

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8794 HOUSE STATE AFFAIRS

Alaska clean water fund, including applicable state and federal requirements. Any such decisions made by the committee and expressed in a bond resolution are conclusively deemed to comply with the requirements of the legislation pertaining to the bond program.

Sec. 37.15.573. BOND RESOLUTION - The committee must adopt a bond resolution to issue bonds. The resolution will contain those terms and conditions necessary to identify and define the bonds and the bond sales process.

Sec. 37.15.575. STATE AID INTERCEPT - This section defines the procedure for allowing the State to intercept or garnish other legitimate sources of State aid should a community default on a loan from this fund. This paragraph is included in the legislation to enhance investor confidence in the program, improve the bond rating, and ultimately, lower program costs.

Sec. 37.15.580. PLEDGE OF THE STATE - This provision recognizes that the state may not alter the terms and conditions of a bond resolution by subsequent executive or legislative action.

Sec. 37.15.583. ENFORCEMENT BY BONDOWNER - To resolve any disagreements between the bondowners and the committee, 10 percent or more of the bondowners of any series or issue can bring suit in state superior court in Juneau. The ten percent threshold was selected to discourage frivolous litigation.

Sec. 37.15.585. AMOUNTS REQUIRED FOR PAYMENTS - Each year the committee will inform the commissioners of the departments of Environmental Conservation and Revenue of the amounts needed in that year to pay for the bonds. The notice will be given at this time so that the departments will be able to incorporate these numbers into their financial planning for the next fiscal year.

Sec. 37.15.587. PURPOSES AND SUFFICIENCY OF REVENUE - Bond proceeds will be used to build projects that are eligible under the clean water fund program. The committee will not issue bonds unless there is enough security available in the fund to make it prudent to issue the bonds.

Sec. 37.15.590. REFUNDING - If it is in the best interests of the State, the committee may refund all or some of the bonds. The committee will follow the defined procedures to conduct the refunding process. The committee may appoint a trustee to conduct this process. The trustee may invest funds in short-term federal instruments until the refunding proceeds are needed.

Sec. 37.15.595. BONDS AS LEGAL INVESTMENTS - The bonds are legal investments and can be traded and sold between institutions and persons. The State may accept them as security for the State and Municipal debts.

Sec. 37.15.600. STATUTORY CONSTRUCTION - The statute is to be liberally construed to give effect to the public purpose of providing for the financing and construction of public water pollution control projects.

Sec. 37.15.605. REGULATIONS - The committee can adopt regulations to implement this program.

Sec. 37.15.605. Definitions - This sections contains the definitions applicable to the bond program.

Section 3 - 12. Sections 3 - 12 of the bill amend AS 46.03.032, the statute that establishes the Alaska clean water fund.

Section 3. AS 46.03.032(a) - The Alaska clean water fund statute is amended to allow the fund to receive money from the sale of bonds and this money may be placed in a special account of the fund.

Section 4. AS 46.03.032(b) - The provisions of the Alaska clean water fund statute are to be given liberal interpretation to further their purpose of providing financing for the construction of water pollution control projects. The DEC will administer the fund consistent with the state and federal requirements applicable to the fund and with the requirements of the bond legislation.

Section 5. AS 46.03.032(c) - This section makes a technical correction in the citation of the Clean Water Act, to follow the proper citation form and to refer to the Clean Water Act as amended.

Section 6. AS 46.03.032(d) - This section reorganizes the existing statute into a more understandable form. It also authorizes use of the fund to secure state-issued bonds, and authorizes use of the fund to pay the principal and interest on the bonds and the costs of issuing and administering the bonds. The proceeds of the bond sale must be deposited into the fund.

Section 7. AS 46.03.032(f) - This section also reorganizes the existing statute into a more logical format and allows DEC to spend money from the fund to administer the bond program.

Section 8. AS 46.03.032(g) - The existing statute is amended to allow a state agency to receive loans from the fund. Currently, only municipalities may do this. Nationwide it has been recognized that the state environmental agencies that normally run the clean water funds don't always have authority over all environmental situations. This is especially true for nonpoint source pollution problems that affect plant and animal populations that would normally be considered part of the jurisdiction of the Departments of Natural Resources or Fish and Game. Allowing DEC to make loans to other state agencies will provide a tool to enable these organizations to cooperatively address these interagency environmental problems. Also, the section is amended to make it clear that the potential borrowers will demonstrate their credit-worthiness prior to loan commitment.

Section 9. AS 46.03.032(i) - This section amends the existing statute to accommodate the references to the bond issuance program. Some technical changes are also made to reference AS 46.06.021, the solid waste statute that establishes project priorities, rather than repeat them in full in the Alaska clean water fund statute.

Section 10. AS 46.03.032(k) - In addition to the reports the department already prepares for the program, DEC will prepare reports necessary for the committee.

Section 11. AS 46.03.032(o) - The definitions section includes one technical change in the terminology used to refer to solid waste management projects and adds a new definition for the term "state agency."

Section 12. AS 46.03.032(p) - This new subsection provides that any inconsistencies between any regulations adopted by the state bond committee under Title 37 and those adopted by DEC under Title 46 involving the Alaska clean water fund program will be resolved in favor of the Title 37 regulations.

Section 13. Clarifies that the portion of this legislation that is entitled ENFORCEMENT BY BONDOWNER would affect a change in Civil Procedure 3 and require all actions to be filed in Superior Court in Juneau.

Section 14. Recognizes that in order for all actions to be filed in Superior Court in Juneau, the second part of the paragraph that is entitled ENFORCEMENT BY BONDOWNER must receive a two-thirds majority vote of each house; otherwise that portion will not take effect.

FISCAL NOTE

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____
 Title: Clean Water Fund Bonds
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Environmental Conservation
 BRU: Facility Construction & Operation
 Component: Facility Construction & Operation

COMPONENT SERIAL NO.

Expenditures/Revenues:

(Thousands of Dollars)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipt	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Alaska Clean Water Fund	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY97) cost: \$ _____ *

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.)
 * Projected bond costs have not yet been determined. Please see attached explanations.
 The department supports this bill that authorizes the sale of revenue bonds to be used by the Alaska Clean Water Fund to fund construction of public wastewater systems, nonpoint source water pollution control projects, including solid waste management systems, and estuary conservation and management projects.

Prepared by: Larry Jones
 Division: Director, Division of Administrative Services

Phone: 465-5010
 Date: 1/2/96

Approved by Commissioner: Larry Jones
 Agency: Department of Environmental Conservation

Date: 1/4/96

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Alaska Clean Water Fund - Bond Sales / Reasons why costs can not be determined:

The proceeds from the sale of bonds is to supplement available loan funds. Therefore, bonds will only be sold if the demand for construction loans exceeds the amount available in the Alaska Clean Water Fund (ACWF). However, the sale will have to be timed to allow a certain amount of the ACWF to be held as collateral for the bonds sold. Further considerations in the timing of the sale of bonds includes several financial issues such as rebate as it applies to selling bonds.

The department is working closely with the State Bond Committee, the Bond Committee's bond counsel and financial advisors to ensure all of these concerns are adequately addressed and that a bond sale only occurs when it is advantageous to the state. Consequently, the costs related to the sale of the bonds is unknown at this time. Finally, costs associated with the sale of bonds are usually paid from the proceeds of the bond sale.

FISCAL NOTE

Revision Date: _____ Dept. Affected: Revenue
Title: Clean Water Fund Bonds BRU: Revenue Operations
Sponsor: Rules Committee Component: Treasury Management
Requestor: Governor COMPONENT SERIAL NO. 121

Expenditures/Revenues: (Thousands of Dollars)

	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY96) impact \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

All costs of issuance, administration, and debt service on the bonds will be paid from the Alaska Clean Water Fund. The proceeds of the bond issue will be deposited in the Clean Water Fund, thereby increasing the money available for loans to municipalities. There is no estimated fiscal impact on other State funds.

Prepared by: Forrest R. Browne Phone: 465-3750
 Division: Treasury Management Date: 1/3/96
 Approved by Commissioner: [Signature] Date: 1/3/96
 Agency: Department of Revenue

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A M E N D M E N T

#1

OFFERED IN THE HOUSE
TO: HB 401

BY REPRESENTATIVE IVAN

passed

- 1 Page 6, line 6, after "in":
- 2 Insert "the current fiscal year and"

- 3 Page 8, line 12, after "letters":
- 4 Insert "and lines"

A M E N D M E N T

2

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: HB 401

passed

1 Page 2, line 7, after "authorized":

2 Insert ", subject to (b) of this section"

3 Page 2, after line 13:

4 Insert a new subsection to read:

5 "(b) The state bond committee may not issue more than \$15,000,000 in
6 revenue bonds during a fiscal year, excluding refunding bonds. The total amount of
7 revenue bonds outstanding at any one time may not exceed \$150,000,000, including
8 principal and interest owed on the bonds."

9 Reletter the following subsections accordingly.

A M E N D M E N T

#3

OFFERED IN THE HOUSE

BY REPRESENTATIVE IVAN

TO: HB 401

passed

- 1 Page 2, line 5:
 2 Delete "state agencies"
 3 Insert "other qualified entities"
- 4 Page 9, line 13:
 5 Delete "state agencies"
 6 Insert "other qualified entities"
- 7 Page 9, line 20:
 8 Delete "state agency"
 9 Insert "other qualified entity"
- 10 Page 9, line 22:
 11 Delete "state agency"
 12 Insert "other qualified entity"
- 13 Page 10, line 11:
 14 Delete "state agency"
 15 Insert "other qualified entity"
- 16 Page 11, line 20, following "(1)":
 17 Insert "other qualified entity" means an intermunicipal or interstate agency as
 18 those terms are used in 33 U.S.C. 1383, and may include an authority, corporation,
 19 instrumentality, enterprise, or other entity formed through an agreement between a
 20 municipality and one or more other governmental entities under AS 29.35.010(13) or

1 under art. X, sec. 13, Constitution of the State of Alaska, or between a municipality and
2 a regional housing authority under AS 18.55.996(b):

3 (2)"

4 Page 11, lines 22 - 25:

5 Delete "i

6 (2) "state agency" means a department, authority, public
7 corporation, instrumentality, or other administrative unit of the executive branch
8 of state government"

