

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9900 HOUSE LABOR & COMMERCE

**HB**

**13**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 19, 1999

FURTHER REFERRALS:

Date of Committee Action: 29 Jan 1999

The LABOR AND COMMERCE Committee considered:

HB 13

HOUSE BILL NO. 13

REGULATION OF ESCROW ACCOUNTS

"An Act relating to the characterization of, use of, segregation of, deposit of, interest on, and disbursement of escrow money; relating to the recording, filing, and delivery of escrow documents; relating to civil penalties for violations of certain escrow provisions by escrow settlement agents; relating to the supervision by the Department of Commerce and Economic Development of escrow settlement agents; authorizing the adoption of regulations to implement certain escrow provisions; 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) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DCED

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
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CHAIR'S SIGNATURE *[Signature]*

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 19, 1999

FURTHER REFERRALS:

Date of Committee Action: Jan 25, 1999

The LABOR AND COMMERCE Committee considered:

HB 13

HOUSE BILL NO. 13

REGULATION OF ESCROW ACCOUNTS

"An Act relating to the characterization of, use of, segregation of, deposit of, interest on, and disbursement of escrow money; relating to the recording, filing, and delivery of escrow documents; relating to civil penalties for violations of certain escrow provisions by escrow settlement agents; relating to the supervision by the Department of Commerce and Economic Development of escrow settlement agents; authorizing the adoption of regulations to implement certain escrow provisions; and providing for an effective date."

recommends it be replaced with the following committee substitute CS HB 13 (L+C)  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) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DCED  zero fiscal note(s) \_\_\_\_\_

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CHAIR'S SIGNATURE *[Signature]*



Official Business

# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
HOUSE LABOR AND COMMERCE COMMITTEE

Capitol Room 17, Juneau, AK 99801-1182  
Telephone: (907) 465-4954

State Capitol  
Juneau, AK 99801-1182

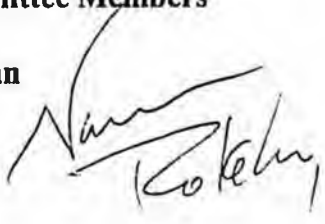
## Memorandum

**TO:** House Labor & Commerce Committee Members

**FROM:** Rep. Norman Rokeberg, Chairman

**DATE:** January 28, 1999

**RE:** House Bill 13



Legislative counsel has advised me that when we adopted CS HB 13 and moved it out of our committee, we left no one to collect the civil penalty (neither the Department nor a private right of action).

After discussion with the Department, I had Legal Services prepare the attached draft (LS0126H). It is my intent to bring this matter up Friday, January 29<sup>th</sup>, under "bills previously heard/scheduled." The following changes from the adopted CS have been made:

Page 1, title: reinsert language regarding Department of Commerce and Economic Development.

Add lines 6-7 "the investigation of complaints against escrow agents, and the remedies available for noncompliance by escrow settlement agents". Reference to "adoption of regulations" in the title remains deleted.

Page 3 - moves section concerning "civil penalty" (34.80.060 in HB 13 and now 34.80.085, page 5, lines 6-10). Reinserts 34.80.060 "department supervision" with "shall supervise".

Page 4 - Adds new 34.80.070 (investigative power of the department). This is language the Department supplied with its fiscal note. This has the affect of putting the procedure for investigation in statute as opposed to allowing the Department to adopt regulations. Note that the section concerning adoption of regulation is deleted in this proposed CS.

Adds new section 34.80.080 (assurance of voluntary compliance; court action). Provides that if the Department finds a settlement agent has violated the

law, the Department shall seek voluntary compliance or refer to the Attorney General who may bring action for injunctive or other relief, including the civil penalty in 34.80.085.

Page 5, lines 6-10. Civil penalty section. Line 6 deletes "wilfully" which was in the previous version. (This deletion was made to avoid confusion regarding the appropriate legal standard, i.e., wilfully, intentionally, knowingly, and put in place a strict liability standard.)

Page 5, line 12 – reinsert definition of "department"

Page 5, lines 19-21. Changes definition of "escrow transaction", line 21 by inserting "single piece of" after "interest in a". (Committee's conceptual amendment to exclude "wholesale" transactions.)

Page 6, lines 13-14. Changes definition of "residential real property". Adds after "real property" the following: "where all of the structures on the real property equal four or fewer attached or detached dwelling units;" (Committee's conceptual amendment to exclude "wholesale" transactions and condos.)

Page 6, line 18, the word "indebtedness" was inserted as in the amendment adopted by the committee.

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

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465 3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

## MEMORANDUM

January 28, 1999

**SUBJECT:** Good funds bill (Work Order No. 21-LS0126\H)

**TO:** Representative Norman Rokeberg, Chair  
House Labor and Commerce Committee  
Attn: Janet

**FROM:** *TB*  
Theresa Bannister  
Legislative Counsel

This memo accompanies the above-described draft.

Pursuant to your request, the mental state, "wilfully," has been deleted from the civil penalty section (sec. 34.80.085). As we discussed over the phone, as long as the civil penalty is considered just that, the deletion does not create any problem. However, if the amount of the civil penalty is considered heavy enough, a court may consider that it indicates a criminal offense under art. I, sec. 11 of the state constitution, which will trigger the constitutional safeguards afforded criminal defendants. In that case, a mental state would be required before finding the person liable for the penalty. In that situation, the court might impose at least a mental state of "knowingly," as defined at AS 11.81.900. You have indicated that the civil penalty would usually amount to between \$2,000 and \$5,000. That may not be large enough to cause a problem, but I wanted you to be aware of the issue.

If I may be of further assistance, please advise.

TLB:jdr:glc  
99-045.jdr

Enclosure

1-LS0126H v  
Bannister  
1/28/99

CS FOR HOUSE BILL NO. 13(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the characterization of, use of, segregation of, deposit of,  
2 interest on, and disbursement of escrow money; relating to the recording, filing,  
3 and delivery of escrow documents; relating to civil penalties for violations of  
4 certain escrow provisions by escrow settlement agents; relating to the supervision  
5 by the Department of Commerce and Economic Development of escrow  
6 settlement agents, the investigation of complaints against escrow settlement agents,  
7 and the remedies available for noncompliance by escrow settlement agents; and  
8 providing for an effective date."

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

10 \* Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is to provide maximum  
11 assurance to the public that their money will not be placed in jeopardy when entrusted to a  
12 settlement agent in the course of residential real property transactions.

1 \* **Sec. 2.** AS 21.66.250 is amended to read:

2           **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.80. trust  
3           [TRUST] funds or assets held in a fiduciary capacity by a title insurance company that  
4           is authorized to do a trust business shall be invested in accordance with AS 06.25.

5 \* **Sec. 3.** AS 34 is amended by adding a new chapter to read:

6           **Chapter 80. Escrow Transactions for Residential Real Property.**

7           **Sec. 34.80.010. Characterization of escrow money.** The money that is  
8           received by a settlement agent for an escrow transaction is not the property of the  
9           settlement agent and is not subject to execution, attachment, or other form of collection  
10          for a claim against the settlement agent. Escrow money may not be used for a purpose  
11          other than to fulfill the terms of the escrow transaction agreement and may not be  
12          disbursed or otherwise used until the happening of the event or performance of the  
13          condition on which the delivery of the money is conditioned.

14          **Sec. 34.80.020. Segregation and deposit of escrow money.** (a) A settlement  
15          agent shall segregate the escrow money from one escrow transaction from all other  
16          money, including the escrow money of other escrow transactions. The records of a  
17          settlement agent must reflect this segregation.

18          (b) A settlement agent shall deposit escrow money in a depository escrow  
19          account of a financial institution located in this state.

20          **Sec. 34.80.030. Interest on escrow money.** Notwithstanding any other  
21          provision of law, interest may not be collected or paid by a settlement agent on  
22          money held for an escrow transaction unless authorized in writing by the parties to the  
23          escrow transaction, including the settlement agent.

24          **Sec. 34.80.040. Disbursement of escrow money.** (a) A settlement agent may  
25          not disburse escrow money unless items that are at least equal in value to the proposed  
26          disbursements have been received by the settlement agent for the escrow transaction,  
27          have been deposited as required by AS 34.80.020(b), and are available for withdrawal  
28          as a matter of right from the depository escrow account.

29          (b) A settlement agent may not disburse escrow money on the same business  
30          day as the items are deposited under AS 34.80.020(b) unless the deposit is made in  
31          cash, by interbank electronic transfer, or in a form that permits conversion of the

1 deposit to cash on the same day the deposit is made.

2 (c) A settlement agent may not disburse escrow money on the business day  
3 after the business day on which the items are deposited under (a) of this section unless  
4 the deposit is made by

5 (1) a cashier's check or a certified check and the cashier's check or  
6 certified check is payable in the state and drawn on a financial institution located in  
7 the state;

8 (2) a cashier's check, a negotiable order of withdrawal, a money order,  
9 or another item and the check, order of withdrawal, money order, or other item has  
10 been finally paid before the disbursement; or

11 (3) a depository check, including a cashier's, certified, or teller's check,  
12 that is governed by 12 U.S.C. 4001 - 4010 (Expedited Funds Availability Act).

13 (d) In (a) of this section, "available for withdrawal as a matter of right" means

14 (1) when the item has been submitted for collection and payment for  
15 the item has been received;

16 (2) when the financial institution where an item has been deposited  
17 considers the money represented by the item available for withdrawal; or

18 (3) unless written notification has been received from the financial  
19 institution where the item was deposited establishing a longer period for an item drawn  
20 on an out-of-state financial institution. after a reasonable time has passed for  
21 prohibiting customers from drawing on the item.

22 **Sec. 34.80.050. Recording, filing, or delivery of escrow transaction**  
23 **documents.** A settlement agent may not record in the office of the recorder in this  
24 state or record in an office in another state that is equivalent to the office of the  
25 recorder, file under AS 45.09 in this state or file under an equivalent statute in another  
26 state, or deliver a conveyance of property, loan documents, documents establishing a  
27 security interest in property, or other documents from an escrow transaction until the  
28 money required by the escrow transaction agreement to be disbursed at the same time  
29 is available for disbursement under AS 34.80.040.

30 **Sec. 34.80.060. Department supervision.** The department shall supervise the  
31 compliance of settlement agents with the provisions of this chapter. However, the

1 department may not audit a settlement agent's records and accounts unless a person  
2 who is a party to an escrow transaction of the settlement agent has complained in  
3 writing to the department about the agent's noncompliance with this chapter and,  
4 notwithstanding AS 34.80.070, the audit is limited to the records and accounts of the  
5 escrow transaction to which the person is a party.

6 **Sec. 34.80.070. Investigative power of the department.** (a) When the  
7 department, upon receipt of a written complaint about a settlement agent from a party  
8 to an escrow transaction of the settlement agent, has cause to believe that the  
9 settlement agent has engaged in, is engaging in, or is about to engage in a practice that  
10 violates this chapter, the department may

11 (1) request that persons who are parties to the escrow transaction file  
12 a written statement or other written report, under oath and on forms provided by the  
13 department, that sets out all the facts and circumstances concerning the possible  
14 violation and any other information that the department considers necessary;

15 (2) examine under oath the settlement agent and any other person who  
16 may have information relevant to the complaint;

17 (3) examine records, books, documents, accounts, or other papers that  
18 the department considers necessary;

19 (4) make true copies of any or all items listed in (3) of this subsection,  
20 which may be introduced in place of the originals in any administrative hearing.

21 (b) The department may issue subpoenas to require the attendance of witnesses  
22 or the production of documents or other evidence, administer oaths, and conduct  
23 hearings to aid in the investigation into the complaint.

