

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6403 SENATE LABOR & COMMERCE

807

OTHER EDUCATION INFORMATION

| Jurisdiction | Full-Time Staff Education Director | Active Educ. Adv. or Liais. Comm. | RE Educ. and/or Resear. Fund | Coll./Univ. RE Research Center | |
|-------------------|---------------------------------------|---|------------------------------------|--------------------------------|---------------------------------------|
| | | | | Active | Receives funding from RE lic. fees |
| Alabama | Yes | Yes | No | No | |
| Alaska | No, Pub. Inf. Off. | Yes | Yes | No | |
| Alberta | Yes | Yes | Yes | No | |
| Arizona | Yes | No | No | Yes | No |
| Arkansas | No | Yes | Yes | No | |
| British Columbia | No | No | Yes | Yes | Yes |
| California | Yes | Yes | Yes | Yes | Yes |
| Colorado | Yes | No | No | No | |
| Connecticut | No | No | No | Yes | Yes |
| Delaware | No | Yes | Yes | No | |
| Dist. of Columbia | Yes | No | Yes | No | |
| Florida | Yes | Yes | Yes | Yes | Yes |
| Georgia | Yes | Yes | Yes | Yes | No |
| Guam | No | No | No | No | |
| Hawaii | No, Inf. Off. | No | Yes | Yes | Yes |
| Idaho | Yes | Yes | Yes | No | |
| Illinois | Yes | No | Yes | Yes | Yes |
| Indiana | Yes | Yes | Yes | Yes | No |
| Iowa | No - will hire soon | No | No, but auth'd | No | |
| Kansas | Yes | No | No | Yes | Occasionally |
| Kentucky | Yes | No | Yes | Yes | Yes |
| Louisiana | Yes | No | Yes | Yes | Yes |
| Maine | Yes | No | Yes | Unknown | |
| Maryland | Yes | Yes | No | No | |
| Massachusetts | No | Yes | No | No | |
| Michigan | No | Yes | No | No | |
| Minnesota | Yes | Yes | Yes | No | |
| Mississippi | No | No | No | No | |
| Missouri | Yes | No | No | No | |
| Montana | No | No | Yes | No | |
| Nebraska | Yes | No | No | No | |
| Nevada | Yes | No | Yes | No | |

OTHER EDUCATION INFORMATION

| Jurisdiction | Full-Time Staff Education Director | Active Educ. Adv. or Liais. Comm. | RE Educ. and/or Resear. Fund | Coll./Univ. RE Research Center | |
|-----------------|------------------------------------|-----------------------------------|------------------------------|--------------------------------|------------------------------------|
| | | | | Active | Receives funding from RE lic. fees |
| New Brunswick | No | Yes | Yes | No | |
| New Hampshire | No | No | No | No | |
| New Jersey | Yes | No | Yes | No | |
| New Mexico | Yes | Yes | No | No | |
| New York | No | No | No | No | |
| North Carolina | Yes | No | No | No | |
| North Dakota | No | Yes | Yes | No | |
| Nova Scotia * | No | No | No | No | |
| Ohio | Yes | Yes | Yes | Yes | Yes |
| Oklahoma | Yes | Yes | Yes | No | |
| Ontario | NR | NR | NR | NR | |
| Oregon | Yes | Yes | No | No | |
| Pennsylvania | No | Yes | No | Unknown | No |
| Quebec | No | No | No | Yes | No |
| Rhode Island | No | Yes | No | No | |
| Saskatchewan | Yes | Yes | Yes | No | |
| South Carolina | Yes | No | Yes | Yes | No |
| South Dakota | No | No | Yes | No | |
| Tennessee | No, but have P-T consultant | No | Yes | Yes | No |
| Texas | Yes | No | No | Yes | Yes |
| Utah | Yes | No | Yes | No | |
| Vermont* | No | Yes | No | No | |
| Virginia | Yes | Yes | Yes | No | |
| Virgin Islands* | No | No | No | No | |
| Washington | Yes | Yes | Yes | No | |
| West Virginia | No | No | No | No | |
| Wisconsin | No | Yes (ad hoc) | No | No | |
| Wyoming | No | Yes | Yes | No | |

* 1988 survey

March 6, 1990

Finance Committee
Alaska State Senate
State Capital Building
Juneau, Alaska 99811

Re: Senate Bill 28844

Senators,

It has just come to my attention that SB288, regarding changes to AS08.88 of the Alaskan statutes, contains provision that would require additional education requirements for real estate licensees. I would like to take this opportunity to stress my strong opposition to any provisions that would require "mandatory continuing education".

During my years of service on the Real Estate Commission, including one year as Chairman, there were numerous attempts to get this type of legislation passed. We held many public hearings on this matter and tried to balance the desire with the practicality. While there are acceptable arguments such as, "This is the way it is done in other states so therefore we should do it in Alaska!" or "We have to do something to cut down on the numerous complaints!", our careful analysis always ended in not supporting continuing education as a solution. We simply felt forcing a licensee to sit through a real estate class two days every two years would not materially change the quality of their work. The cost of another layer of bureaucracy versus the expected result is not warranted. I do not feel the arguments for or against mandatory education have changed materially since that time.

It is important to keep the State's position with the real estate industry in perspective when considering the adoption of this type of requirement. The State of Alaska, in its wisdom, has established a set of laws that regulate the right to perform those functions allowed under AS08.88. You can only perform those functions with a license. Realizing that in the spectrum of the real estate industry that there are all levels of expertise, experience, etc., the law established two levels of licensing, broker and salesman. By passing certain requirements, one can become a salesman. If you have at least two years of experience and pass additional requirements, you can become a Broker. You cannot perform those functions authorized in the statutes as a salesman unless you are working under a broker's license. In turn, a Broker can have licensees "working" under his broker's license but the Broker has total responsibility for the actions of the salesman licensees.

This process is not only simple but affective. The Broker has the responsibility and liability for not only himself but for all of the licensees working under him. The public's recourse is through the courts for damages. The State can prevent further miscarriages

by revoking the license.

The only strong argument against this system was that in many real estate circumstances it was unfair to make someone that had been harmed go through the lengthy court procedure to get monetary recourse. To correct this flaw the surety fund and procedure was established.

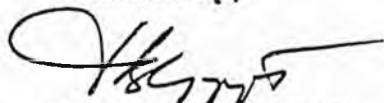
My point is this. The system outlined above works as well as any. Keep it simple and leave clear lines of accountability. It is the licensee's responsibility to educate himself. Since the Broker is responsible he'd better darn well be sure that both he and the licensee's working under him are educated. It is when you cloud this chain of responsibility and accountability that indifference begins. If the State is going to take on a portion this responsibility who is going to be liable? I trust you will not want to accept this liability based upon two days of education every two years.

It is my opinion that strong enforcement of your existing statutes is the solution to improve industry standards, not some mandatory requirement that will only cause dissention and further disburse the liability. If you are inclined to pass this type of legislation, first insist on using the excess surety funds (as they are intended) for voluntary courses. Do this for, say, two years and then get a report. Use this as a test. Poll the licensees. Do they want mandatory education? Do they think it will improve the industry? Remember, many licensees are not Realtors. Realtor is only a designation used by those who belong to a professional organization and many licensees do not espouse to this organizations goals.

In summary, I believe the limited benefits gained from mandatory education are far outweighed by the cost, the insidious bureacracy that will be created, the red tape and the spreading of liability resulting from its inception. It is simply not worth the problems that will be caused.

I would be more than happy to discuss this issue with any of you if you so desire. You can reach me in Juneau at 586-8161.

Sincerely,



Lance Youngquist

RE: Sponsor Substitute for S.B. No. 288

Dear Senator,

Please consider a change to the bill by the deletion of Sec. 2(d) A person who is licensed under this chapter must complete 20 hours of continuing education - - -

My experience has been that mandatory continuing education goes not solve any problems and becomes a make-work project that neither the licensee nor the public benefit from.

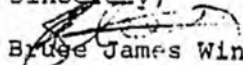
In attending a required education course in another state, I found attendance in a general B.S. session to obtain the document required for relicensure. I have heard the argument that without the education requirement we will have no reciprocity with other states. I do not intend to carry my license elsewhere, and hearing of the problems with other states, certainly do not want their problems here.

I feel that we stand far out ahead of other states with our current licensing program, and especially our Surety Fund program which not only provides for suspension or revocation of license, but financial redress to the public through the Fund.

Attempting to enhance competency and honesty by statute does not seem to work. There is no evidence that the public will be better protected by this requirement.

The current system places the responsibility for competency and honesty upon the Broker, who is not only responsible for his actions, but also the actions of any salesman working under his Broker's license. This system seems to work very well.

Sincerely,


Bruce James Winton, Broker

Former: President, Juneau Board of Realtors
President, Alaska Association of Realtors
Chairman, IMF, National Association of Realtors
Member, Real Estate Commission
Chairman, License Law Committee, Real Estate Commission

Current:

Broker (first licensed in Alaska as salesman 1954)
Chairman, ByLaws, Southeast Board of Realtors
Associate Professor of Real Estate, University of Alaska, SE.

Sent 3/9

DO YOU WANT MORE UNNECESSARY STATE GOVERNMENT INTERFERENCE AND REGULATION IN YOUR BUSINESS?

DO YOU WANT THE STATE TO FORCE YOU TO PAY MONEY OUT OF YOUR POCKET FOR AN UNNECESSARY ILLOGICAL CENTRAL GOVERNMENT CONTROLLED CONTINUING EDUCATION PROGRAM FOR OUR REAL ESTATE INDUSTRY?

DO YOU WANT THE STATE TO CREATE MORE UNNECESSARY STATE JOBS/MORE STATE EMPLOYEES TO PAY FOR?

If you want to maintain responsibility for your own business then call your Senator NOW--TODAY an tell them to VOTE NO ON SENATE BILL 288 !!

Vote NO to forced state government controlled and planned continuing education for the real estate industry!!

If you don't spend the money to call your Senator now then you will literally pay for it many times over through forced government planned education programs for our industry.

SENATORS Juneau Office Locations, Phones

| Room | Phone | |
|-------|----------|-------------------------------------|
| | 465- | |
| 423-C | 465-3707 | Adams, Albert P. (D) Kotzebue |
| 518-C | 4985 | Binkley, John (R) Bethel |
| 30-C | 4797 | Coghill, John B. "Jack" (R) Nenana |
| 119-C | 4766 | Duncan, Jim (D) Juneau |
| 417-C | 4916 | Efason, Richard L. "Dick" (R) Sitka |
| 125-C | 3834 | Fahrenkamp, Bettye M. (D) Fairbanks |
| 101-C | 4523 | Falks, Jan (R) Anchorage |
| 508-C | 3791 | Fischer, Paul A. (R) Soldotna |
| 514-C | 3709 | Frank, Steve (R) Fairbanks |
| 103-C | 4958 | Halford, Rick (R) Chugiak |
| 9-C | 3743 | Jones, Lloyd (R) Ketchikan |
| 111-C | 3822 | Kelly, Tim (R) Anchorage |
| | 3771 | Kertusa, Jalmar M. (D) Palmer |
| 510-C | 4993 | Pearce, Drue (R) Anchorage |
| 504-C | 3879 | Pourchot, Pat (D) Anchorage |
| 113-C | 3793 | Rodey, Patrick (D) Anchorage |
| 427-C | 3818 | Sturgulewski, Arliss (R) Anchorage |
| 11-C | 4978 | Szymanski, Mike (D) Anchorage |
| 516-C | 4821 | Uehling, Rick (R) Anchorage |
| 121-C | 3473 | Zharoff, Fred F. (D) Kodiak |

TO CONTACT YOUR LEGISLATOR

DURING SESSION

address all legislator and committee mail to:

Name
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

B. Craig

C-Capitol
• 431 N. Franklin

March 8, 1990

Ref: Senate Bill 288--Real Estate

Dear Senator:

I am opposed to Sec. 2 (d) of Senate Bill 288 which would require 20 hours of continuing education in order to have my real estate license renewed .

Forced education will not make a dishonest person more honest. People generally learn standards of honesty by age 10. I do not believe continuing education will change the basic moral fiber of people therefore the public will not be any more protected if the continuing education requirement is passed.

If the Real Estate Commission has a full time Education Coordinator who puts out a quarterly newsletter, then why isn't that person including important information and case law data in the newsletter? Why isn't the Education Coordinator sending out yearly updated sets of State Statutes, Ak. Administrative Code and Regulations pertaining to the real estate industry in order to keep the people in the industry informed yearly? I pay into the Surety Fund trust account which was created to pay for claims as well as provide education to those in the industry. I'm a consumer--where is my educational information I pay for when I make payment into the Surety Fund?

In 1989 I received for payment into the Surety Fund 4 each newsletters and I believe that is all !! I think the RE Commission should mail out each and every year :

- 1) the quarterly newsletter containing important case law information and other changes and data the RE Commission thinks vital to the industry
- 2) updated set of Statutes, AK. Admin. Code and Regs. dealing with real estate which will assure agents and brokers having updated information
- 3) copy of the RE Commissions Trust Account Manual
- 4) copy of the Brokers Kit intended as a desk reference for brokers

I am not for the bill as it now stands because it 1) unnecessarily regulates the industry 2) will create an unnecessary state job if a new fiscal note is attached and 3) there has been NO DATA PRESENTED BY ANYONE showing that there are any more of less honest people working in the industry now as compared to the past.

It is my understanding that a number of Surety Fund payments being made now are from claims that are YEARS old and have not been responsibly handled until now which as resulted in heavy draws on the current fund. No one has presented any data to my knowledge to prove that current claims are any higher or lower or better or worse then those from the past--only that current claims and complaints are being handled in a more timely fashion.