STATE REVOLVING FUNDS

Issuer	RATINGS			State Intercept
	Moody's	S & P	Fitch	
Alabama Water Pollution Control Authority	NR	NR	NR	No
Wastewater Management Authority of Arizona	Aa	AA+	NR	No
Arkansas Development Finance Authority	NR	AA	NR	No
Colorado Water Resources and Power Development Authority	Aa	AA/AA+	NR	No
State of Connecticut	Aa	AA+	AA	Yes
Indiana Bond Bank	NR	A	NR	Yes
Iowa Finance Authority	NR	A	NR	No
Kansas Development Finance Authority	Aa1	AA+	NR	Yes
Kentucky Infrastructure Authority	A	A	NR	No
Maine Municipal Bond Bank	NR	A+	NR	No
Maryland Water Quality Financing Administration	Aa	AA	AA-	Yes
Massachusetts Water Pollution Abatement Trust	Aa1/Aa	AAA/AA-/A+	AA+/AA	Yes
Michigan Municipal Bond Authority	Aa	AA	NR	Yes
Minnesota Public Facilities Authority	Aa	AAA	NR	No
Missouri State Environmental Improvement And Resources Authority	Aa1/Aa	NR	NR	No
New Jersey Wastewater Treatment Trust	Aa	AA	NR	Yes
State of Nevada	Aa	AA	NR	No
New York State Environmental Facilities Corporation	Aaa/Na	AAA/A/A-	AAA/AA	Yes
North Dakota Municipal Bond Bank	A1	NR	NR	No
Ohio Water Development Authority	A	A	NR	No
Pennsylvania Infrastructure Investment Authority	NR	AA	NR	No
Rhode Island Clean Water Finance Agency	NR	NR	NR	No
South Dakota Conservancy District	A	NR	NR	No
Texas Water Development Board	Aa	AAA	NR	No
State of Wisconsin	Aa	AA	AA+	Yes

STATES THAT HAVE NO STATE INTERCEPT

Alabama	No uninsured ratings.
Arizona	Uninsured ratings are only for Phoenix, whose double-A general obligation ratings flow to the ratings on Arizona's SRF bonds.
Arkansas	Double-A Standard and Poor's rating; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Colorado	Double-A from both Mood's Investors Service and Standard & Poor's; without state intercept, State is required to use supplemental reserve fund, which is utilized if earnings fall below required coverage.
Iowa	Rated only single-A by Standard & Poor's.
Kentucky	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Maine	Rated only "A+" by Standard & Poor's; enjoys state moral obligation.
Minnesota	Similar to both Arkansas and Colorado, Minnesota has a supplemental reserve, but the debt is also secured by moral obligation pledge.
Missouri	Reserve fund equals 70% of outstanding loans, as opposed to lower conventional reserve fund levels for most other programs.
Nevada	Backed by State's general obligation pledge.
North Dakota	Rated "A1" by Moody's Investors Service.
Ohio	Rated only single-A by both Moody's Investors Service and Standard & Poor's.
Pennsylvania	Double-A Standard & Poor's rating; overcollateralization with over one-half of the program funds coming from the State of Pennsylvania.
Rhode Island	No uninsured ratings.
South Dakota	Rated only single-A by Moody's Investors Service.
Texas	Substantial overcollateralization; expectation that debt service coverage on pool will rise to over 8.0 times during the life of the bonds.



P R E S T O N G A T E S & E L L I S
A T T O R N E Y S

January 18, 1996

Ms. Michele Brown
Acting Commissioner
Department of Environmental Conservation
State of Alaska

The State Bond Committee
c/o Mr. Forrest Browne, Debt Manager
Treasury Division, Department of Revenue
State of Alaska

Re: Leveraging the Clean Water Act Revolving Fund Loan Program

Dear Ms. Brown and Members of the Committee:

We have been requested to evaluate the Alaska Clean Water Fund ("ACWF") revolving fund loan program for the purpose of making recommendations as to how the program can be structured to accommodate and provide for the sale of bonds ("Bonds"), the proceeds of which would be reinvested in the program. In so doing, we have been asked to consider the legal issues such a program may raise and to analyze the different options available for achieving such a program. We have also been requested to confirm that any format we propose complies with federal law requirements for the issuance of bonds the interest on which may be excluded from federal income tax. Concern has also been expressed that it comply with federal law relating to the federal Clean Water Act.

Finally, we were asked to assist in drafting necessary implementing legislation. Such legislation has been prepared through the efforts of the Department of Law, the Department of Environmental Conservation, the staff of the State Bond Committee, the financial advisor to the State Bond Committee and this firm. This legislation has been introduced in the Legislature as Senate Bill No. 207 and House Bill No. 401 (herein together, the "Bill").

In undertaking this task, we have reviewed the constitution and statutes of the State of Alaska relating to the ACWF (a state revolving fund or "SRF" under federal law) and have reviewed federal law relating to tax exemption of state and local governmental obligations and the Clean Water Act. We have reviewed relevant court decisions and opinions of the attorney general of the state, information relating to the operation of the revolving loan program and have met and

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Ms. Michele Brown
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had discussions with staff members of the State Bond Committee, the Department of Environmental Conservation ("DEC") and the Department of Law.

We respond as follows:

SUMMARY OF CONCLUSIONS

We believe that the Bonds may be issued by the State Bond Committee as provided in the Bill, without violation of Article IX, Section 8, of the State Constitution requiring an election approving the issuance of bonds. We also believe that under the Bill the program can be structured to allow leveraging of the ACWF by the issuance of Bonds, with the commitment of funds necessary to such a structure without violation of Article IX, Section 7, of the State Constitution restricting the dedication of revenues of the state. Finally, under the Bill, such a financing program can be structured to allow the Bonds to be issued on a tax-exempt basis. These conclusions are, of course, dependent on the final language of the legislation adopted, and the ultimate terms and provisions of the financing plan as adopted by the State Bond Committee.

LEGAL ANALYSIS

Regardless of the administrative structure chosen to implement a program of leveraging the ACWF by the issuance of bonds, there are two fundamental legal issues which must be addressed. They are the questions of (1) whether or not a vote of the people is required for the issuance of such bonds and (2) whether or not the issuance of such bonds can be structured in such a way as to comply with the constitutional prohibition against dedication or earmarking of revenues of the State.

One important point should be made before discussing the legal issues. In order for a bond counsel to be able to give an opinion approving an issue of bonds, he or she must be able to say that no reasonable argument can be made against the validity of such bonds. This is a strict standard and is sometimes difficult to meet even if one thinks that a court would be likely to uphold validity on a particular issue. The following discussion is the result of our effort to evaluate each issue in the light of the "no reasonable argument" standard.

Issuing State Bonds Without an Election

Article IX, Section 8, of the State Constitution provides as follows:

"No state debt shall be contracted unless authorized by law for capital improvements . . . and ratified by a majority of the qualified voters of the State who vote on the question."

Section 11 of Article IX provides:

"The restrictions on contracting debt do not apply to debt incurred through the issuance of revenue bonds by a public enterprise or public corporation . . . when the only security is the revenues of the enterprise or corporation."

Thus, Article IX, Section 8, requires that State bonds be issued only for capital purposes and only with an approving vote of the electorate. These restrictions are removed with respect to the issuance of revenue bonds issued by "a public enterprise or public corporation of the State . . . when the only security is the revenues of the enterprise or corporation." Although the Bill proceeds would not be used for capital facilities belonging to the state and no election is contemplated, these restrictions do not apply if one of the above exceptions can be invoked.

One approach would be to create or use a separate public corporation for the purpose of leveraging the revolving fund program. The Bonds can also be issued directly by the State, as contemplated by the Bill, through the State Bond Committee which now administers the issuance of other State debt, if to do so constitutes "the issuance of revenue bonds by a public enterprise . . . of the State . . . , when the only security is the revenues of the enterprise" There is little law on the subject of whether or not such a loan program can constitute a "public enterprise" for purposes of meeting the revenue bond exception to public vote requirements. Many cases recognize the validity of issuing such bonds for a public improvement, such as a utility system or an airport which generates revenue sufficient to secure the bonds. There is authority that the issuance of bonds primarily for reinvestment to make a profit (arbitrage bonds) is not a valid public purpose. See State v. City of Orlando, 576 So. 2d 1315, 1317 (Fla. 1991). Such arbitrage schemes are, however, quite different from the program contemplated here--the loaning of money to municipalities for clean water related public improvements. Under present federal law and DEC practice, such loans cannot bear interest at a rate greater than the Bonds so it is unlikely a profit could be made. We believe that the leveraging of the revolving fund program through the issuance of Bonds should be considered by the courts to be a public enterprise. While there seems to have been little litigation on this point, the existence of other similar State revolving fund programs financed in part by the issuance of revenue bonds, as well as the existence of a number of general purpose bond banks and industrial development authorities in Alaska and nationally, gives credence to the "public enterprise" characterization of such a program as being within the custom and practice nationally in municipal finance.

The proceedings of the Alaska Constitutional Convention further support the characterization of the Bonds as the revenue bonds of a public enterprise of the State. The minutes of the convention record the following exchange:

"HELLENTHAL: In Section 11 where the Committee deals with the non-applicability of the restrictions on debt, in the case of revenue bonds issued by public corporations of the state, first; public enterprises of the state, second; and

thirdly, any political subdivision. Does the committee mean by that language that any political subdivision can issue revenue bonds either through a public corporation or through a public enterprise, or directly, like the City of Anchorage did with its Eklutna project; and in the event that they choose to issue them directly without employing the device of the public corporation, with those bonds being exempt from the restrictions applicable to debt?

NERLAND: That was the intention of the Committee, Mr. Hellenthal."

This language makes clear the intent of the drafters that bonds to fund a public enterprise may be issued directly by the State without employing the device of a public corporation.

Case law defines "enterprise" broadly. "Enterprise" is not restricted to a scheme for making money but includes any object that is consistent with the interests of society and may engage the attention of men and invite their cooperation." under the holding in Maxwell vs. Akin, 89 F. 178, 180 C.C.C.D. Ore. 1898. Case law interpreting "enterprise," as it appears in federal statutes, does so very broadly. See Marshall v. McAlester Corp., 438 F. Supp. 1005, 1012 (E.D. Okla. 1977) ("enterprise" under the Fair Labor Standards Act).

Based on the foregoing, it appears that characterizing the revolving loan program as a public enterprise of the State should successfully bring into play the exceptions of Article IX, Section 11. Care should still be taken however in actually implementing the legislation to avoid the implication that the Bonds are, in any way, secured by the general funds or revenue of the State. To this end, it may be necessary to segregate in separate accounts the money paid into the fund out of general State funds and other ACWF moneys such as grants or loan repayments, to make clear that only federal grants, loan repayments and earnings thereon secure the Bonds, to create reserves that secure the Bonds only out of "revenues of the enterprise" and to make whatever other provisions are necessary to clarify the applicability of the revenue bond concept.

Dedicated Funds

In order to structure, in conjunction with the ACWF, a revenue bond financing vehicle, it is necessary to provide for, or authorize the issuing agency to provide for, the pledging or dedication of the revenue stream and other moneys which are to secure and pay the Bonds. The Bill does this. This is usually not a problem for a state or municipality. However, Alaska is subject to the requirements of Article IX, Section 7, of the State Constitution which provides:

"The proceeds of any state tax or license shall not be dedicated to any special purpose, except . . . when required by the federal government for state participation in federal programs."