24 **Sec. 34.80.080. Assurance of voluntary compliance; court action.** If, as a  
25 result of the department's investigation, the department makes a finding that a  
26 settlement agent has engaged in, is engaging in, or is about to engage in a practice that  
27 violates this chapter, the department shall

28 (1) seek an assurance of voluntary compliance with this chapter from  
29 the settlement agent; or

30 (2) refer the department's finding to the attorney general, who may  
31 bring an action for injunctive or other relief, including the civil penalty allowed under

1 AS 34.80.085, in superior court in the name of the state against the settlement agent;  
2 if an action is brought, the action shall be brought in the superior court in the judicial  
3 district in which the settlement agent is doing business or where the settlement agent's  
4 principal place of business in the state is located, or, with the consent of the  
5 complainant and the settlement agent, in any other judicial district in the state.

6 **Sec. 34.80.085. Civil penalty.** A settlement agent who violates this chapter  
7 is liable to the state for five times the amount of the consideration paid to the agent  
8 for the services rendered for the escrow transaction that is the subject of the violation.  
9 In this section, "settlement agent" does not include an employee of a person who  
10 handles an escrow transaction for compensation.

11 **Sec. 34.80.090. Definitions.** In this chapter,

12 (1) "department" means the Department of Commerce and Economic  
13 Development;

14 (2) "depository escrow account" means an account that holds escrow  
15 money pending completion of an escrow transaction and that is in a financial  
16 institution;

17 (3) "escrow money" means the money that is received by a settlement  
18 agent for an escrow transaction;

19 (4) "escrow transaction" means a transaction where, for the purpose of  
20 effecting and closing the sale, purchase, exchange, transfer, encumbrance, leasing, or  
21 other disposition of an interest in a single piece of residential real property, persons  
22 agree that

23 (A) money, written documents, evidence of title to real or  
24 personal property, or other things of value will be delivered to a person for  
25 retention until the happening of a specific event or the performance of a  
26 prescribed condition; and

27 (B) upon the happening of the event or performance of the  
28 condition, the person holding the things of value will deliver them to the  
29 persons entitled to them under the escrow transaction agreement;

30 (5) "financial institution" means a financial institution

31 (A) whose accounts are insured by an agency of the federal

1 government;

2 (B) that is located in this state and does not meet the  
3 requirements of (A) of this paragraph, but is subject to regulation by the  
4 division of banking, securities and corporations in the Department of  
5 Commerce and Economic Development; or

6 (C) that is located in another state and does not meet the  
7 requirements of (A) of this paragraph, but is subject to regulation in the other  
8 state by an agency comparable to the division of banking, securities and  
9 corporations in the Department of Commerce and Economic Development;

10 (6) "item" means cash, a check, a negotiable order of withdrawal, a  
11 share draft, a traveler's check, a money order, or an interbank electronic transfer; in  
12 this paragraph, "check" includes a cashier's check;

13 (7) "residential real property" means real property where all of the  
14 structures on the real property equal four or fewer attached or detached dwelling units;

15 (8) "settlement agent" means a person who handles an escrow  
16 transaction for compensation, but does not mean a financial institution or other person  
17 when the financial institution or other person collects money for the sole purpose of  
18 applying the money to the payment of an indebtedness; "settlement agent" includes an  
19 employee of a person who handles an escrow transaction for compensation when the  
20 employee is carrying out employment duties related to the escrow transaction.

21 **Sec. 34.80.095. Short title.** This chapter may be cited as the Good Funds Act.

22 \* **Sec. 4.** This Act applies to escrow transactions that begin on or after the effective date  
23 of this Act. In this section, "escrow transaction" has the meaning given in AS 34.80.090,  
24 enacted by sec. 3 of this Act.

25 \* **Sec. 5.** This Act takes effect July 1, 1999.

RE: HB 13 - Regulations of Escrow Accounts

Please support this Bill. Unfortunately it has become the practice of some lenders to require escrow agents to close and review transactions before the lenders have funded and delivered the actual monies needed to finalize the transaction. This procedure should be stopped now by statute. I can think of no reason the escrow agent having all of the buyers monies ready to disburse to the seller or a borrower putting a lien against their home without the money they are

12:30pm  
 JAN 25 1999  
 P. 01  
 Legend pg 2  
 Tim Hurley's testimony at Debra's request.

JAN 25 1999 12:23 PM KODIAK L10 FAX NO. 2

Page 1

Corcoran 12:15 PM  
 12:22 PM  
 H.L.C. committee  
 SEN. M. AKIE  
 REP. AN. STEPHAN  
 REP. ROJKEBERG

907 486-5584

KODIAK, AK 99615

Box 864

Timothy J. Threlly

Cost to my body.

COMMENCED AT NO ADDITIONAL

practice for all

HR 13 IS GOOD BUSINESS

NOT AFTER. THE PROPOSED

THE TRANSITION IS COMPLETED,

by A THIRD PARTY BEFORE

MEANS MOVIES BEING HELD

I believe the team ESCROW

boardroom ready for Disbursement.

Page 2

Lynne Hart  
5115 Strawberry Road  
Anchorage, Alaska 99502

January 14, 1999

Representative Andrew Halcro .  
Alaska State Legislature  
House of Representatives  
State Capital  
Juneau, AK 99801-1182

JAN 22 1999

Re: Good Funds Legislation

Dear Representative Halcro:

I am writing this letter in support of the "good funds" legislation that I expect to be introduced in the House this session. This legislation must be passed in order to protect consumers from the consequences when funds due in a real estate transaction are not available at the time of recordation of the documents

Real estate transactions have been closed and deeds recorded wherein the lender has not funded the loan when all parties have acted in good faith to meet all of the lender's requirements. This should not be allowed to happen and with the passage of the "good funds" legislation, it will not happen.

I urge you to support this legislation for the good of all consumers.

Sincerely,



Lynne Hart

cc: Rep. Norman Rokeberg

**JAN 25 1999**

**CS FOR HOUSE BILL NO. 13(L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE ROKEBERG BY REQUEST**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the characterization of, use of, segregation of, deposit of,  
2 interest on, and disbursement of escrow money; relating to the recording, filing,  
3 and delivery of escrow documents; relating to civil penalties for violations of  
4 certain escrow provisions by escrow settlement agents; relating to the supervision  
5 by the Department of Commerce and Economic Development of escrow settlement  
6 agents; authorizing the adoption of regulations to implement certain escrow  
7 provisions; and providing for an effective date."

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

9 \* Section 1. LEGISLATIVE PURPOSE. The purpose of this Act is to provide maximum  
10 assurance to the public that their money will not be placed in jeopardy when entrusted to a  
11 settlement agent in the course of residential real property transactions.

12 \* Sec. 2. AS 21.66.250 is amended to read:

13 **Sec. 21.66.250. Trust funds. Except as provided in AS 34.80, trust**

1 [TRUST] funds or assets held in a fiduciary capacity by a title insurance company that  
2 is authorized to do a trust business shall be invested in accordance with AS 06.25.

3 \* **Sec. 3.** AS 34 is amended by adding a new chapter to read:

4 **Chapter 80. Escrow Transactions for Residential Real Property.**

5 **Sec. 34.80.010. Characterization of escrow money.** The money that is  
6 received by a settlement agent for an escrow transaction is not the property of the  
7 settlement agent and is not subject to execution, attachment, or other form of collection  
8 for a claim against the settlement agent. Escrow money may not be used for a purpose  
9 other than to fulfill the terms of the escrow transaction agreement and may not be  
10 disbursed or otherwise used until the happening of the event or performance of the  
11 condition on which the delivery of the money is conditioned.

12 **Sec. 34.80.020. Segregation and deposit of escrow money.** (a) A settlement  
13 agent shall segregate the escrow money from one escrow transaction from all other  
14 money, including the escrow money of other escrow transactions. The records of a  
15 settlement agent must reflect this segregation.

16 (b) A settlement agent shall deposit escrow money in a depository escrow  
17 account of a financial institution located in this state.

18 **Sec. 34.80.030. Interest on escrow money.** Notwithstanding any other  
19 provision of law, interest may not be collected or paid by a settlement agent on  
20 money held for an escrow transaction unless authorized in writing by the parties to the  
21 escrow transaction, including the settlement agent.

22 **Sec. 34.80.040. Disbursement of escrow money.** (a) A settlement agent  
23 may not disburse escrow money unless items that are at least equal in value to the  
24 proposed disbursements have been received by the settlement agent for the escrow  
25 transaction, have been deposited as required by AS 34.80.020(b), and are available for  
26 withdrawal as a matter of right from the depository escrow account.

27 (b) A settlement agent may not disburse escrow money on the same business  
28 day as the items are deposited under AS 34.80.020(b) unless the deposit is made in  
29 cash, by interbank electronic transfer, or in a form that permits conversion of the  
30 deposit to cash on the same day the deposit is made.

31 (c) A settlement agent may not disburse escrow money on the business day

1 after the business day on which the items are deposited under (a) of this section unless  
2 the deposit is made by

3 (1) a cashier's check or a certified check and the cashier's check or  
4 certified check is payable in the state and drawn on a financial institution located in  
5 the state;

6 (2) a cashier's check, a negotiable order of withdrawal, a money order,  
7 or another item and the check, order of withdrawal, money order, or other item has  
8 been finally paid before the disbursement; or

9 (3) a depository check, including a cashier's, certified, or teller's check,  
10 that is governed by 12 U.S.C. 4001 - 4010 (Expedited Funds Availability Act).

11 (d) In (a) of this section, "available for withdrawal as a matter of right" means

12 (1) when the item has been submitted for collection and payment for  
13 the item has been received;

14 (2) when the financial institution where an item has been deposited  
15 considers the money represented by the item available for withdrawal; or

16 (3) unless written notification has been received from the financial  
17 institution where the item was deposited establishing a longer period for an item drawn  
18 on an out-of-state financial institution, after a reasonable time has passed for  
19 prohibiting customers from drawing on the item.

20 **Sec. 34.80.050. Recording, filing, or delivery of escrow transaction**  
21 **documents.** A settlement agent may not record in the office of the recorder in this  
22 state or record in an office in another state that is equivalent to the office of the  
23 recorder, file under AS 45.09 in this state or file under an equivalent statute in another  
24 state, or deliver a conveyance of property, loan documents, documents establishing a  
25 security interest in property, or other documents from an escrow transaction until the  
26 money required by the escrow transaction agreement to be disbursed at the same time  
27 is available for disbursement under AS 34.80.040.

28 **Sec. 34.80.060. Civil penalty.** A settlement agent who wilfully violates this  
29 chapter is liable to the state for five times the amount of the consideration paid to the  
30 agent for the services rendered for the escrow transaction that is the subject of the  
31 violation. In this section, "settlement agent" does not include an employee of a person

1 who handles an escrow transactions for compensation.

2 **Sec. 34.80.070. Department supervision.** The department shall supervise the  
3 compliance of settlement agents with the provisions of this chapter. However, the  
4 department may not audit a settlement agent's records and accounts unless a person  
5 who is a party to an escrow transaction of the settlement agent has complained in  
6 writing to the department about the agent's noncompliance with this chapter and the  
7 audit is limited to the records and accounts of the escrow transaction to which the  
8 person is a party.

9 **Sec. 34.80.080. Regulations.** The department may adopt regulations under  
10 AS 44.62 (Administrative Procedure Act) to implement this chapter.