Prelicensing education requirements are something entirely different from the ongoing educational requirements for license renewal. Those two distinct matters should be separated when dealing with this bill. I am against the ongoing educational

requirements for renewal of license. How can any state government controlled ongoing education program provide effective equal educational opportunities for people in Kodiak, Nome, Bethel, Ketchikan, Juneau and Anchorage. Each community is very different and has different needs. The RE Commission anticipates they will spend approx. \$25,000 more for education this year over last and those funds are paid directly by people working in the industry. I would be happy to receive the items listed previously as fair exchange for my payment into the Surety Fund. But leave the subject matter and methods of ongoing education needed in my business up to me.

Our licensing test is reportedly similar to the test given to 25 other states--we are doing exactly what other states are doing, but it is claimed by some not to be adequate in some way in protecting the public. So should we also blindly follow what some states do regarding continuing education? Should we also blindly follow what other states think about locking up Alaska for a wilderness park? Should we also follow the same path in their approach to wetlands? We should learn from other states and find out how they do things but not necessarily follow them. Just because other states have different methods for dealing with an industry does not mean we need to blindly follow their example. Let's think things out slowly and carefully and think about what is best for Alaska and work on what is best for us here and now and for our future. And if the licensing test is proven to be too easy then change the test. By statute that is one of the responsibilities of the Real Estate Commission already!

This bill is ridiculous--it takes on the mentality of trying to fix something that isn't broken and tries to convict the real estate industry of something they COULD POSSIBLY do wrong in the future when there currently is no evidence of any incompetency in the industry now. If this bill were a case in court the judge would kick it out for lack of evidence.

Respectfully,

Barbara Craig

Barbara Anne Craig

Owner/Broker

Barbara Craig Realty

Box 02-0422

Juneau, Ak. 99802

586-9091

BY SEN. STURGULEWSKI

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Real Estate Commission; and
7 providing for an effective date."

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


9 * Section 1. AS 08.88.081 is amended to read:

10 Sec. 08.88.081. COMMISSION REGULATIONS. The commission shall
11 adopt regulations necessary to carry out the purposes of this chapter
12 [PERTAINING TO THE RESPONSIBILITIES OF PERSONS LICENSED UNDER THIS
13 CHAPTER AND THE GROUNDS FOR REVOKING OR SUSPENDING A LICENSE].

14 * Sec. 2. AS 08.88.091 is amended by adding new subsections to read:

15 (b) An applicant for licensure under AS 08.88.171(c) must com-
16 plete 20 hours of education approved by the commission before the
17 person may be licensed under that subsection.

18 (c) An applicant for licensure under AS 08.88.171(a) or (b) must
19 complete 15 hours of education approved by the commission before the
20 person may be licensed under either of those subsections.

21  (d) A person who is licensed under this chapter must complete 20
22 hours of continuing education approved by the commission before the
23 person's license may be renewed.

24 (e) The commission may not approve an education or continuing
25 education course required under this section unless the commission
26 certifies the course outline and approves the instructor of the course
27 before the course is conducted.

28 * Sec. 3. AS 08.88.171(a) is amended to read:

29 (a) A person is eligible for [ENTITLED TO] a real estate broker

Barbara Craig Realty

(Formerly Barbara Jays Realty)

P.O. Box 02-0422

Juneau Alaska 99802

(907) 586-9091

March 7, 1990

Real Estate Licenses:

| | |
|------------------|--|
| Anchor Point 4 | Anchorage and surrounding area: approximately 1,850 |
| Bethel 2 | |
| Copper Center 1 | |
| Dillingham 1 | |
| Slana 1 | |
| Girdwood 7 | |
| Homer 33 | |
| Kenai 38 | |
| Kodiak 27 | |
| Moose Pass 1 | |
| Naknek 1 | |
| Nikiski 7 | |
| Nenilchik 3 | |
| Ouzinkie 1 | |
| Big Lake 13 | |
| Seidovia 3 | |
| Seward 12 | |
| Soldotna 38 | |
| Sterling 5 | |
| Talkeetna 1 | |
| Valdez 6 | |
| Willow 6 | |
| Dutch Harbor 1 | |
| Fairbanks 165 | |
| College 2 | |
| North Pole 17 | |
| Salcha 1 | |
| Barrow 2 | |
| Delta Junction 8 | |
| Nome 2 | |
| Tok 2 | |
| Juneau 80 | |
| Gustavus 1 | |
| Sitka 9 | |
| Ketchikan 18 | |
| Craig 1 | |
| Wrangell 1 | |
| Haines 1 | |

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.
3901 C STREET, SUITE 722
ANCHORAGE, ALASKA 99503
PHONE: (907) 861-2878

To: Gordon Harrison
Legislative Research Agency
From: Grayce Oakley, Executive Secretary, *GO*
Real Estate Commission
Date: March 5, 1990
Re: Request for Surety Fund information

I was attending a surety fund hearing when your faxed request arrived Thursday. The hearing did not recess until late Friday afternoon. I understand from Terry McGillivray that when she told you the volume involved with minutes of commission meetings, you deleted that request. Here are the remaining statistics:

| | FY 86 | FY 87 | FY 88 | FY 89 |
|--------------------------------|-----------|-----------|-----------|-----------|
| Income | \$266,960 | \$ 26,840 | \$205,342 | \$ 38,704 |
| Expenses for Claim Settlements | 52,357 | 88,619 | 90,860 | 118,031 |
| Expenses paid for Education | 136,703 | 126,239 | 89,182 | 76,882 |
| Appropriated for Education* | 145,000 | 145,000 | 145,000 | 145,000 |

* Although the appropriation remained constant, the actual expenditures were cut back because of the anticipated heavier payouts as a backlog of claims were resolved in FY 88 and FY 89.

| | |
|--|------------|
| Current Balance as of June 30, 1989: | \$243,121. |
| Plus estimated renewal income--FY 90: | 302,000 |
| Less claims paid in FY 90: | 28,000 |
| Less claims approved 2/22/90 | 70,542 |
| Less estimated education expenses FY 90: | 100,000 |
| Less claims currently on appeal | 97,000 |
| Estimated current available balance: | \$249,000 |

Barbara Craig Realty

(Formerly Barbara Jaya Realty)

P.O. Box 02-0422
Juneau Alaska 99802
(907) 586-9091

March 6, 1990

Finance Committee/SB288-Real Estate

The portion of the bill I am against is Sec. 2 (d)--which would require 20 hours of continuing education to get my real estate license renewed.

Education will not make a dishonest person more honest. People generally learn standards of honesty by age 10. I do not believe continuing education will change the basis moral fiber of people therefore the public will not be any more protected.

If the Real Estate Commission has a full time Education Coordinator, Terry McGillivray who puts out a quarterly newsletter, then why isn't that Education Coordinator including important information or case law data in the newsletter? Why isn't the Education Coordinator sending out yearly updated State Statutes, Ak. Administrative Code and Regs in order to keep the people in the industry informed? I pay into the Surety Fund for important data or educational information--I'm a consumer--where is my important updated information I pay for?

If the continuing education requirement was dropped from the bill, then would there be the need to hire an additional state employee as the fiscal note indicates?

In 1989 I received for my payment into the surety fund 4 each newsletters and I believe that is all! I think the RE Commission Education Coordinator should mail out each year:

- a) the quarterly newsletter containing important case law info and other changes and data the RE Commission thinks are vital
- b) updated set of Statutes dealing with real estate, AAC and Regs by registered mail which will assure agents and brokers have the updated information
- c) copy of the trust account manual the RE Commission developed
- d) Brokers kit which is intended as a desk reference for brokers (the RE Commission claims it is nearly complete if not already finished).

I am not for this bill as it now stands because it 1) creates an unnecessary state job 2) it unnecessarily regulates the industry through forced central government planned educational requirements 3) and no statistical data has been presented by anyone showing that there are any more or less honest people in the industry now compared to the past.

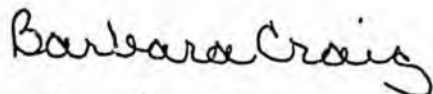
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Prelicensing educational requirements are something entirely different from the ongoing educational requirements for licensing renewal. Those two distinct matters should be separated when dealing with this bill. I am against the ongoing educational requirements for renewal of license. How can any state government controlled ongoing education program provide equal educational opportunities for people in Kodiak, Nome, Ketchikan, Juneau and Anchorage. Each community is very different and has different needs. If you eliminate the ongoing educational requirements for license renewal (Sec. 1 (d)) then the fiscal note should reflect zero cost for the remainder of the bill-- it should not be necessary to hire additional staff if no central government controlled education programs for renewal of license are approved. In addition the RE Commission anticipates they will spend approx \$25,000 more for education this year over last and those funds are paid directly by people working in the industry. I would be happy to receive the items listed above as fair exchange for my payment into the Surety Fund. But leave the subject matter and methods of ongoing education needed in my business up to me.

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Respectfully,



Barbara Anne Craig
Owner/Broker

BY SEN. STURGULEWSKI

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2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 288

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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STATE OF ALASKA

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DIVISION OF OCCUPATIONAL LICENSING

STEVE COWPER, GOVERNOR

7TH FLOOR FRONTIER BLDG.
3801 C STREET, SUITE 723
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supposedly • surplice

triven; also : mistakenly believed
 sup-pos-ed-ly \sə-ˈpɒz-əd-lee, -ˈpɒ-
 di-lee\ adv
 sup-pos-ing \sə-ˈpɒz-ɪŋ\ conj : if
 way of hypothesis : on the assumption
 that
 sup-po-si-tion \sə-ˈpɒz-ɪʃ-ən\ n 1
 : something that is supposed : HYPOTH-
 ESIS 2 : the act of supposing
 sup-pos-i-to-ry \sə-ˈpɒz-ɪ-tɔ-ri\ n, pl
 -ries : a small easily melted mass of
 usu. medicated material for insertion
 (as into the rectum)
 sup-press \sə-ˈpres\ vb 1 : to put
 down by authority or force : SUPDUCE
 (~ a revolt) 2 : to keep from being
 known; also : to stop the publication or
 circulation of 3 : to exclude from con-
 sciousness : REPRESS — sup-press-
 ible \sə-ˈpres-ə-bəl\ adj — sup-press-
 ion \sə-ˈpres-ən\ n
 sup-pres-sant \sə-ˈpres-ənt\ n : an
 agent (as a drug) that tends to suppress
 rather than eliminate something unde-
 sirable
 sup-pu-rate \sə-ˈpju-ˌreɪt\ vb -rat-ed;
 -rat-ing : to form or give off pus —
 sup-pu-ra-tion \sə-ˈpju-ˌreɪt-ən\ n
 su-pra \sɪ-ˈpra, -ˈpri\ adv : earlier in
 this writing : ANOVA
 su-pra-na-tion-al \sɪ-ˈpra-ˈnash-
 (ə)-nəl, -ˈpri\ adj : transcending national
 boundaries, authority, or in-
 terests (~ organizations)
 su-pre-m-a-cist \sɪ-ˈpre-m-ə-sɪst\ n
 : an advocate of group supremacy
 su-pre-m-a-cy \sɪ-ˈpre-m-ə-si\ n, pl
 -cies : supreme rank, power, or
 authority
 su-pre-me \sɪ-ˈpre-m\ adj [L *supremus*,
 superl. of *superus* upper, fr. *super*
 over, above] 1 : highest in rank or
 authority 2 : UTMOST 3 : most excel-
 lent (he is ~ among poets) 4 : UL-
 TIMATE (the ~ sacrifice) syn superla-
 tive, surpassing, peerless, incomparable
 — su-pre-me-ly adv — su-pre-me-
 ness n
 Supreme Being n : GOD 1
 supt abbr superintendent
 supvr abbr supervisor
 sur-cease \sɜ-ˈseɪs\ n : CESSATION,
 RESPIRE
 sur-charge \sɜ-ˈtʃɑrj\ vb 1 : to fill
 to excess : OVERLOAD 2 : to print or
 write a surcharge on (postage stamps)
 surcharge n 1 : an excessive load or
 burden 2 : an extra fee or cost 3
 : something officially printed on a post-
 age stamp to give it a new value or use
 sur-cin-gle \sɜ-ˈsɪŋ-gəl\ n : a band
 passing around a horse's body to make
 something (as a saddle or pack) fast
 sure \sɜ-ˈʃʊr\ adj sur-er; sur-est [ME,
 fr. MF *sur*, fr. L *securus* secure] 1
 : firmly established 2 : CONFIDENT,
 CERTAIN 3 : TRUSTWORTHY, RELIABLE
 4 : not to be disputed : UNDOUBTED 5
 : bound to happen syn assured, pos-
 itive — sure-ly adv — sure-ness n
 sure adv : SURELY
 sure-fire \sɜ-ˈʃʊr-ˌfi(ə)r\ adj : certain to
 get results : DEPENDABLE
 sure-ty \sɜ-ˈʃʊr-ɪ-ti\ n, pl -ties 1