The following questions are raised: May the State dedicate loan repayments (principal and interest) under the ACWF revolving fund program to be deposited in the ACWF? May the State pledge to the payment and security of the Bonds the loan repayments (principal and interest), federal grants received, State matching money and interest earned on ACWF money? May reserve funds or accounts be created out of funds other than revenue of the revolving fund loan program and pledged to secure and pay Bonds?

Dedications Required By Federal Law

In order to continue to qualify for participation in the federal funding program established by the Clean Water Act, implementing state legislation must be consistent with the Clean Water Act and relevant federal regulations. The proceeds of state bonds secured by the state revolving fund (the ACWF) are required to be paid into such fund. (33 U.S.C.A. Section 1383 (d)(4)) Repayment of loans out of a SRF must also be paid into the fund. (33 U.S.C.A. Section 1383(d)(1)(D)) Federal capitalization grants and state matching moneys are also required to be paid into the SRF. (33 U.S.C.A. Section 1382 (b) (1), (2)) Although there does not appear to be federal legislation specifically mandating the retention of interest earnings in the SRF, the regulations state that "SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance" to assist communities in maintaining water quality. 40 CFR Section 35.3115 (1994) The Initial Guidance for State Revolving Funds contains similar language referring to "All funds within the SRF," as does 33 U.S.C.A. Section 1383 (c).

Thus it appears that federal legislation mandates that all of the major sources of money in the ACWF be deposited in that Fund and that moneys in the Fund may not be withdrawn except to be applied to provide financial assistance to local governments or state agencies for the purposes specified in the Act. One of the methods of giving financial assistance is to use such moneys to pay and secure bonds issued to provide funds for the same purposes. While federal law does not mandate that moneys in the SRF be used only for so securing bonds, as opposed to other authorized means of assisting communities, the discretion that Article IX, Section 7, intended to permanently vest in the legislature with respect to state revenues is almost totally eclipsed by these requirements of federal law which are "required . . . for state participation in" this federal program. Also, the case of State v. Alex, 646 P.2d 203, 209 (Alaska 1982) indicates that once moneys are in a given fund, Art. IX, Section 7, does not preclude their dedication to secure revenue bonds to which they relate. Thus, we believe that, as authorized by the Bill, the dedication of revenue sources in the Alaska Clean Water Act to the ACWF and the proposed dedication of money in the ACWF (other than state matching money or, possibly, the portion of loan repayments representing the loan of state matching money) to pay and secure bonds meet the requirements of Article IX, Section 7.

Tax Analysis

Under the Bill, a program may be structured in which tax-exempt bonds are issued by the State to acquire tax-exempt obligations of local governmental units. The debt obligations issued by the local governmental units must be tax-exempt governmental obligations and may-not be tax-exempt private activity bonds. Care must be taken to ensure that the underlying projects do not have private business users in excess of that permitted by the Internal Revenue Code (the "Code") and that any private business management contracts for the facility meet the IRS guidelines in effect at the time the State bonds are issued.

The Code generally treats bonds as taxable "arbitrage bonds" if the bond proceeds are used to acquire "investment property" that has a yield that is materially higher than the bond yield. The term "investment property" includes securities (such as the obligations issued by local governmental units) but excludes from this treatment tax-exempt obligations that are not private activity bonds. Also, it is unlikely that any of the local obligations acquired would bear interest at a higher rate than the Bonds.

It is important that there be more projects to be financed than the non-bond resources available from the State and the federal government. Internal Revenue Service regulations generally prohibit the State from issuing more bonds, issuing bonds earlier, or allowing them to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds are issued. A review of the DEC projection in this regard indicates that this issue should not pose a problem. The State's goal in the program is to leverage additional borrowed money into more project financing. It is important to demonstrate that additional projects may be financed (and financed sooner) than could be financed if the State were just to use the state and federal resources available to demonstrate that the State is not issuing more bonds than are necessary or issuing them earlier than necessary.

Programs such as this usually require that debt service reserves be established to secure the bonds. If money derived from the State funds or from the federal government are pledged to secure the State bonds, that money will be subject to the Code rules relating to bonds and may be subject to the arbitrage rebate requirements if invested in excess of the bond yield.

The bond proceeds generally may be invested at yields in excess of the bond yield for a period of three years by the local governmental units. While the bond proceeds are held by the State and before they are used to acquire the local governmental unit obligations, the IRS regulations allow for a six-month investment period for State bond proceeds. This six-month temporary period is subtracted from the three-year period available to the local governmental units. In addition, there is a three-month temporary investment period for repayments that are expected to be recycled into purchase of new local obligations.

Ms. Michele Brown
The State Bond Committ
January 18, 1996
Page 7

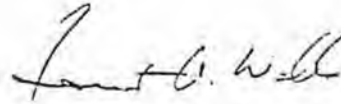
The Code also contains specific requirements for "pooled financing bonds." In general, the State must reasonably expect that as of the close of the three-year temporary investment period, at least 95% of the net bond proceeds will have been used to acquire the local governmental unit obligations. In addition, the payment of legal and underwriting costs associated with the issuance of the bonds may not be contingent and at least 95% of such costs must be paid not later than 180 days after the State bond issuance.

We hope that the forgoing is of assistance. Please call with any questions or comments.

Very truly yours,

PRESTON GATES & ELLIS

By



Forrest W. Walls

FWW:wp

cc: Ms Marie Sansone
Mr. Butch White
Mr. Chester Johnson
Mr. Mike Burns
Mr. Lee Sharp
Mr. Bill Mantle
Ms. Cynthia Weed

FWW09F.DOC

Government Finance Associates, Inc

71 Broadway, Suite 1301
New York, New York, 10006
(212) 809-5700
FAX (212) 809-6317

January 19, 1996

TO: MIKE BURNS
BUTCH WHITE
MARIE SANSONE
FORREST BROWNE

FROM: GOVERNMENT FINANCE ASSOCIATES, INC.

SUBJECT: ELIMINATION OF STATE INTERCEPT; EFFECT ON
ALASKA'S PROPOSED SRF FINANCING PROGRAM

We have been asked to evaluate the impact of removing the state intercept from the proposed SRF leveraging and bonding structure. In this connection, it is necessary to review the effects on both the underlying credit features and the projected financing costs for the program. In order to appropriately respond to this subject, background material should be presented, as follows.

DESIRED RATING: Generally speaking, as a result primarily of (i) the large cash infusions from the Federal and state governments, (ii) provisions of the local loan repayment arrangements, and (iii) the state creation and oversight, SRF's have been highly rated. For example, as indicated in the attachment, of the 25 active leveraged state SRFs, sixteen are rated double-A or better, without taking into account bond insurance. The other nine are rated single-A, or they are assigned insured ratings. Because of the high credit standing of these structures, only a few have chosen to be insured, since any rating in the double-A or higher categories makes bond insurance unnecessary. In most cases, insured bonds trade no better than a weak double-A. Additionally, double-A ratings, on an uninsured basis, give a borrower substantially greater flexibility, as a result of the lower cost of capital that the rating affords and the reduced number of restrictions that apply to uninsured debt. Taking these factors into consideration, combined with the inherent strengths of the Alaska SRF, we recommend that the State establish a goal of achieving no less than an uninsured rating of double-A.

USE OF STATE INTERCEPT: As shown in the attachment, of the sixteen active leveraged SRFs rated double-A or better, half of them use the state intercept of local aid to provide underlying security. The state intercept mechanism has been employed for numerous purposes over the years. In the 1970's, for example, states that created bond banks to reduce the cost of capital for localities often applied the state intercept to help secure the bonds that were sold by the respective state bond banks. As a policy matter, the rating agencies have concerns about the pooling of local credits, with disparate credit

Government Finance Associates, Inc.

standing, in the absence of some generic, extra credit support. State intercepts have often been used to address these rating agency misgivings about local credit pools and to "homogenize" the various credits within the pools. On occasion, state "moral obligation" pledges have been invoked for this purpose, but Moody's, in particular, gives little weight to the concept after "moral obligation" agencies in New York State had very serious credit problems in the 1970's, including a default on certain notes by one "moral obligation" agency. The state intercept is a well-established and favorably accepted credit device.

DIFFERENCE IN COST OF CAPITAL BETWEEN "A" AND DOUBLE "A" SRF'S:

In our opinion, if the State does not make special arrangements, as discussed further below, to compensate for the loss of the state intercept, it is highly likely that a rating of single-A will be given to the State's SRF, as opposed to the more desirable double-A. If this development occurs, then the Alaska SRF will experience a more costly interest expense on the bonds it sells in the credit markets. We estimate that the current difference in interest costs between a single-A and double-A credit, over twenty years, on \$10 million is equal to \$271,000 in gross dollars. Compounding this difference over several years of SRF issuances, for \$100 million, it would amount to \$2.3 million over twenty years.

It should be noted that we are currently experiencing low interest rates. In a higher interest rate environment, this difference between single-A and double-A credits could be (and has been) as great as 50 basis points. In that situation, the difference in capital costs between a single A and double A could aggregate as much as \$7.0 million over twenty years. One could argue that the difference could be reduced through bond insurance, which is correct, but it is relevant to emphasize the following in this respect. First, bond insurance is rather expensive, often as much as one-half of one percent of total debt service. Second, bond insurers frequently require programmatic restrictions that even the rating agencies do not mandate.

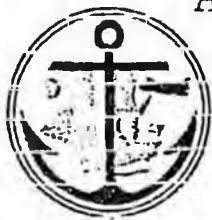
ALTERNATIVES TO STATE INTERCEPT: As discussed above and as more fully exhibited in the enclosures, there are options for Alaska in achieving a double-A rating for the leveraged SRF over and above the use of the state intercept. The alternatives tend to fall into three categories. First, as demonstrated by the Arkansas, Colorado, and Minnesota programs, a supplemental reserve could be created that further secures the cash flow through excess revenues and unreleased fund balance. Second, overcollateralization of financed loans could also be accomplished through lower ratios of SRF debt to the program's fund balance and other unreserved monies; Missouri, Pennsylvania and Texas have followed this course. Third, other programs, such as Arizona and Nevada, have applied high general obligation bond ratings to secure the SRF debt; Arizona apparently issues uninsured debt only for high rated localities, such as Phoenix, and Nevada SRF debt is further secured by the State's general obligation pledge. Based on our understanding of the desire for flexibility in the Alaska program, we do not think that the third option is realistic for the Alaska context.

Government Finance Associates, Inc.

CONCLUSION: The state intercept mechanism is a common feature for many, highly rated SRF structures. If the State wishes to eliminate the state intercept but still achieve a double-A rating, on an uninsured basis, for its leveraged SRF program, it will be necessary for operational adjustments to be made by the State. These adjustments could include, but would not necessarily be limited to, the establishment of supplemental reserve funds and significant overcollateralization of assets (lower debt to equity ratios). In effect, the Alaska program would be required to limit its flexibility in certain respects. The State will need to balance these additional restrictions and effect on the SRF's future programmatic flexibility against any perceived disadvantages of the use of a state intercept.