11 **Sec. 34.80.090. Definitions.** In this chapter,

12 (1) "department" means the Department of Commerce and Economic  
13 Developrment;

14 (2) "depository escrow account" means an account that holds escrow  
15 money pending completion of an escrow transaction and that is in a financial  
16 institution;

17 (3) "escrow money" means the money that is received by a settlement  
18 agent for an escrow transaction;

19 (4) "escrow transaction" means a transaction where, for the purpose of  
20 effecting and closing the sale, purchase, exchange, transfer, encumbrance, leasing, or  
21 other disposition of an interest in residential real property, persons agree that

22 (A) money, written documents, evidence of title to real or  
23 personal property, or other things of value will be delivered to a person for  
24 retention until the happening of a specific event or the performance of a  
25 prescribed condition; and

26 (B) upon the happening of the event or performance of the  
27 condition, the person holding the things of value will deliver them to the  
28 persons entitled to them under the escrow transaction agreement;

29 (5) "financial institution" means a financial institution

30 (A) whose accounts are insured by an agency of the federal  
31 government;

1 (B) that is located in this state and does not meet the  
2 requirements of (A) of this paragraph, but is subject to regulation by the  
3 division of banking, securities and corporations in the Department of  
4 Commerce and Economic Development; or

5 (C) that is located in another state and does not meet the  
6 requirements of (A) of this paragraph, but is subject to regulation in the other  
7 state by an agency comparable to the division of banking, securities and  
8 corporations in the Department of Commerce and Economic Development;

9 (6) "item" means cash, a check, a negotiable order of withdrawal, a  
10 share draft, a traveler's check, a money order, or an interbank electronic transfer; in  
11 this paragraph, "check" includes a cashier's check;

12 (7) "residential real property" means real property on which is located  
13 a building that contains only dwelling units and the number of dwelling units in the  
14 building is four or fewer; if the real property has one or more other buildings, those  
15 buildings may not contain dwelling units and may not be used for commercial  
16 purposes;

17 (8) "settlement agent" means a person who handles an escrow  
18 transaction for compensation, but does not mean a financial institution or other person  
19 when the financial institution or other person collects money for the sole purpose of  
20 applying the money to the payment of a loan during the term of the loan; "settlement  
21 agent" includes an employee of a person who handles an escrow transaction for  
22 compensation when the employee is carrying out employment duties related to the  
23 escrow transaction.

24 **Sec. 34.80.095. Short title.** This chapter may be cited as the Good Funds Act.

25 \* Sec. 4. This Act applies to escrow transactions that begin on or after the effective date  
26 of this Act. In this section, "escrow transaction" has the meaning given in AS 34.80.090,  
27 enacted by sec. 3 of this Act.

28 \* Sec. 5. This Act takes effect July 1, 1999.

**HB**

**17**

(7)

Date Referred to Committee: January 19, 1999

FURTHER REFERRALS:

Date of Committee Action: 15 March 1999

The LABOR AND COMMERCE Committee considered:

HI

HOUSE BILL NO. 17

PERS CREDIT FOR NONCERTIFICATED EMPLOY.

"An Act relating to the calculation of employee contributions and credited service in the public employees' retirement system for noncertificated employees of school districts, regional educational attendance areas, the Alaska Vocational Technical Center, and the state boarding schools; 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)

[x] fiscal note(s) DOA [ ] fiscal note(s) \_\_\_\_\_

[ ] zero fiscal note(s) \_\_\_\_\_ [ ] zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>John P. Harris</i>	✓			
<i>Samuel M. ...</i>	✓			
<i>Don ...</i>	✓			
<i>John ...</i>	✓			
<i>John ...</i>	✓			
<i>John ...</i>	✓			

CHAIR'S SIGNATURE

*John ...*

3-15-99

**Representative Tom Brice**  
**ALASKA STATE LEGISLATURE**

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293

*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

FEB 10 1999

Memorandum

To: Representative Norman Rokeberg, Chairman House Labor & Commerce

From: Representative Tom Brice 

Date: February 9, 1999

RE: HB 17 PERS Credit for Noncertificated Employees

I respectfully request that this bill be scheduled for a hearing in your committee. Attached are all the pertinent backup materials requested.



**HOUSE BILL NO. 17**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES BRICE, Phillips, Smalley, Cissna, Croft**

**Introduced: 1/19/99**

**Referred: Labor and Commerce, Health, Education and Social Services**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the calculation of employee contributions and credited service  
2 in the public employees' retirement system for noncertificated employees of school  
3 districts, regional educational attendance areas, the Alaska Vocational Technical  
4 Center, and the state boarding schools; and providing for an effective date."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 \* **Section 1.** AS 39.35.160 is amended by adding a new subsection to read:

7 (c) An employee who has made an irrevocable election under AS 39.35.300(c)  
8 or 39.35.310(c) to have the employee's years of service as a noncertificated employee  
9 of a state boarding school, of a school district or regional educational attendance area,  
10 and of the Alaska Vocational Technical Center determined by reference to  
11 AS 14.25.220 shall pay a contribution surcharge for that service. The amount of the  
12 surcharge is the difference between the amount the employer would have had to  
13 contribute under AS 39.35.250 - 39.35.290 for the employee when treating the  
14 employee's credited service as service earned under AS 39.35.300(c) or 39.35.310(c)

1 less the amount the employer would have had to contribute under AS 39.35.250 -  
2 39.35.290 without treating the employee's credited service as service earned under  
3 AS 39.35.300(c) or 39.35.310(c).

4 \* **Sec. 2.** AS 39.35.300 is amended by adding a new subsection to read:

5 (c) A noncertificated employee of the Alaska Vocational Technical Center or  
6 a state boarding school who first becomes a member of the system on or after the  
7 effective date of this Act may, within 90 days after the employee first joins the system,  
8 make an irrevocable election under this subsection to have the years of service that the  
9 employee earns as a noncertificated employee determined using the table for service  
10 on or after July 1, 1969, that is set out in the definition of "year of service" in  
11 AS 14.25.220. A noncertificated employee of the Alaska Vocational Technical Center  
12 or a state boarding school who is an active member of the system on the effective date  
13 of this Act may, within 180 days after the effective date of this Act, make the  
14 irrevocable election. A member of the system who is an inactive member on the  
15 effective date of this Act and who is later employed as a noncertificated employee of  
16 the Alaska Vocational Technical Center or a state boarding school may, within 90 days  
17 after beginning the subsequent employment, make the irrevocable election. An  
18 election under this subsection shall be made in writing on a form provided by the  
19 administrator. The election applies to the employee's service earned for the school  
20 year in which the election is accepted by the administrator and applies to all  
21 subsequent employment as a noncertificated employee of a state boarding school, a  
22 school district or regional educational attendance area, or the Alaska Vocational  
23 Technical Center. An employee who makes an election under this subsection shall pay  
24 the contribution surcharge as set out in AS 39.35.160(c).

25 \* **Sec. 3.** AS 39.35.310 is amended by adding a new subsection to read:

26 (c) A noncertificated employee of a school district or regional educational  
27 attendance area who first becomes a member of the system on or after the effective  
28 date of this Act may, within 90 days after the employee first joins the system, make  
29 an irrevocable election under this subsection to have the years of service that the  
30 employee earns as a noncertificated employee determined using the table for service  
31 on or after July 1, 1969, that is set out in the definition of "year of service" in

1 AS 14.25.220. A noncertificated employee of a school district or regional educational  
2 attendance area who is an active member of the system on the effective date of this  
3 Act may, within 180 days after the effective date of this Act, make the irrevocable  
4 election. A member of the system who is an inactive member on the effective date  
5 of this Act and who later is employed as a noncertificated employee of a school  
6 district or regional educational attendance area may, within 90 days after beginning the  
7 subsequent employment, make the irrevocable election. An election under this  
8 subsection shall be made in writing on a form provided by the administrator. The  
9 election applies to the employee's service earned for the school year in which the  
10 election is accepted by the administrator and applies to all subsequent employment as  
11 a noncertificated employee of a state boarding school, a school district or regional  
12 educational attendance area, or the Alaska Vocational Technical Center. An employee  
13 who makes an election under this subsection shall pay the contribution surcharge as  
14 set out in AS 39.35.160(c).

15 \* Sec. 4. This Act takes effect July 1, 1999.

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. HB 17 (L&C)

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to the calculation of employee contributions and credited service in the public employees' retirement system ..."  
 Sponsor: Representative Brice  
 Requestor: (H) L&C

Department Affected: Administration  
 BRU: Centralized Administrative Services  
 Component: Retirement and Benefits  
 COMPONENT SERIAL NO. 64

**Expenditures/Revenues:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	72.4	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>72.4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ( )	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1037 GF/Mental Health	0	0	0	0	0	0
OTHER (1029 P/E Retire)	72.4	0	0	0	0	0
<b>TOTAL</b>	<b>72.4</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Estimate of any current year (FY 99) cost: \$ 0

**POSITIONS:**

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

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

The \$72.4 is needed to hire contractors to update the division's computer system to accommodate the proposed changes. In addition to contractor time, division staff will dedicate time to make system changes and the impacted school districts may also need to update their systems.

This change would affect approximately 6,660 current PERS members.

Prepared by: Guy Bell, Director  
 Division: Retirement and Benefits

Phone: 465-4470  
 Date: \_\_\_\_\_

Approved by Commissioner: Robert Poe Jr.  
 Agency: Department of Administration

Date: 3/5/99

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# Representative Tom Brice

## ALASKA STATE LEGISLATURE

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*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
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### REPRESENTATIVE TOM BRICE SPONSOR STATEMENT FOR HB 17

Alaska has many noncertificated employees in its schools who work nine, ten or eleven months out of the year along with their certificated counterparts. The certificated employees receive a full year credit for the part of the year they work while the noncertificated employee only get credit for the actual time worked. Because of this, a nine month employee has to work 40 years to receive a 30 year retirement.

This bill addresses the inequity in state law and PERS system by giving noncertificated school employees who work a comparable amount of days the option to use the same retirement formula that certificated employees use. This bill will allow those noncertificated school district employees to receive the same amount of credit toward retirement as those certificated employees who work the same amount of time and receive a full year of credit toward retirement.

The cost of changing the PERS system, under this bill, will be supported by the employees, rather than increasing the burden to school districts. Employees currently active in the system will have 180 days to opt into the new program. New employees will have the option to participate within 90 days of inception. That is within beginning employment within the system.

Thank you for your consideration.



# Representative Tom Brice

## ALASKA STATE LEGISLATURE

119 N. Cushman, Ste. 205  
Fairbanks, AK 99701  
907-456-7423 / Fax: 451-9293  
*While in Juneau*  
State Capitol  
Juneau, AK 99801-1182  
907-465-3466

To: Representative Norman Rokeberg, Chairman House Labor & Commerce  
From: Representative Tom Brice *TB*  
Date: February 9, 1999  
Re: Section Analysis, HB 17 PERS Credit for Noncertificated Employees

**Section 1** amends AS 39.35.160 adding a subsection explaining that noncertificated employees who choose to have credited service counted under Teachers' Retirement System (TRS) formula have to pay a contribution surcharge for the service and the amount of the surcharge is the difference the employer would have had to pay for the extra time. Thus, the employee must pay for the cost.

**Section 2** amends 39.35.300 concerning employment with the state, to require that when determining how long a noncertificated employee of a state boarding school or the Alaska Vocational Technical Center has worked in a year, the employee can irrevocably choose to use the formula that is set out in the TRS for figuring credited service for members of TRS. Under that formula, an employee who works 172 days or more in a year is entitled to a full year of credited service. A year is figured from July 1 to June 30.

Noncertificated employees who wish to use the TRS formula must make the decision within 180 days after the effective date. Employees who are hired on or after the effective date must make the decision within the first 90 days of their employment.

**Section 3** makes similar changes to AS 39.35.310, concerning employment with other employers under the Public Employees' Retirement System. It permits an employee to choose to have the formula that is set out in TRS for figuring credited service for members of TRS to be used when determining how long a noncertificated employee of a school district or regional educational attendance area has worked in a year. Time limits and choices are irrevocable as stated in section 2.

#### **Section 4**

Provides that the Act takes effect July 1, 1999





# Alaska State Legislature

Please enter into the record my testimony to the House Labor & Commerce  
committee name

committee on HB 17, dated 5/18/99

bill/subject

Pers Credit for Non Certificated  
Employees.

