

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

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**APPENDICES**

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**APPENDIX A**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Schedule of Revenues and Expenditures  
 FY 98 through FY 02  
 (unaudited)

	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>
<u>Revenue (rounded to nearest hundred)</u>					
License Application Fees	\$ 318,700	\$ 318,800	\$ 289,100	\$ 302,800	\$ 296,800
Pub Licenses	-0-	800	-0-	800	-0-
Brewery Licenses	7,000	8,000	3,000	7,000	3,000
Distillery Licenses	1,000	-0-	-0-	-0-	-0-
Beverage Dispensary Licenses	813,000	777,500	817,100	760,900	812,300
Club Licenses	59,100	49,600	51,600	48,000	57,000
Common Carrier Licenses	85,700	37,700	97,300	33,200	88,500
Restaurant Licenses	117,500	106,500	97,000	97,800	99,200
Theater License	600	600	-0-	-0-	600
Retail Store Licenses	297,000	312,000	286,500	310,500	281,800
Wholesale Licenses <sup>29</sup>	152,000	112,000	39,500	69,400	20,000
Malt Beverage and					
Wine Wholesale Licenses <sup>29</sup>	12,700	13,800	132,800	76,300	400
Miscellaneous <sup>30</sup>	<u>65,500</u>	<u>45,600</u>	<u>81,400</u>	<u>63,700</u>	<u>80,800</u>
<u>Total Revenues</u>	<u>1,929,800</u>	<u>1,782,900</u>	<u>1,895,300</u>	<u>1,790,400</u>	<u>1,740,400</u>
<u>Expenditures (rounded to nearest hundred)</u>					
Personal Services	551,200	558,300	543,400	585,300	573,100
Travel	21,300	12,400	23,000	21,400	21,200
Contractual	61,200	53,500	108,500	149,600	97,300
Commodities	6,400	8,900	10,500	4,000	3,600
Equipment	4,600	2,700	29,000	3,500	400
Transfers to Municipalities <sup>31</sup>	<u>823,300</u>	<u>837,200</u>	<u>902,000</u>	<u>833,400</u>	<u>885,100</u>
<u>Total Expenditures</u>	<u>1,468,000</u>	<u>1,473,000</u>	<u>1,616,400</u>	<u>1,597,200</u>	<u>1,580,700</u>
<u>Excess of Revenue Over Expenditures</u>	<u>\$ 461,800</u>	<u>\$ 309,900</u>	<u>\$ 278,900</u>	<u>\$ 193,200</u>	<u>\$ 159,700</u>

Note: All ABC Board revenues are to be deposited into the General Fund and are not dedicated for use by the board.  
 Source: Alcoholic Beverage Control Board and the Alaska State Accounting System.

<sup>29</sup> In FY 00, new staff changed the coding procedures for the additional fees (taxes) paid by wholesalers.

<sup>30</sup> The miscellaneous revenue account includes fees from various low-volume licenses (recreational sites, winery and municipal golf courses), fines, and permits (caterer, special events, restaurant caterer, club license caterer, and restaurant designation).

<sup>31</sup> In accordance with AS 04.11.610, refunds of annual license fees, excluding annual wholesale license fees, collected within a municipality are to be given to the municipality semiannually. The total of these refunds is the "Transfers to Municipalities" amount.

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**APPENDIX B**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Licenses, Permits, and Fees  
 FY 98 through FY 02

TYPES OF LICENSES	BIENNIAL FEE
Application Filing Fee	\$ 200.00
Beverage Dispensary License – Half Year	1,250.00
Beverage Dispensary License – Tourism – Half Year	1,250.00
Beverage Dispensary License	2,500.00
Beverage Dispensary License – Duplicate	2,500.00
Beverage Dispensary License – Tourism	2,500.00
Beverage Dispensary License – Tourism – Duplicate	2,500.00
Beverage Dispensary License – Public Convenience	2,500.00
Beverage Dispensary License – Community License	2,500.00
Bottling Works License	500.00
Brewery License	1,000.00
Brewpub License	500.00
Club License	1,200.00
Club License – Half Year	600.00
Club License – Public Convenience	1,200.00
Common Carrier License	700.00
Common Carrier License – Half Year	350.00
Distillery License	1,000.00
Golf Course	400.00
Package Store License	1,500.00
Package Store License – Half Year	750.00
Package Store License – Tourism	1,500.00
Package Store License – Public Convenience	1,500.00
Package Store License – Community License	1,500.00
Pub License (University)	800.00
Recreational Site License	800.00
Recreational Site License – Half Year	400.00
Restaurant/Eating Place (Beer & Wine only)	600.00
Restaurant/Eating Place (Beer & Wine only) – Half Year	300.00
Restaurant/Eating Place (Beer & Wine only) – Tourism	600.00
Restaurant/Eating Place (Beer & Wine only) – Public Convenience	600.00
Retail Stock Sale License	100.00
Theater License	600.00
Wholesale License – General (Basic Fee)	2,000.00
Wholesale License -- Malt Beverage & Wine	400.00
Winery	500.00

Note: This fee schedule has not changed since 1980.