As a final comment, we would like to emphasize that in the absence of substantial reasons to the contrary, the use of the state intercept, as a result of its frequent use for other states that have received a double-A rating, will facilitate discussions with rating agencies and will be met with an historically favorable acceptance by the credit markets. These factors should result in a lower cost of capital for the Alaska SRF. We suggest that if Alaska desires to eliminate the state intercept, we should first discuss its elimination with the rating agencies to determine the replacement security feature that the agencies would possibly require in order for Alaska to achieve a double-A rating. Of course, if Alaska is satisfied with the single-A rating, then it becomes a matter of the additional cost of capital that would be incurred through the elimination of the state intercept.

ANCHORAGE WATER & WASTEWATER UTILITY



Rick Mystrom,
Mayor

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898



Owned by the
Municipality of Anchorage

PAGES INCLUDING COVER SHEET: 3 DATE: 2-20-96
TO: Juan Juan Community Reg Affairs FAX: () 465-5589
LOCATION: AK State Legislature PHONE: ()
SUBJECT: House Bill 401

FROM: Diana Bennett FAX: (907) 562-3421
LOCATION: Finance Div. PHONE: (907) 786-5623

COMMENTS: Thank you for the opportunity to speak in
Support of HB 401. Please call if there are any
questions

We are transmitting from a Canon Fax L770 - (907) 562-3421. In the event of a transmission problem call (907) 786-5502.

PLEASE DO NOT HIGHLIGHT DOCUMENT NOTATIONS

MUNICIPALITY OF ANCHORAGE
Anchorage Water and Wastewater Utility

MEMORANDUM

DATE: January 29, 1996
TO: Tim Rogers, Executive Assistant
THRU: Mark Premo, P.E., General Manager, AWWU
FROM: ¹⁴ Diana Bennett, CPA, Finance Manager, AWWU
SUBJECT: Suggested Revisions to House Bill 401

Listed below are suggested changes to the bills having to do with the issuance of revenue bonds to fund water quality improvements. AWWU fully supports the concept of this bill, or a revision of the bill, and would like to provide testimony in support of whatever bill comes before the legislature this session.

Page 1: Change title to read

"An Act authorizing the issuance, sale, security and payment of revenue bonds to fund public water quality improvements; and amending Alaska Rule of Civil Procedure 3."

Page 1: Section 1, line 13, add:

"These water quality improvements include wastewater systems and nonpoint source water pollution control projects such as solid waste management systems."

Page 2, line 5, delete:

"and state agencies"

Page 5, line 6, delete:

entire Sec. 37.15. .5. STATE AID INTERCEPT

Page 6, line 6:

Following "required in", insert "the current fiscal year and"

Page 8, line 12:

Following "letters", insert "and lines"

Tim Rogers
Revisions to HB401
January 29, 1996

Page 9, line 8:
Following "constructing," insert "purchasing."

Page 9, line 12:
Following "constructing," insert "purchasing,"

Page 9,
Delete lines 14 and 15

Page 9, line 18:
Delete "and state agencies"

Page 9, line 20:
Delete

Page 9, line 22:
Delete "or state agency"

Page 10, line 11:
Delete "or state agency"

Page 10, lines 17 and 18
Delete "and sufficient reserves for the loan as may be necessary."

Page 10, lines 23 and 24
Delete "A loan made from the Alaska clean water fund may be subject to the state aid intercept provisions of AS 37.15.575."

Please let me know if you need additional information or assistance.

ANCHORAGE WATER & WASTEWATER UTILITY



Rick Mystrom,
Mayor

3000 Arctic Boulevard
Anchorage, Alaska 99503-3898



Owned by the
Municipality of Anchorage

PAGES INCLUDING COVER SHEET: 5 DATE: 2-20-96

TO: Ivan Ivanov Community & Regional Off. FAX: (1) 465-4589

LOCATION: AK State Legislature PHONE: ()

SUBJECT: House Bill 401

FROM: Diana Bennett FAX: (907) 562-3421

LOCATION: Finance Division PHONE: (907) 786-5623

COMMENTS: Thank you for the opportunity to speak on
behalf of HB401. The Utility supports this
bill - Please call if there are any questions.

We are transmitting from a Canon Fax L770 - (907) 562-3421. In the event of a transmission problem call (907) 786-5502.

PLEASE DO NOT HIGHLIGHT DOCUMENT NOTATIONS

Testimony before House Community and Regional Affairs

My name is Diana Bennett. I am the Finance Manager of the Anchorage Water and Wastewater Utility, a department of the Municipality of Anchorage. I am here today to speak in favor of House Bill 401 and its companion bill in the Senate, number 207, bills authorizing the State of Alaska to issue revenue bonds for the purpose of funding wastewater and other water quality improvement projects thru the Alaska Clean Water loan fund.

Although AWWU shares a common workforce and management, it is actually two separate utilities for regulatory purposes, establishing separate rates for service and incurring separate debt for capital projects. The wastewater utility relies substantially, almost entirely, on the Alaska Clean Water loan fund to finance its comprehensive capital improvement plan. We anticipate borrowing \$4-6 million

annually from the loan program. I hope the funds will be available to do so.

The low interest loan program has been extremely popular and well received throughout the country. The Anchorage Wastewater Utility has borrowed \$8.8 million from the low interest loan program, at rates substantially lower than would be possible in the regular bond market. We estimate this has saved the ratepayers at least \$400,000 over the past four years, in addition to the flexibility the program affords us. In the years this Alaskan program has been in existence, ADEC has made loans totaling \$53 million. There is still a tremendous need for low cost funding throughout the state. ADEC received requests for \$13 million in loans for the current fiscal year.

The bill under discussion will allow what many other states have done and leverage this initial capitalization money from the federal government. Increasing the amount of funds available allows

projects to be completed sooner than if we have to wait for our projects to move above the "cut line". This is a good way to increase the pool of money available for necessary water quality projects, without putting any other programs at risk. The burden for repayment remains with the communities requiring the funds. There is a strong incentive for them (us) to make our payments.

Without increasing the availability of funds, at the current request level of \$13 million, the state will run out of money to loan in only 2 years. The loans are being repaid, but the repayment stream has not reached equilibrium yet, and when it does it will only be, I believe, \$4 - 5 million - well below the projected need. The communities around the State need this source of low interest money to help finance sorely needed water quality improvements.

The revenue bonds will be backed, not by the full faith and credit of the state, but by the revenue coming from repayment of the loans. In

the history of the low interest loan program, there has never been a default - not in the entire United States. In fact, in Alaska, there has never been a late payment! These bonds will be extremely safe. The State will not be required to "bail out" any agency over this.

You may have seen a Municipality of Anchorage memo listing some recommended changes to this bill. The Utility is substantially in favor of the bill as was originally written, however, we were asked to comment on the bill, with an eye to any proposed changes. This Utility works closely with ADEC and we have agreed among our two groups that this bill, with or without any or all of the suggested revisions, is extremely workable, and will benefit the whole state of Alaska. I urge you to pass this bill. Thank you for your time.

February 20, 1996

**Municipality
of
Anchorage**



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 343-4433

Rick Mystrom, Mayor

OFFICE OF THE MUNICIPAL MANAGER

March 8, 1996

Representative Jeanette James
Alaska State Legislature
State Capitol
Juneau, AK 99801

Re: House Bill 401

Dear Representative James:

Please add our support for the passage of HB 401, relating to the issuance and sale of revenue bonds to fund public water quality improvements.

The Alaska Clean Water loan fund provides a basis for which much needed financing for wastewater utility projects throughout the State. The Anchorage Water and Wastewater Utility currently relies almost exclusively on this loan fund to finance its comprehensive capital improvement program.

This bill will allow Alaska to leverage Federal funds enabling communities throughout the State to fund much needed water quality projects.

Thank you for your consideration of this legislation.

Sincerely,

A handwritten signature in black ink that reads "Tim Rogers". The signature is written in a cursive style.

Tim Rogers
Legislative Program Coordinator

HB

404

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

SPONSOR STATEMENT

January 15, 1996

HB 382 Extend Board of Dispensing Opticians-James
Extends Board for 4years

HB 404 Extend Board of Chiropractic examiners-L&C
Extends Board for 5 years

HB 405 Extend Board of Optometrists-L&C
Extends Board for 5 years

The boards are responsible for overseeing the licensing of the Doctors covered by the appropriate board. The board must be extended if the doctors are to be licensed.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 404

Revision Date: _____
 Title: An Act extending the termination date of the
Board of Chiropractic Examiners,....
 Sponsor: House Labor & Commerce
 Requestor: Representative James

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations

COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	18.2	18.2	18.2	18.2	18.2	18.2
TRAVEL	6.7	6.7	6.7	6.7	6.7	6.7
CONTRACTUAL	1.8	1.8	1.8	1.8	1.8	1.8
SUPPLIES	0.1	0.1	0.1	0.1	0.1	0.1
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	26.8	26.8	26.8	26.8	26.8	26.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES	56.5	8.6	56.5	8.6	56.5	8.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	26.8	26.8	26.8	26.8	26.8	26.8
TOTAL	26.8	26.8	26.8	26.8	26.8	26.8

Estimate of any current year (FY 96) cost: \$ 32.7

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 404 extends the Board of Chiropractic Examiners to June 30, 2001. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$32.7. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: January 10, 1996
 Date: 1-11-96

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FISCAL NOTE

No. 1
 Bill Version: HB 404
 (H) Publish Date: 1/16/96

STATE OF ALASKA
 1996 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: An Act extending the termination date of the BRU: Occupational Licensing
 Board of Chiropractic Examiners: _____ Component: Operations
 Sponsor: House Labor & Commerce
 Requestor: Representative James COMPONENT SERIAL NO. 1844

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
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GRANTS, CLAIMS						
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Prepared by: Jennifer Stuckler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: January 10, 1996
 Approved by Commissioner: William L. Hensley Date: 1-11-96
 Agency: Commerce and Economic Development

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COMMITTEE COPY

(7)
Date Referred to Committee: January 9, 1996

HOUSE COMMITTEE REPORT

FURTHER REFERRALS:

1/16/96
Rules
Fin address
1/17/96

Date of Committee Action: 1-11-96

The STATE AFFAIRS Committee considered:

HB 404

HOUSE BILL NO. 404

EXTENDING BOARD OF CHIROPRACTORS

"An Act extending the termination date of the Board of Chiropractic Examiners; and providing for an effective date."

recommends it be replaced with the following committee substitute _____ the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) CEC fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Jeannette James</i>	James	✓			
<i>Thomas Porter</i>	Porter			✓	
<i>James Green</i>	Green			✓	
<i>Ivan</i>	Ivan	✓			
<i>Caren Robinson</i>	ROBINSON	✓			
<i>Ed Willis</i>	Willis	✓			
<i>Scott Ogan</i>	Ogan			✓	
		(4)		(3)	

CHAIR'S SIGNATURE *Jeannette James*
James

Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF CHIROPRACTIC EXAMINERS

September 6, 1995



Audit Control Number:

08-1434-96

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in either Anchorage or Juneau.