Signed: Jackie Nilsen-Rigardi  
Testifier

DGESPA Delta-Greely Educational  
Representing (Optional) Support Personnel  
Association

Address HC 60 Bx 4180, Delta Jet,  
AK (907) 895-4217  
Phone No.

## MY TESTIMONY IN SUPPORT OF HB 17

In asking for your SUPPORT of HB 17, non-certificated school employees are seeking a move toward EQUITY with other education, state and seasonal employees. You, as legislators are afforded this benefit for a 121 day work year. Many City and Borough elected officials receive a full year's credit in PERS unless otherwise compensated when by their choice they have the option to waive out of PERS. School Board members who meet an average of two (2) to (3) times a month receive a full year's retirement under PERS. We work approximately 180 days plus and DO NOT receive a full year's credit in PERS!

Other seasonal employees across the State, such as those employed by the Highway Department, Fish and Game, Forestry, do not receive a full year's credit under PERS, but they are otherwise compensated by being ELIGIBLE for UNEMPLOYMENT BENEFITS when they are NOT working. We are NOT even allowed to collect unemployment. Even the most aggressive job seekers amongst us cannot find employers, who pay more than the minimum wage, to hire us (no matter how qualified) for a two (2) to three (3) month period in the Summer!

Privately contracted school employees, such as bus drivers work less hours per day, as a rule, but the exact same work year, and though not in PERS, they too are eligible for UNEMPLOYMENT COMPENSATION, while we are NOT!

2014

Prior to about 1992, many more non-certificated school employees were twelve-month employees thereby eligible for a year-for-a-year's credit in PERS. With Districts receiving less and less funding for education year after year, they have sought to recoup financially by slashing our hours, benefits, and work years, etc. I began twenty years ago as a nine-month school employee and my work year has been methodically eroded to a bare eight (8) months and \$1,000 less pay for my efforts, that's with a 2% raise last year! As education continues to be inadequately funded, we see more and more districts, with your support looking to the RIP to alleviate their financial stress by having more and more employees of longevity, certificated and non-certificated, retiring. These are usually the folks at the top of the salary schedule, so the savings can be tremendous. What some people don't realize is that unlike certificated employees, it can cost the districts more to pay our three (3) years than they save by offering us the RIP because they have to pay PERS for a full twelve-month year for each of the three years whether we work twelve (12) months or NOT. It's usually NOT.

Non-certificated employees have been penalized long enough! When there are budget crunches in school districts, we are "selected" as the first to be hit. We have a history of being discriminated against in the areas of benefits, unemployment compensation, job security, contracting out, the right to bargain,

3064

**and this, retirement credit in PERS!**

**We are not asking for charity, but simply a benefit afforded other education, state and seasonal employees! After working in the same school job for nineteen (20) years, I currently, at almost 47 year's old, have only just over seven and a half (7 1/2) year's retirement credit in PERS! You do the math, I figure that I may not even LIVE LONG ENOUGH to see retirement!!**

**I had to wait until I was "permitted " to bargain, in 1989, before I even got into PERS. Non-certificated school employees with twenty (20) to thirty (30) years in their jobs can't AFFORD to retire unless they brought PERS credit with them from a previous employer. I am a professional as are my co-workers and members. We only ask that you treat us as professionals with EQUAL RIGHTS under the law. Please don't continue this INEQUITY. Let this Legislature be known as a body of fairness and foresight, NOT one that chooses to continue the INEQUITIES of the past!**

**PLEASE DO PASS HB 17 !! Thank you for your time.**

4064

3/15/99

## NEA-Alaska Position Paper Full Year Credit

We seek legislation to cause equitable treatment between teachers and school employees. After twenty years of service in an Alaska school district a teacher receives twenty years of credit for purposes of retirement. In contrast a school secretary, custodian, or school bus driver working the same 20 years receives only 15 years of service credit. For a support worker it will take 26.7 years to receive an equivalent of 20 years credit. It takes a support employee working a nine-month school term 40 years to get 30 years of service credit. It takes the same employee 6.8 years to vest in the retirement system instead of five.

Recent legislative changes have made it harder for school support staff members to vest in order to qualify for health insurance at retirement. Now a newly employed school support employee working on a nine-month contract must work 13.3 years instead of the 10-year vesting requirement in order to be able to receive health insurance.

It's not difficult to understand why retirement incentives have not been made available to school support employees. For a school district to RIP a nine-month employee, the district must pay a twelve-month retirement credit and the savings that would accrue are lost in the purchasing of the extra year. To provide a three-year incentive, a school district would have to purchase four work years.

Meanwhile a support employee has limited opportunities to seek summer employment in many communities in Alaska. In particular jobs that allow the employee to add to their PERS time during the summer months are virtually non-existent.

We seek equity. We realize the importance of the work provided by support staff who work shoulder to shoulder with teachers and administrators. The societal pressures are many times the same for support staff as for teachers.

We find that Alaska's population continues to grow; increasing student enrollment causes increased worked demands on support staff. They too are required to make ends meet. They work to do more with less each year. The stress of work is as prevalent with them as with teachers.

In 1997 and 1998 Alaska schools hired the largest number of new teachers ever. We do not have statistics on support staff turn over. Support staff generally represents a stable work force within schools and communities. But if teacher turnover statistics are any indicator of possible support turnover, we face a developing hiring crisis. Alaska must initiate efforts now to attract and retain teachers and support staff so that we can maintain excellent schools for children.

SB 9 and 16 and HB 17 are steps in the right direction establishing a degree of equity with other employees and elected officials of school districts. School board members who participate in PERS receive a year's credit for attendance and work related to their duties as members of the board. Support employees ask for the same benefit and they are willing to pay for it.

School employees have heard others argue that they are treated no differently than seasonal workers. School support employees are treated different in ways other than retirement. For example, seasonal workers are entitled to unemployment benefits during non-work time. School support staff are specifically excluded from unemployment benefits during non-work time. Most school employees are precluded from getting summer job opportunities because the school year runs into early June and most tourist related jobs begin in early May.

In addition school support employees have seen benefits and hours reduced. In the public sector, they have become the lowest paid.



EDUCATION SUPPORT STAFF ASSOCIATION  
2118 Cushman Street  
Fairbanks, Alaska 99701  
(907) 456-4435

February 18, 1999

Rep. Tom Brice  
House of Representatives  
State Capitol  
Juneau, AK 99801-1182

Dear Rep. Brice:

On behalf of the Executive Board of the Education Support Staff Association, I want to thank you sincerely for your sponsorship of HB 17 to provide nine and 10-month classified school district employees with credit for full-year retirement under the Public Employee Retirement System.

As you are well aware, this change would mean that classified and certified staff would be treated the same way for the first time when it comes to earning retirement credit. This is only fair to employees who work in the service of students and the public.

Your bill would benefit approximately 450 employees in the Fairbanks North Star Borough School District and approximately 6,000 statewide.

We hope that you will request a prompt hearing on the bill in the Labor & Commerce Committee. Our members will also be urging the chairperson to schedule hearings soon.

Again, thank you very much for your efforts to help school district classified staff to provide for a more secure retirement after their years of work for students.

Sincerely,

Ray Eddy  
Political Action Committee Chairperson

P.S. Thank you also for sponsoring HB 1. ESSA supports this bill to benefit our public employee colleagues.



# General Teamsters Local 959 State of Alaska

*Affiliated with International Brotherhood of Teamsters*

ANCHORAGE, ALASKA 99503, 520 E. 34TH AVE. (907) 565-8122 FAX (907) 565-8265 GERALD L. HOOD, Secretary-Treasurer

FAIRBANKS, ALASKA 99707, P.O. Box 70609  
JUNEAU, ALASKA 99801, 306 Willoughby  
KENAI, ALASKA 99611, P.O. BOX 3150

(907) 452-2959 FAX (907) 452-5051  
(907) 586-3225 FAX (907) 586-1227  
(907) 283-4498 FAX (907) 283-6030

March 8, 1999

MAR 09 1999

*Representative Norman Rokeberg, Chair  
Representative Andrew Halcro, Vice Chair  
Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801*

Re: *HB 17 PERS Credit For Non-Certified Employees*


*Dear Representatives Rokeberg & Halcro:*

*Teamsters Local 959 represents non-certified employees most predominantly in the Anchorage School District. Several hundred of those members actually work less than twelve months of the year due to the nature of their jobs. As we understand HB 17, it would allow those members, by individual choice, the opportunity to receive the same credited year as their certified counterparts for purposes of retirement. Any increased cost under this bill would be born by the employee, not the employer (Anchorage School District).*

*We urge your support and passage of this bill to allow, by employee choice, the opportunity to increase their credited service time as is currently the option for the certified employees.*

*Sincerely,*

TEAMSTERS LOCAL 959

  
Gerald L. Hood  
Secretary-Treasurer

/ijr

cc: *Representative Jerry Sanders  
Representative Lisa Murkowski  
Representative John Harris  
Representative Tom Brice  
Representative Sharon Cissna*



March 3, 1999

Honorable Senators & Representatives:

I urge you to give serious consideration of passing House Bill 17 and Senate Bill 16 regarding changes to public employees' retirement (PERS).

As a school district employee for the last eleven years, I've now just accrued seven years toward my retirement. I'm working eight hours a day for ten months of the year but get retirement on a pro-rated basis.

This is not equitable treatment for personnel under the PERS retirement system when teachers, under the TRS system, receive a years retirement for nine months of employment.

In my opinion all state employess should be treated equally and fairly in regard to their retirement benefits.

Thank You,

Linda Yost  
13621 Venus Way  
Anchorage, AK 99515

March 9, 1999

To Whom It May Concern:

I am a 10 month a year custodian for the Kenai Peninsula Borough School District. I am writing this letter in support of Senate Bill 9 and House Bill 17, and wish to have it submitted as written testimony in favor of these Bills.

Our system is all about fairness and equality. So it appears that when one group of Public School employees (certified) are treated better than another (classified), it flies in the face of the foundation of what our system says is right.

It is capricious and arbitrary to deny us year for year credit towards retirement when teachers are given that credit. Especially when you consider the fact that we actually work more time in a calendar year than they do. They deserve this credit, and so do we.

The Public School System is the bedrock of our nation, and if anything should reflect fairness and equality it should be that system. We should all be treated in a fair and just manner. Too many decisions today are made, because they are politically expedient, and not because they are necessarily just. The State of Alaska considers us year-round employees. Isn't it time the State Legislature does? By the way, do legislators get this credit?

Sincerely,

John M. Jordan

P.O. Box 1683

Seldovia, Alaska 99669

MAR 09 1999

House, Labor, and Commerce

Re: PERS credit for non-certificated employees

To: Chair/Rokeberg

I have worked for the school district for 15 years. I have only 7.5 years of credit toward pers.

I started working for the school district when I was 24 years old, I am now almost 40. There is no way I can see retirement by 65 or even 70. People working with children have given their best years before then. But giving our best years for the education of our states children we are not given credit as we should be.

We are considered 9 month employees, not seasonal. It is difficult to find work in the summer months because everyone knows you will only be available for three months. We are not considered for unemployment benefits, we don't get due credit for pers.

Please pass HB17. It is the fair thing to do for the working class.

Sincerely,

*Jan Wrigley*  
Jan Wrigley

**Subject: HB 17**

**Date:** Wed, 10 Mar 1999 09:07:15 -0600

**From:** bonnie@kpbsd.k12.ak.us (Bonnie Clouston)

**To:** Representative\_Tom\_Brice@legis.state.ak.us,  
Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_AndrewL\_Halcro@legis.state.ak.us,  
Representative\_AndrewL\_Halcro@legis.state.ak.us,  
RepresentativeL\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Jerry\_Sanders@legis.state.ak.us,  
Representative\_Sharon\_Cissna@legis.state.ak.us

Please support HB 17. I understand that this bill will be heard on Friday. I have sent POMs before on this bill and have had some response from several of the House Labor and Commerce Committee. I want to thank those who have contacted me.

