alaska Legislature

Date: March 12, 1987

From: Ted Moninski  
Executive Director  
Alaska Public Utilities Commission

Subject: SSSB22

At yesterday's Committee meeting, Senator Szymanski raised a question regarding the applicability of SSSB22 to the possible deregulation of Alascom, Inc. This question was generated as a result of comments submitted by the APUC regarding the potential effect of including a "customer count" threshold in determining the regulatory status of electric and telephone utilities.

As I stated in my testimony before the Committee yesterday, there was some confusion about Alascom's customer count in light of its fairly recently adopted practice to direct bill certain end users. A check with Alascom has verified the fact that this practice has been significantly expanded with Alascom now direct billing over 10,000 customers. Assuming this practice continues, SSSB22, even as amended, will not result in the deregulation of Alascom.

I would appreciate your circulating this memorandum to all of the Committee members and, in particular, to Senator Szymanski.

SB

39

DIVISION OF OCCUPATIONAL LICENSING

Proposed Legislative Changes  
to the  
REAL ESTATE COMMISSION

\*Section 1. AS 08.03.010(c)(18) is amended to read:

(18) Real Estate Commission (AS 08.88.011) - - June 30, 1991 [1987].

\*Section 2. AS 08.88.031 is repealed and reenacted to read:

Sec. 08.88.031. Executive secretary of commission. The department shall, after consultation with the board, employ a person who is not a member of the commission, to serve as executive secretary of the real estate commission. The executive secretary shall perform duties as prescribed by the commission.

\*Section 3. AS 08.88.037 is amended to read:

Sec. 08.88.037. Investigation and injunction. (a) The commission shall [MAY, UPON ITS OWN MOTION,] ~~request the department to~~ conduct investigations to determine whether a person has violated a provision of this chapter or a regulation adopted under it, or to secure information useful in the administration of this chapter.

\*Section 4. AS 08.88.061 is amended to read:

Sec. 08.88.061. Assistants. The commission may use [EMPLOY] assistants to

- (1) prepare questions on examinations;
- (2) grade examinations. [;]
- [(3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER.]

THE FOLLOWING SHOULD BE REPEALED:

Sec. 08.88.034. Investigator of the commission.

Sec. 08.88.101. Administrative duties of the commission. (Note: The department's authority is listed under AS 08.01.050.)

Sec. 08.88.121. Sale of Register. (Note: See AS 08.01.050(12).)

Sec. 08.88.231. Deposit in general fund. (Note: This is covered by AS 37.10.050 and .060.)

THE FOLLOWING REQUIRE SOME AMENDING AS NOTED:

Sec. 08.88.037(b) - Substitute "department" for "Executive Director".

Sec. 08.88.191(b) - Substitute "department" for "commission".

Sec. 08.88.221(d) - Same as above.

Sec. 08.88.251 - Need some substitution of "department" for "commission".

Sec. 08.88.490 - Same as above.

1 IN THE SENATE

CS

BY ZHAROFF

by Request

2 ~~SPONSOR-SUBSTITUTE~~ FOR SENATE BILL NO. 39

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission."

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

NEED EFFECTIVE DATE.

8 \* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

9 (27) Real Estate Commission (AS 08.88.011).

10 \* Sec. 2. AS 08.01.050(a) is amended to read:

11 (a) The department shall perform the following administrative  
12 and budgetary services when appropriate:

13 (1) collect fees and issue receipts;

14 (2) maintain records and files;

15 (3) issue and receive application forms;

16 (4) notify applicants of acceptance or rejection of appli-  
17 cants as determined by the board or as determined by the department  
18 under AS 08.11 for audiologists, under AS 08.45 for naturopaths, or  
19 under AS 08.55 for hearing aid dealers;

20 (5) designate dates examinations are to be held and notify  
21 applicants;

22 (6) publish notice of examination;

23 (7) arrange space for holding examinations;

24 (8) notify applicants of results of examinations;

25 (9) issue licenses and certificates or temporary licenses  
26 or certificates as authorized by the board or as authorized by the  
27 department under AS 08.11 for audiologists, under AS 08.45 for naturo-  
28 paths, or under AS 08.55 for hearing aid dealers;

29 (10) issue duplicate licenses or certificates upon proof

1 by the licensee of loss of the original and payment by the licensee of  
2 a fee of \$2 except as otherwise provided in this title;

3 (11) notify licensees of renewal dates at least 30 days  
4 before the expiration date of their licenses;

5 (12) compile and maintain current a register of licenses;

6 (13) answer routine inquiries;

7 (14) maintain files relating to individual licensees;

8 (15) arrange for printing and advertising;

9 (16) purchase supplies;

10 (17) employ secretarial help when needed;

11 (18) perform other services that may be requested by the  
12 board;

13 (19) provide investigative services to the boards estab-  
14 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-  
15 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, [AND] AS 08.86, and AS 08.-  
16 88, for the purpose of assisting those boards in matters of profes-  
17 sional discipline and in responding to consumer complaints.

18 \* Sec. 3. AS 08.01.065(a) is amended to read:

19 (a) The department shall adopt regulations that establish the  
20 amount and manner of payment of application fees, examination fees,  
21 license fees, registration fees, permit fees, investigation fees, and  
22 all other fees as appropriate for the occupations covered by this  
23 chapter [AND FOR REAL ESTATE BROKERS AND SALESMEN UNDER AS 08.88].

24 \* Sec. 4. AS 08.03.010(c)(18) is amended to read:

25 (18) Real Estate Commission (AS 08.88.011) -- June 30, 1991  
26 [1987].

27 \* Sec. 5. AS 08.88.031 is repealed and reenacted to read:

28 Sec. 08.88.031. EXECUTIVE SECRETARY OF COMMISSION. The depart-  
29 ment shall, after consultation with the commission, employ a person.

1 who is not a member of the commission, to serve as executive secretary  
2 for the commission. The executive secretary shall perform duties as  
3 assigned by the commission.

4 \* Sec. 6. AS 08.88.037 is amended to read:

5 Sec. 08.88.037. INVESTIGATION AND INJUNCTION. (a) The commis-  
6 sion may request the department to [, UPON ITS OWN MOTION,] conduct  
7 investigations to determine whether a person has violated a provision  
8 of this chapter or a regulation adopted under it, or to secure infor-  
9 mation useful in the administration of this chapter.

10 (b) If it appears to the department [EXECUTIVE DIRECTOR] that a  
11 person has engaged in or is about to engage in an act or practice in  
12 violation of a provision of this chapter or a regulation adopted under  
13 it and that action is warranted in the public interest, the department  
14 [EXECUTIVE DIRECTOR] shall notify all commission members by telephone  
15 or telegraph of a proposed order or action, and, if a majority of the  
16 members of the commission approve, the department [EXECUTIVE DIRECTOR]  
17 may

18 (1) after reasonable notice of and an opportunity for a  
19 hearing is given to the person, issue an order directing the person to  
20 stop the act or practice; the department [EXECUTIVE DIRECTOR] may  
21 issue a temporary order before a hearing is held; a temporary order  
22 remains in effect until a final order affirming, modifying, or revers-  
23 ing the temporary order is issued or until 15 days have elapsed after  
24 the person receives the notice and has not requested a hearing; a  
25 temporary order becomes final if the person to whom the notice is  
26 addressed does not request a hearing within 15 days after receiving  
27 the notice; if a hearing is requested, a hearing shall be conducted by  
28 a hearing officer within 30 days; the commission shall issue a final  
29 order within 10 days after the hearing;

1 (2) bring an action in superior court to enjoin the act or  
2 practice and to enforce compliance with this chapter, a regulation  
3 adopted under it, or an order issued under it;

4 (3) examine or have examined the books and records of a  
5 person whose business activities require licensure under this chapter  
6 and the department [EXECUTIVE DIRECTOR] may require the person to pay  
7 the reasonable costs of the examination; and

8 (4) issue subpoenas for the attendance of witnesses, and  
9 the production of books, records, and other documents.