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Senator Al Adams
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DIVISION OF LEGISLATIVE AUDIT

Randy S. Welker, CPA
Legislative Auditor
Merle R. Jenson, CPA
Deputy Legislative Auditor

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Juneau, Alaska 99811-3300

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P. O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347

September 6, 1995

Members of the Legislative Budget
and Audit Committee:

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

A SPECIAL REPORT ON THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF CHIROPRACTIC EXAMINERS

September 6, 1995

Audit Control Number
08-1434-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report, we assess the operations and performance of the Board of Chiropractic Examiners utilizing the criteria set out in AS 44.66.050(c). The criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(8), the Board of Chiropractic Examiners is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Chiropractic Examiners should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Chiropractic Examiners until June 30, 2000.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section of this report.

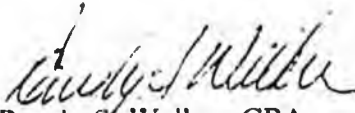

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Chiropractic Examiners. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(8) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

We reviewed the board activities and licensing functions for the years FY 92 through FY 95. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documentation of licensees.
3. Interviews with Division of Occupational Licensing staff.
4. Minutes of board meetings and division correspondence files.
5. Attorney general's opinions applicable to professional boards.

Board of Chiropractic Examiners
(As of August 1, 1995)

William F. Risch, D.C. Chair

Patricia Conners-Allen, D.C.

Trevor Ireland. D.C.

LeRoy D. Nordstrom, D.C.

(Vacant), Public Member

As discussed in Recommendation No. 2, since January of 1995 the public member seat on the board has been vacant.

ORGANIZATION AND FUNCTION

The Board of Chiropractic Examiners was established under the provisions of Title 8, Chapter 20 of Alaska Statutes. The board consists of five members appointed by the governor and subject to legislative confirmation. Four members must be chiropractors and one member must be appointed from the general public. Board members serve staggered terms of four years.

The board regulates the practice of chiropractic. The board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling the standards of professional chiropractic practice.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when an individual has violated chiropractic statutes or regulations.

By statute an applicant may be licensed by passing the examination given by the board or by credentials. For credentials, an applicant must provide proof of licensure in another jurisdiction with requirements that are essentially equivalent to Alaska's. Both types of applicants must meet specified educational requirements, and pass all parts of an examination administered by the National Board of Chiropractic Examiners.

Division of Occupational Licensing

The Division of Occupational Licensing (OccLic), Department of Commerce and Economic Development provides administrative and investigative assistance to the Board of Chiropractic Examiners. This assistance is funded by licensing and application fees as appropriated by the legislature. Administrative assistance includes budgetary services and functions such as: collection of fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings. On its own initiative, or in response to a complaint, OccLic may conduct an investigation if it appears a person has engaged in or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that a person stop the practice, bring an action on Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

(Intentionally left blank)

REPORT CONCLUSIONS

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

The Board of Chiropractic Examiners has consistently been found to satisfy a public purpose and has demonstrated its ability to conduct business satisfactorily. Deficiencies found have been relatively minor, and are further discussed in the Findings and Recommendations section of this report.

Alaska Statute 08.03.010(c)(8), requires that the Board of Chiropractic Examiners be terminated on June 30, 1996. Under AS 08.03.020 the board has a one-year period to administratively conclude its affairs. Based upon our review of the board's performance, it is recommended that the next termination date for sunset review should be June 30, 2000.

Our recommendation for a four year extension is linked to the suggested legislative action set out in Recommendation No. 1. In the recommendation, we suggest the legislature clarify statutory language which allows for licensure by credential. As reflected by subsequent discussion, we make this recommendation despite concerns that such action may appear to lead to more restrictive entry into the chiropractic profession.

Our concerns were alleviated by our review of examination results which indicated that the current board's policy of denying licenses by credential did not result in unduly restricted entry into the profession. If the legislature adopts our recommendations related to credential provisions in statute, we believe the board should be limited to only a four year renewal period. By limiting the renewal period, a more timely review of examination practices would automatically be triggered. Such a review will allow our agency to address concerns that licenses continued to be issued in a fair and reasonable manner, even after current practice has been codified in statute.

**LICENSURE AS A CHIROPRACTOR IN ALASKA REQUIRES
APPLICANTS TO PASS BOTH A NATIONAL AND
STATE EXAMINATION**

The Board of Chiropractic Examiners requires applicants for licensure to successfully complete both national and state examinations. The national examination is made up of three parts. Additionally, the state board requires that applicants also pass a physiotherapy examination. Both of these national examinations are administered through the auspices of the National Board of Chiropractic Examiners.

Some applicants, licensed in other jurisdictions, fail to meet the State's *essentially equivalent* standard because they were licensed without having to pass part three of the national examination and/or the physiotherapy examination. State regulation provides that an applicant can substitute an examination from another state for part three or the physiotherapy section if the applicant can demonstrate that the test is equivalent. As discussed in Recommendation No. 1, to date the board has yet to recognize any other state's examination as being equivalent.

The state examination includes written, oral, and practical components

The state examination involves a written test of Alaska Statutes related to the ethical and legal requirements involved with the practice of chiropractic in the State. Additionally, the examination also involves a written test on the administration, safety procedures, analysis, and interpretation of x-rays. As might be expected, applicants licensed in other jurisdictions have not met these criteria, and accordingly, even if they meet all the requirements of the other phases, they cannot achieve the State's *essentially equivalent* standard. The written examination also covers clinical practice and evaluates the applicant's competency in this area.

The state examination also includes a demonstration of an applicant's ability to properly apply chiropractic techniques using one of a number of different methods. In addition to demonstrating what is termed manipulative technique, the applicant must also demonstrate their competency in the area of physiotherapy, physical diagnostic skills, and interpretation of x-rays. Even though an individual, licensed in another state, may have passed a similar practical examination as a condition of licensure, the board still requires the applicant to pass this phase. Unlike the national examination phase, the applicant does not receive "credit" for successful completion of any one segment of the state examination. Rather, all applicants regardless of any previous license status, must demonstrate their practical technical proficiency to the satisfaction of the board.

After successfully completing all phases of the licensing examination the applicant is required to sit for a formal interview with the board and respond to typically routine questions regarding their background and experience. The interview process is generally a routine formality for the applicant.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending state law related to what the statutes term as "licensure by credentials" for chiropractors.

Alaska Statute (AS 08.20.140) provides for a process by which applicants may be licensed as chiropractors without taking the state examination. The statute provides that the Board of Chiropractic Examiners may issue a license if an applicant can satisfactorily demonstrate they were licensed in another jurisdiction that imposed requirements *essentially equivalent* to the State's current licensing standards.¹

For the past four years reviewed, no applicant has received a license without taking the state examination. In practice, the board essentially deals with all applicants the same way, regardless whether or not the individual may have been licensed as a chiropractor in another jurisdiction. The board scrutinizes each applicant's training, experience, and examination credentials in making its licensing determination. The board gives credit to examination testing, training, and experience that may have been obtained in another jurisdiction by an individual practicing as a licensed chiropractor. However, the board has historically held that no applicants, licensed in other jurisdictions, meet the *essentially equivalent* requirements.

The board seems to have made this determination by considering licensing requirements, in their entirety. To be licensed as a chiropractor in Alaska, an applicant, after documenting they meet the necessary qualifying education and experience requirements must then successfully complete both the national and state examinations. These examination requirements, as described in the inset on the opposite page, are applied to all applicants, and invariably result in everyone needing to successfully complete at least one examination.

The multiplicity, and to some degree the uniqueness, of examination requirements for licensure in the State has rendered the licensure by credential statute meaningless. The statute serves to falsely suggest that an applicant could obtain licensure in Alaska based solely on their licensure in another jurisdiction, as long as the other jurisdiction had *essentially equivalent* standards. However, because of the extensive and state-specific nature

¹ Specifically, AS 08.20.140 provides

The board may issue a license without examination to an applicant presenting satisfactory proof of possession of a license or certification of registration in good standing in a state or territory of the United States, or a foreign country, if the requirements for registration at the date of the applicant's license were essentially equivalent to those in this chapter. [emphasis added]

Alaska's requirements, as a practical matter no other jurisdiction's requirements can meet the equivalency standard.

We would typically look in askance on such practices and requirements that seem to be unduly rigorous. Such extensive requirements can serve as an unfair barrier to entry into the profession — protecting the professional interests of current licensees at the expense of the public interest. We are given further pause by the apparent intent of the legislature that licensure be available to applicants from other jurisdictions. This intent can be reasonably inferred from AS 08.20.140 which provides for a process whereby licenses could be obtained without examination. We have been traditionally skeptical about board actions and functions that seemingly have the effect of eviscerating original statutory intent.

However, from our review of this board's licensing activities, we determined that the board has not been acting to unduly or unfairly restrict licensure. Over the past four years the board has issued more than 40 licenses, and the rate of success for applicants is almost 93 percent. In cases where an individual did not pass the jurisprudence section of the state examination, the board allowed applicants to retake the examination upon arrangement with the board's licensing examiner. In our view, these statistics suggest that the board has not been overly restrictive in its application of licensing requirements.

As discussed in the inset on page six, the State requires applicants that may be licensed in another jurisdiction to demonstrate their practical proficiency, even though they may have done so in an essentially equivalent process as a condition of original licensure. We believe it is reasonable for the board to satisfy itself that prospective practitioners can adequately and appropriately perform the day-to-day practical requirements of their profession.

Accordingly, we recommend the legislature consider either amending or repealing AS 08.20.140. By doing so, the legislature could more clearly set out the actual requirements and expectations involved in the licensing of chiropractors. Repeal would eliminate the expectation and possible confusion on the part of applicants who may be licensed by other jurisdictions regarding what they must do to be licensed in Alaska.

A preferable remedy may be for the legislature to codify more specifically in statute the requirements for licensure. Such a statutory amendment could state that any applicant must successfully complete certain relevant national examinations; the necessary state examinations; and, a practical demonstration and examination in front of board members. By codifying current practice in statute, the legislature could provide both clear notice of licensing requirements and standards, while also guarding against possible abuses by future boards.

Recommendation No. 2

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a more timely manner.

Alaska Statute 08.20.020 provides that one member of the general public be appointed to serve on the Board of Chiropractic Examiners. The public member sits with four licensed chiropractors on the State's regulatory and oversight board.

The public member board seat has been vacant since January of 1995. It was also vacant from March of 1991 to July of 1992, and from January of 1994 through March of 1994. Of the fifty-one months from March of 1991 to June of 1995, the seat was vacant approximately twenty-five months. In that time, the board held five meetings without the benefit of the presence of the required board member.

This lack of public representation on the board defeats the intent behind the board membership statutory requirement. It fosters the possibility that the board will be more insular and self-serving in its actions and makes the board less accountable to the public at large.