2 : SURENESS, CERTAINTY 2 : something
 that makes sure : GUARANTEE 3 : one
 who becomes a guarantor for another
 person syn security, bond, bail
 sponsor, buckler
 sur-f (sɜ-ˈf) n : the swell of the sea as it
 breaks on the shore; also : the sound or
 foam caused by breaking waves
 surf vb : to ride the surf (as on a surf-
 board) — surf-er n — surf-ing a
 sur-face \sɜ-ˈfæs\ n 1 : the outside of
 an object or body 2 : outward aspect
 or appearance
 surface vb surfaced; sur-fac-ing
 1 : to give a surface to : make smooth
 2 : to rise to the surface
 surf-board \sɜ-ˈfɔrd\ n : a buoyant
 board used in riding the crests of waves
 sur-felt \sɜ-ˈfɛlt\ n 1 : EXCESS, SUM-
 ANUNDANCE 2 : excessive indulgence
 (as in food or drink) 3 : disgust caused
 by excess (as in eating and drinking)
 surfelt vb : to feed, supply, or indulge
 to the point of surfelt : CLOY
 surg abbr 1 surgeon 2 surgery; surger
 surge \sɜ-ˈdʒɜrj\ vb surged; surg-ing 1
 : to rise and fall actively : ROSS 2 : to
 move in waves 3 : to rise suddenly to a
 high value syn arise, mount, soar
 surge n 1 : a large billow 2 : a sweep-
 ing onward like a wave of the sea (a
 of emotion) 3 : a transient sudden in-
 crease of current in an electrical circuit
 sur-geon \sɜ-ˈdʒɜn\ n : a physician who
 specializes in surgery
 sur-gery \sɜ-ˈdʒɜr-i\ n, pl -ger-ies
 [ME *surgerie*, fr. OF *chirurgie*, *surge*
 fr. L *chirurgia*, fr. Gk *chirurgia*, fr.
chirurgos surgeon, fr. *chirouros*
 working with the hand, fr. *cheir* hand
 + *ergon* work] 1 : a branch of med-
 icine concerned with the correction of
 physical defects, the repair of injuries,
 and the treatment of disease esp. by
 operation 2 : a surgeon's operating
 room or laboratory 3 : work done by
 a surgeon
 sur-gi-cal \sɜ-ˈdʒɜr-ɪ-kəl\ adj : of, relating
 to, or associated with surgeons or sur-
 gery — sur-gi-cal-ly -k(ə)-li\ adv
 sur-ly \sɜ-ˈli\ adj sur-lier; sur-
 [alter. of ME *stirly* lordly, imperious, fr.
stir] : ILL-NATURED, CRABBED syn
 morose, glum, sullen, sulky, gloomy —
 sur-ly-ness n
 sur-mise \sɜ-ˈmɪz\ vb sur-mis-ed
 sur-mis-ing : GUESS syn conjecture
 — sur-mise n
 sur-mount \sɜ-ˈmaʊnt\ vb 1 : to be
 superior to : OVERCOME 2 : to get
 or lie at the top of syn overthrow
 rout, vanquish, defeat, subdue
 sur-name \sɜ-ˈnæm\ n 1 : NICKNAME
 2 : the name borne in common by mem-
 bers of a family
 sur-pass \sɜ-ˈpas\ vb 1 : to be su-
 perior to in quality, degree, or perfor-
 mance : EXCEL 2 : to be beyond the
 reach or powers of syn transcend
 outdo, outstrip, exceed — sur-pass-
 ing-ly adv
 sur-plice \sɜ-ˈplɪs\ n : a loose wide
 outer ecclesiastical vestment usu. a
 knee length with large open sleeves

sur-plus \sɜ-ˈ(r)-plɪs\ n 1
 left over : EXCESS 2 : the ex-
 cess over liabilities syn super-
 surplus
 sur-prise \sɜ-ˈ(r)-ˌprɪz\ n 1 :
 made without warning 2 :
 unaware 3 : something that
 : AMAZEMENT, ASTONISHMENT
 surpris also sur-prize
 prisad; sur-pris-ing 1 :
 upon and attack unexpected
 take unaware 3 : AMAZE 4
 or accomplish by means of
 syn waylay, ambush, astonish
 — sur-pris-ing adj — sur-
 ly adv
 sur-re-al-ism \sɜ-ˈri-ə-ˌli-
 z-əm\ n : art, literature, or theater
 characterized by fantastic or in-
 congruous or effects produced
 natural juxtapositions and
 tions — sur-re-al-ist \sɜ-ˈri-
 ə-ˌlɪst\ n — sur-re-al-istic \sɜ-ˈri-
 ə-ˌlɪk\ adj — sur-re-al-is-tic-al
 k(ə)-li\ adv
 sur-ren-dor \sɜ-ˈren-dər\ n
 ren-dered; sur-ren-
 \d(ə)-rɪŋ\ 1 : to yield to
 of another : give up under c
 2 : RELINQUISH
 surrender n : the act of giv-
 yielding oneself or the pos-
 something to another syn su-
 capitulation
 sur-rep-ti-tious \sɜ-ˈrep-tɪ-
 : done, made, or acquired
 : CLANDESTINE syn underbar-
 furly — sur-rep-ti-tious-
 sur-roy \sɜ-ˈrɔɪ\ n, pl sur-roy
 wheeled 2-seated horse-drawn
 sur-ro-gate \sɜ-ˈrɔ-gət, -g-
 : DEPUTY, SUBSTITUTE 2 : a
 in some states with author-
 probate of wills, the settl-
 estates, and the appoint-
 guardians
 sur-round \sɜ-ˈraʊnd\ vb 1
 close on all sides : ENCIRCLE
 close so as to cut off retreat
 sur-round-ings \sɜ-ˈraʊn-d-
 : conditions by which one is
 sur-tax \sɜ-ˈtæks\ n : tax
 tax over and above a normal
 sur-tout \sɜ-ˈtʊt\ n [F, fr.
 (fr. L *super*) + *tout* all, fr.
 whole] : a man's long close fit
 coat
 surV abbr survey; surveying
 sur-veil-lance \sɜ-ˈvɛl-l-
 yəns, -ˈvɛ-əns\ n : close w
 : SUPERVISION
 sur-vey \sɜ-ˈveɪ\ vb sur-vey-
 vey-ing 1 : to look over and
 closely 2 : to make a survey
 tract of land 3 : to view
 something as a whole syn be-
 observe, remark — sur-vey-
 sur-vey \sɜ-ˈveɪ\ n, pl sur-
 : INSPECTION, EXAMINATION
 general view (as ~ of English)
 3 : the process of finding and
 ing the contours, measure-
 position of a part of the earth
 also : a measured plan and d
 of a region

SUMMARY

REAL ESTATE STATUTES & ENFORCEMENT PROCEDURES

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12 AAC 02 Occupational Licensing Regulations
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Real Estate Commission Forms

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Office Registration
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License Complaint
Surety Fund Claim for Payment

THE REAL ESTATE SURETY FUND

Legislation enacted in 1974 created the Real Estate Surety Fund with a twofold purpose. First it provided indemnification up to \$10,000 per transaction for judgments awarded by the courts to persons who suffered a financial loss because of a licensee's actions that involved fraud, deceit, misrepresentation or conversion of trust funds. Second, it could be a source of funding for real estate education of both the public and licensees after reaching the specified minimum balance of \$250,000.

The Commission-sponsored seminars held periodically in major population areas of the state and the publication of the Listing and Earnest Money Manual are the tangible results of the second stated purpose.

The first and primary purpose of providing indemnity to satisfy uncollectable judgments against real estate licensees was begun when the first surety fund fees were paid into the fund concurrent with the 1976 biennial license renewal.

A 1980 legislative amendment removed the previous requirement that the claimant first obtain a civil court judgment and gave the Commission the quasi-judicial role of adjudicating the surety fund claims via administrative hearings. Since 1980, the basic procedures outlined in AS 44.62.330-630 have been used in conjunction with specific surety fund claim processing instructions set forth in the regulations (12 AAC 64.280-330) adopted by the Commission in December 1982.

Surety Fund Authorization

AS 08.88.450

The Real Estate Surety Fund is administered as a special account of the state's general fund. The primary source of revenue is the fee paid by each licensee in lieu of bonding. Filing fees paid by claimants that are retained by the Commission are also deposited into this account. It may not exceed \$500,000 and any amounts in excess of \$250,000 may be designated for real estate educational purposes, such as those named in AS 08.88.091.

AS 08.88.455

With each initial application for a real estate license and the subsequent renewals, the applicant must pay a surety fund fee of up to \$125. The Commission has the authority to adjust the amount of the fee by regulation, but may not make it higher than \$125 per licensing period. When making an adjustment, the anticipated needs for claims and educational expenses must be considered simultaneously with the statutory directive to maintain a minimum fund balance of \$250,000.

* { Expenditures from the fund for educational purposes are submitted in advance with the proposed budget for the Commission and appropriated from the fund by the legislature.

Supervising Licensed Personnel

- AS 0^o.88.071 (c) An individual licensee's conduct is not blamed on the broker unless he/she has knowledge of and agrees to it ahead of time or condones it by remaining silent. However, a broker is responsible for supervising the activities of the licensees in the office and for reviewing all agreements relevant to the transactions they produce. This encompasses listings, purchase agreements, addendums, occupancy agreements, etc. The broker is responsible for the conduct he/she should know about in the course of exercising adequate supervision, including trust account records of property owned and managed by the licensee.

Record Keeping

- AS 08.88.331 A licensee must process all transactions through his/her broker, and all money collected by the licensees must be turned over the broker. In turn, the broker must account for all monies he/she receives. Transactions where the licensee is a principal in the transaction must also be processed through the broker.
- AS 08.88.351 A major responsibility of the broker is keeping records. This includes:
- 1) Keeping a complete record of all the real estate transactions of the office for at least three years.
 - 2) Preparing a closing statement accounting for all money receipts and disbursements in each transaction.
 - 3) Maintaining a trust account for separate handling of other people's money temporarily entrusted to his/her keeping. Specific requirements for trust account records are discussed later in this section.
 - 4) Making trust account records available to the Commission for audit.
- 12 AAC 64.135 (a) The Commission must give a broker 72 hours notice to conduct an inspection of transaction records. The inspection is to be done during normal business hours (between 8 a.m. and 5 p.m. Monday through Friday). The Commission is entitled to see listing agreements, purchase agreements, trust account deposit and disbursement records, closing statements, and broker/licensee communications regarding transactions.
- 12 AAC 64.135 (b) The Commission may order a trust account audit without prior notice. The auditor must present the notice during normal business hours. In this circumstance, the broker can request a 24-hour delay, but the trust records must be secured by the auditor for the duration of the delay.

MAINTAINING AN ACTIVE REAL ESTATE LICENSE

An active license is one which is issued in conformity with the criteria described in the preceding section and has not been revoked, suspended, allowed to lapse, or placed on inactive status.

Once obtained, a license is valid as long as the person continues in that position, pays the appropriate renewal fees and does not incur disciplinary action resulting in a suspension or revocation of his/her license.

AS 08.88.455

Although Alaska does not have a continuing education requirement for license renewal, the Commission encourages licensees to further their professional growth by sponsoring educational courses funded by Surety Fund monies collected in excess of the minimum balance in the fund.

Activities Requiring a License

In general, people who provide real estate services for others for pay must be licensed. A person can sell his/her own property without a license; or a person fitting the exceptions listed in AS 08.88.421 need not be licensed, but usually, only a licensed person can sell property for others.

AS 08.88.161

The activities that are considered "dealing in real estate" for which a person must be licensed are:

- 1) Selling, exchanging, renting, leasing, auctioning or buying real estate.
- 2) Listing real estate for sale, exchange, rent, or lease. Listing means contracting with a property owner to act as his agent in marketing his property. The fee or commission paid for this service is usually based on a percentage of the sale price.
- 3) Collecting rent for the use of real estate.
- 4) Dealing in real estate options for the improvement, purchase or lease of real property. An option is the right to purchase, lease or improve the property in the future at a predetermined price.
- 5) Helping to find a buyer for a parcel of real property and/or assisting in the negotiation of a real estate transaction.
- 6) Presenting oneself to the public as doing any of these things.
- 7) Trying to offer to do any of the above listed things.

licensed broker. If ever convicted or any of the specified felony charges, the complete sentence must have been served.

Examination Content

AS 08.88.191

The Commission is required to offer a real estate exam at least once a year. In Anchorage it is given twelve times a year; in Fairbanks, Juneau and Kenai the exam is offered quarterly. Other locations are by individual application.

There are two versions: the salesperson's and the broker's exam. Alaska is one of the 25 states whose Commission contracts with Educational Testing Service (ETS) of New Jersey to prepare, administer and grade both versions of the exam. The Commission is responsible for reviewing exam contents, but ETS retains full copyright over its examinations, including the portions covering the individual state's statutes.**

The broker's exam is a little longer and more difficult than the salesperson's, but both cover essentially the same material. Five hours are allowed to complete either exam.

Approximately three-fourths of the exam is uniform for all states on general real estate principles and includes such topics as: real estate contracts, financing, deeds, interest in real property, condominiums, fair housing, agency, property management, settlement procedures, appraisals, planning and zoning, property descriptions, and taxes and assessment. The remainder is tailored to the statutes and regulations of each state. In Alaska it encompasses the following statutes and regulations with additional emphasis in the broker's exam on trust account and supervisory responsibilities:

- AS 08.88.011-500 Real Estate Brokers and Salesmen
- AS 34.03.010-380 Uniform Residential Landlord and Tenant Act
- AS 34.08.010-995 Uniform Common Interest Ownership Act
- AS 45.55.010-270 Alaska Securities Act of 1959
- 12 AAC 64.010-950 Real Estate Regulations

A copy of these statutes can be obtained for \$15 plus \$5 for mailing from the Commission office. Also available is an information bulletin published by ETS that outlines testing and scoring procedures and provides sample questions for both exams.

Administration of the Exam

AS 08.01.050

Exams are given on the fourth Saturday of the month unless that is a holiday weekend. In those months, the exam is on the third Saturday. Notices are published in local newspapers prior to the exam in each community where it is offered. The application forms to preregister for taking the exam are available at the office or from most of the pre-licensing schools. An application form and the \$65 exam fee should be mailed to ETS before the first of the month in which an individual wishes to take the exam. He/she should

AS 08.88.221
12 AAC 64.910

12 AAC 64.910

examination, conspiracy to defraud creditors, or any other felony involving moral turpitude, or, if convicted of such an offense, the person has completed the sentence imposed upon conviction, and if the person is employed by a real estate broker. Unless the salesman fails to pay the biennial renewal fee or unless the real estate salesman's license is suspended or revoked under AS 08.88.071(a)(3), a real estate salesman's license continues in effect so long as the salesman is employed as a salesman by a licensed real estate broker. If the salesman stops being employed as a real estate salesman, the real estate salesman's license is suspended from the time the salesman stops until the salesman again is employed as a salesman by a licensed real estate broker.