10 \* Sec. 7. AS 08.88.061 is amended to read:

11 Sec. 08.88.061. ASSISTANTS. The commission may use [EMPLOY]  
12 assistants to

13 (1) prepare questions on examinations;

14 (2) grade examinations [;

15 (3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER].

16 \* Sec. 8. AS 08.88.191(b) is amended to read:

17 (b) If the commission authorizes the department to contract  
18 [CONTRACTS] with a national testing service to prepare, administer and  
19 grade examinations,

20 (1) the commission shall review the examination and approve  
21 its contents;

22 (2) application for the examination, accompanied by the  
23 proper filing fee, may be transmitted by the applicant directly to the  
24 national testing service.

25 \* Sec. 9. AS 08.88.034, 08.88.101, 08.88.121, and 08.88.231 are re-  
26 pealed.

REAL ESTATE COMMISSION  
STAGGERED RENEWAL GROUPS  
AND  
REVENUE PROJECTIONS

FY 1988-95 Page 1

Group	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	FY	Revenues (160 Lic)	
A	88	5,000	89	20,000	91	20,000	93		95		
B	88	5,833.33	89	20,000	91	20,000	93		95		
C	88	6,666.67	89	20,000	91	20,000	93		95		
D	88	7,500.00	89	20,000	91	20,000	93		95		
E	88	8,333.33	89	20,000	91	20,000	93		95		
F	88	9,166.67	89	20,000	91	20,000	93		95		
G	88	10,000.00	89	20,000	91	20,000	93		95		
H	88	10,833.33	89	20,000	91	20,000	93		95		
I	88	11,666.67	89	20,000	91	20,000	93		95		
J	88	12,500.00	89	20,000	91	20,000	93		95		
K	88	13,333.33	89	20,000	91	20,000	93		95		
L	88	14,166.67	89	20,000	91	20,000	93		95		
					FY 91	T=240,000	FY 93	T=240,000	FY 95	T=240,000	
M	88	10,833.33	89	10,000	90	20,000	92		94		
N	88	11,666.67	89	10,000	90	20,000	92		94		
O	88	12,500.00	89	10,000	90	20,000	92		94		
P	88	13,333.33	89	10,000	90	20,000	92		94		
Q	88	14,166.67	89	10,000	90	20,000	92		94		
R	88	15,000.00			90	20,000	92		94		
S	88	15,833.34			90	20,000	92		94		
T	88	16,666.67			90	20,000	92		94		
U	88	17,500.00			90	20,000	92		94		
V	88	18,333.34			90	20,000	92		94		
W	88	19,166.67			90	20,000	92		94		
X	88	20,000.00			90	20,000	92		94		
								FY 92	T=240,000	FY 94	T=240,000
					T-FY88 = 300,000	T-FY89 = 290,000	T-FY90 = 240,000				

REAL ESTATE COMMISSION  
STAGGERED RENEWAL GROUPS  
AND  
REVENUE PROJECTIONS

FY 1988-95 Page 2

Group	Ren Mos.	Next Renewal	FY NR	Next Renewal	Ren Mo	FY NR	Next Renewal	FY NR	Ren. Mos.
A	6	July 88	89				July 90	91	24
B	7	Aug. 88	89				Aug. 90	91	24
C	8	Sep. 88	89				Sep. 90	91	24
D	9	Oct. 88	89				Oct. 90	91	24
E	10	Nov. 88	89				Nov. 90	91	24
F	11	Dec. 88	89				Dec. 90	91	24
G	12	Jan. 89	89				Jan. 91	91	24
H	13	Feb. 89	89				Feb. 91	91	24
I	14	Mar. 89	89				Mar. 91	91	24
J	15	Apr. 89	89				Apr. 91	91	24
K	16	May 89	89				May 91	91	24
L	17	June 89	89				June 91	91	24
M	13	Feb. 89	89	Feb. 90	12	90	Feb. 92	92	24
N	14	Mar. 89	89	Mar. 90	12	90	Mar. 92	92	24
O	15	Apr. 89	89	Apr. 90	12	90	Apr. 92	92	24
P	16	May 89	89	May 90	12	90	May 92	92	24
Q	17	June 89	89	June 90	12	90	June 92	92	24
R	18	July 89			24	90	July 91	92	24
S	19	Aug. 89			24	90	Aug. 91	92	24
T	20	Sep. 89			24	90	Sep. 91	92	24
U	21	Oct. 89			24	90	Oct. 91	92	24
V	22	Nov. 89			24	90	Nov. 91	92	24
W	23	Dec. 89			24	90	Dec 91	92	24
X	24	Jan. 90			24	90	Jan 92	92	24

REAL ESTATE COMMISSION  
STAGGERED RENEWAL GROUPS  
AND  
REVENUE PROJECTIONS

FY 1988-95 Page 3

FY Revenue Projection

Renewals - See chart (based on 3840 licensees - 160 hrs)

Other Renewals

License exams	900 x 30	= \$18,000
New exams	300 x 125	= \$37,500
Transfers, etc.	1200 x 25	= \$30,000
Other		= <u>\$10,000</u>
		\$95,500.00
FY 88		\$395,500 (\$300,000 + \$95,500)
FY 89		\$385,500 (\$290,000 + \$95,500)
FY 90		\$335,500 (\$240,000 + \$95,500)
FY 91		\$335,500 (\$240,000 + \$95,500)

These projections assume a drop in licensees (total active + inactive) from the January 86 number of 4000 to 3840.

SB 39 An Act relating to real estate brokers and salespersons and to the Real Estate Commission and providing for an effective date.

The Real Estate Commission is generally supportive of SB 39, however, there are several items that need to be looked at again in view of current fiscal problems and several items that still do not accomplish what they are intended for.

The commission does not support reducing the surety fund filing fee to \$25. The original purpose of the filing fee was to reduce "frivolous" claims. This has been accomplished. The current claims filings are just over 40 per year. Previously we were receiving approximately 130 or more claims per year. The number of claims being paid is about the same and perhaps a bit higher than before the filing fee. The percentage of claims being paid has been running about 50%. This is an indication that we are still receiving claims in which there is a question as to whether or not there is a valid claim, but we are not receiving claims in which there is no chance of a claimant prevailing.

A reduction of the fee to \$25 would increase the filings to about the same number as the license complaints and would again inundate commission and staff in handling of claims. The additional hearing costs would be approximately \$110,000 - \$75,000 for hearing examiners and \$35,000 for clerical support. This would almost triple our current surety fund processing cost. Without an additional full-time hearing examiner and a full-time clerical position, the additional load simply cannot be handled with existing personnel.