As of the date of this report no new public member has been appointed. We recommend that if at all possible, the seat be filled before the next scheduled meeting.

(Intentionally left blank)

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis of the board activities relates to the public need factors defined in the sunset law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The board has served the public by examining and licensing qualified applicants, and by proposing changes to statutes and regulations in order to enhance the quality of chiropractic care in Alaska.

The board has enforced the laws for issuing licenses in a uniform and consistent manner. It has held regular meetings and examinations throughout the audit period in accordance with statutory requirements.

The board was instrumental in the passage of legislation permitting the establishment of a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fee charges, or the costs of services rendered by licensees.

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

The board has served the public by examining and licensing qualified applicants and by proposing changes in regulation that are necessary to enforce state statutes and enhance the quality of chiropractic care in Alaska.

Appointments to the public member board seat were not made in a timely manner. This seat has been vacant since January 1995. It was also vacant from March 1991 through July 1992 (16 months), and it was vacant from January 1994 through March 1994. For further discussion, see Recommendation No. 2.

Alaska Statute 08.20.140 states that licensure by credential may be extended to applicants who present proof of current licensure in other states, and who have met requirements essentially the same as those which exist in Alaska. The board has held that no tests equivalent to the state exam, or equivalent to part three of the national written exam exist. Therefore, as a practical matter, all applicants are required to take these tests to be licensed in Alaska. For further discussion, see Recommendation No. 1.

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

The board was instrumental in the passage of legislation establishing a peer review committee to review complaints concerning the reasonableness or appropriateness of care provided, fees charged, or the costs of services rendered by licensees.

The board supports implementation of Locum Tenens statutes and regulation of chiropractic technicians. Adoption of a Locum Tenens measure would provide easier access to licensed chiropractors from other states to practice in Alaska on a temporary basis. This would permit professionals from other states to practice, perhaps in a substitute capacity for a licensed chiropractor within the State.

The board also supports inclusion of chiropractors in the Impaired Physician's Act as found in AS 08.01.050(d). This statute allows occupational licensing to contract with public or private agencies to provide assistance and treatment to persons licensed by the board, who abuse alcohol, drugs, or other substances. Currently, professionals not covered under this act are monitored by personnel in the investigative unit of the Division of Occupational Licensing. Contracting with agencies specializing in the treatment of alcohol and drug abuse will afford those professionals a better chance for recovery and will ultimately result in more stable professional care offered to the public.

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 that it has provided.

All meetings and examinations were advertised in three Alaskan newspapers with adequate notice for interested individuals to attend or to make written comment.

Time was set aside to hear public testimony at all meetings.

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

Public notices of proposed regulations are published in major newspapers. As noted above, meetings were adequately advertised, and time was set aside for public testimony.

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

No complaints were filed with the Ombudsman regarding chiropractic licensees.

Overall, the investigation of complaints against licensees received by the Division of Occupational Licensing is effective. While timeliness is a concern, given the circumstances surrounding the cases that have remained open for an extended period, progress is not unreasonably slow. Complaints are prioritized logically and handled accordingly.

During the period under audit, nineteen investigative cases were opened. Six of these cases involved allegations of fraud or misrepresentation. Three cases involved allegations of negligence, and two involved practice beyond the scope of one's license. One case was a sexual misconduct case and one dealt with violation of professional ethics. Two cases involved unlicensed practice, one involved criminal action, and the final three were license application problems. We reviewed a sample of nine cases. Additionally, we noted all cases that required board decision. All hearing officer's decisions were upheld by the board.

The licensing board appears to be willing to take effective licensing enforcement action, and to operate in a fair and objective manner.

The extent to which the board or commissions that regulate entry into an occupation or profession has presented qualified applicants to serve the public.

Overall, the application process for chiropractic licensure appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Qualified applicants are readily licensed.

Adequate continuing education is required to maintain licensure. Continuing education credits are adequately monitored by the Division of Occupational Licensing to promote a high level of quality performance to the public.

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

No complaints regarding the Division of Occupational Licensing were received by the Ombudsman. We did not find any evidence that the board was not complying with state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

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

As discussed in Recommendation No. 2, the significant portion of time the public member board seat was vacant represents a lack of public representation on the board.

The board's position that no test is equivalent to the state exam or to part three of the national exam causes AS 08.20.140 to be misleading. As discussed in Recommendation No. 1, the statute should be clarified to avoid confusion as to what are the board requirements for licensure by credentials.

TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

P.O. BOX 110806
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November 30, 1995

Mr. Randy S. Welker
Legislative Auditor
Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 08 1995

LEGISLATIVE AUDIT

Dear Mr. Welker:

Reference the Board of Chiropractic Examiners Preliminary Audit Report. Thank you for this opportunity to comment.

Recommendation No. 1:

The Legislature should consider clarifying state law related to what the statutes term as "licensure by credentials" for chiropractors.

As the board has not issued a license by credentials in more than four years, we concur that license by credentials provision in AS 08.20 is misleading to applicants. The board has been unable to determine equivalency of other jurisdiction exams and, therefore, all applicants have been required to sit for the entire Alaska examination.

Recommendation No. 2:

The Office of the Governor should arrange for appointments to the public member seat on the Board of Chiropractic Examiners to be made in a timely manner.

My department is not involved with board appointments; this recommendation will be passed along to the Governor's office for comment as applicable.

Analysis of Public Need:

We agree with your analysis of the need for licensing this profession. In our opinion, the board has performed its responsibilities in the best interest of the public.

Examinations:

With regards to page 6, relating to the exam categories, we would like

Mr. Randy S. Welker

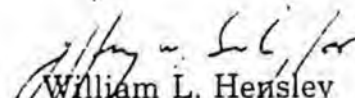
-2-

November 30, 1995

to clarify that under paragraph four, it is correct that the board previously gave a practical exam section which specifically covered physiotherapy and interpretation of x-ray; however, that portion of the exam was discontinued some time ago (approximately 1992). Current exam categories administered during the August 1995 exam were as follows:

<u>Exam</u>	<u>Passing Score</u>
X-ray Written Exam Section	75%
Jurisprudence Written Exam Section	75%
Oral Exam (six questions--applicant specific)	Pass/Fail
Manipulation Techniques (Applicant chooses one of three options)	75%

Sincerely,


William L. Hensley
Commissioner

WLH/BG/yd730.ol
103195a

cc: Catherine Reardon, Director
bcc: Barbara Gabier, Program Coordinator

HB

405

Alaska State Legislature

REPRESENTATIVE
JEANNETTE JAMES

P.O. Box 56622
North Pole, Alaska 99705
(907) 488-1546
FAX (907) 488-9006



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-3743
FAX (907) 465-2381

House of Representatives

House District 34

SPONSOR STATEMENT

January 15, 1996

HB 382 Extend Board of Dispensing Opticians-James
Extends Board for 4years

HB 404 Extend Board of Chiropractic examiners-L&C
Extends Board for 5 years

HB 405 Extend Board of Optometrists-L&C
Extends Board for 5 years

The boards are responsible for overseeing the licensing of the Doctors covered by the appropriate board. The board must be extended if the doctors are to be licensed.

FISCAL NOTE

STATE OF ALASKA
1996 LEGISLATIVE SESSION

BILL NO. HB 405

Revision Date: _____
 Title: An Act extending the termination date of the
 Board of Optometry;....
 Sponsor: House Labor & Commerce
 Requestor: Representative James

Department: Commerce and Economic Development
 BRU: Occupational Licensing
 Component: Operations
 COMPONENT SERIAL NO. 1844

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	15.7	15.7	15.7	15.7	15.7	15.7
TRAVEL	2.8	2.8	2.8	2.8	2.8	2.8
CONTRACTUAL	4.5	4.5	4.5	4.5	4.5	4.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	23.0	23.0	23.0	23.0	23.0	23.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES	48.5	3.8	48.5	3.8	48.5	3.8
---------------------------	------	-----	------	-----	------	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1091 Designated PR	23.0	23.0	23.0	23.0	23.0	23.0
TOTAL	23.0	23.0	23.0	23.0	23.0	23.0

Estimate of any current year (FY 96) cost: \$ 27.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

HB 405 extends the Board of Optometry to June 30, 2001. The costs identified above are included in the FY 97 operating budget and therefore, new funds are not required. Costs shown represent only Direct expenses of the board based on FY 95 activity. Administrative Indirect expenses are also assessed annually per capita by the number of current licensees. FY 95 program costs (direct and administrative indirect) totalled \$27.0. Fees were adjusted in October 1994 to cover full costs of the program over a two-year period and will be reviewed again prior to the December 31, 1996 renewal.

Prepared by: Jennifer Strickler, Administrative Officer
 Division: Occupational Licensing
 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2144
 Date: January 10, 1996
 Date: 1-11-96

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CS FOR HOUSE BILL NO. 405(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Board of Examiners in Optometry; relating to dispensing
2 opticians; and providing for an effective date."

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

4 * Section 1. AS 08.03.010(c)(19) is amended to read:

5 (19) Board of Examiners in Optometry (AS 08.72.010) -- June 30, 2002
6 [1996];

7 * Sec. 2. AS 08.72.150 is amended to read:

8 Sec. 08.72.150. APPLICATION FOR EXAMINATION AND ISSUANCE OF
9 LICENSE. An applicant shall apply for the examination by filing an application with
10 the department together with the examination fee by the deadline established by the
11 department in regulations [AT LEAST 15 DAYS BEFORE THE EXAMINATION].
12 Upon successful completion of the examination by the applicant and payment of the
13 license fee, the board shall issue a license to the successful applicant. The applicant may
14 practice optometry in the state upon receipt of the license.

15 * Sec. 3. AS 08.72 is amended by adding a new section to read:

OK

1
2
3
4
5
6

Sec. 08.72.285. USE OF ASSISTANTS. A person may not be employed by a licensee to perform duties that include preparing, dispensing, or fitting lenses, eyeglasses, contact lenses, or appurtenances to them unless the person is registered as an apprentice under AS 08.71.160.

* Sec. 4. AS 08.72.125, 08.72.140(1), and 08.72.140(2) are repealed.

* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

188(b)

Audit Report

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT
BOARD OF EXAMINERS IN OPTOMETRY

October 4, 1995



Audit Control Number:

08-1436-96

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from each legislative chamber. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$5 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

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ALASKA STATE LEGISLATURE

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Division of Legislative Audit



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October 4, 1995

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BOARD OF EXAMINERS IN OPTOMETRY

October 4, 1995

Audit Control Number
08-1436-96

This audit was conducted under the requirements of AS 44.66.050 and the authority of AS 24.20.271(1). In the report we assess the operations and performance of the Board of Examiners in Optometry utilizing the criteria set out in AS 44.66.050(c). This criteria relates to assessing the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(19), the Board of Examiners in Optometry is scheduled for termination on June 30, 1996. The board would be allowed one year in which to conclude its affairs.