(d) A licensee shall promptly inform the commission of a change in business association that affects the status of the licensee's license under this section. (sec. 1 ch 95 SLA 1964; am sec. 3 ch 130 SLA 1966; am sec. 1 ch 55 SLA 1969; am secs. 5-7 ch 28 SLA 1974; am secs. 12-15 ch 167 SLA 1980)

NOTES TO DECISIONS. Relationship between brokers and salespersons. — The Alaska statutory system governing real estate brokers and salespersons implies that the relationship is one of employer and employee. Calvo v. Calhoun, Sup. Ct. Op. No. 1368 (File No. 2839), 559 P.2d 111 (1977)

Applied in Black v. Dahl, Sup. Ct. Op. No. 2318 (File No. 4770), 625 P.2d 876 (1981).

Collateral references. — Real estate broker. 39 ALR2d 606.

Attorney's right to act as real estate broker without having been licensed as such. 99 ALR2d 1151.

Licensed real estate broker's right to compensation as affected by lack of license on the part of partners, coadventurers, employees, or other associates. 8 ALR3d 523.

Procurement of real estate broker's license subsequent to execution of contract for services as entitling broker to compensation for service. 80 ALR3d 318.

Necessity of having real estate broker's license in order to recover commission as affected by fact that business sold included real property. 82 ALR3d 1139.

→ **Sec. 08.88.181. Content of examination.** (a) The real estate examination may include, but is not necessarily limited to, questions on business ethics; arithmetic; elementary principles of land economics and appraisal; the general principles in state statutes relating to deeds, mortgages, real estate contracts, subdivisions, legal descriptions, building restrictions, agency and brokerage; and the general provisions of this chapter and of the regulations of the commission.

(b) The real estate salesman examination covers the same subjects as the real estate broker examination, but is less difficult.

(7)

→ (c) The only purpose of an examination under this chapter is to disqualify those whose lack of ability to participate in real estate transactions would create a serious risk of serious financial loss to members of the public. (sec. 1 ch 95 SLA 1964; am sec. 2 ch 55 SLA 1969; am sec. 16 ch 167 SLA 1980)

Sec. 08.88.191. Administration of examination. (a) The commission shall offer written examinations at periodic intervals but at least once a year.

(b) If the commission contracts with a national testing service to prepare, administer and grade examinations,

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

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

(c) An applicant who fails the written examination may request that the examination be reevaluated. The commission shall provide by regulation for a system of reevaluating examinations on request of an applicant who fails the examination. The system provided by the commission may provide for reevaluation by the testing service or by any other person. (sec. 1 ch 95 SLA 1964; am sec. 2 ch 108 SLA 1970; am secs. 1, 2 ch 24 SLA 1972; am sec. 8 ch 28 SLA 1974; am sec. 17 ch 167 SLA 1980)

Sec. 08.88.201. Reexamination. A person who fails an examination may apply for a subsequent examination, but shall pay the application fee for each application. (sec. 1 ch 95 SLA 1964; am sec. 32 ch 6 SLA 1984)

Editor's notes. — The second sentence of this section is now obsolete. AS 08.88.101(a) as it existed

Sec. 08.88.061. Assistants. The commission may employ assistants to

- (1) prepare questions on examinations;
- (2) grade examinations;
- (3) investigate alleged violations of this chapter. (sec. 1 ch 95 SLA 1964; am sec. 57 ch 218 SLA 1976; am sec. 4 ch 167 SLA 1980)

Sec. 08.88.071. Duties of the commission. (a) The commission shall

- (1) pass on qualifications of applicants for licenses and issue licenses to those who qualify;
- (2) prepare and grade examinations:
 - (3) after hearing, have the authority to suspend or revoke the license of a licensee who
 - (A) with respect to a real estate transaction
 - (i) made a substantial misrepresentation;
 - (ii) made a false promise likely to influence, persuade, or induce;
 - (iii) in the case of a real estate broker, pursued a flagrant course of misrepresentation or made a false promise through an agent, associate real estate broker, or real estate salesman;
 - (iv) has engaged in conduct that is fraudulent or dishonest;
 - (v) violates AS 08.88.391;
 - (B) procures a license by deceiving the commission, or aids another to do so;
 - (C) has engaged in conduct in which the commission had no knowledge at the time the licensee was licensed demonstrating the licensee's unfitness to engage in the business for which the licensee is licensed;
 - (D) knowingly authorizes, directs, connives at or aids in publishing, distributing, or circulating a material false statement or misrepresentation concerning the licensee's business or concerning real estate for sale in the licensee's business in this or any other state;
 - (E) if a real estate broker, wilfully violates AS 08.88.171(d) or 08.88.291;
 - (F) if an associate real estate broker, claims to be a real estate broker, or, if a real estate salesman, claims to be a real estate broker or associate real estate broker;
 - (G) if a real estate broker, employs an unlicensed associate real estate broker or real estate salesman;
 - (H) if an associate real estate broker or real estate salesman, fails immediately to turn money collected in a real estate transaction over to the employing real estate broker;
 - (4) prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations promulgated under this chapter;

S B

296

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4.21.89
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

L&C
FIN

4/20/89

DATE TURNED INTO OFFICE 4.26.89

Mr. President:

T&RA Committee considered SB 296

establishing the business incentive program; efd

and recommended:

- replace with CS _____ same title
- attached amendment(s) and new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

FISCAL NOTE(S) attached zero
 appropriation no FN attached

COMMERCE
 fiscal impact
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Mr. Squitieri - if amended

Pat Lambert needs work

Bill Adams - No Rec
Chair's signature and recommendation

Committee backup attached

SB 296: "An Act establishing the business incentive program , and providing for an effective date."

SB 296 establishes the business incentive program in the Alaska Industrial Development and Export Authority (AIDEA). Money in the business incentive revolving fund is to be used for the purpose of pass-through grants to municipalities for training, making interest payments for installation and purchase of manufacturing equipment and for infrastructure development associated with the project. The source of funds is not delineated in the bill.

A business would submit an application to the municipality which, after approval, would then forward it to AIDEA. An application for such a grant must be acted upon by AIDEA within 30 days. Funds would flow from the authority back to the municipality. The grant is limited to \$500 for each job created, plus whatever the municipality adds on for infrastructure development.

Should the business not create the jobs anticipated, the bill requires that "all or a portion" of the grant be repaid. Repayment would be for principal of the grant plus estimated inflation expressed as an interest rate. The principal would return to the grant fund and the interest would go to the general fund.

Grants must be made through a municipality with no municipality securing more than 25% of the total money available. In addition, no more than 50% of the money available can be granted in any one judicial district in any calendar year. As written (page 2, lines 12-16), the bill allows associated infrastructure to be outside the above caps.

The department has no specific amendments at this time, but would like to bring up several questions:

1. "Privately owned business" is not defined. Does it include corporations that are publicly owned (shares traded on an exchange) or is the program limited to sole proprietorships and partnerships?
2. What happens if there is no municipality and a business needs assistance?
3. The AIDEA board meets once a month, so 30 days could be very restrictive in terms of reviewing any grant application and taking board action.
4. How does this program fit into the Department of Labor's Job Training Program and the Department of Community and Regional Affairs' and Department of Administration's pass-through grant programs? The department feels that the program must better be located within DC&RA. As a grant program, it does not fit the traditional operations of the authority.
5. What is the source of funds for the grants?



Larry Merculieff, Commissioner

Date: 4/25/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act establishing the business
incentive program
Sponsor: Rodey, Faiks and Pearce
Requester: Senate C & RA

Agency Affected: Commerce & Economic Dev.
BRU: Alaska Industrial Development
and Export Authority
Components: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 46.9 | 46.9 | 46.9 | 46.9 | 46.9 |
| TRAVEL | | 7.0 | 7.0 | 7.0 | 7.0 | 7.0 |
| CONTRACTUAL | | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| SUPPLIES | | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 |
| EQUIPMENT | | 12.0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 77.4 | 65.4 | 65.4 | 65.4 | 65.4 |

| | | | | | | |
|---------|--|---|---|---|---|---|
| CAPITAL | | 0 | 0 | 0 | 0 | 0 |
|---------|--|---|---|---|---|---|

| | | | | | | |
|---------|--|---|---|---|---|---|
| REVENUE | | 0 | 0 | 0 | 0 | 0 |
|---------|--|---|---|---|---|---|

FUNDING: (Thousands of dollars)

| | | | | | | |
|---------------|--|------|------|------|------|------|
| GENERAL FUND | | 77.4 | 65.4 | 65.4 | 65.4 | 65.4 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL-TIME | | 1 | 1 | 1 | 1 | 1 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS: (Attach a separate page if necessary.)

See attached for detail.

Prepared by: Bertram L. Wagnon, Executive Director Phone: 274-1651
Division: Alaska Industrial Development and Export Authority Date: 4-24-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/25/89

Distribution (by preparer):

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

3958D/042589b

FY 90

Personal Services:

Range 18, Grants Administrator
plus benefits \$46,935

Travel: In-State \$ 5,000
Out-of-State \$ 2,000

Travel to meet with various municipalities and explain program. Meet with municipalities to understand the grant packages. One or two trips outside to meet with businesses to explain and negotiate grant terms and conditions.

Contractual: \$10,000

Postage, communications, printing, legal.

Supplies: \$ 1,500

Equipment (one time costs): \$12,000

Desk, chair, typewriters, calculator, file cabinets, table, side chair, computer terminal.

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

3111 C. St., Suite 510
Anchorage, Alaska 99503
(907) 561-7618

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3793

DATE: April 27, 1989

TO: Senator Dick Eliason, Chair
Senate Labor and Commerce

FROM: Senator Pat Rodey *Pat*

SUBJECT: SB 296, Business Incentive Program
(enabling legislation)

I would like to request the Senate Labor and Commerce Committee to consider scheduling Senate Bill 296, an act establishing the Business Incentive Program.

The purpose of this legislation is to establish a program through the Alaska Industrial Development Authority to enhance the ability of local governments to attract new businesses to their communities.

This program would allow businesses to buy down the interest rates on loans for the purchase of manufacturing equipment, pay for infrastructure related to the project, and onetime job training expenses for new job creation.

Local governments would make application to the fund on behalf of private companies. They would be required to bring a formal resolution in favor of the project and demonstrate that all other possible funding sources have been fully utilized. No single municipality could spend more than 25 percent of monies available in the fund in any year, thus ensuring equitable geographic distribution. This legislation would apply to new projects as well as the expansion of existing primary industry projects.

If you are interested in co-sponsorship of this legislation please call my legislative aide, Mark Begich at 465-3793 or in Anchorage at 337-6748.

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3 PROPOSED COMMITTEE SUBSTITUTE FOR

4 SENATE BILL 298

5 IN THE LEGISLATURE OF THE STATE OF ALASKA

6 SIXTEENTH LEGISLATURE - FIRST SESSION

7 A BILL

8 For an Act entitled: "An Act relating to waste collection and
9 recycling."

10
11 Section 1. FINDINGS AND POLICY. (a) The legislature finds
12 that

13 (1) the recycling and reuse of garbage, refuse, trash or
14 other waste material ("Waste") and the material, resource, and
15 energy recovery from Waste would substantially extend the useful
16 life of existing solid waste disposal sites in the State of
17 Alaska, reduce the need for new landfills, save Alaska's environ-
18 ment, reduce outdoor pollution, and create jobs in the state;

19 (2) refuse utilities are ideally situated, to collect, and
20 recycle waste and to engage in recovery activity;

21 (3) the recycling and recovery activity is in its infancy
22 in the nation and particularly in the State of Alaska, derives
23 little or no profits for those engaged in the activity, and
24 requires that the legislature promote the activity whenever
25 possible;

26 (4) substantial volumes of Waste are needed to make the
27 recycling and recovery business economically viable which
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3 requires that certificated refuse utilities collect and control
4 the available waste in their service areas;

5 (5) it is in the public interest to encourage the existing
6 refuse utilities to develop the necessary technology and business
7 opportunities to engage in economical and efficient waste re-
8 cycling and recovery activities.

9 (b) It is the policy of the State to encourage Waste re-
10 cycling and recovery activities and to assist and encourage
11 refuse utilities to develop Waste recycling and recovery tech-
12 nology and to conduct an economical and efficient Waste recycling
13 and recovery business.

14 Section 2. AS 42.05.221 is amended to read:

15 (a) A public utility may not operate and receive compen-
16 sation for providing a commodity or service after January 1, 1971
17 without first having obtained from the Commission under this
18 chapter a certificate declaring that public convenience and
19 necessity require or will require the service. A certificate to
20 furnish collection and disposal service of garbage, refuse, trash
21 or other waste material in an area already served by a certif-
22 icated refuse utility may only be granted if the operating and
23 capital expense incurred by the utility and its affiliated inter-
24 ests on waste recovery is not 3% or more of the annual operating
25 and capital expense of the utility and the refuse utility will
26 not provide service to the satisfaction of the Commission. The
27 operating and capital expense incurred by the utility and its
28 affiliated interests for waste recovery for the 5 years prior to

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3 the filing of an application to serve in an area already served
4 by a certificated refuse utility may be averaged to calculate the
5 3% annual operating and capital expense figure. Where a public
6 utility provides more than one type of utility service, a sepa-
7 rate certificate of convenience and necessity is required for
8 each type. A certificate shall describe the nature and extent of
9 the authority granted in it, including, as appropriate for the
10 services involved, a description of the authorized area and scope
11 of operations of the public utility.

12 Section 3. AS 42.05.381 is amended by adding a new
13 subsection to read:

14 (e) All rates charged to a municipality by a utility fur-
15 nishing collection and disposal service of garbage, refuse, trash
16 or other waste material shall be regulated by the commission and
17 may not be exempt from regulation under AS 42.05.711(d).