The commission has no documented case of a person not being able to file because of the fee. There have been several cases in which people had to get the money together before filing and numerous cases in which people with a claim that had no face validity claimed that they wouldn't file because they didn't have the money, but in these cases it seemed more likely that they had properly evaluated their claims as not having merit. In all cases, persons not having the \$250 can still file a small claim action for the small claims filing fee. We know of none that have done this (and the grounds for winning a small claim are broader than those for a surety claim). If the problem being solved is that some people are (may be) unable to file a claim due to financial limitations a system providing for waiver of the fee under appropriate circumstances would be a better way to do it. One way to do this might be to require that a person be unemployed and have an unemployment card or be on public assistance. Authority to grant waivers could be assigned to the executive director with the concurrence of one commission member.

Reducing the filing fee amounts to giving the public a mandatory hearing on every complaint filed. This is not economically feasible at this time. All fees have been raised for licenses in order to support the commission's current program. Raising them by 70% to handle a large number of inappropriate claims would be an unpopular move.

SB 39 POSITION PAPER  
(Continued)

Section 8 (AS 08.88.251(a), line 27). The words "the person's license certificate and . . ." need to be deleted. This section is inconsistent with current practice and with the regulations. The commission does not have licensees return certificates except in cases of disciplinary action. The return of licenses was found to create delays for licensees, confusion for all and significant additional cost to the commission. Current practices have been in use for at least seven or eight years and have not resulted in a single documented (or undocumented) problem.

Section 15 (AS 08.88.406). This section should be deleted. Based on further examination of the problem and a great deal of comment from members of the real estate industry, it appears that it would be better to give the commission authority (as AS 08.88.071(a)(9) would) to establish procedures by which brokers may set up arbitration through the current arbitration statutes rather than have the burden and cost of those arbitrations and their administration assumed by the commission. The cost of arbitrating these disputes, if assumed by the commission, could be as much as \$100,000 to \$200,000 or more. If the commission wishes to take on the task of arbitrating these disputes itself, the commission can do so by regulation under .071(a)(9). In any case, with .071(a)(9) in place, .406 can be enacted as regulation and leaving it to regulation permits greater flexibility in solving the problem of earnest money disputes.

With these exceptions, the commission supports the proposed changes.

Section 3 (AS 08.88.081). This section has been rewritten several times to eliminate problems in drafting regulations due to the fact that the current language of the section appears to limit regulation drafting authority to only certain parts of the statute. I understand this section to be read as, "Including but not limited to (1-4)." This is what is needed.

In Section 2, the amendment to provide for confidentiality of records protects individuals from being harmed by unfounded allegations filed with the commission. It also protects individuals who file complaints from being sued or intimidated by threats of suits by licensees who claim they are being slandered. The public is best protected when alleged improprieties are not publicized until the commission has looked into them. Many times the determination of whether or not wrong has been done requires technical knowledge not available to the public. Other times people not technically sophisticated can perceive something as wrong when it is not. In both cases, the commission is the body that should screen the allegations before they can damage anyone. This is the basic premise upon which professional licensing boards and discipline is based and it requires confidentiality of certain records until the record is complete.

SB 39 POSITION PAPER  
(Continued)

Section 6 (AS 08.88.171, line 21), apparently an editing oversight. One additional "entitled" needs to be changed to eligible.

Section 4. Publication is the primary means of prevention that the commission can use to protect the public from widespread scams and to educate the licensees to problems and solutions to problems in the industry.

Section 6. Change entitle to eligible. The commission has been unable to deny licenses to individuals that it has felt should not be licensed after they were convicted of crimes. The commission feels that, because trust is such an important part of the fiduciary relationship, simply serving a sentence should not entitle a person to reinstatement of a real estate license because that trust was broken. When a license has been revoked due to a conviction, the commission feels that it should make a separate determination of the person's suitability for licensure.

(d) this change simply makes a vague term (promptly) definite (48 hours) and makes the law clear and uniformly enforceable.

Section 10. Most real estate licensees work as independent contractors. It is often difficult to establish whether or not a licensee was actually working or not when an injury occurs and the potential for improper claims being filed against the insurance is great. The impracticality of covering salespeople with workers' compensation results in many brokers being liable for not covering them. This section eliminates this problem and has strong support from the commission and the industry.

Section 11. This section brings the current section more in line with the practical and legal situation which exists today. There are many current situations for which the current statute is inadequate.

Section 12. This more clearly defines the requirement to disclose a conflict of interest.

Section 14. Recent court decisions have extended the problems of excessive liability to the real estate industry to the extent that the public is being negatively affected. The "innocent but guilty of misrepresentation" situation that licensees are in has made errors and omissions insurance either impossible to get or prohibitively expensive. The consequence is that none is carried and when serious injury does occur the injured parties are often unable to collect even if they do get a judgment.

This section limits the broker's liability and removes the licensee from the role of guarantor of the property.

SB 39 POSITION PAPER  
(Continued)

Section 16. The commission has encountered numerous situation in which individuals attempt to circumvent the license law by creating corporations and/or appointing salespeople as "officers" of the corporation to avoid licensure. The purpose of the "corporate exemption" has always been to say that corporations enjoy no greater or lesser rights under the law than do natural persons. A natural person may not hire unlicensed people to sell real estate, therefore, neither can a corporation. The changes in this section clarify the fact that the corporation's exemption is actually subsumed under the first part of .421 which provides that a person is exempt when the person sells the person's own property. A director or officer of the corporation, acting as the corporation and not as an employee of the corporation, can convey title without being licensed.

Section 17. This section exempts business brokers from real estate licensure when they sell businesses in which real estate in the form of a lease of business premises is included in the transaction but is not a material or variable part of the negotiation. In many cases, business brokerage requires specialized knowledge which is not a normal part of a real estate licensee's qualifications and no real estate knowledge is actually required. Business seliers should have the right to hire competent business brokers as long as the business is not real estate.

Section 18. This section eliminates the \$500,000 cap on the fund. Experience is showing that the cap on the fund can create problems as the industry grows because both claims and education programs grow with the fund balance then becoming too low to establish a stable fund size.

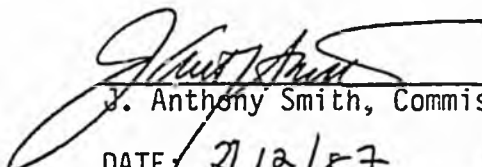
Section 19. This section expands the liability of the fund to include negligent misrepresentation. Currently, under a Supreme Court ruling, the fund is liable only for willful misrepresentation.

Section 25. This section appears to eliminate the need for a surety claim hearing when a judgment is received by a claimant. Some clarification is in order. It is not clear that the unpaid balance up to a maximum of \$10,000 is paid by the fund. It is also not clear how the determination of whether or not the action was based on conduct similar to that set out in AS 08.88.460(a) is made. This can all be done by regulation if an adequate regulation authority can be put in AS 08.88.081.

Section 28. This section is based on passage of the \$25 filing fee. It should be deleted along with the \$25 filing fee for reasons previously stated.