In our opinion, the Board of Examiners in Optometry should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. We recommend that the legislature extend the Board of Examiners in Optometry until June 30, 2002.

The audit was conducted in accordance with generally accepted government auditing standards and the criteria set out in AS 44.66.050(c). Fieldwork procedures utilized in developing this report are discussed further in the Objectives, Scope, and Methodology section on page one.

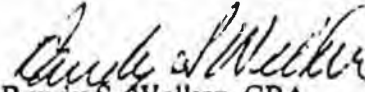

Randy S. Welker, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Examiners in Optometry. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(19) states that the board will terminate on June 30, 1996, and will have one year from that date to conclude its affairs.

Objectives

Our specific audit objectives were:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the interest of the public. In assessing the operations and performance of the board, we utilized the criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Our audit reviewed the operations and activities of the Board of Examiners in Optometry for the period of FY 92 through FY 95.

During the course of our examination, we reviewed and evaluated the following:

1. Compliance with statutes and regulations related to the licensing of optometrists. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain his/her optometry license in good standing.
2. Minutes of meetings of the Board of Examiners in Optometry.
3. Annual reports issued by the board.
4. Complaints filed with the Division of Occupational Licensing and the Department of Law.

We also conducted interviews with employees of the Department of Commerce and Economic Development, Division of Occupational Licensing, and the Department of Law.

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ORGANIZATION AND FUNCTION

The Board of Examiners in Optometry was established under the provisions of Title 8, Chapter 72 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Four board members must be licensed, practicing optometrists who have been residents in the State for at least three years. The statute also requires one member of the general public to sit on the board.

The board regulates the practice of optometry in the State by setting education, training, and work experience standards necessary for an individual to be licensed as an optometrist.

Alaska Statute (AS 08.72) defines the practice of optometry as the examination, diagnosis, and treatment of conditions of the human eyes and visual system, other than by use of laser, x-rays, surgery, or pharmaceutical agents.¹

Members of the Board of Examiners in Optometry (As of June 30, 1995)*

James W. Matson, Optometrist & Chairperson
Lynn J. Coon, Optometrist & Secretary
Steve S. Dobson, Optometrist
Randall Christiansen, Optometrist

* As of the date of this report Governor Knowles has not appointed a public member to the Board of Examiners in Optometry (See Recommendation No. 3).

The board's duties and responsibilities under statute include:

1. Holding a minimum of one meeting per year.
2. Examining and issuing licenses to qualified applicants.
3. Holding hearings in order to impose disciplinary sanctions on persons who violate optometry licensing statutes and/or regulations.
4. Adopting regulations necessary to enforce the statutes relating to the board.
5. Adopting a code of ethical practice for optometry.

¹ Recent statutory amendments provide that optometrists may obtain a license endorsement that permits them to prescribe and administer pharmaceutical agents. These pharmaceutical agents (drugs) may only be topically applied to the human eye and its appendages. To obtain such an endorsement an individual must pass "written and practical portions of an examination on ocular pharmacology, approved by the board, that tests the licensee's or the applicant's knowledge of the characteristics, pharmacological effects, indications, contraindications, and emergency care associated with the prescription and use of pharmaceutical agents."

Applicants must be a high school graduate or equivalent in addition to having graduated from a recognized college or school of optometry. Additionally, all applicants must certify that they are in good health with no contagious or infectious diseases and have a visual acuity correctable to 20/40. Licensed optometrists are required to obtain 12 hours of continuing education per year.²

Alaska's optometry statutes and regulations do not allow for reciprocity with other states. Optometrists licensed in other states wishing to practice in Alaska must first become licensed in Alaska. Applicants that have passed a written examination in another jurisdiction may obtain waiver from passing the written examination requirement.³ However, AS 08.72.170 specifically states "*a waiver of the practical or oral portions of the examinations may not be given.*"

To become licensed in Alaska optometrists licensed in other states must provide the department with official documentation verifying Alaskan optometry educational requirements have been met. They must also apply for and pass all parts of the state optometry examination, pay all examination and application fees, and fulfill all other licensing requirements.

State law requires all optometrists licensed in Alaska to license each of their branch offices. There are few requirements for the licensing of branch offices. Optometrists must submit completed applications and pay all the required fees to the Division of Occupational Licensing biennially. Currently, the board is no longer enforcing the statute and the division is no longer collecting the required fees.⁴

The board grants license endorsements for optometrists to prescribe and use pharmaceutical agents. The board also grants endorsements for practitioners to only use pharmaceutical agents. Currently, all applicants graduating from optometry schools automatically qualify for pharmaceutical prescription and use license endorsement, after meeting all other licensing requirements.

² If an optometrist maintains a license endorsement for the prescription and use of pharmaceutical agents as discussed in footnote one then they must obtain additional hours of continuing education.

³ The state examination consists of three sections — oral, written, and practical. Alaska Statute 08.72.170 grants the board the authority to waive the written portion of the state examination. The board may not waive either the practical or oral sections. The written section of the examination may be waived if:

- 1) The applicant meets all other examination criteria per AS 08.72.140.
- 2) The applicant holds a current license by examination in another state or a province of Canada if they have been established in an ethical practice for at least three years.
- 3) The applicant can show satisfactory evidence of having passed the written portion of the examination given by the National Board of Examiners in Optometry.
- 4) The applicant has not had a certificate or license revoked for cause in any state, territory, or foreign country.

⁴ AS 08.72.125, and 12 AAC 48.030 relate to the licensing of branch offices. Neither clearly defines when branch office licenses are required, rather they address situations only when they are not (See Recommendation No. 1).

Department of Commerce and Economic Development, Division of Occupational Licensing

The Department of Commerce and Economic Development, Division of Occupational Licensing (OccLic) provides administrative and investigatory assistance to the Board of Examiners in Optometry. Administrative assistance includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065, mandates the department, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Results of our reviews during prior audits determined OccLic has implemented timekeeping policies and procedures to ensure licensing fees for boards and commissions include and closely reflect actual administrative, investigative, and overhead costs incurred by the division.

Further, under AS 08.01.087, OccLic has the authority to act on its own initiative or in response to a complaint and may conduct an investigation if it appears a person has engaged or is about to engage in a practice over which OccLic has authority. OccLic can issue an order that the person stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and records.

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REPORT CONCLUSIONS

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

The Board of Examiners in Optometry has been found to satisfy a public purpose and has demonstrated its ability to conduct its business in a satisfactory manner. The Board of Examiners in Optometry statutes, regulations, policies and procedures are current. The board carries out its regulatory oversight function in a professional, competent, and efficient manner.

Alaska Statute 08.03.010(c)(19) requires the Board of Examiners in Optometry be terminated on June 30, 1996. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend legislation be enacted to extend the board's termination date to June 30, 2002.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

Current statutory provisions related to the Board of Examiners in Optometry contribute to administrative "bottlenecks" in the licensing of optometrists. Additionally, certain statutory requirements are apparently no longer relevant to conventions of current practice. Specifically, we suggest the legislature consider:

1. Eliminating reference to, or extending the deadline for applications. Under current statute (AS 08.72.150) applicants for licensure may submit their applications and supporting documentation 15 days before examination or license expiration date. This 15 day deadline has caused a workload "bottleneck" for the licensing examiner during renewal periods. During these periods, the licensing examiner must process large volumes of various types of documentation received from applicants and license holders. He must check the applications for completeness and follow-up on missing documentation, in preparation for final review and approval of the full board.

The 15 day deadline allows little time for the licensing examiner to request additional documentation and to make corrections before the board reviews applicant files. The statutes for most other licensing boards leave the setting of the deadline to the discretion of the Division of Occupational Licensing (OccLic) or provide for more time than 15 days. We suggest that the legislature repeal AS 08.72.150 and leave the establishment of administrative deadlines to OccLic and the board through the adoption of regulations.

2. Repealing license requirements related to branch offices. At a June 1994 meeting, the board directed OccLic to no longer enforce AS 08.72.125 which requires the licensing of each branch office of any licensed optometrist's practice. This statute directs that "*a person may not practice, or attempt or offer to practice, optometry without obtaining a license for each branch office from the board.*"

Since the board's decision, no collection notices have been sent to optometrists and branch office licensing fees have not been actively collected by OccLic. The only occasion these fees have been collected has been when an optometrist has voluntarily remitted payment. From our review of statutory history and the discussion of the board it appears the conditions and concerns that originally gave rise to branch office licensing requirements no longer exist. We suggest the legislature repeal this statute.

3. Repeal health and visual acuity requirements. Currently, AS 08.72.140 requires applicants for examination and licensure to provide the division with notarized or certified documentation verifying they are free from contagious and infectious diseases and have visual acuity of 20/40 in at least one eye as corrected. With one exception, no other profession — not even those that are typically thought of as being more medically related such as physicians, dentists, or nurses — has such a disease-free requirement.

Enactment of the federal Americans with Disabilities Act increased both the number and types of discrimination claims which may be asserted by individuals and enforced by a court of law. The potential for litigation against the board and/or State based on assertions that these two requirements are discriminatory may now exist. We suggest that OccLic obtain an opinion from the Attorney General's office regarding the advisability and legality of these requirements. We also suggest the legislature reconsider these statutory requirements in both AS 08.74.140 and AS 08.72.181 (which pertains to renewal of licenses).

4. Clarify the status of unlicensed professionals supervised by optometrists. There is a unique professional and commercial overlap between licensed optometrists and dispensing opticians. Both professionals are licensed to dispense eyeglasses and contact lenses. Both professions are allowed to supervise unlicensed individuals to assist them in the dispensing of corrective lenses. However, it has been asserted by dispensing opticians that all unlicensed assistants should be registered optician apprentices — subject to requirements set out in the optician licensing statutes. Analysis by the Department of Law supports this interpretation of current statute.

There are allegations that despite the requirements of statute (as further interpreted by the Department of Law) many optometrists utilize unlicensed or unregistered assistants to dispense corrective lenses. Twice in recent years the Board of Examiners in Optometry has sought legislation that would exempt staff supervised by its licensees from having to be either an optician or a registered apprentice. We suggest the legislature consider statutory amendments to clarify the current statute that sets the demarcation line of responsibilities between the two professions.

Recommendation No. 2

The Division of Occupational Licensing should enforce only those optometry application requirements set out in either statute and regulation.

OccLic has been enforcing optometry application requirements not required by state statutes or regulations. Specifically, application forms for optometric examination and licensure require applicants to submit certified or notarized copies of an unmounted 3" x 3" photograph taken within six months previous to filing the application.

Applicants must also submit official transcripts from all colleges or universities attended prior to optometry college to the Division of Occupational Licensing. All applications include a

statement to the effect that these items must be submitted to the division before the applications will be considered for licensure.

Neither the optometry statutes or regulations direct that applicants to meet these submission requirements. It appears the division has unilaterally imposed these requirements without clear legal authority. In our view, there is no compelling justification to support imposition of either requirement.