18 (f) The commission shall adopt regulations for electric
19 cooperatives and for utilities which furnish collection and
20 disposal service of garbage, refuse, trash, or other waste mate-
21 rial setting a range for adjustment of rates by a simplified rate
22 filing procedure. A cooperative or utility furnishing collection
23 and disposal service of garbage, refuse, trash or other waste
24 material may apply for permission to adjust its rates over a
25 period of time under the simplified rate filing procedure regu-
26 lations. The commission shall grant the application if the
27 cooperative or the utility furnishing collection and disposal
28 service of garbage, refuse, trash, or other waste material

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3 satisfies the requirements of the regulations. The commission
4 may review implementation of the simplified rate filing procedure
5 at reasonable intervals and may revoke permission to use the
6 procedure or require modification of the rates to correct an
7 error.

8 Section 4. AS 42.05.711(d) is amended to read:

9 (c) The commission, on a finding that no legitimate public
10 interest will be served, may exempt a utility from all or any
11 portion of this chapter other than AS 42.05.221 - AS 42.05.281.

12 Section 5. AS 42.05.720 is amended by adding new paragraphs
13 to read:

14 (1) "resource recovery" means the process of obtaining
15 useful material or energy resources from waste;

16 (2) "energy recovery," means recovery in which all or a
17 part of the waste materials are processed to utilize the heat
18 content or other forms of energy, of or from the material;

19 (3) "material recovery," means any process of obtaining
20 from waste, by presegregation or otherwise, materials which still
21 have useful physical or chemical properties after serving a
22 specific purpose and can, therefore, be reused or recycled for
23 the same or other purpose;

24 (4) "recycling," means any process by which solid waste
25 materials are transformed into new products in such a manner that
26 the original products may lose their identity;

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(5) "reuse," means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity;

(6) "waste" means garbage, refuse, trash or other waste material;

(7) "waste recovery" means resource recovery, energy recovery, material recovery, recycling or reuse of waste.

Section 6. No certificate may be granted to furnish collection and disposal service of garbage, refuse, trash or other waste material in an area already serviced by a certificated refuse utility for 1 year from the effective date of this Act.

Section 7. This Act takes effect immediately under AS 01.10.070(c).

CITY OF FAIRBANKS
Office of the City Attorney
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4683
907-459-6750

February 22, 1989

RECEIVED

MAR 31 1989

Fax to: 465-2161

Commission John Andrews
Department of Administration
P.O. Box C
Juneau, Alaska 99811

Deputy City Mgr.
UTILITIES

Re: Comments on Telecommunications Intent Language,
Preliminary Report, February 1, 1989

Dear Commission Andrews:

The City of Fairbanks Municipal Utilities System (FMUS) appreciates the opportunity to comment on your Telecommunication Intent Language, Preliminary Report, dated February 1, 1989. I am sorry for not meeting your deadline of February 17, 1989 but FMUS did not receive a copy of the report until it was telecopied to us yesterday by the Alaska Telephone Association. Even though we are listed on the distribution list we never received a copy.

IS THE STATE IN FACT SAVING MONEY?

The City of Fairbanks certainly commends any State Agency for trying to conserve public money. However, after reading your report we still are not convinced that when all the capital cost of building, maintaining and operating the State network are considered that the State is in fact saving money. The actual cash outlay paid to third parties may be \$950,838 less. However, your report does not mention that the State's "costs" includes all the yearly depreciation on capital cost of State network (paid with capital appropriations to various departments) and wages and fringes of state workers to operate and maintain the State network. Many other indirect expenses such as the cost of office space and utilities may also be unassigned to the network. All regulated telephone companies, both local and inter-exchange are required to maintain all such records in a standardized format pursuant to FCC Title 47 Part 36 guidelines so that they can be easily compared and audited. The APUC also requires Alaska LEC to follow part 36 rules with only slight deviation. Lack of a requirement for enterprise fund accounting or incentives to properly maintain and report such costs in a profit/loss format is a problem with a State network financed with public money.

WHO PAYS FOR SUCH SAVINGS (IF ANY)?

FMUS takes issue with the concept that it and other local exchange companies are unaffected by loss of State traffic on public switched network.

Here again, taxpayers who make instate telephone calls are paying for these uneconomic savings.

While we do not have the current data to determine exactly how much local rates and instate toll rates will have to be raised because of the State Network, it is beyond question that there will be increases. The only thing we do not yet know is how much. These increases may exceed the amount of "saving" by State agencies. Other factors will also affect these rates (most likely reductions in subsidies from lower 48), but these factors are not within the control of the State of Alaska. FMUS did receive less in intrastate toll settlements in 1987 as mentioned in the report but this was NOT due to a reduction in the number of telephone customers in Fairbanks. FMUS increased the number of telephone customers and access in both 1987 and 1988 and is now at an all time high.

I disagree strongly with your conclusion that State network will not have an adverse affect on both local rates for FMUS and local telephone companies in Anchorage and Juneau as well as on intrastate telephone rates. Any time you have a duplication of plant-two systems in place paid for by the same population of users, this has to lead to additional cost for at least some of the users. If the State is saving money then the cost must be borne by the remaining users. The remaining users are State taxpayers who have financed the State network through public money and then pay for it again through higher local and instate toll rates. This cannot be wise public policy.

The report also infers that the LECs do not have the technology to handle the states requirements. ATU, FMUS, Juneau and Ketchikan all have Northern Telecom DMS 100 switches that are "State of the Art" and perhaps offer a greater technological flexibility than the state enjoys with its current system.

COMPARISONS WITH OTHER STATES

I question the validity of comparisons to what is done in other states. COMPARISONS to other states where the state's intrastate usage may be less than one percent of intrastate long distance telephone usage is not really comparable to Alaska where the State has a much larger percentage of intrastate calling. I do not know the exact percentage of intrastate long distance telephone usage made by the State of Alaska, but I have heard that it may be as high as 15% or more. While bypass by a single customer with 1% of intrastate toll volume will have the adverse consequences mentioned above, that (relatively) small customer will not have the effect of a customer who has ten or fifteen percentage of the intrastate toll volume.

CORRECTION

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

CITY OF FAIRBANKS
Office of the City Attorney
410 CUSHMAN STREET
FAIRBANKS, ALASKA 99701-4683
907-459-6750

February 22, 1989

RECEIVED

MAR 31 1989

Fax to: 465-2161

Commission John Andrews
Department of Administration
P.O. Box C
Juneau, Alaska 99811

Deputy City Mgr.
Utilities

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WHO PAYS FOR SUCH SAVINGS (IF ANY)?

FMUS takes issue with the concept that it and other local exchange companies are unaffected by loss of State traffic on public switched network.

In Section 6 of the Preliminary Report is the following statement:

Alascom shares toll revenues with the local exchange companies based on costs. If no State network voice traffic originated or terminated in a local exchange company service area, then that company's costs have not been affected by the network. The company's settlement amount can change only if Alascom changes the rate of return it uses for settlement purposes.

INCREASE IN LOCAL TELEPHONE RATES

The above underlined sentence is very misleading. FMUS does receive settlements from Alascom for intrastate calls based its cost. Also, the discussion in the report about the settlements process is correct in describing that costs of local telephone companies are divided into local, intrastate and interstate jurisdictions. This allocation of costs to the different jurisdiction is important because if a very large customer such as the State of Alaska does not use the public switched network then there can be a significant decrease in the percentage of FMUS cost allocated to intrastate jurisdiction. What this means is that a higher percentage of the cost formerly allocated to intrastate jurisdiction is allocated to the interstate jurisdiction and to the local jurisdiction. The Alaska Public Utilities Commission (APUC) will allow this higher percentage of cost to be passed on to local rate-payers. Therefore, FMUS will not lose revenue IF it raises local rates. However, these local rate payers here, and anywhere else calls are made using the State Network rather than the public switched network, are the same taxpayers that the division of Telecommunications is trying to economize for.

INCREASE IN INTRASTATE TELEPHONE RATES

In addition, Alascom will be permitted by the APUC to recover its entire cost of providing intrastate telecommunications service. By the State constructing and using its own network parallel to public switched network there will be very little, if any, reduction in costs of Alascom operating the public switched network. Therefore, if a significant customer such as the State of Alaska leaves the public network then the remaining customers making intrastate calls will have to bear this cost formerly paid by the State in intrastate tolls. Therefore, intrastate rates will have to be increased by the APUC. Here again the "savings" by the State in toll charges will be borne by business and residential intrastate customers through higher instate telephone rates. These higher intra-state telephone rates in turn can motivate other large users to also bypass (leave the public network) leading to more pressure on intra-state and local rates.

Here again, taxpayers who make instate telephone calls are paying for these uneconomic savings.

While we do not have the current data to determine exactly how much local rates and instate toll rates will have to be raised because of the State Network, it is beyond question that there will be increases. The only thing we do not yet know is how much. These increases may exceed the amount of "saving" by State agencies. Other factors will also affect these rates (most likely reductions in subsidies from lower 48), but these factors are not within the control of the State of Alaska. FMUS did receive less in intrastate toll settlements in 1987 as mentioned in the report but this was NOT due to a reduction in the number of telephone customers in Fairbanks. FMUS increased the number of telephone customers and access in both 1987 and 1988 and is now at an all time high.

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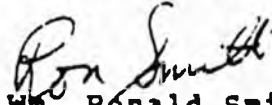
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CONCLUSION

The Preliminary Report mentions that there is a legislative audit being concluded. We ask that the Department of Administration request that the auditor restate their findings in a format consistent with FCC Part 36 rules with recognition of all direct, indirect and allocated costs including depreciation and amortization. If all these costs are included I am sure that there is not an actual "savings". Also, I hope these comments will induce the Department of Administration and the Telecommunications Information Council to reconsider its conclusion that the State Network is wise public policy.

Sincerely,



Wm. Ronald Smith
Deputy City Attorney

tlb

xc: B. Phillips, City Manager
V. Gillespie, Deputy City Manager - Utilities
Alaska Telephone Association
Lorraine Plaga, APUC

S B

297

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Revenue
 Title: Licensing, sale, transportation & possession of alcoholic beverages relating to local option elections BRU: Alcoholic Beverage Control Board
 Sponsor: Senator Binkley Components: _____
 Requestor: Senate Labor & Commerce Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|-------------------|-------|-------|-------|-------|-------|-------|
| 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 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

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)

Prepared by: Patrick L. Sharrock, Director Phone: 277-8638
 Division: Alcoholic Beverage Control Board Date: May 1, 1989
 Approved by Commissioner: Hugh Malone Date: 5/2/89
 Agency: Department of Revenue

Distribution (by preparer):

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

Senator Johne Binkley

Senate Finance Committee

P.O. Box V • Juneau, Alaska 99811 • (907) 465-4985

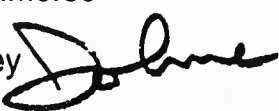


Finance Committee
Co-Chairman

MEMORANDUM

April 25, 1989

TO: Senator Dick Eliason, Chairman
Senate Labor & Commerce

FROM: Senator Johne Binkley 

RE: SB 297, relating to licensing, sale, transportation, importation, and possession of alcoholic beverages; relating to local option election ballots; and providing for an effective date.

I introduced the following bill in order to take care of some problems with the local option statutes. I've attached a sectional analysis for your review. As you will see, most of these amendments are technical.

The only change that might be considered substantive at all is in Section 8 which will allow an established village to have the local option ballots printed in both English and a second language of its choice.

In many villages around the State, the elders do not speak English but instead speak their traditional language. A question on a local option is very important. I feel it is critical that people understand what they're voting on. That is the purpose behind Section 8.

We've been working on this bill for quite some time in an effort to make sure it covers all the problems identified to date. I feel confident that is the case and, even though it is late in the session, I would greatly appreciate your scheduling it for a hearing prior to adjournment. Please contact Janice Adair in my office (4985) if you have any questions.

Thank you for your favorable consideration of this request.

MEMORANDUM

April 24, 1989

TO: Senate Labor & Commerce Committee
FROM: Senator John Binkley
RE: Sectional Analysis of SB 297, amendments to Title 04

Section One. This section ties into the new notice requirements for package store licensees in Section Nine. It would require the Board to give authorization to a package store before they can sell in response to a written order and that authorization is only good for only year at a time. Currently, a package store licensee has to just inform the Board of its intent to sell by mail.

Section Two. This would bring the amount of distilled spirits that can be mail ordered in an area with restricted sales into compliance with the presumption provision. As you'll recall, there was an amendment on the floor of the House at the end of last session which increased the mail order amount to 18 liters. This would drop it back down to 12.

Section Three. This change will allow the ban on possession to take effect 60 days following certification of the election **IF** there are no licensed premises in the established village. If there is a licensed premises, then the effective date remains 90 days after certification of the election.

Section Four. Makes the same change as Section Two, above as it relates to municipalities.

Section Five. This is one of the more confusing sections and requires some background information.

Under current law at AS 04.11.320, the ABC Board may not issue a license in an established village where there is no licensed premises **UNLESS** there has first been a local option election on either prohibiting sales and the vote was no **OR** on the question of a selected licensee and the vote was **YES**.

Because the local option laws are complex, many villages which propose to have a vote on a selected licensee have not realized that voting **NO** on the type of licensee would not allow them to have another kind of licensee instead. A **NO** vote on this question when there is no licensed premises does not allow the Board to issue another kind of license.

This section would require the Board to make this known to the residents of a village which is going to have an election on one of these questions. The Board would

Sectional Analysis

have to post written notice of the requirements of AS 04.11.320 in two different public locations within the village.

Section Six. Deletes the reference to a "combination of questions" on a local option ballot for a municipality. This clarifies that only one question may be voted during an election.

It also provides that the local governing body may prepare the election ballots in English and a second language specified by the body. This does not give a municipality any additional powers but simply spells out in statute that they have this ability.