SB 39 POSITION PAPER  
(Continued)

The remaining sections are simply cleanup and rearrangement needed due to other changes and simply need to be carefully matched to any amendments to the bill.

  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
DATE: 7/12/87

Bill No. Senate Bill No. 39

Date February 2, 1987

Title "An Act relating to real estate brokers and salespersons and to the Real Estate Commission; and providing for an effective date."

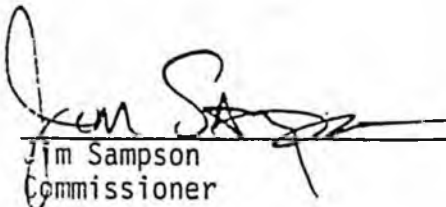
Contact P. L. McClintock  
465-2790

Section 10 of the bill specifically exempts a certain occupational class from coverage under the Alaska Workers' Compensation Act if the people in that class have entered into a written contract as an independent contractor.

The Department and Workers' Compensation Board oppose Section 10 of the bill because we question that it is appropriate to single out a particular group of people from coverage under the Act. Under current workers' compensation law, an independent contractor is already exempt from coverage whether the person is, for example, a tradesman, a merchant, or a salesperson. We feel this amendment opens itself to possible abuse and could very well adversely affect those real estate salespersons who have, in fact, an employer-employee relationship with the broker but have been coerced into signing a contractual agreement.

The Supreme Court in Calvo v. Calhoon, 559 P.2d 111 (Alaska 1977), stated that "[T]he Alaska statutory system governing real estate brokers and salespersons implies that the relationship is one of employer and employee." (See Notes to Decisions AS 08.88.331). Therefore, if a bona fide employee/employer relationship exists between the associate or salesperson and the broker, they should not be exempted from workers' compensation coverage.

APPROVED:

  
Jim Sampson  
Commissioner

**POSITION PAPER/**Department of Labor

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

Bill Version: SB 39  
Publish Date: \_\_\_\_\_

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: "An Act relating to real estate  
brokers and salespersons..."  
Sponsor: Zharoff  
Requestor: Senate Labor & Commerce

Agency Affected: Labor  
BRU: Workers' Compensation  
Comments: workers' Compensation

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

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

**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS : (Attach a separate page if necessary)**

Prepared by: Jacquelyn McClintock Phone: 465-2790  
Division: Workers' Compensation Date: 02/02/87  
Approved by Commissioner: Jim Sampson Date: 02/02/87  
Agency: Labor

- 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 : SB 39  
Publish Date : \_\_\_\_\_

Revision Date: \_\_\_\_\_

Agency Affected: Commerce & Econ. Dev.  
Real Estate Commission

Title: An Act Relating to real estate brokers & salespersons & to the Real Estate Commission & providing for an effective date.

Sponsor: Zharoff

Components: Operations

Requestor: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		216.0	223.6	239.9	239.2	251.1
TRAVEL		4.0	4.0	4.0	4.0	4.0
CONTRACTUAL		16.8	16.8	18.0	18.0	18.0
SUPPLIES		3.0	3.0	3.0	3.0	3.0
EQUIPMENT		23.3	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		<b>263.1</b>	<b>247.4</b>	<b>255.9</b>	<b>264.2</b>	<b>276.1</b>

CAPITAL						
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REVENUE		[1.5]	[1.5]	[1.5]	[1.5]	[1.5]
---------	--	-------	-------	-------	-------	-------

**FUNDING: (Thousands of Dollars)**

GENERAL FUND		263.1	247.4	255.9	264.2	276.1
FEDERAL FUNDS		0	0	0	0	0
OTHER		0	0	0	0	0
<b>TOTAL</b>		<b>263.1</b>	<b>247.4</b>	<b>255.9</b>	<b>264.2</b>	<b>276.1</b>

**POSITIONS:**

FULL-TIME		4	4	4	4	4
PART-TIME		0	0	0	0	0
TEMPORARY		0	0	0	0	0

**ANALYSIS :** (Attach a separate page if necessary)

See Attachment

Prepared by: James L. Magowan  
Division: Real Estate Commission

Phone: 563-2169  
Date: 2/2/87

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  
5293W2287a

FISCAL NOTE

SB 39 FISCAL ANALYSIS

This bill would require the addition of four positions, two clerk typists and two hearing examiners. These would result from the handling of 30 or more earnest money disputes per month and the handling of an additional 100 or more surety hearings per year. Clerk typists are Range 8, hearing examiners are Range 24.

There would be travel necessary to hold hearings outside Anchorage several times per year and there would be substantial telephone and related costs. Telephone costs would include teleconference costs for those hearings and arbitrations that could be handled by phone.

The commission currently has net revenues of \$250 per claim on 20 claims (approximately) per year or \$5,000. An additional \$5,000 per year is refunded when claimants are awarded a claim; \$25 per claim, nonrefundable, for 140 claims would net \$3,500 for a net decrease in revenues of \$1,500.

The costs for other services include estimated minimum space costs.

The Legislative Audit found the commission in need of immediate addition of a clerical position. This could not be done. Any increase or addition to the commission work load will require additional clerical support at least sufficient to carry the entire additional load or it will impact the current program negatively.

SSSB 39: An Act relating to the Real Estate Commission.

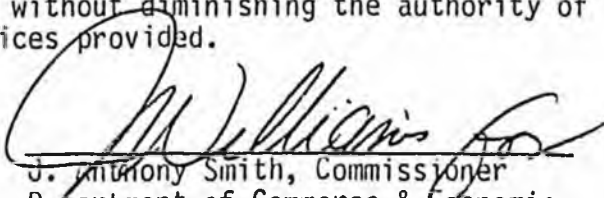
SSSB 39 transfers the Real Estate Commission in the Department of Commerce and Economic Development to the Division of Occupational Licensing, also within the Department of Commerce and Economic Development, and extends the commission to June 30, 1991. In September 1985, Legislative Audit issued a performance report on the commission which recommended it be reestablished.

The department maintains its support for continuation of the Real Estate Commission and recognizes the important functions it provides. However, the department concurs with the proposal to reestablish the commission within the Division of Occupational Licensing.

There are a number of advantages to the plan for both the State of Alaska and licensed realtors.

1. The regulation of the occupation would be more cost effective. The number of licensed realtors has decreased by approximately 50% since the Real Estate Commission became semiautonomous which has increased the cost of service provided per licensee while decreasing the commission's ability to be self-supporting. The commission was unable to generate sufficient program receipts for FY 87 to maintain its current level of expenditures. The department believes the commission can be as effectively administered under the Division of Occupational Licensing at a much lower cost. The transfer of the commission to the Division of Occupational Licensing would save approximately \$150,000.00 per year and would enable the commission to be supported by the licensing fees.
2. As indicated in the Legislative Audit, the Real Estate Commission is in dire need of regulatory and statutory revision. The Division of Occupational Licensing employs both a legislative and a regulations specialist who could more effectively assist the commission in its efforts to improve regulations and statutes.
3. The transfer of administrative responsibilities, such as budget preparation and fiscal monitoring, to the division would enable the commission and staff to concentrate their efforts on increasing services to licensees including auditing of trust accounts, recovering surety fund claims, coordinating with the Real Estate Association, and improving functions.