I really need you help with this bill. I am an employee with the Kenai Peninsula School District, hired in 1981. If I were treated like the teachers, legislative staff workers and the school board members I would have 18 years credit in the PERS system. To date I have only 13.3 year in my PERS account. Please help the classified employee be counted equally with our fellow employees. My position is considered full time, as I can't collect unemployment like other seasonal workers but I am denied the year for year credit. Perhaps someone could explain to me why this is fair. Thank you for listening and I urge you to support this bill. Thank you.

**Subject: House Bill #17**

**Date:** Wed, 03 Mar 1999 18:48:57 -0900

**From:** "debi lichter" <dubber@mtaonline.net>

**To:** Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>, Brian Porter <Representative\_Brian\_Porter@legis.state.ak.us>, John Cowdery <Representative\_John\_Cowdery@legis.state.ak.us>, Tom Brice <Representative\_Tom\_Brice@legis.state.ak.us>, Sharon Cissna <Representative\_Sharon\_Cissna@legis.state.ak.us>, John Harris <Representative\_John\_Harris@legis.state.ak.us>, Lisa Murkowski <Representative\_Lisa\_Murkowski@legis.state.ak.us>, Jerry Sanders <Representative\_Jerry\_Sanders@legis.state.ak.us>

I have worked as an administrative assistant for the University of Alaska - Fairbanks (six years), the Kodiak Island Borough School District (five years) and am currently employed by the Anchorage School District (three years) as a Noncertificated Employee. Although on paper it appears that I have worked for 14 years, I only have accumulated 9.626 years with PERS.

Please support HB#17 which calls for full year PERS Credit for Noncertificated Employees as is currently being credited to our certificated counterparts in the educational field. Thank you. Deborah Bain Lichter, CPS

**Subject: HB #17**

**Date:** Wed, 03 Mar 1999 21:07:13 -0900

**From:** "debi lichter" <dubber@mtaonline.net>

**To:** Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
Brian Porter <Representative\_Brian\_Porter@legis.state.ak.us>,  
John Cowdery <Representative\_John\_Cowdery@ligis.state.ak.us>,  
Tom Brice <Representative\_Tom\_Brice@legis.state.ak.us>,  
Sharon Cissna <Representative\_Sharon\_Cissna@legis.state.ak.us>,  
John Harris <Representative\_John\_Harris@legis.state.ak.us>,  
Lisa Murkowski <Representative\_Lisa\_Murkowski@legis.state.ak.us>,  
Jerry Sanders <Representative\_Jerry\_Sanders@legis.state.ak.us>

Please support the bills that call for full year PERS Credit for  
Noncertificated Employees.

**Subject: HB17**

**Date: Fri, 12 Feb 1999 08:38:33 -0600**

**From: pmills@kpbsd.k12.ak.us (Pauline Mills)**

**To: Representative\_Norman\_Rokeberg@legis.state.ak.us**

**FEB 12 1999**

Please support HB17 and make the inequity end!! Would it be right to treat the senators with a full year credit towards retirement BUT tell the representatives they only get counted 9 months towards retirement?? Please Make it FAIR FOR ALL!!!

I am a Administrative Secretary III and have worked for the Kenai Peninsula Borough School District since 1984. I am very disappointed in the legislature for not passing a similar bill earlier. This seems very UNFAIR! I guess if the legislature can't get this bill passed it may be something for the court system because it is very discriminatory!

Thanks for your support!

**Subject: TRS legislation**

**Date: Sat, 06 Mar 1999 19:27:43 -0900**

**From: beachak@alaska.net**

**To: Representative\_Norman\_Rokeberg@legis.state.ak.us**

Dear Sir:

Having just received word that House Bill 17 and Senate Bill 16 have been introduced in an effort to make changes in the Public Employees Retirement System, I would like to enlist your help in making similar changes in the Teachers Retirement System. Currently, part-time employees who are under the Teachers Retirement System get only .5 years credit toward retirement for working a year at any part-time position, whether they work .5 FTE or .99 FTE. They must work 12 years to be vested in the system. This means that an employee who is working 80% of a full time job must work 40 years to get full retirement rather than the 20 years which an employee working 100% would work. This is an unfair situation which certainly demands a remedy similar to the one proposed for the PERS employees.

Thank you for your help in this matter.

Chris Boone

HB 17 from Fairbanks

**Subject: HB 17 from Fairbanks**

**Date:** Sun, 7 Mar 1999 17:30:20 -0900

**From:** Brad White <bwhite@polarnet.com>

**To:** "representative\_norman\_rokeberg@legis.state.ak.us" <Representative\_Norman\_Rokeberg@l

I would like to urge you schedule a hearing on HB17 as soon as possible. I feel this is an important bill that needs to be addressed.  
JoAnne White

Subject: SB 9

Date: 3 Mar 1999 15:06:56 -0900

From: "Markson\_JoAnne" <markson\_joanne@msmail.asd.k12.ak.us>

To: "Representative Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>

CC: "Rep. Brice" <Representative\_Tom\_Brice@legis.state.ak.us>,
"Rep. Cissna" <Representative\_Sharon\_Cissna@legis.stae.ak.us>,
"Rep. Harris" <Representative\_John\_Harris@legis.state.ak.us>,
"Rep. Murkowski" <Representative\_Lisa\_Murkowski@legis.state.ak.us>,
"Rep. Sanders" <Representative\_Jerry\_Sanders@legis.state.ak.us>,
"Representative Halcro" <Representative\_Andrew\_Halcro@legis.state.ak.us>

Dear Representative Rokeberg:

>>>

I would like to request your support of SB 9 to provide nine and ten month classified school district employees with credit for full-year retirement under the Public Employee Retirement System.

>>>

As you are well aware, this change would mean that classified and certified staff would be treated the same way for the first time when it comes to earning retirement credit. This is only fair to employees who work in the service of students and the public.

This bill would benefit approximately 1,000 employees in the Anchorage School District and approximately 6,000 statewide.

Thank you very much for your time and I hope you will support the school district classified staff and provide for a more secure retirement after their years of work for students.

>

Sincerely,

JoAnne Markson, Administrative Assistant
Kincaid Elementary, Anchorage

>>>

>>>

>>

>>

>

>

MAR 03 1999

Handwritten signature

**Subject: House Bill 17**

**Date:** Mon, 1 Mar 1999 21:37:32 -0900

**From:** "Gary McIntyre" <AdvancedCybrSys@thevortex.com>

**To:** "Jerry Sanders" <Representative\_Jerry.Sanders@legis.state.ak.us>,  
"Lisa Murkowski" <Representative\_Lisa\_Murkowski@legis.state.ak.us>,  
"Loren Leman" <Senator\_Loren\_Leman@legis.state.ak.us>,  
"Lyman Hoffman" <Senaator\_Lyman\_Hoffman@legis.state.ak.us>,  
"John Harris" <Representative\_John\_Harris@legis.state.ak.us>,  
"Andrew Halcro" <Representative\_Andrew\_Halcro@legis.state.ak.us>,  
"Sharon Cissna" <Representative\_Sharon\_Cissna@legis.state.ak.us>,  
"Dave Donley" <Senator\_Dave\_Donley@legis.state.ak.us>,  
"Tom Brice" <Representative\_Tom\_Brice@legis.state.ak.us>,  
"John Cowdery" <Representative\_John\_Cowdery@legis.state.ak.us>,  
"Tim Kelly" <Senator\_Tim\_Kelly@legis.state.ak.us>,  
"Brian Porter" <Representative\_Brian\_Porter@legis.state.ak.us>,  
"Drue Pearce" <Senator\_Drue\_Pearce@legis.state.ak.us>,  
"Norman Rokeberg" <Representative\_Norman\_Rokeberg@legis.state.ak.us>,  
"Jerry Mackie" <Senator\_Jerry\_Mackie@legis.state.ak.us>

Please vote in favor of giving noncertificated nine, ten, and eleven month employees credit for twelve months of service. Please vote accordingly. Thank you very much.

Nancy McIntyre  
24375 Petunia Ct. Apt E  
Elmendorf AFB, AK 99506  
daytime phone 279-2541

MAR 03 1999

**Subject: House Bill 17**

**Date:** Tue, 02 Mar 1999 17:22:24 -0800

**From:** Mary Conner <MOONLITE@alaska.net>

**Organization:** H & W Printing

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us,  
Representative\_Brian\_Porter@legis.state.ak.us,  
Representative\_John\_Cowdery@legis.state.ak.us,  
Representative\_Tom\_Brice@legis.state.ak.us,  
Representative\_Sharon\_Cissna@legis.state.ak.us,  
Representative\_Andrew\_Halcro@legis.state.ak.us,  
Representative\_John\_Harris@legis.state.ak.us,  
Representative\_Lisa\_Murkowski@legis.state.ak.us,  
Representative\_Jerry\_Sanders@legis.state.ak.us

Please vote yes on House Bill 17. Thank you, Mary Conner (ASD)

MAR 03 1999

*Ref: JWC*

Subject: HB17

Date: Tue, 2 Mar 1999 15:35:17 -0900

From: rachel tidwell <rtidwell@northstar.k12.ak.us>

To: Representative\_Norman\_Rokeberg@legis.state.ak.us

>Dear Rep. Rokeberg:

>

>I want to urge you to support the following bill, HB 17 to provide nine  
>and ten month classified school district employees with credit for full-year  
>retirement under the Public Employee Retirement System.

>

>As you are well aware, this change would mean that classified and certified  
>staff would be treated the same way for the first time when it comes to  
>earning retirement credit. This is only fair to employees who work in the  
>service of students and the public.

>

>Your bill would benefit approximately 450 employees in the Fairbanks North  
>Star Borough School District and approximately 6,000 statewide.

>

>I hope that you will request a prompt hearing on the bill in the Labor &  
>Commerce Committee. I will also be urging the other members to support  
>this bill.

>

>Again, thank you very much for your time and I hope you will support the  
>school district classified staff to provide for a more secure retirement after  
their years  
>of work for students.

>

>Sincerely,

>

>Rachel Tidwell  
>Weller Elementary

>

>

MAR 03 1999

*R. Tidwell*

**Subject: In support of HB 17**

**Date:** Sun, 28 Feb 1999 20:17:32 -0900

**From:** Peggy <peggy1@northstar.k12.ak.us>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

I am writing in support of House Bill 17 sponsored by Rep Tom Brice. I have been an employee of the Fairbanks North Star Borough School District since 1982 and have earned less than 16 years of service for over 17 years of working for the District. HB 17 addresses the inequity in state law and the PERS system by giving noncertificated school employees a comparable amount of days the options to use the same retirement formula that certificated employees use. I strongly urge you to support this bill.

Peggy Hirt  
288 Rambling Road #57  
Fairbanks, Ak 99712

Phone: (w) 456-5775  
(h) 457-2199

*Ref 75 A*

MAR 03 1999

**Subject:** House bill 17

**Date:** 3 Mar 1999 12:52:27 -0900

**From:** "Olson\_Inga" <olson\_inga@msmail.asd.k12.ak.us>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Representative Norman Rokeberg,

I need to let you know that I SUPPORT House bill 17. I also would like to THANK YOU for bringing it forward and I hope it will pass. I've always wondered why the teachers could retire after 20 years and the non certificated employees had to work 30 years. Here we're all professionals working for the same employer the Anchorage School District and I think it's time we get treated the same.