Section Seven. Makes the same deletion of "combination of questions" for established villages.

Section Eight. This subsection would allow the governing body of an established village to request that the local option ballot be written in both English and another language. The request would have to be made to the Lt. Governor's office at least 90 days before the election in order to give his office time to prepare the ballots.

Section Nine. Requires that the ABC Board notify the Department of Transportation of the adoption of a local option and requires that DOT post notice of the ban of possession or sale and importation along the boundaries of the community if it is on a state highway that is connected to the state highway system.

If a community people can drive through adopts such an option, the prohibition should be disclosed to them.

This section also expand the notice requirements of a community that has adopted a local option. Under current law, if a community bans the sale and importation, it is required to post notice of the ban within the community. This section extends that requirement to the ban on possession.

It also includes a change to the Notice requirements and ties into Section One, above. Under current law, the Board must send notice every package store licensee by registered mail of a new local option adoption. This amendment would require the Board to notice only those who have been authorized to sell in response to a written order and allow the notice to be sent by certified mail.

Section Ten. Last session in SB 371, it was required that alcohol being shipped into a community that had restricted the sale of alcohol be labeled and have an itemized invoice on the outside of the box. However, air carriers were not given any responsibility for checking to see if people were shipping alcohol.

While we do not want air carriers to suffer any liability for shipping alcohol that is not properly labeled, we do want them to at least ask if a box contains alcohol and

have a label available for the travellers use if it does. This section accomplishes that by stating a carrier may not knowingly ship unlabeled alcohol.

In order to make that requirement workable, it was necessary to revise the itemized invoice requirement. The ABC Board had interpreted the language from last year as allowing only the licensee to prepare the invoice. This section will allow the purchaser to provide the invoice. This could be the sales receipt.

Section Eleven. This simply adds posting the signs required in Section Nine to the duties of DOT.

S B

298

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Deregulation of refuse
 utilities
 Sponsor: Labor & Commerce Committee
 Requestor: Labor & Commerce Committee

Agency Affected: Commerce & Economic Dev.
 BRU: APUC
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 91 | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 0 | 0 | 0 | 0 | 0 |

| | | | | | | |
|---------|---|---|---|---|---|---|
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

| | | | | | | |
|---------|---|---|---|---|---|---|
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |
|---------|---|---|---|---|---|---|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: T.S. Moninski II, Executive Director Phone: 276-6222
 Division: Alaska Public Utilities Commission Date: 2/27/90

Approved by Commissioner: Larry Mercurieff *Larry Mercurieff* Date: 2/27/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 LW/dg16391D/22790a

6-1240E -
Cramer
2/8/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE
 2 CS FOR SENATE BILL NO. 298 (L&C)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to waste collection."

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

8 * Section 1. AS 29.35.050(b) is amended to read:

9 (b) The governing body of a municipality may not prohibit a
 10 person holding a valid certificate from the Alaska Public Utilities
 11 Commission from continuing to collect and dispose of garbage, refuse,
 12 trash, waste material, or provide other related services in an area in
 13 the municipality if the certificate authorizes the collection and
 14 disposal of [GARBAGE, REFUSE, TRASH, OR OTHER] waste material and
 15 providing of other services in the area, and the certificate was
 16 originally issued before the municipality provided similar services.
 17 Except as provided in (d) of this section, a [A] municipality may not
 18 provide for a garbage, refuse, trash, or other waste material collec-
 19 tion and disposal service in an area to the extent it lies in an area
 20 granted to a garbage, refuse, trash, or other waste material carrier
 21 by a certificate issued by the Alaska Public Utilities Commission to
 22 the carrier until it has purchased the certificate, equipment and
 23 facilities of the carrier, or that portion of the certificate that
 24 would be affected, at fair market value. A municipality may exercise
 25 the right of eminent domain to acquire the certificate, equipment, and
 26 facilities of the carrier, or that portion of the certificate that
 27 would be affected.

28 * Sec. 2. AS 29.35.050 is amended by adding a new subsection to read:

29 (d) A municipality may establish an intermediate transfer site

1 for the collection and disposal of waste material without purchasing
2 the certificate, equipment, or facilities of a waste material carrier
3 certificated by the Alaska Public Utilities Commission. The municipi-
4 pality may, without compensating a certificated waste carrier operat-
5 ing in the area, provide for or contract with a certificated or non-
6 certificated entity to provide for the collection and disposal of
7 waste material

8 (1) left at the intermediate transfer site; or

9 (2) generated by the municipal government or by the municipi-
10 pal school district.

11 * Sec. 3. AS 42.05.711 is amended by adding a new subsection to read:

12 (m) The collection and disposal, under AS 29.35.050(d), by a
13 municipality of waste material deposited at an intermediate transfer
14 site and of waste material generated by the municipality itself or by
15 the municipal school district is exempt from this chapter.
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Original sponsor(s): Labor & Commerce Committee

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 298 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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12 TRASH,] waste material [,] or provide other related services in an
13 area in the municipality if the certificate authorizes the collection
14 and disposal of [GARBAGE, REFUSE, TRASH, OR OTHER] waste material and
15 providing of other services in the area, and the certificate was
16 originally issued before the municipality provided similar services.
17 Except as provided in (d) of this section, a [A] municipality may not
18 provide for a [GARBAGE, REFUSE, TRASH, OR OTHER] waste material col-
19 lection and disposal service in an area to the extent it lies in an
20 area granted to a [GARBAGE, REFUSE, TRASH, OR OTHER] waste material
21 carrier by a certificate issued by the Alaska Public Utilities Commis-
22 sion to the carrier until it has purchased the certificate, equipment
23 and facilities of the carrier, or that portion of the certificate that
24 would be affected, at fair market value. A municipality may exercise
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13 site and of waste material generated by the municipality itself is
14 exempt from this chapter.
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ALASKA REFUSE UTILITIES ASSOCIATION

Suggested amendments to H.B. 499:

1. Page 2, line 9--delete the following:

"(2) generated by the municipal government, [OR BY THE MUNICIPAL SCHOOL DISTRICT.]"

2. Page 2, line 19--delete the following:

"site and of waste material generated by the municipality, [OR BY THE MUNICIPAL SCHOOL DISTRICT IS EXEMPT FROM THIS CHAPTER.]"

3. Page 2, line 21--add the following:

"Sec. 5. AS 42.05.____ is amended by adding a new section to read:

The legislature finds that authorizing competing public utilities for the collection and disposal of garbage, refuse, trash, and other waste materials may be injurious to the progress of waste recovery and recycling of materials and is a policy matter reserved for the legislature. The Alaska Public Utilities Commission is instructed to not issue competing certificates for the collection and disposal of garbage, refuse, trash, or other waste materials until the legislature finds that competition in this service is in the public interest."

4. Page 2, line __, add the following:

"Sec. 6. Sections 1, 2 and 4 of this act take effect on January 1, 1994. Except that this act takes affect immediately for all municipalities that have adopted a cap on their property taxes."

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

ALASKA PUBLIC UTILITIES COMMISSION

COMMENTS ON SB 298

April 26, 1989

The Commission supports SB 298. This legislation would deregulate garbage utilities in conformance with the recommendations in the 1979, 1985, and 1989 performance reviews (Sunset Audits) of the Commission by the Division of Legislative Audit. The Commission has consistently endorsed this recommendation both in its formal responses to these Sunset Audits and in its FY1988 Annual Report to the Legislature.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Deregulation of refuse
utilities

Agency Affected: Commerce & Econ. Development
BRU: APUC

Sponsor: Labor & Commerce Committee
Requestor: Labor & Commerce Committee

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 | FY 94 |
|------------------------|----------|----------|----------|----------|----------|----------|
| 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 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

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)

SEE ATTACHED.

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

Approved by Commissioner: _____ Date: _____
Agency: Commerce & Economic Development

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

Analysis:

If enacted, SB298 will completely remove the collection and disposal of refuse (garbage) utility service from APUC jurisdiction. This action will impact 43 of 311 certificated public utilities (13.8% of the total). Of these, 9 of 96 fully economically regulated refuse utilities (9.4% of the total) would be deregulated.

While this change in jurisdiction will provide some relief in terms of agency workload, it comes in the nature of a partial realignment of resources to responsibilities. When consideration is given to the fact that approximately 24% of the the APUC's staff has been lost to budget cuts since FY84, it would be imprudent from a management perspective to propose any additional reductions as a result of the jurisdictional change incorporated in this bill. Therefore, the APUC submits a zero fiscal note in response to this proposed legislation.

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

Commissioner, Department of
Commerce and Economic Development Larry Mercurieff

Deputy Commissioner, Department of
Commerce and Economic Development Jeffrey W. Bush

Members of the
Alaska Public Utilities Commission

| | |
|-------------|-----------------------|
| Chairperson | Susan M. Knowles |
| Member | Carolyn S. Guess |
| Member | Peter Sokolov |
| Member | Louis E. Agi |
| Member | Kathleen L. Whiteaker |

STATE OF ALASKA

AUDIT DIVISION
P.O. BOX W
JUNEAU, ALASKA 99811-3300

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

February 21, 1989

Members of the Legislative Budget
and Audit Committee:

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

A PERFORMANCE REPORT ON THE
DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
ALASKA PUBLIC UTILITIES COMMISSION

February 14, 1989

Audit Control Number

08-1354-89-R

The objectives of this audit were to examine the activities of the Alaska Public Utilities Commission to determine if there is a demonstrated public need for its continued existence and if the commission has been operating in an efficient and effective manner.

The audit was conducted in accordance with generally accepted governmental performance auditing standards. Audit scope and methodology are discussed in the Report Objectives, Scope, and Methodology section of this report. Audit results may be found in the Report Conclusions, Findings and Recommendations, and in the Analysis of Public Need sections of this report.



Randy S. Welker, CPA
Legislative Auditor
Division of Legislative Audit

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REPORT OBJECTIVES, SCOPE, AND METHCODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have examined the activities of the Alaska Public Utilities Commission (hereinafter referred to as APUC or the commission) to determine if there is a demonstrated public need for its continued existence and if the commission has operated in an efficient and effective manner.

Legislative intent requires consideration of this report during the legislative oversight hearings to determine whether APUC should be reestablished. The law now specifies that the commission will terminate June 30, 1989 and have one year from that date to conclude 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.

Discussion of the objectives, scope, and methodology of our review follows.

Objectives

APUC was created to regulate public utilities so that citizens could enjoy adequate service at the lowest reasonable rates. The primary objective of this audit, therefore, was to determine whether the public need for the commission continues to exist.

The secondary objective was to review the commission's major functions, namely certification of utilities, tariff actions, investigations, and complaint follow-up for effectiveness in meeting the public need. The tertiary objective was to evaluate these functions in particular, and the APUC's operations in general, for economy and efficiency of operation.

Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

ORGANIZATION AND FUNCTION

Public utility regulation in Alaska has evolved substantially since the creation of the Public Services Commission (PSC) in 1959. That three-member body had jurisdiction over electric power, heat, water, gas, oil or other petroleum products (except by pipeline), telephone or telegraph communications, and community sewer services. In 1960 PSC gained responsibility for transportation utilities which it regulated until the creation of the Alaska Transportation Commission in 1966.

PSC was replaced by a three-member Alaska Public Utilities Commission in 1970. Regulated industries then included electrical, telecommunications, water, steam, sewer, gas, and petroleum when no competition existed. A 1973 amendment added garbage, refuse, trash or other waste to the list. Amendments passed in 1980 provided exemptions from economic regulation for cable television services and other utilities with low annual gross revenues as well as establishing a provision allowing economic deregulation by consumer vote for certain utility groups. With abolition of the Alaska Pipeline Commission in 1981, jurisdiction over pipelines passed to APUC.

In addition to jurisdictional changes, composition of APUC also changed. Alaska Statute 42.05.040 originally required one member to be a law school graduate, one to be a university graduate with a major in engineering, and one to be a university graduate with a major in finance, accounting, or business administration. Two additional positions were added to the commission in 1975 for which no special qualifications were established. All members are appointed by the Governor and confirmed by the Legislature for six-year terms.

Under AS 42.05 and AS 42.06, APUC is charged with the responsibility to ensure the furnishing of adequate service to all public utility patrons, without discrimination, and at the lowest reasonable rates consistent with the interests of both the public and the utility. Statutory provisions direct the commission, after determining an applicant is fit, willing, and able to provide utility service, to issue that applicant a Certificate of Public Convenience and Necessity. After issuance of this certificate the commission then regulates the rates, classifications, rules, regulations, practices, services, and facilities of a public utility, unless it is exempted or deregulated. The commission has the authority to adopt regulations and to hold formal, quasi-judicial hearings to accomplish these purposes.

CORRECTION

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

REPORT OBJECTIVES, SCOPE, AND METHODOLOGY

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Our analysis of public need, findings and recommendations, and our conclusions have been summarized in the appropriate sections of this report.

Scope and Methodology

The primary emphasis of our audit was on the factors outlined in the Analysis of Public Need section of this report. Alaska Statute 44.66.050 requires that these factors be considered in the determination of the commission's continued existence. To address these areas, we analyzed the need for regulation of the various industries, reviewed pertinent academic literature, considered the regulatory status and trends nationwide, interviewed commissioners and staff, reviewed APUC's statutes and regulations, contacted the State Ombudsman and the Equal Employment Opportunity offices, analyzed consumer complaints against utilities filed with the commission, and reviewed decisions made by the commission.

The effectiveness and efficiency of the commission was addressed through the above procedures and also by contacting and requesting assistance from all certificated utilities and by reviewing individual files.

Our review of decisions, complaints, tariff actions, hearings, investigations, and certifications was performed primarily on a sample of FY 88 items. These were selected on a judgmental basis to allow us to focus on certain activities and industries.