In summary, the department believes the transfer of the Real Estate Commission will increase efficiency without diminishing the authority of the commission or the level of services provided.

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

DATE: 4/9/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: SSSB 39  
Publish Date: 4/7/87

REQUEST: \_\_\_\_\_  
Revision Date: \_\_\_\_\_  
Title: An Act relating to the  
Real Estate Commission.  
Sponsor: Senator Zharoff  
Requestor: \_\_\_\_\_

Agency Affected: Commerce and Economic Dev.  
BRU: Real Estate Commission/Occupational  
Licensing  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	[62.0]	0	0	0	0
TRAVEL	0	[15.1]	0	0	0	0
CONTRACTUAL	0	[75.7]	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	[152.8]	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	[152.8]	0	0	0	0
TOTAL	0	[152.8]	0	0	0	0

POSITIONS:

FULL-TIME	0	[1]	0	0	0	0
PART-TIME	0	1	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Kathy Marshall  
Division: Occupational Licensing

Phone: 465-2534  
Date: April 9, 1987

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

SSSB 39

SSSB 39 amends the statutes to transfer the semiautonomous Real Estate Commission within the Department of Commerce and Economic Development to the Division of Occupational Licensing within the same department. As a result, the reorganization will create a cost savings of \$152,800.00 as a one-time impact in FY 88.

The decrement of \$62,000.00 in personal services result through reclassification of certain positions currently providing support to the Real Estate Commission. In addition, one position is being reduced from full-time to part-time.

The attached forms document the costs associated with the transfer.

STATE OF ALASKA  
Office of Management & Budget  
Division of Budget Review

REVISED PROGRAM SUMMARY  
by  
BUDGET COMPONENT

CATEGORY Public Protection  
PROGRAM Consumer Protection  
AGENCY Commerce & Economic Dev  
DIVISION Real Estate Commission  
BRU Real Estate Commission  
COMPONENT

	FY '88 REQUEST	SSSB 39 Note	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH
70010 UNALLOCATED											
71000 PERS SVCS	300.5	-300.5	0.0								
72000 TRAVEL	36.1	-36.1	0.0								
73000 CONT SVCS	166.9	-166.9	0.0								
74000 SUPPLIES	10.3	-10.3	0.0								
75025 LAND/STRCT											
75690 EQUIPMENT											
77000 GRANTS											
78000 DEBT SVC											
TOTAL	513.8	-513.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
68515 GEN FUND											
68510 GF MATCH											
51010 FED REC											
51015 IA REC											
51060 PROG REC	513.8	-513.8	0.0								
51200 CIP REC											
FULL TIME	6.0	-6.0	0.0								
PART TIME	2.0	-2.0	0.0								
TEMPORARY MONTHS	82.0	-82.0	0.0								

STATE OF ALASKA  
Office of Management & Budget  
Division of Budget Review

REVISED PROGRAM SUMMARY  
by  
BUDGET COMPONENT

CATEGORY Public Protection  
PROGRAM Consumer Protection  
AGENCY Commerce & Economic Dev  
DIVISION Occupational Licensing  
BRU Occupational Licensing  
COMPONENT Administration

	FY '88 REQUEST	SSSB 39 Note	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH	ADN	ADJUSTED AUTH
70010 UNALLOCATED											
71000 PERS SVCS	713.3	271.5	984.8								
72000 TRAVEL	14.1	11.0	35.1								
73000 CONT SVCS	311.9	91.2	403.1								
74000 SUPPLIES	10.4	10.3	20.7								
75025 LAND/STRCT											
75690 EQUIPMENT											
77000 GRANTS											
78000 DEBT SVC											
TOTAL	1049.7	394.0	1443.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
88515 GEN FUND											
88510 GF MATCH											
51010 FED REC											
51015 IA REC											
51080 PROG REC	1049.7	394.0	1443.7								
51200 CIP REC											
FULL TIME	19.0	5.0	24.0								
PART TIME	1.0	3.0	4.0								
TEMPORARY MONTHS	234.0	76.0	310.0								

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version : SSSB 39  
Publish Date : 4/7/87

REQUEST: \_\_\_\_\_  
Revision Date: \_\_\_\_\_  
Title: An Act relating to the  
Real Estate Commission.  
Sponsor: Senator Zharoff  
Requestor: \_\_\_\_\_

Agency Affected: Commerce and Economic Dev.  
BRU: Real Estate Commission/Occupational  
Licensing  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES	0	[62.0]	0	0	0	0
TRAVEL	0	[15.1]	0	0	0	0
CONTRACTUAL	0	[75.7]	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	[152.8]	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	[152.8]	0	0	0	0
TOTAL	0	[152.8]	0	0	0	0

POSITIONS:

FULL-TIME	0	[1]	0	0	0	0
PART-TIME	0	1	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

(See Attached)

Prepared by: Kathy Marshall  
Division: Occupational Licensing

Phone: 465-2534  
Date: April 9, 1987

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

Date: \_\_\_\_\_

Distribution (by preparer):

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

SSSB 39

SSSB 39 amends the statutes to transfer the semiautonomous Real Estate Commission within the Department of Commerce and Economic Development to the Division of Occupational Licensing within the same department. As a result, the reorganization will create a cost savings of \$152,800.00 as a one-time impact in FY 88.

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Office of Management & Budget  
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by  
BUDGET COMPONENT

CATEGORY Public Protection  
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AGENCY Commerce & Economic Dev  
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Office of Management & Budget  
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TEMPORARY MONTHS	234.0	76.0	310.0								

1 IN THE SENATE

CS  
2 ~~SPONSOR~~-SUBSTITUTE FOR SENATE BILL NO. 39

BY ZHAROFF

by REQUEST

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

if SS;

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission."

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

NEED EFFECTIVE DATE.

8 \* Section 1. AS 08.01.010 is amended by adding a new paragraph to read:

9 (27) Real Estate Commission (AS 08.88.011).

10 \* Sec. 2. AS 08.01.050(a) is amended to read:

11 (a) The department shall perform the following administrative  
12 and budgetary services when appropriate:

13 (1) collect fees and issue receipts;

14 (2) maintain records and files;

15 (3) issue and receive application forms;

16 (4) notify applicants of acceptance or rejection of appli-  
17 cants as determined by the board or as determined by the department  
18 under AS 08.11 for audiologists, under AS 08.45 for naturopaths, or  
19 under AS 08.55 for hearing aid dealers;

20 (5) designate dates examinations are to be held and notify  
21 applicants;

22 (6) publish notice of examination;

23 (7) arrange space for holding examinations;

24 (8) notify applicants of results of examinations;

25 (9) issue licenses and certificates or temporary licenses  
26 or certificates as authorized by the board or as authorized by the  
27 department under AS 08.11 for audiologists, under AS 08.45 for naturo-  
28 paths, or under AS 08.55 for hearing aid dealers;

29 (10) issue duplicate licenses or certificates upon proof

1 by the licensee of loss of the original and payment by the licensee of  
2 a fee of \$2 except as otherwise provided in this title;

3 (11) notify licensees of renewal dates at least 30 days  
4 before the expiration date of their licenses;

5 (12) compile and maintain current a register of licenses;

6 (13) answer routine inquiries;

7 (14) maintain files relating to individual licensees;

8 (15) arrange for printing and advertising;

9 (16) purchase supplies;

10 (17) employ secretarial help when needed;

11 (18) perform other services that may be requested by the  
12 board;

13 (19) provide investigative services to the boards estab-  
14 lished under AS 08.04, AS 08.20, AS 08.36, AS 08.64, AS 08.68, AS 08.-  
15 70, AS 08.71, AS 08.72, AS 08.80, AS 08.84, [AND] AS 08.86, and AS 08.-  
16 88, for the purpose of assisting those boards in matters of profes-  
17 sional discipline and in responding to consumer complaints.