Thanks again for all your hard work

Inga Olson  
Senior Clerk/Information Support Center

MAR 03 1999

**Subject: House bill 17**

**Date:** 4 Mar 1999 12:40:39 -0900

**From:** "Olson\_Inga" <olson\_inga@msmail.asd.k12.ak.us>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Representative Norman Rokeberg,

I would like to get your help to schedule House bill 17 for Labor and Commerce please.  
Thank you very much for your assistance.

Inga Olson  
Senior Clerk/Information Support Center

**HB**

**32**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 19, 1999

FURTHER REFERRALS:

Date of Committee Action: Jan 29, 1999

The LABOR AND COMMERCE Committee considered:

HB 32

HOUSE BILL NO. 32

EXTEND BOARD OF MARINE PILOTS

"An Act extending the termination date of the Board of Marine Pilots."

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) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) DCE D

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Sam Kately</i>	✓			
<i>[Signature]</i>	✓			
<i>John L. Harris</i>	✓			
<i>[Signature]</i>	✓			

CHAIR'S SIGNATURE *Sam Kately*

**HOUSE LABOR & COMMERCE COMMITTEE  
COMMITTEE PACKET  
HOUSE BILL 32  
EXTEND BOARD OF MARINE PILOTS**

- 1. House Bill 32**
- 2. Sponsor Statement**
- 3. Fiscal Note**
- 4. Board description and membership from 1999 Boards and Commission information**
- 5. November 1998 Audit Report**
- 6. 1997 Board of Marine Pilots Annual Report**
- 7. 1998 Board of Marine Pilots Annual Report**

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
Fax: (907) 488-4271



## House Of Representatives

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884

House District 33

House Bill 32

“An Act extending the termination date of the Board of Marine Pilots.”

SPONSOR: Representative Gene Therriault

### SPONSOR STATEMENT:

Under AS 08.03.010 (10) the Board of Marine Pilots (BMP) will terminate on June 30, 1999. A report released by the Legislative Budget and Audit Committee recommended that the Legislature extend the board's termination date to June 30, 2004. House Bill 32 does just that.

Controversies surrounding the board during the previous review period (1990-93) have substantially improved. Issues relating to competition, training, and tariff-setting have not been totally resolved, but there is a great deal more consensus between BMP, marine pilots, and shippers that are subject to the board's oversight. Amendments made to the Pilot Statutes in 1995 have created a semi-competitive environment in which the board only intervenes when there are objections to rate changes. Resolution of these issues has enabled the board to concentrate more on the public safety aspects of its mission rather than legal confrontations that hampered its activities from 1990 to 1994.

The regulation and licensing of qualified marine pilots benefit the public's safety and welfare. The steady increase in tourist passenger ships in recent years has made BMP's role increasingly more important. The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. HB 32**

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Commerce &amp; Econ Dev.</u>
Title <u>An Act extending the termination of the</u>	BRU <u>Occupational Licensing</u>
<u>Board of Marine Pilots.</u>	Component <u>Occupational Licensing</u>
Sponsor <u>Rep. Theriault</u>	
Requester <u>House Labor and Commerce</u>	Component Serial No. <u>2360</u>

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
-------------------------------	------------	------------	------------	------------	------------	------------

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 112.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 32 extends the Board of Marine Pilots to June 30, 2004. Funding for continuation of the board in the amount of \$112.0 is included in the department's FY 2000 operating budget request; therefore, new funds are not needed. The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by board fees are anticipated to cover its full operating costs.

Prepared by <u>Jennifer Strickler, Administrative Manager</u>	Phone <u>465-2144</u>
Division <u>Occupational Licensing</u>	Date/Time <u>2/3/99 1:48 PM</u>
Approved by Commissioner <u>Deborah B. Sedvick</u>	Date <u>2/3/99</u>
Agency <u>Commerce &amp; Economic Development</u>	

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**BOARD COSTS  
INFORMATION**

<b>HB 32</b>				
<b>DIRECT COSTS</b>			<b>Total</b>	<b>AVG</b>
<b>FY:</b>	<b>97</b>	<b>98</b>	<b>DIRECT</b>	<b>ANNUAL</b>
				<b>COSTS</b>
Personal Services	76.1	63.9	140.0	70.0
Travel	11.6	10.0	21.6	10.8
Contractual Services	36.3	25.2	61.5	30.8
Commodities	0.6	0.1	0.7	0.4
Equipment	0.2	0.0	0.2	0.1
	<b>124.8</b>	<b>99.2</b>	<b>224.0</b>	<b>112.0</b>

**STATE OF ALASKA**  
**Boards and Commissions**

---

**MARINE PILOTS**

**BOARD:** Board of Marine Pilots

**BOARD IDENTIFICATION NUMBER:** 059

**DEPARTMENT:** DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

**AUTHORITY:** AS 08.62.010

**STATUS:** Active

**SUNSET DATE:** June 30, 1999

**REQUIREMENTS:** Legislative Confirmation

**PROHIBITIONS:** A member who has served all or part of 2 successive terms may not be reappointed unless 4 years have elapsed.

**TERM:** 4 years

**DESCRIPTION:** 7 members: 6 appointed by Governor; 2 licensed pilots actively engaged in piloting vessels (subject to statute), 2 agents or managers of vessels, and 2 public members; plus the commissioner of the Dept. of Commerce and Economic Development or his/her designee; not more than one pilot and one agent shall be from any one judicial district; must be Alaska residents.

**FUNCTION:** To prevent the loss of lives and property and to protect the marine environment of the state by offering jurisdiction over pilotage and licensing of marine pilots.

**CHAIR:** Governor may select.

**SPECIAL FACTS:** The Governor may designate the chair of the board. Board members serve at the pleasure of the Governor. \*(AS 08.62.020, AS 08.01.020) E-mail: Peter\_Christensen@commerce.state.ak.us

**COMPENSATION:** Standard Travel and Per Diem.

**MEETINGS:** At least 3 times/year, or at call of chair or majority request; some meetings may be teleconferenced.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Christensen, Marine Pilots Coordinator, Division of Occupational Licensing, DCED, P.O. Box 110806 M/S 0800, Juneau, AK, 99811-0806, Phone: 907-465-2548, Fax: 907-465-2974.

**STATE OF ALASKA**  
**Boards and Commissions**

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**Membership Roster**  
**MARINE PILOTS (059)**

Member	Appointed	Reappointed	Term Exp.
<p>Robert M. Berto Agent Vice President Southeast Stevedoring Corporation P.O. Box 8080 Ketchikan, AK 99901</p>	09/30/94	07/31/98	05/31/02
<p>Jeffrey W. Bush Commissioner/Commerce and Economic Development/or designee Deputy Commissioner Dept. of Commerce &amp; Economic Devel. P.O. Box 110800 Juneau, AK 99811-0800</p>	03/08/95		
<p>Peter S. Garay Pilot/Western Alaska P.O. Box 2653 Homer, AK 99603</p>	07/16/97		06/01/01
<p>Barbara J. Huff Tuckness Public Director Government and Leg. Affair General Teamsters Local 959 520 East 34 Avenue Anchorage, AK 99503</p>	02/20/97		06/01/99
<p>Bernie R. Smith Agent/Manager Manager Tesoro Alaska Petroleum Company P.O. Box 196272 Anchorage, AK 99519</p>	10/02/95	01/02/97	06/01/00
<p>Michael C. Spence Pilot/Southeast P.O. Box 7981 Ketchikan, AK 99901</p>	10/02/95		06/01/99
<p>Michael N. White Public Law Offices of Friedman, Rubin &amp; White 1227 West Ninth Avenue, Suite 201 Anchorage, AK 99501</p>	10/31/97		06/01/00

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
Fax: (907) 488-4271

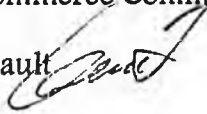
While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884

House District 33

## House Of Representatives

### MEMORANDUM

TO: Representative Norm Rokeberg, Chair  
House Labor and Commerce Committee

FROM: Representative Gene Therriault 

DATE: January 21, 1999

SUBJECT: Scheduling of HB 32

---

I respectfully request that HB 32 be scheduled for a hearing in the House Labor and Commerce Committee on Friday, January 29.

A recent sunset review conducted by the Legislative Budget and Audit Committee recommended that the Board of Marine Pilots be extended to June 30, 2004. House Bill 32 makes that extension.

Controversies surrounding the Board and its relationship with various Pilots Associations around the state have largely disappeared. While there is still progress to be made, it appears now that the Associations have come together and stability is expected.

Please contact me if you have any additional questions.

attachments

# Audit Report

---

DEPARTMENT OF COMMERCE  
AND ECONOMIC DEVELOPMENT  
DIVISION OF OCCUPATIONAL LICENSING  
BOARD OF MARINE PILOTS

November 18, 1998

---

Audit Control Number:

08-1458-99



Division of Legislative Audit

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

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## 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 Juneau or Anchorage.

### BUDGET AND AUDIT COMMITTEE

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Senator Al Adams  
Senator Dave Donley  
Senator Rick Halford  
Senator Drue Pearce  
Senator John Torgerson (alternate)

Representative Terry Martin, Vice Chair  
Representative Con Bunde  
Representative Eric Croft  
Representative Jeanette James  
Representative Gene Therriault  
Representative Mark Hanley (alternate)

### DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA  
Legislative Auditor  
Merle R. Jenson, CPA  
Deputy Legislative Auditor

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

(907) 465-3830, Juneau  
(907) 561-1425, Anchorage  
(907) 465-2347, Juneau FAX

# 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  
Internet e-mail address:  
legaudit@legis.state.ak.us

November 18, 1998

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  
DIVISION OF OCCUPATIONAL LICENSING  
BOARD OF MARINE PILOTS

November 18, 1998

Audit Control Number

08-1458-99

The objective of this review is to advise the legislature as to whether the Board of Marine Pilots should be extended or terminated in statute. Currently, AS 08.03.010(c)(10) has the board scheduled for termination on June 30, 1999. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved on June 30, 2000. We recommend that the legislature extend the board's termination date to June 30, 2004.

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.

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA  
Legislative Auditor

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Department of Commerce and Economic Development.....	33

## OBJECTIVES, SCOPE AND METHODOLOGY

In accordance with Title 24 and 44 of the Alaska Statutes, we conducted a review of the activities of the Board of Marine Pilots (BMP).

### Objectives

The primary objective of our review was to advise the legislature as to whether the board should continue in existence. As required by statute, the legislative committee of reference is to consider this report as part of its oversight process and determine whether the board should be reestablished. The law currently specifies that the board will terminate on June 30, 1999 and will have one year from that date to conclude its affairs.

### Scope

We focused primarily on the activities of the board over the most recently completed three fiscal years of operation — FY 96 through FY 98. Of specific concern to our review are the actions of BMP in carrying out the extensive changes the legislature made to the marine pilotage statutes in 1995. Additional concerns addressed in our review involved board proceedings, examination, licensing, and investigations.

### Methodology

We engaged a contractor, Parker and Associates, to conduct most of this review. We supervised the activities of the contractor, as required by auditing standards. Additionally as required by auditing standards, we confirmed independence of the contractor and that the work was competent and sufficient.

To accomplish the audit objectives, the following documents were reviewed and the following interviews were conducted:

- Applicable sections of state statutes and regulations.
- Interviews with employees of the Division of Occupational Licensing (OL), Department of Commerce and Economic Development.
- Interviews with various board members, shipping agents, selected licensed marine pilots, and U.S. Coast Guard officials regarding various concerns and issues involving marine pilotage in Alaska. The topics covered included the activities of BMP, and the impact of the extensive revisions made to marine pilot statutes in 1995 have had on board operations and pilotage in Alaska.
- Minutes of board meetings and annual reports.
- Licensing files for marine pilots.