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The staff of APUC is divided into six major functions: administration, engineering, communications carriers, consumer protection, finance, and tariffs. In total, APUC employs 40 people with an operating budget for FY 89 of \$3,884,100. A brief description of the services provided by those functions follows:

Administration. An executive director, hired by the commission, is responsible for directing all staff functions and acts as a liaison between staff and commissioners and between the commission and legislature. He is responsible for records and document management, fiscal and personnel administration, and budget preparation and is assisted in these duties by an administrative assistant, document processing personnel, and other clerical support staff.

Engineering. This section is responsible for the investigation of utility procedures and practices affecting quality of service, review of legal descriptions for service areas, plans for plant expansion, and plant-in-service and depreciation schedules. Their evaluations are presented in proceedings before the commission.

Communications Carriers. This section was established by 1976 legislation to develop, recommend, and administer policies and programs with respect to the regulation of rates, services, accounting, and facilities of communications common carriers within the State involving the use of wire, cables, radio and space satellites.

Consumer Protection and Information. Major responsibilities for this section include investigation and resolution of consumer complaints, public relations, and information dissemination.

Finance. Activities carried out by this section include the examination, analysis, and evaluation of financial statements submitted for rate cases, audits of financial records of utilities, examination of financial information comprising historical operating year and pro forma adjustments, and the presentation of these analyses at proceedings before the commission.

Tariff. This section examines, analyzes, and investigates tariff filings and presents recommendations to the commission at biweekly tariff action meetings. Administrative functions include organizing those meetings, as well as meeting all public notice requirements on tariff filings and maintenance of current master tariffs for all utilities.

REPORT CONCLUSIONS

Policy Issues

This review contains policy issues raised as a result of our evaluation of various commission practices. The final policy decisions affecting those practices are not within the scope of this review but require legislative consideration. In debating these decisions the legislative oversight committees should take into consideration the findings and recommendations presented in this report to assist them in evaluating the potential impact of any policy changes.

Report Conclusions

In our opinion, the Alaska Public Utilities Commission is operating in an efficient and effective manner and should continue to regulate public utilities and pipelines. We believe that the public interest is being served by requiring public utilities and pipelines to be certificated by APUC. This process stabilizes demand for the utility service by eliminating competition and thereby allowing economies of scale to operate. Economic regulation by the commission, in place of that competition, ensures that the utilities provide adequate service at the lowest reasonable rates.

Although this economic justification is valid for the majority of utilities regulated by APUC, we evaluated their jurisdiction for potential areas of deregulation for several major reasons: (1) to comply with the intent of sunset legislation which attributed public disenchantment with state government to a proliferation of that government; (2) in recognition of the fact that the cost of regulation may exceed its benefits; (3) the increased demands being placed on commission resources; and (4) the State's ability to provide those resources.

Our analyses revealed several industries where regulation could be eliminated with minimum negative public impact. Our initial criteria was whether the service was essential for modern living to the average Alaskan and, if so, whether the industry operated as a natural monopoly. Although it is uncertain whether rates under deregulation would be higher or lower, deregulation should provide benefits such as competitive alternatives to existing services and more innovative services and rate designs. Additionally, services may be provided in areas not previously served as a result of eliminating the barrier to entry into the marketplace that has been erected by certification and the cost of regulation. While refuse collection services may be considered essential by many, this industry is not a natural

monopoly and should not be regulated (See Recommendation No. 1A). Radio communication carriers do not provide an essential service and also should not be regulated (See Recommendation No. 1B). Cable television may be considered essential by many and may also be a natural monopoly in the small and medium size towns. However, the statutes have created state sanctioned monopolies without the companion public protection against unreasonable and discriminatory rates and services. Further, federal law prohibits full economic regulation. The State should cease cable certification (See Recommendation No. 1C).

We are also convinced that small utilities should be exempted from economic regulation on the basis that the cost of regulation likely exceeds its benefits to consumers. We further recommend that the consumers of these exempted utilities be allowed a reasonable opportunity to elect economic regulation (See Recommendation No. 1D).

We recommend that the utilities owned by the Municipality of Anchorage be exempted from economic regulation. This exemption and the companion opportunity to elect economic regulation should be available to Anchorage as it is to all other municipal governments in the State (See Recommendation No. 1E).

We believe that the commission's costs should be fully allocated to consumers, but only to those consumers of utilities who continue to be regulated. We consider this regulatory funding approach to be most equitable to all the State's citizens. It should also encourage the elimination of any unwarranted economic regulation when combined with consumer regulatory elections (See Recommendation No. 2).

We recommend that APUC develop a topical reference system for commission orders and court decisions (See Recommendation No. 3).

A review of commissioner appointments showed that appointment terms expire on the same date for the two consumer members. As this situation could cause a significant disruption of commission activity, we recommend that the statute be changed to require the staggering of these appointments (See Recommendation No. 4).

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Alaska Statute 42.05 should be amended to eliminate certain unnecessary regulatory functions of APUC.

Public convenience and necessity require certain services to be provided. Such services have traditionally included electric, telephone, gas, water, and sewer. The nature of these businesses do not lend themselves to competition; they are capital intensive and have permanent physical connections to their customers. The economies of scale of these industries are such that one company may be able to serve an entire market at a lower cost than could two or more companies; therefore, competition could not decrease prices to consumers in the long run and would only result in wasted capital resources through duplicate facilities. Note that this "natural monopoly" relates not only to the relationship between fixed and variable costs but also to the characteristics of the market. As these services are considered essential and as the long-run cost is lowest if only one company is allowed to serve, a monopoly is awarded in the form of a Certificate of Public Convenience and Necessity to a company that is determined to be fit, willing, and able.

As these services are essential, the demand for them is relatively inelastic in terms of service price or available funds. A monopoly coupled with inelastic demand can result in excessively high prices as well as price and service discrimination between consumers. Uncontrolled economic power has been considered economically, politically, and socially unacceptable in a democratic society. The alternatives are to nationalize the utilities or to regulate their services as a substitute for effective competition, with regulation being the preferred method. Regulated public utilities are required to make specified service levels available at approved rates to all consumers in their designated service areas.

In addition to the concerns over economic power, the public interest may also serve to extend regulation into situations where competition would have significant undesirable side effects on the quality of life in the area. For example, competition could create a black forest of utility poles or the continual digging to bury cables or pipe.

However, it may not be appropriate to economically regulate all certificated utility companies. For example, the cost of regulation may outweigh its potential benefits or the consumer's control over service and rates that already theoretically exists in that the company is a member-owned cooperative or it is owned by a political subdivision.

Further, overriding all the above considerations, the public interest being addressed must represent a substantial portion of the State's population; unique situations should be addressed at the local level.

While we acknowledge that not everyone will subscribe to this theory of regulation, we believe it to be fundamentally sound. Utilizing these principles, we analyzed APUC's jurisdiction and determined that governmental control in the following areas was unwarranted.

- A. Alaska Statute 42.05 should be amended to cease certification and regulation of companies furnishing collection and disposal service of garbage, refuse, trash, or other waste material.

Whether an individual considers refuse collection to be an essential service for modern living depends primarily on where they reside in the State. However, even essential services should generally not be regulated unless they are natural monopolies. For example, we do not believe that essentials such as food and clothing should be regulated.

Refuse collection, as with most enterprises, has certain economies of scale that affect its operations. However, these economies of scale are not such that one company can obviously provide the area-wide services for a significantly lower total cost than could several competitors. Relative to traditionally-regulated industries, refuse collection requires less capital, and thus they have a higher percentage of variable costs and less significant economies of scale. Further, the competition within service areas in several locations defeats the natural monopoly premise in the larger markets. We believe that a natural monopoly could occur in this industry in only the very small markets and that these do not warrant regulation due to the cost to benefit relationship.

Therefore, refuse collection should not be regulated unless there are overwhelming negative side effects present under competition in this industry. We acknowledge the possible negative effects of increased truck traffic, refuse pickup scheduled throughout the week in individual neighborhoods, and consistency problems as companies adjust to the economic realities of competition. However, these problems did not overwhelm the residents of the Mat-Su Borough as a result of the residential competition which began in 1985. Further, the Alaska Municipal League has adopted a resolution asking that refuse collection be de-regulated.

In response to our previous sunset audit recommendations to deregulate this industry, APUC expressed concern over the health and sanitation problems that could occur if these companies were removed from their jurisdiction. These health and sanitation issues are presently under the jurisdiction of local communities and also the Department of Environmental Conservation.

There are presently forty-three certificated refuse companies; nine of these are economically regulated under AS 42.05.711, as they have annual gross revenues of greater than \$200,000. Although APUC has no time sheet data upon which to estimate the cost to regulate these forty-three companies, the commission states in their FY 88 Annual Report that the time dedicated to refuse is excessive relative to agency resources and the resultant public benefit, and they recommend that this industry be deregulated.

B. Alaska Statute 42.05 should be amended to cease certification and regulation of radio common carriers.

There are currently ten certificated radio common carriers in Alaska. Radio Common Carrier (RCC) services include radio paging, mobile radiotelephone, and improved mobile telephone public utility services.

The commission opened an investigative docket on the subject of deregulation of RCCs in 1981 which resulted in a 1982 decision to cease economic regulation of this industry. The commission cited as justification, among other things, that RCC service was not an essential service. As RCC service is not essential to the average Alaskan, we concur with the commission that it should not be economically regulated. We further contend that services that are not essential should not be certificated.

In that 1982 decision, APUC stated that the certification process should be continued to monitor the interconnection to the telecommunications network and to prevent cross-subsidization of non-monopoly RCC services by monopoly local exchange telephone services. However, both these concerns can be monitored through the continuing processes of certification and economic regulation of local exchange services.

Cellular phones are relatively new to Alaska, and APUC has not yet decided if or how they should be regulated. We understand these phones provide a higher sound quality at a higher cost than conventional radio phones and over a shorter range; as such, they may be even less of an essential service to the average Alaskan.

Alaska Statute 42.05.711(d) reads as follows: "The commission, on a finding that no legitimate public interest will be served, may exempt a utility from all or any portion of this chapter." [Emphasis added.] As the 1982 decision categorically deregulated an entire industry, not an individual utility, this order may be illegal. We are not recommending that this statute be amended to allow categorical deregulation, as this power should be retained by the Legislature. Rather, we are recommending that the statute be amended to specifically deregulate RCC services; this would incidentally resolve the question.

C. Alaska Statute 42.05 should be amended to cease certification of cable television.

We do not consider cable television an essential service, particularly in view of the large number of Alaskans who receive off-the-air network television or broadcasts from the Rural Alaska Television Network. The premise of "essential" is also defeated by a review of the cable television service in Anchorage in which large sections of the service area are not yet cabled 9 years after the certification was awarded. The 1988 service expansion added only 1 mile of cable for 83 homes and businesses. While we acknowledge that it takes years for a new utility to cover a service area, we submit that this standstill, even in consideration of the economic decline, indicates that this service has a higher elasticity of demand than would an "essential" service.

As it is not an essential service, it should not be regulated as a public utility. Although the statutes do not allow economic regulation, they do require certification of the companies. APUC has responded by issuing certifications for exclusive service areas. This has created state-sanctioned monopolies with legally protected service areas, yet the statutes do not provide the companion public protection against unreasonable and discriminatory rates and services. The statute should, therefore, be amended to remove the certification requirement.

However, there are many who believe that cable television is essential to modern living or that it is essential so that we may fully realize our First Amendment right of freedom of speech. If it is first decided that cable television is essential, then the natural monopoly issue must also be considered in the regulatory determination.

We believe that cable television may be a natural monopoly in the small and medium-sized towns. As such, these may be candidates for economic regulation. However, the cost of regulation may outweigh the benefits for these small markets. The economic regulation that is available is also limited to basic services, as the federal Cable Communications Policy Act of 1984 prohibits price regulation of the premium packages. In the largest cities, the competitive environment indicates that there is not a natural monopoly present for cable television, thus certification and economic regulation is inappropriate.

The federal Cable Act was designed to promote the expansion of cable television systems by promoting local franchising and limiting rate regulation. This law would not allow any rate regulation in Anchorage or Fairbanks but would allow basic service rates to be regulated in other areas such as Juneau or Homer. It does, however, appear to allow us control over the possible competitive side effect of duplicate cabling. By statute we could require the segregation of cable distribution companies and these could be fully regulated. The cable programming could then be opened to competition.

In summary, regardless as to whether or not cable television is viewed as essential, we recommended that the present certification requirement be deleted from the statute. To the extent that this service is deemed essential, municipal franchising or certification and regulation of distribution-only companies should be considered.

We also must point out a potential liability to the State under the Cable Act if this recommendation is implemented. The Cable Act outlines specific criteria which must be shown to deny a franchise and the proposed statute amendment would categorically retract the certificates (franchise) without this showing. However, the Attorney General's Office indicated to us that the State would prevail in court. We recommend that a formal opinion on this potential liability be obtained from the Attorney General before this statute is amended.

- D. Alaska Statute 42.05 should be amended to exempt the smaller utilities from economic regulation.

Electric, telephone, gas, water, and sewer utilities have traditionally been considered essential services and are often natural monopolies. Nevertheless, we should refrain from economic regulation if its cost

exceeds the benefits. However, this information is not available nor can it be reasonably generated. "Cost" would include incremental APUC and utility time and materials as well as the effect of project delays on long-term rates; this component of the equation could be studied and estimated. The "benefits" of regulation include a financially stable utility providing consistent service uniformly to customers who are assured of equitable rates and services now and in the future; this cannot be quantified.

Nevertheless, in consideration of the State's dwindling resources and the public's disenchantment with the proliferation of state government, we believe that it is appropriate for us to presume that the cost of regulation presently exceeds its benefits for many smaller utilities and that the gross revenue exemption levels provided in the statutes should be raised.