18 \* Sec. 3. AS 08.01.065(a) is amended to read:

19 (a) The department shall adopt regulations that establish the  
20 amount and manner of payment of application fees, examination fees,  
21 license fees, registration fees, permit fees, investigation fees, and  
22 all other fees as appropriate for the occupations covered by this  
23 chapter [AND FOR REAL ESTATE BROKERS AND SALESMEN UNDER AS 08.88].

24 \* Sec. 4. AS 08.03.010(c)(18) is amended to read:

25 (18) Real Estate Commission (AS 08.88.011) -- June 30, 1991  
26 [1987].

27 \* Sec. 5. AS 08.88.031 is repealed and reenacted to read:

28 Sec. 08.88.031. EXECUTIVE SECRETARY OF COMMISSION. The depart-  
29 ment shall, after consultation with the commission, employ a person,

1 who is not a member of the commission, to serve as executive secretary  
2 for the commission. The executive secretary shall perform duties as  
3 assigned by the commission.

4 \* Sec. 6. AS 08.88.037 is amended to read:

5 Sec. 08.88.037. INVESTIGATION AND INJUNCTION. (a) The commis-  
6 sion may request the department to [, UPON ITS OWN MOTION,] conduct  
7 investigations to determine whether a person has violated a provision  
8 of this chapter or a regulation adopted under it, or to secure infor-  
9 mation useful in the administration of this chapter.

10 (b) If it appears to the department [EXECUTIVE DIRECTOR] that a  
11 person has engaged in or is about to engage in an act or practice in  
12 violation of a provision of this chapter or a regulation adopted under  
13 it and that action is warranted in the public interest, the department  
14 [EXECUTIVE DIRECTOR] shall notify all commission members by telephone  
15 or telegraph of a proposed order or action, and, if a majority of the  
16 members of the commission approve, the department [EXECUTIVE DIRECTOR]  
17 may

18 (1) after reasonable notice of and an opportunity for a  
19 hearing is given to the person, issue an order directing the person to  
20 stop the act or practice; the department [EXECUTIVE DIRECTOR] may  
21 issue a temporary order before a hearing is held; a temporary order  
22 remains in effect until a final order affirming, modifying, or revers-  
23 ing the temporary order is issued or until 15 days have elapsed after  
24 the person receives the notice and has not requested a hearing; a  
25 temporary order becomes final if the person to whom the notice is  
26 addressed does not request a hearing within 15 days after receiving  
27 the notice; if a hearing is requested, a hearing shall be conducted by  
28 a hearing officer within 30 days; the commission shall issue a final  
29 order within 10 days after the hearing;

1 (2) bring an action in superior court to enjoin the act or  
2 practice and to enforce compliance with this chapter, a regulation  
3 adopted under it, or an order issued under it;

4 (3) examine or have examined the books and records of a  
5 person whose business activities require licensure under this chapter  
6 and the department [EXECUTIVE DIRECTOR] may require the person to pay  
7 the reasonable costs of the examination; and

8 (4) issue subpoenas for the attendance of witnesses, and  
9 the production of books, records, and other documents.

10 \* Sec. 7. AS 08.88.061 is amended to read:

11 Sec. 08.88.061. ASSISTANTS. The commission may use [EMPLOY]  
12 assistants to

13 (1) prepare questions on examinations;

14 (2) grade examinations [;

15 (3) INVESTIGATE ALLEGED VIOLATIONS OF THIS CHAPTER].

16 \* Sec. 8. AS 08.88.191(b) is amended to read:

17 (b) If the commission authorizes the department to contract  
18 [CONTRACTS] with a national testing service to prepare, administer and  
19 grade examinations,

20 (1) the commission shall review the examination and approve  
21 its contents;

22 (2) application for the examination, accompanied by the  
23 proper filing fee, may be transmitted by the applicant directly to the  
24 national testing service.

25 \* Sec. 9. AS 08.88.034, 08.88.101, 08.88.121, and 08.88.231 are re-  
26 pealed.

# Alaska Recreational Property, Inc.

Suite 800 Court Plaza  
P.O. Box 1211  
Juneau, Alaska 99802  
(907) 586-3340

Reed R. Stoops, President

James F. Clark, Secretary-Treasurer

March 5, 1987

The Honorable Tim Kelly  
Chairman, Senate Labor & Commerce Committee  
P. O. Box V  
Juneau, AK 99811

Dear Senator Kelly:

The Senate Labor and Commerce Committee currently has SB 39 "An Act relating to real estate brokers and salespersons and to the Real Estate Commission" in its jurisdiction. The bill was introduced by Senator Zharoff at the request of the Real Estate Commission.

Should the bill be moved through the Committee, I strongly urge that you delete the proposed new language on lines 3-6 on page 10.

This provision would prohibit corporations such as Alaska Recreational Properties from selling their own properties unless they use a licensed real estate broker. There is absolutely no need for such a requirement. While our corporation may choose to use a broker under certain circumstances, we are more familiar with the property to be sold, and are generally more effective in making sales than a broker.

Property owners, either individual or corporate, deserve the right to market their own property if they so choose. This provision is only one step away from requiring individuals to hire brokers when they sell their own homes.

The purpose of the proposed provision seems clear: to enhance the economic status of real estate brokers at the expense of the individual or corporate right to manage the affairs of one's own business. Unless the Commission has a clear and convincing public purpose to justify their position, I do not see any reasonable grounds for this proposal.

Thank you for your consideration of this matter.

Sincerely,



Reed R. Stoops

RRS:sd/9.31  
cc: Senator Fred Zharoff



## SENATOR FRED F. ZHAROFF

### ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P. O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • TRIBILOF ISLANDS • SHUMAGIN ISLANDS

20 January, 1987

#### MEMORANDUM:

TO: Mark Johnson, Committee Aide  
Senate Labor and Commerce Committee

FROM: Michael Thill  
Senator Zharoff's Staff

SUBJ: SB 39 Real Estate Commission Bill

Senate Bill 39 was prefiled by Senator Zharoff to address concerns of the Real Estate Commission which were not acted upon last session. This measure contains substantive changes which were requested by the Real Estate Commission, extends the termination date of the commission, and grants general regulation adoption authority common to most boards and commissions.

The text of the bill is the result of a task force composed of real estate professionals, related businesses, and the public.

The most knowledgeable person to speak with regarding this measure is:

Jim Magowan, Executive Director of the Real Estate  
Commission: 563-2169

I will attach a sectional analysis, a copy of a memo from the AG's Office concerning this bill, a copy of the most recent audit, the OMB report which recommends an overhaul of the commission statutes, and a copy of those statutes which are being repealed.