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## ORGANIZATION AND FUNCTION

The Board of Marine Pilots (BMP) was created by Chapter 106 SLA 1970, which became effective May 7, 1970. The statutes were significantly changed with the passage of the Marine Pilot Act of 1991 which broadened BMP's authority. At that time the legislature felt it necessary to give BMP broad statutory authority, which included establishing pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. All but one section of that act went into effect on July 2, 1991. That section, which required a pilot to be a member of a pilot association, did not go into effect until January 1, 1993. The policy, findings, and intent of the Marine Pilot Act stated, "*It is the policy of the state to prevent the loss of lives and property, and to protect the marine environment of the state by requiring compulsory pilotage on the inland and coastal water of and adjacent to the state.*"

### Membership on the board

BMP is composed of seven members. Membership consists of two pilots licensed under the statute who are actively engaged in that profession, two agents or managers of vessels subject to the statutes, two public members, and the commissioner of the Department of Commerce and Economic Development (DCED) or designee. All members must be residents of Alaska. By statute, not more than one pilot member and one agent may be from any one pilotage region established by the board.

#### Members of the Board of Marine Pilots

Jeffrey W. Bush, DCED Deputy  
Commissioner, Chair  
Robert M. Berto, Agent, Vice-Chair

Peter S. Garay, Pilot  
Bernie R. Smith, Agent  
Michael C. Spence, Pilot  
Barbara J. Huff Tuckness, Public Member  
Michael N. White, Public Member

The public members cannot be engaged in the piloting profession, have a legal contract with a pilot, or have a direct financial interest in the piloting profession.

### Duties of BMP

BMP's statutory responsibilities include:

1. Adopting regulations establishing qualifications of, and required training for pilots and providing for examination of pilots.
2. Maintaining a register of licensed pilots, licensed deputy pilots, and agents.
3. Adopting regulations establishing pilotage regions, professional fees, and criteria to recognize pilot organizations.

4. Reviewing and approving the articles, bylaws, and rules of pilot organizations.
5. Auditing a pilot organization or an individual pilot as necessary to implement the board's statutory mandates.
6. Making copies of the statute and regulations available upon request.
7. Developing training programs conducted by pilot organizations.
8. Establishing and publishing the dates of future license examinations.
9. Arbitrating rates for pilotage services in a manner provided for in the marine pilot statutes.

#### Duties of the Department of Commerce and Economic Development

The Department of Commerce and Economic Development provides administrative and investigatory assistance to BMP. 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. On its own initiative, DCED may conduct an investigation if it appears an individual has engaged or is about to engage in a practice over which DCED has authority. DCED can issue an order that the individual stop the practice, bring an action in Superior Court to enjoin the act, examine the books and records of a licenseholder, and issue subpoenas for the attendance of witnesses and records.

#### Marine Pilot Coordinator

The department has hired a marine pilot coordinator. The duties of this position, whose hiring is subject to approval of BMP, are set out at AS 08.62.050. The coordinator assists the board in fulfilling its statutory duties. The marine pilot coordinator cannot work as a pilot, be an active member of a pilot association, or have a financial interest in a pilot association or the equipment that it uses.

#### Role of pilot associations

Pilots usually form associations to provide services to the shipping industry. Pilot associations offer centralized dispatch of services to industry through its pilot members. The associations either own pilot boats, or have agents who make arrangements for pilot boats, to carry pilots to and from vessels. Pilot associations sponsor candidates by providing access to a training officer and vessels with which the association or their agent has a contract. The pilot fees are collected by the association and pilots receive a portion of the revenue collected.

BMP has established four pilotage regions in the State of Alaska and has recognized five pilot associations.

Region	Association	Number of Marine Pilots	Number of Deputy Marine Pilots	Number of Trainees
Southeast	Southeast Alaska Pilot Association	24	3	3
	Alaska Coastwise Pilot Association	15	2	0
Western	Alaska Marine Pilots	10	1	1*
Southcentral	Southwest Alaska Pilot Association and Dispatching Services	20	3	2
Kuskokwim River	Kuskokwim Pilot's Association	0	1	0
Totals		<u>69</u>	<u>10</u>	<u>6</u>

\* - One individual to become a deputy marine pilot as of January 1, 1999.

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## BACKGROUND INFORMATION

Piloting is the act of directing a vessel into and out of areas where navigation has been determined to be dangerous or difficult. The difficulties can include restricted waterways, such as channels, ports or harbors; tides, currents and water depths; and type and nature of traffic. A pilot can either be a member of the ship's crew or he can be independent of the crew and brought onto the ship solely for the purpose of guiding the vessel through designated pilotage waters. The pilots' knowledge of the local geography and weather of the waters they are piloting makes them invaluable to the vessel. The safety of the lives aboard the vessel and for the marine environment is the pilot's responsibility.

### History of pilotage in the United States

Prior to the formation of the United States, many maritime states had already started regulating pilotage. The First Congress of the United States had to determine which functions would be administered by the federal government and which functions would be administered by state governments. The Commerce Clause of the U.S. Constitution grants the power to regulate interstate and foreign commerce to the federal government. To enable the states to continue regulating pilotage, an amendment was made to the Lighthouse Act of August 7, 1789, which stated:

*That all pilots in the bays, inlets, rivers, harbors and ports of the United States, shall continue to be regulated in conformity with the existing laws of the States respectively wherein such pilots may be, or with such laws as the States may respectively hereafter enact for the purpose, until further legislative provision shall be made by Congress.*

Since the passage of the Lighthouse Act, congress enacted very few laws to impact the states' authority over pilotage. A law was passed in 1852 which provided for federally-licensed pilots to be in charge of vessels propelled in whole or in part by steam and carrying passengers.

Since 1871, responsibility for the regulation of marine pilots and pilotage is shared by federal and state governments. In general terms the federal government, through the United States Coast Guard (USCG), regulates pilotage on enrolled vessels. Enrolled vessels are registered in the United States and engaged in commerce between American ports. However, individual states are given the right to regulate pilotage on registered vessels. Registered vessels are those engaged in foreign trade. The U.S. Customs Service determines in which trade a vessel is operating.

### Requirements for federal licensing

The USCG enforces federal pilotage laws and issues federal licenses to individuals who meet its requirements. In most states, if not all, an applicant must have a USCG pilot license in order to obtain a state license. The USCG license is usually referred to as a minimum standard of

competence license. The requirements for a USCG license include a required number of months of sea service, a certain number of round trips, and passing a written examination. The USCG appointed a Pilotage Study Group to make recommendations on pilotage in U.S. waters. The report issued on September 15, 1989 recommended increasing the sea service time and tightening record-keeping requirements to document service qualifications.

A federal license is valid for a period of five years. For renewal of the license, a pilot has to submit evidence of one year of sea service within the previous five years. Pilotage endorsements on the license do not expire, but every five years the pilot must make one round trip familiarization trip over the route for which they receive an endorsement. For long or extended routes, the pilot does not have to physically make the familiarization trip, the pilot can be certified based on his review of publications and charts.

#### Requirements for state licensing

Since knowledge of local geography is an essential aspect of the pilotage profession, state licensing procedures require intensive on-the-job training to gain the necessary experience. Some states have apprenticeship programs that provide on-the-job training. Entry into an apprenticeship program often requires little or no previous experience, but the training may last up to seven years.

Other states, including Alaska, have deputy pilot programs that provide on-the-job training. Training for deputy marine pilot programs is often for a two-year duration, which is considerably less time than the apprenticeship program. This is because the entry requirements for the deputy pilot include considerably more sea service experience than the apprentice. Alaska's deputy marine pilot qualifications could take from one to three years to attain. All training programs require the trainee to ride a ship with a fully licensed pilot, observing their handling of the ship. Over time the trainee begins to handle the ship himself under the pilot's guidance.

Licenses granted by the states are for a set period and must be renewed at intervals ranging from one to five years. Alaska has a biennial renewal. According to the American Pilots' Association, several states have continuing training programs or requirements. Alaska has also incorporated renewal requirements for marine pilots. Below is an excerpt from the statute on Alaska's continuing training program.

*AS 08.62.120. Renewal of License. (a) In order to renew a marine pilot license, a person who is licensed under [statutory requirements] shall . . .*

*(4) submit proof satisfactory to the board that the person has*

*(A) engaged in piloting vessels subject to this chapter in the marine pilotage region for which the license is to be renewed during at least 60 days of each calendar year in the licensing period immediately preceding the licensing period for which renewal is sought; or*

*(B) completed the minimum number of familiarization trips required by the board for renewal of a marine pilot license for a marine pilotage region for which the license is to be renewed.*

Vessels subject to Alaska marine pilotage regulations

A pilot is required to be employed by vessels navigating in the inland and coastal waters of or adjacent to the State, as defined by the board. However, certain vessels are exempt as detailed below.

*AS 08.62.180 Exemptions. This chapter does not apply to*

*(1) vessels subject to federal pilot requirements under 46 U.S.C. 8502 except as provided in AS 08.62.185 (see below);*

*(2) fishing vessels, including fish processing and fish tender vessels, registered in the United States or in British Columbia, Canada;*

*(3) vessels propelled by machinery and not more than 65 feet in length over deck, except tugboats and towboats propelled by steam;*

*(4) vessels of United States registry of less than 300 gross tons and towboats of United States registry and vessels owned by the State of Alaska, engaged exclusively*

*(A) on the rivers of Alaska; or*

*(B) in the coastwise trade on the west or north coast of the United States including Alaska and Hawaii, and including British Columbia, Yukon Territory, and Northwest Territories, Canada;*

*(5) vessels of Canada, built in Canada and manned by Canadian citizens, engaged in frequent trade between:*

*(A) British Columbia and Southeastern Alaska south of 58 degrees, 10 minutes North latitude, if reciprocal exemptions are granted by Canada to vessels owned by the State of Alaska and those of United States registry; or*

*(B) northern Alaska north of 68 degrees, 7 minutes North latitude and Yukon Territory or Northwest Territories;*

*(6) pleasure craft of United States registry; and*

*(7) pleasure craft of foreign registry of less than 300 gross tons as measured under 46 C.F.R. 69.51 – 69.75.*

*AS 08.62.185. Certain licensed pilots required for oil tankers. (a) Any oil tankers, whether enrolled or registered, of 50,000 dead weight tons or greater,*

*shall, when navigating in state water beyond Alaska pilot stations employ a pilot licensed by the state under this chapter.*

*(b) The pilot required in (a) of this section shall control the vessel during all docking operations.*

### Pilot discipline

The USCG investigates shipping accidents and other navigational incidents involving marine pilots operating under its federal license. The USCG has the authority to issue a letter of warning or reprimand, levy a fine, or seek criminal prosecution. The USCG may suspend or revoke a pilot's federal license if the pilot violated maritime law or regulation or was negligent or inattentive to his pilotage duties. At the present time, the USCG has no jurisdiction over a pilot's state license if the pilot was operating under that license at the time an incident took place. Both the National Transportation Safety Board and the USCG Pilotage Study Group recommend that federal law be changed so the USCG can take action on a pilot's federal license, even if an incident occurred when the pilot was acting on their state license.

All 24 maritime states have procedures for disciplining pilots when incidents occur while the pilot is operating on their state license. In most states, the pilot is required to report in writing an incident to the oversight organization. In Hawaii the oversight organization is a state department, but in the other 23 states the oversight organization is a board or commission that may or may not include pilot members. In many states, incidents are investigated and findings presented to the oversight organization by a state agency. If just cause is shown, the oversight organization can suspend or revoke the pilot's state license. In Alaska, reports are investigated by DCED, but BMP has the authority to suspend or revoke a pilot's license. BMP also has the statutory power to suspend or revoke a pilot's state license if their USCG license has been conditioned, suspended, or revoked.