Source of Information: Alcoholic Beverage Control Board.

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**APPENDIX C**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Summary of Responses from Active Licensees

Questionnaires sent: 245  
 Responses received: 105<sup>32</sup> (43%)

1. How often do you have contact with the Alcoholic Beverage Control Board or its staff during an average year?

78 0 - 6 times  
 9 7 - 12 times  
 2 More than 12 times  
 16 Only to renew licenses

2. When you deal with the ABC Board, do you find the staff to be:

	<u>Yes</u>	<u>No</u>	<u>N/A</u>
Pleasant	94	5	3
Responsive	90	4	3
Knowledgeable	88	3	4

3. Did the staff of the ABC Board answer any questions you may have had?

80 Answered completely  
 17 Answered to the best of their ability, but not completely  
 1 Did not know the answer to my question  
 5 Researched the answer and called me back  
 8 Not applicable

4. Which classification is your license?

86 Full year  
 17 Seasonal  
 3 Both

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<sup>32</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

**APPENDIX C**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Active Licensees  
(continued)

5. What type of licenses(s) do you currently have? *(Check all that apply.)*
- 49 Beverage Dispensary
  - 33 Package Store
  - 31 Restaurant/Eating Place
  - 14 Club
  - 7 Tourism
  - 2 Common Carrier
  - 2 Golf Course
  - 2 Recreational Site
  - 0 Brewery
  - 0 Pub
  - 0 Wholesaler
  - 0 Winery
6. Do you feel there are enough ABC Board meetings held each year to adequately administer liquor licenses?
- 47 Yes
  - 16 No
  - 31 No opinion
  - 8 Unsure
7. Do you receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings if you so choose?
- 80 Yes
  - 8 No
  - 12 Sometimes
8. Have you attended an ABC Board meeting in the past four years, either in person or by teleconference?
- 14 Yes, in person
  - 2 Yes, by teleconference
  - 89 No

**APPENDIX C**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Summary of Responses from Active Licensees  
 (continued)

9. Have you offered public comment to the ABC Board in the past four years?

14 Yes  
87 No

If yes, to what extent do you feel your comments were considered in the decision made by the ABC Board?

2 To a great extent  
8 To some extent  
5 Not at all  
4 No decision made

10. Approximately how many inspections have you received during each of the following years?

<u>Year</u>	<u>0</u>	<u>1-2</u>	<u>3-5</u>	<u>More than 5</u>
1999	31	40	3	1
2000	30	48	5	1
2001	32	50	5	1
2002	50	29	3	1

11. Do you feel ABC Board enforcement activities and procedures adequately police the alcoholic beverage industry?

71 Yes  
11 Somewhat  
4 No  
17 No opinion

**APPENDIX C**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Active Licensees  
(continued)

12. Do you feel the ABC Board staff enforce the laws and regulations on all licensees equally?

69 Yes  
11 No  
7 Sometimes  
11 Don't know

13. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

22 Yes<sup>33</sup>  
35 No  
33 No opinion

14. Overall, how do you rate the ABC Board?

19 Excellent  
46 Very good  
25 Good  
6 Fair  
1 Poor

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<sup>33</sup> See discussion in Analysis of Public Need section on page 16.

**APPENDIX D**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Local Governments

Questionnaires sent: 66  
Responses received: 36<sup>34</sup> (55%)

1. Is your local government given adequate notice by the Alcoholic Beverage Control Board of proposed issuances of new licenses and transfers, relocations or renewals of existing licenses?

25 Yes, always  
7 Usually  
1 Sometimes  
0 No, never notified

2. Since July 1, 1998, has your local government protested the issuance of a new license or the renewal, relocation or transfer of an existing license?

8 Yes  
24 No  
2 Unsure

If yes, what was the reason for the protest? (*Check all that apply.*)

7 Delinquent property taxes  
2 Public complaints  
2 Number of police reports  
0 Violation(s) of public policy  
8 Delinquent sales taxes  
0 History of criminal activity on premises  
0 Health and/or safety concerns  
1 Other

Was your protest upheld by the ABC Board resulting in the denial of a license issuance, transfer, relocation or renewal?

5 Yes  
0 No  
4 Unsure  
0 ABC Board did not provide us with the results  
1 Other

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<sup>34</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

**APPENDIX D**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Local Governments  
(continued)

3. Effective July 1, 1999, Alaska statutes were changed allowing local governments to recommend conditions be placed on a specific alcoholic beverage license and to notify the ABC Board if the licensee violated a condition imposed. Were you aware of this option? (*A copy of the statute was attached.*)

18 Yes  
19 No

If yes, has your local government placed any conditions on a license renewal, issuance, relocation or transfer?