SENATOR FRED F. ZHAROFF  
ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

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SB 39 Sectional Analysis:

Section 1) Extends the termination date of the Real Estate Commission until June 30, 1990.

Section 2) Makes gender changes throughout the section and provides that a license may be suspended or revoked if the licensee represents himself as an independent contractor for the purposes of avoiding worker's compensation obligations.

Section also requires the confidentiality of investigations, claims, and complaints until the commission has taken final action, unless disclosure is necessary to conduct an official investigation.

Also provides for public access to license files of the commission, and establishes that earnest money disputes shall be settled by binding arbitration.

Section 3) Grants the commission typical regulation adoption authority normally given to occupational licensing boards and commissions.

Section 4) Authorizes the publishing of books, pamphlets, radio and TV spots, by the commission, to protect and serve the public.

Section 5) Adds a new subsection which allows the commission to charge a fee sufficient for the production of educational materials, and requires that fees for those materials funded by the surety fund shall be paid to the surety fund.

Section 6) Expands real estate broker license eligibility requirements. Increases the experience requirement from 24 to 60 months of active real estate sales, and requires the broker to register with the commission.

Section makes gender changes in both the associate real estate brokers license statute and the real estate salesperson statutes.

Further, requires notification to the commission within 48 hours after a change in a business association which effects the status of a licensee's license.

- Section 7) Adds a new section which provides that an applicant for a license, who has had a license suspended in this state or another jurisdiction, is ineligible for the issuance of a license until the conditions of suspension have been satisfied.
- Applicant who has had a license revoked is not eligible for reinstatement of a license until the commission finds the applicant fit. An applicant who is found "unfit" for licensure, without benefit of a hearing, shall receive a statement of the issues and be provided an opportunity for a hearing.
- Any act which is grounds for license revocation is sufficient for license denial.
- Section 8) Removes the "inactive license certificate" which is issued by the commission when a person becomes inactive from the profession.
- Section 9) Removes the license certificate requirement issued by the commission when a person goes from inactive status to active status.
- Section 10) Exempts associate brokers or salespersons who have entered into bonafide independent contractor status from the requirements of workers compensation coverage.
- Section 11) Requires full disclosure to all parties of the broker's relationship in the transaction and fulfillment of the terms of a written contract before the commission is earned.
- Section 12) Amends the conflict of interest provisions of real estate transactions by requiring disclosure of personal interest in a transaction before making an offer to purchase to a seller.
- Section 13) Adds a new subsection requiring a licensee to obtain written consent from all parties to a

transaction prior to representing more than one party in a transaction.

Section 14) persons licensed under this chapter are not liable for "innocent misrepresentations of fact".

Section 15) Adds a new section concerning earnest money disputes. Broker may hold disputed earnest money in a trust account if he notifies all parties in the dispute and requests the parties to reach a mutual agreement about the earnest money.

If the parties don't reach an agreement within 15 days of the certified mailing, the broker shall submit the dispute to the commission for binding arbitration.

Broker shall hold the earnest money in dispute in his trust account until the arbitrator issues instructions over the distribution of the earnest money.

If a party in the dispute files a civil action to recover the earnest before the completion of arbitration, the broker shall hold the money in his trust account until instructed to do otherwise by the courts.

Section 16) The exemption from state law relating to real estate does not apply to a corporation that is engaged in the business of selling real estate or that maintains and sells real estate in an inventory.

Section 17) Amends the definition of "lease" to distinguish between real estate brokerage and business brokerage.

Section 18) Adds "associate real estate brokers" to the list of real estate professionals who make payments to the real estate surety fund, and deletes the provision prohibiting the fund from exceeding \$500.0. Retains the provision that amounts in the fund exceeding \$250.0 may be appropriated for real estate educational purposes.

Section 19) Adds qualifying language to the concept of "misrepresentation", (negligent or intentional), and tightens up the information requirements on forms for reimbursement.

- Section 20) Changes the refund policy for filing fees by not refunding the filing fee in a case where the claim is dismissed by the claimant.
- Section 21) Adds qualifying language to the concept of "misrepresentation" (negligent or intentional), and makes gender changes to this section.
- Section 22) Adds new sections as follow:
- b) When an award is made from the real estate surety fund to a claimant for prohibited real estate practices, the commission may consider the hearing on the claim as a hearing on the suspension of the license. A suspension so ordered shall be lifted when the real estate professional reaches an agreement with the commission on repayment of the surety fund award and the costs of the hearing. Violations of the repayment agreement will result in a reimposition of the suspension.
  - c) Repayment does not affect a suspension or revocation of a license when the licensee has violated a law or regulation under this chapter. Penalties so imposed are separate and in addition to those penalties imposed for surety fund claim proceedings.
- Section 23) Authorizes the commission to charge the costs of a hearing described in (b) of the preceding section to the surety fund.
- Section 24) When a licensee is found to have committed fraud, deceit, etc. the licensee shall reimburse to the surety fund the amount of the award plus the costs of the hearing which have been charged to the fund.
- Section 25) Section concerns "payment of judgements" by real estate professionals who have violated the law. Deletes references to "small claims action" and inserts "court" action. The mechanics of how a payment shall be made remain the same.
- Section 26) Exemption from liability for "innocent misrepresentation" (authorized in section 14), applies to causes of action arising on or after the effective date of this act.
- Section 27) Applicability section

- Section 28) Requires the refund of \$225 of the filing fee paid under 08.88.460(d) to a claimant whose case is pending on the effective date of this act.
- Section 29) Directs the revisor of statutes to make AS 08.88 gender neutral when AS 08 is reprinted.
- Section 30) Repealers
- Section 31) Immediate effective date.

A PERFORMANCE REPORT ON THE  
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R

Commissioner, Department of  
Commerce and Economic Development

Loren H. Lounsbury

Deputy Commissioners, Department of  
Commerce and Economic Development

Terry Elder  
Greg Baker

Members of the  
Alaska Real Estate Commission

Chairman  
Vice-Chairman  
Member  
Member  
Member  
Member  
Member

Dave Ribacchi  
Barbara J. Hill  
LaVerne Collins  
Gilbert Serrano  
John E. Benson  
Barry L. Brown  
Iola Robinson

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811-3300

**THE LEGISLATURE**  
BUDGET AND AUDIT COMMITTEE

October 29, 1985

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 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  
ALASKA REAL ESTATE COMMISSION

September 19, 1985

Audit Control Number

08-1224-86-R



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

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## PURPOSE AND SCOPE OF THE REPORT

### Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an examination of the Alaska Real Estate Commission was conducted to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Alaska Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1986, but will continue until June 30, 1987 for the purpose of concluding its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

### Scope

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

1. Applicable statutes and regulations.
2. Tests of records and documents of the Commission.
3. Discussions with Commission members and staff of the Commission.
4. Complaints filed with the Commission and the Ombudsman's Office.
5. Questionnaires sent to Commission members and Alaska licensed real estate brokers, associate brokers, and salespersons.

## ORGANIZATION AND FUNCTION

The Alaska Real Estate Commission (AREC) was established and operates under Title 8, Chapter 88 of the Alaska Statutes. It is a regulatory commission consisting of five real estate brokers or associate brokers and two public members.