Alaska Statute 42.05.711 exempts electric and telephone utilities with gross revenues under \$50,000 from certification and economic regulation. It also allows a utility's consumers to elect economic deregulation for cooperatives, electric or telephone utilities with less than \$325,000 in annual gross revenues, and for any utility which does not gross \$100,000 annually. We propose that an across-the-board gross revenue-based exemption from economic regulation be established. Three options are presented in the following table. It was prepared based upon APUC's FY 88 Annual Report and represents all utilities that are currently economically regulated with the exclusion of the industries we have recommended for categorical deregulation.

Number of affected utilities and customers, based upon gross revenues:

| Type | Under \$500,000 | | Under \$750,000 | | Under \$1,000,000 | |
|----------------|-----------------|--------------|-----------------|--------------|-------------------|--------------|
| | Util. | Customers | Util. | Customers | Util. | Customers |
| Electric | 10 | 819 | 15 | 1,990 | 18 | 2,691 |
| Telephone | -0- | -0- | 1 | 343 | 2 | 863 |
| Gas | -0- | -0- | -0- | -0- | 1 | 908 |
| Water | 22 | 3,715 | 22 | 3,715 | 22 | 3,715 |
| Sewer | 2 | 15 | 3 | 382 | 3 | 382 |
| <u>Total</u> | <u>34</u> | <u>4,549</u> | <u>41</u> | <u>6,430</u> | <u>46</u> | <u>8,559</u> |
| <u>Percent</u> | <u>40.5%</u> | <u>.8%</u> | <u>48.8%</u> | <u>1.1%</u> | <u>54.8%</u> | <u>1.5%</u> |

The above percent calculations represent the reduction in the coverage of economic regulation under each revenue scenario; however, we caution the inference from the table that APUC's workload would decrease

proportionate to the decrease in the number of utilities. While there certainly should be some relationship, the commission has no time sheet data available to correlate these factors.

In concert with an amendment to exempt these smaller utilities, the following areas should also be addressed:

1. The petition provision which allows customers to request economic regulation of exempted utilities should be amended. Alaska Statute 42.05.711 presently requires 25% of an exempted utility's subscribers to sign the petition. We believe that this is much too great an obstacle to overcome and recommend that an election be called if APUC receives a petition demonstrating significant consumer interest. For example, the petition requirement could be set at the lesser of 5% or 500 customers.
2. This proposed gross revenue exemption statute should not take effect for 6 months to allow utility customers who wish to retain regulation to do so without interruption.
3. The results of past deregulation elections should be honored, thus not requiring a new vote on failed deregulation elections.
4. The customers who continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service (See Recommendation No. 2).

E. Alaska Statute 42.05 should be amended to cease mandatory economic regulation of certain utilities owned by political subdivisions.

Alaska Statute 42.05.711(b) generally exempts utilities owned by political subdivisions from economic regulation, unless they so elect. However, it also provides that if any of a subdivision's utilities directly competes with any other certificated utility then all the subdivision's utilities shall be economically regulated. We presume the intent of this provision was to eliminate the wasting of resources from facility duplication resulting from the then ongoing electric service area dispute as well as preventing the cross-subsidization of rates which might accompany such a dispute. The only utilities falling under this provision, at present, are owned by the Municipality of Anchorage.

The Anchorage service area dispute has been resolved and the present day competition is in the form of economy energy sales of electricity and perhaps telephone communication systems. This type of competition does not encourage the massive facility duplication or the cross-subsidization of rates that a service area dispute might. Service area concerns can be adequately addressed through the certification process without economic regulation.

In conjunction with an amendment to delete this mandatory economic regulation, the following areas should also be addressed:

1. The utilities previously regulated by APUC due to competition should continue to be so regulated unless rejected by the governing body.
2. A governing body should be allowed to withdraw a previous election.
3. The consumers who, through their local government, have chosen to continue the benefits of APUC's economic regulatory oversight should be expected to pay for this service. Specifically, the Municipality of Anchorage Assembly should decide whether their utilities should be regulated locally or by APUC. If they choose to "hire" APUC to perform this regulatory function in their behalf, citizens from all across the State should not be forced to pay for that service with General Funds (See Recommendation No. 2).

Recommendation No. 2

Alaska Statute 42.05 and Alaska Statute 42.06 should be amended to more fully allocate the costs of regulation.

APUC is currently being funded primarily by General Funds with a program receipts supplement from partial direct allocations of cost. The statutes require the cost of investigations and hearings to be allocated among the parties, including the commission, as is just under the circumstances. The commission has traditionally not allocated costs to itself and has allocated only the hired consultant fees, attorney general services, and other incremental out-of-pocket costs. In a 1988 decision, the Alaska Supreme Court interpreted the present statutes on cost allocations to disallow attorney general services. The court also remanded the case back to the commission to determine what portion of the cost allocation they should absorb.

Basic fairness prescribes that only the consumers who benefit from the regulatory services provided by APUC should pay the cost of this service. This is the "user fee" concept of funding. A funding method should also be designed to allow responsive adjustments to be made in the level of regulation as desired by consumers. With these criteria in mind, we have briefly commented on three predominate alternatives.

To the extent of its general funding, any approach fails to equitably match the regulatory cost to the consumers who benefit. General funding may be viewed as a payment by all citizens all across the State, while the benefit may accrue primarily to consumers in Anchorage. The utilities owned by the Municipality of Anchorage have contributed greatly to the commission's workload, yet a significant portion of the total cost of the proceedings is paid out of General Funds.

General funding is also less responsive to appropriate regulatory levels; in fact, it probably wastes some of the State's dwindling resources. Given that there is a regulatory cost/benefit break-even point and that certain consumers are given the opportunity to elect full economic regulation, general funding will likely be perceived as payment by "someone else" with the result that regulation will always be extended past this break-even point. Thus, government is providing an unnecessary service.

Funding of APUC through a gross receipts tax levied against the utilities and pipelines that is passed through to consumers could provide a reasonable matching of costs to beneficiaries. This assumes tax rates were established by utility size, by industry, and by level of regulation. However, there would always be inequities.

This tax approach would be responsive to regulatory needs only to the extent that the matching is accurate. However, taxation has traditionally focused on ability to bear rather than resource utilization and, thus, such a funding approach may not be responsive. For example, if a tax was designed which levied 100% of the commission's costs against the pipeline companies and none to the utilities, this approach would do nothing to reduce unnecessary regulation of the utilities.

Full and direct allocation of the commission's costs provides the most accurate and defensible matching among the three alternatives. As such, it would not only be an effective method in eliminating unwarranted government regulation but it could also make the regulatory process more efficient by encouraging adequate and appropriate filings.

To administer this full allocation program would require time sheets for commission staff and attorney general

services, and the use of account codes to share docket proceeding costs among the parties and to allow recovery of general overhead. The administrative cost of this program should be less than with the tax approach but, of course, greater than with the General Fund design. These costs could potentially be offset by increased staff efficiency through time sheet accountability. We believe the benefits of a full-cost allocation program would far outweigh a slightly higher administrative cost.

Based upon the above, we recommend that the statutes be amended to establish a full-cost allocation funding approach for APUC. In conjunction with this shift toward program receipts funding, AS 42.05.651 and AS 42.06.610 should be amended, as follows:

1. These statutes should be amended to specify that all costs of the commission may be allocated.
2. Alaska Statute 42.05.651 should be changed to require interim allocation, rather than awaiting completion of a proceeding. The commission has estimated their unbilled utility allocations at \$1.6 million with an average age of 3.0 years. We note that the related pipeline statute, at AS 42.06.610, already requires interim billings. However, APUC does not appear to be in compliance, with their estimated unbilled pipeline allocations at \$2.1 million with an average of 4.7 years. Further, APUC should amend their regulation at 3 AAC 48.157 which provides for cost allocations after pipeline hearings rather than on the required interim basis.
3. These statutes presently require allocation to the parties of a proceeding including the commission; these should be modified to exclude the commission. However, the provisions allowing the commission to allocate among the parties as is reasonable and just should be retained, thus the commission may occasionally absorb some costs indirectly and have a need for minimal General Fund monies.
4. For economically regulated companies, on a case-by-case basis, the commission should be allowed to determine whether the costs being allocated are to be passed through to the consumers.

Recommendation No. 3

APUC should develop a topical reference system for commission orders and court decisions.

The commission is a quasi-judicial agency which issues decisions based upon finding of fact and conclusions of law.

These decisions are in the form of written orders that have the effect of law and are subject to judicial review.

The commission's orders are filed chronologically and also within the docket (case) files. Decisions from the courts on appeals of commission orders are filed with the related docket. However, no topical cross-reference system is maintained.

At present, the best catalog of prior actions is institutional memory. Obviously, such a memory-based system cannot provide true access to precedent when needed by commissioners, staff, utilities, consultants, and attorneys. A cross-reference system would allow analysis by staff and decisions by the commission to be made consistently from case to case and in accordance with relevant court decisions. It would also aid utilities and their consultants and attorneys to adequately prepare for filings and hearings.

The Legislature, in conjunction with their FY 89 appropriation to APUC, provided the following: "It is the intent of the Legislature that the commission use the additional permanent part-time position to develop a keyword index filing system for all future commission orders and that prior year orders be incorporated into the system as possible." However, the part-time position was not actually authorized and the system has not yet been designed.

Recommendation No. 4

Alaska Statute 42.05.030 should be amended to stagger the appointments of the two consumer members of the commission.

In 1975 the commission was expanded from three to five commissioners. Appointments were made to both the new positions for the standard six-year terms with both terminating on the same date. All other APUC commissioner terms have been appropriately staggered. Because the potential for disruption of commission activity would be high with two new commissioners coming on at the same time, we recommend the terms of the consumer members be staggered.

Currently, the terms are scheduled to end as follows:

| | |
|---------------------|------------------|
| Consumer seats (2): | November 1, 1993 |
| Engineering seat: | October 31, 1990 |
| Finance seat: | October 31, 1992 |
| Legal seat: | October 31, 1994 |

The statute required the governor to stagger the initial appointments. However, as this was not done for the consumer members, we recommend the statute be amended to also require the necessary staggering of subsequent appointments.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of commission activities indicate both positive and negative factors as they relate to the public need factors defined in AS 44.66.050. These analyses were not intended to be all-inclusive, but address those areas we were able to cover within the scope of our review.

1. The extent to which the board, commission, or program has operated in the public interest.

The commission has conscientiously attempted to allow only qualified applicants to provide utility services and to regulate them in such a manner as to ensure adequate service at the lowest reasonable rates. In finding that no public interest would be served through regulation, APUC administratively exempted some utilities through the discretionary power granted at AS 42.05.711(d).

2. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The Alaska Public Utilities Act (AS 42.05) and Pipeline Act (AS 42.06) provide broad discretionary power to the commission to carry out its mandated responsibilities. The jurisdiction provided under these statutes should be limited to require regulation only of industries where the greatest public interest may be served (See Recommendation No. 1).

The budgeting approach and the statutes should be modified to fully allocate the commission's costs to consumers, but only to those consumers of utilities who continue to be regulated. We consider this regulatory funding approach to be most equitable to all the State's citizens. It should also encourage the elimination of any unwarranted economic regulation when combined with consumer regulatory elections (See Recommendation No. 2).

The commission has not developed a topical reference system for commission orders and court decisions (See Recommendation No. 3). APUC has not been successful in obtaining additional personnel or funding for this task.

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

In their FY 88 Annual Report, APUC highlighted certain problems they perceive with the current statutes and also outlined options and recommended solutions.

APUC broached the question of who should pay the cost of regulation and also presented several options on a public policy level. However, they placed the emphasis on agency funding, rather than on equity to the State's citizens or on the potential elimination of unwarranted regulation (See Recommendation No. 2).

The commission recommended that the statutes be amended to allow interim billing of cost allocations for utilities, similar to that allowed for pipelines. We concur, however, we believe that these billings should be required, and we assert that they are in fact already required for pipeline cases (See Recommendation No. 2).

The commission recommended a statute change to allow them to increase certificate application fees to fully reflect the cost of processing these filings. We would concur if it were not for our recommendation which would effectively allocate these costs on a comprehensive basis (See Recommendation No. 2).

APUC also recommended that the exemption scheme at AS 42.05.711 be reviewed and revised. We agree and have outlined our suggestions at Recommendation No. 1. The commission specifically recommended the deregulation of refuse collection.

They requested clarification of AS 42.05.431 which establishes the power of the commission to fix rates. APUC is uncertain how the dispute resolution procedures under subsection (b) could be used to renegotiate wholesale power contract rates if the commission finds them to be unjust and unreasonable.

The commission suggested that, if the Legislature intended for utilities who are not economically regulated to pay interest on customer deposits, AS 42.05.711 should be amended to reflect this intent. They further recommended that unclaimed deposits not be escheated to the State. We disagree with this second recommendation, as it may provide a disincentive to locate the true owners of these funds.

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

Formal proceedings are properly and timely noticed and are open to the public. The commission has held public hearings and formal proceedings within the service areas of the utilities before them to facilitate public attendance and participation. APUC also staffs a Consumer Protection and Information Section to resolve complaints and disseminate information.

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

All formal proceedings, including hearings on proposed regulations, are noticed and open to the public. Any interested person or party may intervene in a formal proceeding if that intervention will benefit, but not unduly delay the proceeding. The commission has also held informal workshops with attorneys and utility representatives in an attempt to be more responsive to the needs and concerns of those groups.

6. The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, to the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.

The commission has adopted regulations for informal and formal complaint procedures. Procedures include a requirement that the complaint be made first with the utility before being filed with the commission. If the complaint cannot be resolved informally, formal procedures, including an investigation, may be initiated. The Office of the Ombudsman also occasionally handles utility or APUC-related complaints. We found the complaint resolution process to be operating satisfactorily.

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

The commission, prior to granting a Certificate of Public Convenience and Necessity to a public utility, is required to determine that the applicant is fit, willing, and able to provide the service. APUC employs