### Marine Pilot Act of 1991 changes Alaska's pilotage statute

The former Division of Policy in the Office of the Governor, issued a report in November 1990 titled, *Improving Alaska's Marine Pilotage System*. The report stated that Alaska's statute treated licensing as an individual right rather than recognizing its importance as a regulatory oversight organization charged with public protection. The emphasis on individuals' rights had diverted BMP's attention from public safety issues facing state pilotage as BMP was constantly dealing with controversies with individual pilots. The report pointed out the Department of Law questioned whether existing statutory language granted BMP the broad discretionary powers intended by the legislature. The report stated, "*weak authority to set specific licensing standards has resulted in the charge that Alaska's marine pilot standards are the lowest among the maritime states.*"

In response to the report, the legislature drafted a bill that came to be known as the Marine Pilot Act of 1991. The act made significant changes to Alaska's pilotage statute. A policy, findings, and intent section emphasized safety by requiring compulsory pilotage on the inland and coastal waters of the State to prevent the loss of lives and property and to protect the marine

environment. The legislature gave BMP broad statutory authority, including setting pilotage regions, maximum tariffs, and criteria for the training and licensing of marine pilots. The effectiveness of BMP's use of this authority is discussed on page 29, in the Analysis of Public Need section.

However, two aspects of the act created a competitive economic structure for pilotage in Alaska, which was directly contrary to recommendations made in the report. The report had a section on competition and its potentially adverse impact on safety. But the legislature allowed a competitive economic structure by stating the board could not adopt a regulation or take any other action resulting in anti-competitive activities. The report had recommended, "*The Board should be authorized in statute to establish an enforceable tariff schedule, to avoid unhealthy rate competition among pilots.*" Instead, the legislature empowered BMP only to adopt maximum tariffs. This means pilot associations can compete with other associations in their region based on price, as long as the maximum tariff is not exceeded.

#### Impact of economic structures on the pilotage profession

Of the 24 maritime states, rate competition exists mainly in 4 states: Connecticut, Oregon, Hawaii, and Alaska. However, we understand that certain ports in California and some East coast areas also have competition. Traditionally, the pilotage profession has been handled by states as a publicly-regulated monopoly, in much the same manner as a utility company. This is usually accomplished by setting fixed tariffs that pilot associations can charge for their services and, in many states, by limiting the number of licenses granted.

The reason advanced for a state endorsing a regulated monopoly is to protect the state's interests by creating pilot independence from the shipping industry. Most pilots and their national association have long argued that pilots are not free to base their piloting decisions solely on safety considerations if they have to solicit jobs from the industry. If acting in an employee or contractee situation, a pilot may decide to move a vessel in marginal situations to meet a shipowner's schedule.

Proponents of competition argue the shipping industry is unlikely to place pilots in a position of having to compromise their independent decision-making, because the shipowner has the most to lose if there was an accident in terms of money for cargo, vessel, and insurance premiums. Pilots in favor of competition also allege that incidents go unreported and uninvestigated when there are no competing pilot associations.

The Federal Trade Commission (FTC) has performed several reviews of various states' statutory and regulatory policies to determine if they are too restrictive or anti-competitive. Reviews were performed on the State of Florida Board of Pilot Commissioners and the State of

South Carolina on the Commissioners of Pilotage for the Port of Charleston. FTC has stated in these reviews that:

*"We have no reason to believe that harbor pilotage is a natural monopoly. For that reason, price regulation likely represents a response to entry restrictions, which may enable incumbent pilots to charge higher than competitive prices."*

The FTC also stated in its review that a direct approach through vigorous safety regulations and enforcement is more effective in promoting safety than the indirect method through economic regulation. Interviews with FTC staff in Washington D.C. and the Seattle Regional Office have confirmed that these statements reflect the current attitude of the FTC regarding marine pilotage.

#### 1995 amendments to the Pilot Statutes allowed for competition and general BMP oversight

Competition between piloting organizations and the role of BMP in setting piloting rates continued to be at the center of the public policy debate. In 1995, in conjunction with the last sunset extension of BMP, the legislature again amended the marine pilot statutes. One of the more significant changes the legislature made involved the responsibilities of BMP in the area of rate-setting for piloting services.

Under the revised statute local associations could set rates either through negotiation with shippers, or by providing due notice to all enterprises utilizing pilot services. Upon due notice of increased rates, affected parties could appeal the proposed rates to BMP. The board then could solicit information from the association in support of the higher rates, evaluate the information presented, and determine whether the increased pilot rates were reasonable. Due to this change, BMP no longer established rates, but rather let local market forces do so, and acted as a final arbiter in the instances where there was a dispute.

According to testimony presented to legislative committees considering the bill, this process was a result of negotiations involving the administration, shippers, and marine pilots and represented a compromise of how to deal with regulation and competition involving piloting services in state waters.

## REPORT CONCLUSIONS

Under AS 08.03.010 (10) the Board of Marine Pilots (BMP) will terminate on June 30, 1999. If the legislature does not take action to reestablish the board, AS 08.03.020 provides the board one year in which to conclude its affairs. Consequently if no action is taken by the legislature, BMP will be dissolved June 30, 2000.

During the period covered by this review (July 1, 1993 to June 30, 1998) BMP has substantially improved its performance at operating in the public interest compared to the previous review period (1990-93). The issues of competition versus monopoly, training, and tariff-setting have not been totally resolved, but there is a great deal more consensus between BMP, marine pilots, and shippers that are subject to the board's oversight. There is a greater acceptance of BMP's rulings, and this has almost eliminated the continual legal confrontations that hampered the board's activities from 1990 to 1994. This has enabled BMP to concentrate more on the public safety aspects of its mandate. The board was able to work with the pilot associations in reaching satisfactory solutions to the controversial issue of whether tariffs should and could be set by BMP, or whether pilotage fees should be set by the competitive market.

The 1995 amendments to the State's marine pilot statutes changed BMP's role in setting how much pilot organizations could charge for services. The approach developed, as set out at AS 08.62.046, allows local pilot organizations flexibility to negotiate rates with shippers operating out of their local ports. The process allows for competition between organizations where it might exist, while giving shippers an avenue of appeal and review when they believe rates may be excessively high in regions of the State where there is no competition.

BMP has carried out the intent behind this amendment, although the current semi-competitive environment is significantly different from the situation that existed at the time of the 1995 amendments. See the Auditor Comments section for our discussion regarding the current competitive situation related to marine piloting in the State. The board is also carrying out the legislative directives related to training and licensing qualifications, which were also an important part of the 1995 amendments.

The regulation and licensing of qualified marine pilots benefit the public's safety and welfare. The steady increase in tourist passenger ships in recent years has made BMP's role increasingly more important. The board provides reasonable assurance that the individuals licensed to pilot passenger and cargo ships in Alaskan waters are qualified to do so. Extension of the board will take it through a period that, prospectively, appears to be one of intensive activity. BMP has begun improving training and continuing education of Alaska marine pilots. The board has successfully worked with the pilot associations in resolving many of the problems identified in the 1994 audit and has contributed to improving marine safety in Alaskan waters.

In our opinion, the Board of Marine Pilots serves an important public purpose. It should be continued in statute and its termination date extended to June 30, 2004.

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Board of Marine Pilots (BMP) should work with the pilot associations, the U.S. Coast Guard (USCG), the shippers, and other maritime interests to develop a database against which the competency of both trainees and licensed pilots can be better measured.

It was difficult to find databases that would aid in reaching recommendations or conclusions about marine pilotage. Indeed, it is difficult to find adequate databases anywhere in the maritime industry. Worldwide statistics are often used because there are not sufficient numbers in regional data to identify trends, problem areas, the effects of introducing new technology, or new operating or training practices. The four-year study undertaken by the National Research Council's Marine Board Committee on Pilotage and Navigation could not find adequate data sources. The Alaska Oil Spill Commission had the same problem.

There are two types of data that need to be accumulated. The first is a database that would capture a historical record of piloted shipping history within state waters. The other would be a database that reflected the human factors involved in regulated maritime shipping activity. The board is launching an ambitious program to utilize simulators in determining the competency of marine pilots. Lack of a good universal database upon which regulators or training pilots can rely in evaluating performance norms hampers this effort. The USCG has been working on its system for several years and has made some advances through a continued examination of human factors that may have an impact on navigational operating safety. These are somewhat general as yet and probably not specific enough to meet the needs of the new BMP program.

We recognize the board must move cooperatively to develop such information. In the area of developing a history of maritime shipping, we suggest the board give priority to establishing standard reporting forms reflecting pilot activity. Such forms can then be used by the various pilotage associations in the State to report activity in their region. Such information can then be accumulated for future reference and consideration when making board policy.

### Recommendation No. 2

BMP should consult the Department of Law regarding the practicality of enforcing the current piloting exemption statutes. After such consultation, the board should develop proposed statutory changes for the consideration by the legislature.

Under state law (AS 08.62.180) many seagoing vessels are exempted from the requirement that they take on a marine pilot in state waters. For example, fishing vessels, certain types of tugboats and towboats are not required to use a marine pilot. Also exempted are yachts [or pleasure craft as they are described at AS 08.62.180(6)] that are registered in the United States. However, exemptions for pleasure craft of foreign registry are limited to vessels of

less than 300 gross tons – larger foreign-flagged yachts are required to use a pilot in state waters.

#### Enforcement of the current law is difficult

Enforcement of the piloting requirement for large recreational yachts of foreign registry has proven difficult. In recent years, only a few non-exempt yacht operators have voluntarily complied with the law requiring they obtain a pilot services. Further, it is reported that the yacht operators complied only after registering numerous, strident protests. However, when the operators of large yachts refuse to comply, there is no practical way to enforce pilotage requirements. Enforcement has been impractical largely due to difficulties and protocol of apprehending ocean-going vessels.

This situation is discussed in the *1997 BMP Annual Report*. The report points out that violation of state pilotage laws is a criminal misdemeanor whereas the federal pilotage law provides only for civil penalties. There is no prior notification required by the State, the U.S. Coast Guard, or U.S. Customs for foreign recreational vessels. The requirement is to report upon arrival, by which time the vessel has violated the statute, as pointed out in BMP's annual report. The report states, "[t]he current system encourages non-compliance with the law, especially when the chances of detection and, therefore, enforcement are remote."

#### No consensus on BMP regarding advisability of current law or its effective enforcement

As reflected in the discussion presented in its annual report, the board has discussed this situation at various meetings. The board has considered possibly seeking statutory changes to address the situation by:

1. imposing pilotage requirements on all yachts, foreign and domestic;
2. exempting all yachts from pilotage requirements;
3. establishing a waiver process and related criteria;
4. establishing an enforcement mechanism whereby civil or administrative penalties are assessed rather than prosecuting violations as criminal misdemeanors; or,
5. seeking statutory authority for the marine pilot coordinator and other state investigators to board foreign flag yachts in order to enforce the State's pilotage requirements.

As noted, each enforcement strategy considered by the board would require a change in state law. Without a BMP consensus on the action needed, it would be difficult for the board to approach the legislature with any proposed legislation.

All indications are that the number of large recreational vessels subject to piloting requirements is going to increase. There are yachts currently being built that are very large and well exceed the 300 gross ton statutory limitation. A vessel almost 800 feet in length arrived in Anchorage in August 1998. Many of the large yachts are of foreign registry. Some may be owned by U.S. citizens but registered outside of the country. Very large domestic

registered yachts would offer the same public safety problem – a large ship with a crew of unknown quality in pilotage waters.

Consult the Department of Law, and if necessary propose change in law

In our view, if statutes are impractical to enforce in a consistent manner, consideration should be given to amending or eliminating the law involved. We suggest BMP seek advice from the Department of Law regarding public policy reasoning behind exempting certain types of vessels from pilot requirements, and the enforceability problems related to the current statute. After obtaining the advice and perspective of the attorney general, BMP should develop proposed legislation for consideration by the legislature. Such legislation should structure statutes to permit improved enforcement of the pilotage requirements.