The Commission regulates persons licensed as real estate brokers, associate brokers, and salespersons by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing or amending rules and regulations necessary to enforce State statutes.
3. Holding hearings to revoke or suspend the license of a person violating real estate statutes or regulations.
4. Prosecuting, through the Department of Law, violations of real estate statutes and regulations.

AREC is also authorized to conduct real estate clinics, meetings, or educational institutes for the purpose of raising the standards of the real estate business and the competency of licensees.

Real estate associate brokers and brokers must pass an examination and have had at least 24 months of active and continuous experience as a real estate salesperson. Additionally, an applicant for an associate broker or broker license may not be under indictment for any felony involving moral turpitude or five or seven years, respectively, have elapsed since completing a sentence for a felony involving moral turpitude. A broker differs from an associate broker in that a broker must be an owner of a real estate business or employed as a broker by a corporation or partnership. An associate broker has met the statutory requirements of a broker, but is employed by a real estate broker.

A real estate salesperson must pass an examination; be at least 19 years old; not be under indictment for, or completed the sentence imposed if convicted of, any felony involving moral turpitude; and be employed by a real estate broker.

Real estate licensees must pay a surety fund fee, in lieu of obtaining a corporate surety bond, when obtaining or renewing their licenses. These fees are deposited in the Real Estate Surety Fund and are to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of a real estate licensee. Claims for reimbursement require a

## REPORT CONCLUSION

### Policy Issues

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

### Report Conclusion

In our opinion, the Alaska Real Estate Commission (AREC) should continue to regulate and license real estate professionals. The regulation and licensing of the profession is necessary because of the potential for substantial economic loss resulting from the business practices of unqualified, incompetent, or dishonest real estate practitioners.

However, substantial improvement needs to take place in the operations of the Commission. The Office of Management and Budget (OMB) conducted a comprehensive management audit of AREC and issued its report, "Management Audit Report on the Alaska Real Estate Commission" dated December 1984. We support the recommendations made by OMB, but note little progress to date in implementation of those recommendations. Implementation of the recommendations contained in this report and the OMB report (see Appendix D) would enable AREC to perform more effectively and efficiently.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Alaska Real Estate Commission (AREC) should revise the procedures for processing and closing licensing complaints.

Currently AREC uses procedures for processing licensing complaints which are ineffective and inefficient. A copy of each complaint file is sent to an AREC commissioner. This "coordinating commissioner" is supposed to assist the Accountant III (REC investigator/auditor hereinafter referred to as investigator) in his investigation by offering real estate expertise. For each complaint recommended for closure, the commissioner is supposed to review the file and approve or disapprove the closure recommendation. During the next Commission meeting, those complaints approved for closure by individual commissioners are officially voted closed by the entire Commission.

The first sunset review of AREC by Legislative Audit dated May 7, 1979, found fault with commissioners being informed as to the facts and being involved in the investigations and recommended that investigation procedures be changed and revised to develop an accurate and proper system for handling complaints. A follow-up review dated June 4, 1981, recommended that a formal system of investigative procedures be developed, approved, and documented prior to the investigative responsibility being transferred from the Division of Occupational Licensing. An Ombudsman investigation completed on April 13, 1983, included recommendations addressing delays in the management and processing of licensing complaints. An Office of Management and Budget (OMB) management report dated December 1984 found that AREC lacked a formal, structured procedure for processing license complaints.

The executive director and investigator have established informal procedures in response to these recommendations that conflict with those in use by other regulatory licensing boards under Occupational Licensing. We recommend AREC take a proactive, rather than reactive approach and revise its procedures to include the following:

1. Case files should not be copied and sent to a commissioner. This is the single most compromising element of the present system.
2. The investigator should fully investigate every complaint. This may involve nothing more than reading the complaint form and supporting documents, but the case file should contain evidence of the investigation conducted.

Initially, active licensees should be notified that their licenses will be suspended if an agreement on repayment is not reached. If these procedures reveal inadequate authority for recovery, statute changes may be necessary. However, lack of action because a problem may exist is not acceptable. These procedures must be formalized and written in order to facilitate recovery.

Recommendation No. 3

AREC should undertake a major revision of Alaska Statutes, Title 8, Chapter 88.

The Attorney General's Office as well as staff and commissioners of AREC pointed to statutes which needed revision. Some sections need clarification while others appeared to give inadequate authority to the Commission to carry out its duties. Some examples follow:

1. Duties of the Commission. AS 08.88.071.
  - (a)(3) could be changed to a simple statement such as: "hold hearings and order disciplinary sanctions against a person who violates this chapter or the regulations of the commission." A separate section is needed delineating grounds for denial, suspension, and revocation of a license. A section on penalties or disciplinary sanctions is usually found in other chapters of Title 8.
  - (b) should be relocated to Article 5, the Real Estate Surety Fund. Combined license and Surety Fund claim hearings are now being scheduled and suspension of a license until repayment of the claim should not be confused with suspension for a licensing violation. Qualifying language may be needed to distinguish between suspension for a violation and suspension for a repayment agreement in those combined hearings. Repayment of the Surety Fund claim does not "buy back" the license suspended for a violation.
2. Entitlement to license. AS 08.88.171.

This section should be retitled "eligibility for license" or "qualifications for license." At this time, a broker or associate broker is still "entitled" to a salesperson license even though the Commission revokes the broker or associate broker license. If this is not the intent of the Legislature, a provision should be included that licensees lose their eligibility for all licenses upon license revocation and that license eligibility can only be reinstated by the Commission.
3. Reinstatement of lapsed license. AS 08.88.241.

The Commission has taken the position that a broker, associate broker, or salesperson whose license has

# **CORRECTION**

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

## PURPOSE AND SCOPE OF THE REPORT

### Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), an examination of the Alaska Real Estate Commission was conducted to determine if the Commission has been operating in an effective, efficient, and economical manner.

As required by legislative intent, this report shall be considered during the legislative oversight function in determining whether the Alaska Real Estate Commission should be reestablished. The law currently specifies that this Commission will terminate on June 30, 1986, but will continue until June 30, 1987 for the purpose of concluding its affairs.

The policy and audit approach utilized by the Division of Legislative Audit for performance reports can best be described as "audit by exception." This methodology focuses audit effort on areas of an auditee's operations that have been identified by a preliminary survey as having a high degree of probability for needing improvements.

Therefore, by design, finite audit resources are used to identify where and how improvement can be made and little time is devoted to reviewing well-run operations or programs. Consequently, this report highlights those areas needing improvement and does not emphasize those operations and programs that are properly functioning.

### Scope

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

1. Applicable statutes and regulations.
2. Tests of records and documents of the Commission.
3. Discussions with Commission members and staff of the Commission.
4. Complaints filed with the Commission and the Ombudsman's Office.
5. Questionnaires sent to Commission members and Alaska licensed real estate brokers, associate brokers, and salespersons.

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\$250 filing fee and payment is made by AREC after a hearing is held. The Surety Fund balance in excess of \$250,000 may be appropriated for educational purposes.

Chapter 167, SLA 1980 gave the Commission the power to appoint an executive director, employ assistants, and approve the appointment of an investigator or auditor. Prior to enactment of this legislation, the Commission received staff support from the Division of Occupational Licensing.

## REPORT CONCLUSION

### Policy Issues

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

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