Recommendation No. 3

The Office of the Governor should appoint a public member to the board as soon as feasibly possible.

State law (AS 08.72.140) requires that "*four board members shall be licensed, practicing optometrists who have been residents for at least three years. One board member shall be a public member* [emphasis added]." Over the past three fiscal years the Board of Examiners in Optometry has operated for extended periods without benefit of a public member. During the period of FY 93 - FY 95 there was no appointed public member for four of the board's seven meetings.

This problem has developed in part from the actions of the Knowles administration. Upon assuming office, the governor removed a public member that Governor Hickel had appointed in December 1992. Although the Hickel-appointed member was removed, no public member was appointed in a expedient manner by the Knowles administration. As of the date of this report, no appointment has been made. It appears to us that the Hickel-appointed member, subject to legislative confirmation, could have served until the Knowles administration provided for a replacement appointment. Alaska Statute 08.01.035 which states "*members of boards . . . are appointed for staggered terms of four years. A member of a board serves until a successor is appointed* [emphasis added]."

The public board member serves as a representative of the citizenry at large. The intent behind placing public members on licensing boards is to provide more access to the board's actions and deliberations. The presence of such a member serves as a check against a professional licensing board becoming too insular or self-serving in its actions.

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ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analyses of board activities relate to the public need factors defined in the "sunset" law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

The Board of Examiners in Optometry has operated in the public interest. The board has spent considerable time in developing regulations for basic education, training, and establishing licensure and licensure endorsement requirements. Further, the board pursued passage of legislation furthering the public interest, health, and welfare.

The board developed, and the legislature passed, two amendments to the optometry statutes during the 1992 legislative session — AS 08.72.175(a) dealing with license endorsements, and AS 08.72.272, which related to the use of pharmaceutical agents. Further, the board developed and the legislature passed, legislation to enact AS 08.72.273. The statute allowed optometrists to remove foreign objects from the eyes of patients. The board, in conjunction with the Department of Law, developed companion regulations related to these statutory changes.

The amendments and enacted legislation furthered the public's interest, health, and welfare by allowing optometrists to perform non-invasive, non-surgical practices only licensed ophthalmologists or physicians were previously allowed to perform. Before amendment and enactment of these laws patient care choices were more restricted, potentially more costly, and the potential for misdiagnosis and mistreatment of eye conditions and diseases was higher.

As an example, in the past when optometrists visited remote areas of the State to perform optometry examinations they were not allowed to prescribe and use topical pharmaceutical agents or remove foreign objects. Instead, optometrists would have to refer the patient to a physician, that in many cases may have less experience or knowledge of the diagnosis and treatment of eye conditions and diseases than the optometrist.⁵ If a physician was not available, the patient would either have to wait for an ophthalmologist or physician to arrive, or would have to fly out to receive proper treatment from an ophthalmologist.

⁵The term, "physician" is used in context to refer to a medical doctor practicing general medicine.

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

The board's operations have been impeded by the following:

1. Administrative bottlenecks caused by the relatively short period that is set out in statute between the time an applicant can apply for licensure and examination (See Recommendation No. 1). These inefficiencies have been exacerbated by OccLic requiring applicants to submit documentation not required by either statute or regulation (See recommendation No. 2).
2. The board operated for extended periods of time without a public member because ex-Governor Hickel and current Governor Knowles did not make appointments in compliance with state board statutes (See Recommendation No. 3).

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

The board made several statutory recommendations that were adopted by the 1992 legislature. As discussed earlier in this section, the board supported passage of legislation that allowed properly credentialed optometrists to utilize topical therapeutical agents and to non-invasively remove superficial foreign bodies from the eye. This bill benefited the public by increasing the number and types of services optometrists are able to provide patients without having to refer them to either general practitioners (physicians) or ophthalmologists. Often referrals of this nature required patients to travel from rural areas of the State to metropolitan centers to receive these services. Requiring these individuals to travel potentially increased the risk of damage to their eyes and the costs of their treatment.

In addition, the board also recommended amending AS 08.72.159 related to the application for examination to extend the filing date for submission of verification documentation by applicants for examination and licensure from 15 to 60 days before examination. This measure was not adopted into law (See Recommendation No. 1 for further discussion).

Results of our review determined the board's second recommendation was in the public interest. The amendment would have allowed the licensing examiner more time to ensure applicants submitted all required documentation supporting their applications before the board's review of their application files for approval to sit for examination and be licensed.

During FY 95 the board also recommended new legislation to allow nonresident optometrists to assist or substitute for a licensed Alaskan optometrist. This recommended legislation, House Bill (HB) 168, "An Act relating to temporary permits for certain optometrists" would create

temporary permits, called "locum tenens" permits for these purposes. HB 168 addressed the need for additional optometrists to serve in rural areas of the State.

The board discussed HB 168 during its June 2, 1995, meeting. During this meeting the board expressed reservations about certain provisions in the bill they felt needed to be addressed. Specifically, the board was concerned HB 168, as worded at that time, would allow out of state optometrist to practice in the State without an Alaskan optometry license for up to 180 days. The board felt that just because an individual was licensed in another state that did not mean they would necessarily qualify for licensure in Alaska.

Currently, all individuals wishing to practice optometry in Alaska must pass the Alaska examination and meet all other Alaska licensing requirements, even if they are licensed in other states. Alaska does not have license reciprocity with any other states, nor do the optometry statutes allow for licensing by credentials. In our view, the board's concerns were well founded and showed the board member's desire to address public safety, health, and welfare concerns that are in the public interest. We believe if the concerns of the board regarding HB 168 are effectively addressed by the legislature this bill would serve in the public's interest by providing additional optometrists, effectively regulated by the board, to serve patients in rural areas of the State.

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 that it has provided.

The location, date, and time of board meetings were published in newspapers around the State providing the opportunity for interested members of the general public to attend the meetings during the period of our review.

The Division of Occupational Licensing's internal policy defines reasonable notice as at least two weeks before a regularly scheduled meeting and at least one week prior to a previously unscheduled teleconference. Under these criteria, all meetings of the board were properly advertised, and the board's agenda allowed time for the general public to address the board.

Further, the board solicited and received public comment on statutory, regulatory, and other changes or policies suggested by the board. The board pursued issues and concerns raised from the public comments they received with the department regulations specialist, and, if and when applicable, the Department of Law.

The extent to which the board has encouraged public participation in the making of its regulations and decisions.

Based on our reviews and analysis of how public comments were used to develop final regulations and affect board decisions, we believe the Board of Examiners in Optometry encouraged public participation in the making of its regulations and decisions.

The board considered the public's input and often took further action based on these comments and suggestions. Correspondence from interested parties was reviewed and discussed by board members at their meetings. Some of the correspondence related to regulatory changes. During our review we noted these proposed regulations were often made available for public comment by the board. Further, the responses received from the public during the public comment period did, on occasion, require the board to make changes to the optometry regulations.

As an example, the board received much input regarding problems optometrists were encountering with branch office licensing. The board discussed these issues and gave due public notice that they intended to repeal these regulations. After the public notice period passed, the board unanimously resolved to repeal all branch office regulations and no longer try to enforce the statute (See Recommendation No. 1).

After making this resolution the board forwarded its recommended repeal of the branch office licensing regulations to the Department of Law for review, comment, and/or approval. The Department of Law, in a letter sent to the board's regulations specialist July 12, 1995, concluded that, "*repealing the regulation mandated by statute without adopting another regulation in its place is inconsistent with the statute.*"

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

Since FY 93, the Division of Occupational Licensing received 11 complaints related to the activities, or the licensees, of the Board Examiners in Optometry. Two of the complaints involved the licensing process.

We reviewed a sample of eight of these complaints. From our review we determined the Division of Occupational Licensing and the Board of Examiners in Optometry investigated complaints in a timely manner — given the budgetary constraints involved. No frivolous cases or cases where jurisprudence was lacking were found. All closed cases were closed for reasonable and justifiable reasons.

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

We believe the board has regulated entry into the occupation/profession, and has presented qualified applicants to serve the public. Further, we believe the licensing process and criteria established by the board are reasonable and appropriate.

During the period FY 92 through FY 95 the board licensed 26 individuals to practice optometry, issued 73 license endorsements for the use and prescription of pharmaceutical agents, and issued 8 branch office licenses.

Also, from our review of board meeting minutes, complaints that were filed, and discussion with the licensing examiner, we determined there had been no rejected applicants, or complaints regarding the rejection of applications between FY 92 and FY 95.

Results of our testing of five license files determined that some required documentation was missing from the files of licensees who had been licensed for several years. Further, we determined the department was incorrectly enforcing application requirements not set out in state optometry laws and regulations (See Recommendation No. 2).

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

Nothing came to our attention during the course of the audit that showed the Board of Examiners in Optometry was not complying with state personnel practices, including affirmative action, in qualifying applicants. Each time the Board of Examiners in Optometry has denied an applicant a license the reason has been based on experience requirements and not personal attributes of the applicant. We did not find any evidence of noncompliance.

However, as reflected by our discussion in Recommendation No. 1, we do have concerns that the current optometry licensing statutory requirements may be unduly restrictive and discriminatory. Statutory requirements that license holders and applicants be free of contagious and infectious diseases, as well as have specified visual acuity may not be in compliance with the requirements of the federal Americans with Disabilities Act (ADA).

The ADA has resulted in numerous additional protected classes of individuals, and requires that employers, businesses, and governments make reasonable accommodation for individuals with various disabilities. As discussed in Recommendation No. 1, we suggest that the Division of Occupational Licensing consult with the Department of Law regarding the advisability and legality of these statutory requirements.

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

See the Findings and Recommendations section for a discussion of recommended statutory and administrative changes related to the operations of the Board of Examiners in Optometry.

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TONY KNOWLES, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF OCCUPATIONAL LICENSING

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November 30, 1995

Mr. Randy S. Welker
Legislative Auditor
Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 03 1995

LEGISLATIVE AUDIT

Dear Mr. Welker:

Re: Board of Examiners in Optometry Preliminary Audit Report

Thank you for this opportunity to comment.

Recommendation No. 1

The Legislature should consider amending and repealing various statutory provisions related to the Board of Examiners in Optometry in order to improve administrative efficiency and consistency with current practice.

We concur with the discussions involving need for certain statutes to be repealed and/or clarified.

- AS 08.72.150 - The 15-day exam application deadline is too short a time period to allow adequate review and examination scheduling/preparation.
- AS 08.72.125 - Branch office licensing requirements serve no public protection purpose and, in fact, are not being enforced by the board. The board has attempted to repeal the regulations which provide for implementation of the branch office licensing, however, the Department of Law would not authorize repeal as long as the statute remains which "requires" branch office licensing.
- AS 08.72.140 - The requirement for all applicants to provide proof of 20/40 visual acuity and certification that the applicant is free of any contagious disease appears inappropriate when considering the American with Disabilities Act. However, due to limited Assistant Attorney General time available to the Division, I will not request an Attorney General