2 Yes  
18 No  
2 Unsure

4. Were you notified of the time and place your protest or proposed conditions would be considered by the ABC Board?

7 Yes, always  
2 Sometimes  
0 Unsure  
1 No, never  
18 Not applicable

5. The ABC Board can refuse to implement proposed conditions if it feels the conditions or the reason(s) the conditions were proposed are arbitrary, unreasonable or capricious. Has the ABC Board refused to implement any conditions proposed by your local government?

0 Yes  
17 No  
4 Unsure  
0 ABC Board did not provide us with the results  
4 N/A

**APPENDIX D**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Local Governments  
(continued)

6. Has the ABC Board or its staff provided your local government with guidelines about what is or is not considered arbitrary, unreasonable or capricious?

- 11 Yes
- 14 No, and we would like some guidelines
- 2 No, and we are not interested in receiving guidelines
- 6 Unsure

7. Which of the following reasons do you feel the ABC Board would accept as valid to impose conditions or protest a license pending issuance, renewal, transfer or relocation? *(Check all that apply.)*

- 19 Delinquent property taxes
- 25 Public complaints
- 25 Number of police reports
- 27 History of criminal activity on premises
- 20 Delinquent sales taxes
- 26 Violations of local ordinances
- 25 Health and/or safety violations
- 30 History of alcohol sales to minors or inebriates
- 1 Other

8. Does your local government solicit community input on liquor license activity?

- 19 Yes
- 9 No
- 1 Unsure
- 1 Not usually

9. Are there any alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

- 1 Yes
- 11 No
- 10 Unsure
- 11 No opinion

**APPENDIX D**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Local Governments  
(continued)

10. If alcoholic beverage license fees are refunded to your local governing body by the ABC Board, what are the funds used for?

- 13 General fund
- 4 Law enforcement
- 1 Alcohol specific crime prevention
- 10 Unknown
- 0 Other

11. Overall, how do you rate the ABC Board?

- 7 Excellent
- 14 Very good
- 8 Good
- 3 Fair
- 0 Poor

**APPENDIX E**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Community Councils

Questionnaires sent: 50  
Responses received: 23<sup>35</sup> (46%)

1. Are you aware of the purpose and existence of the Alcoholic Beverage Control (ABC) Board?

22 Yes  
1 No

2. Does your community council contact the ABC Board for information about license renewal, issuance, relocation or transfer?

8 Yes  
9 No  
5 Sometimes  
0 Unsure

Does the ABC Board or its staff provide the information you request?

9 Yes  
1 No  
3 Sometimes  
1 Unsure  
5 N/A

3. Has your community council ever lodged an objection with the ABC Board over a liquor license renewal, issuance, relocation or transfer?

10 Yes  
11 No  
1 Unsure

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<sup>35</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

**APPENDIX E**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Community Councils  
(continued)

Do you feel the ABC Board took your concerns into consideration before ruling on the license you objected to?

5 Yes  
4 No  
3 Sometimes  
1 Unsure  
6 N/A

If you do not feel the ABC Board took your concerns into consideration, did it provide you with an explanation as to why it did not consider your objection?

3 Yes  
2 No  
2 Sometimes  
1 Unsure  
6 N/A

4. Do you feel the public has enough say in how liquor licenses in your area are issued, renewed, relocated, transferred or revoked?

9 Yes  
11 No  
1 Unsure  
0 No opinion  
1 N/A

5. Does your community council receive notice and information about proposed regulation changes in a timely manner so that you are able to participate in the hearings if you so choose?

9 Yes  
8 No  
3 Sometimes

**APPENDIX F**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Summary of Responses from Enforcement Agencies

Questionnaires sent: 44  
 Responses received: 27<sup>36</sup> (61%)

1. Are you aware of the purpose and existence of the enforcement staff assigned to the Alcoholic Beverage Control (ABC) Board?

25 Yes  
 0 No

2. Are you aware of enforcement by ABC Board staff of any of the following activities in your area?

	<u>Yes</u>	<u>No</u>	<u>Unsure</u>
Sale of alcohol to minors	13	13	1
Sale of alcohol to inebriated persons	13	14	0
Sale of alcohol before or after regulated hours of operation	11	15	1
Sale of alcohol without a valid permit or license	10	16	1

3. How often does your agency have contact with the ABC Board enforcement staff during an average year?

10 0 - 2 times  
 7 3 - 6 times  
 6 7 - 12 times  
 4 More than 12 times  
 0 We have no contact with the ABC Board enforcement staff

4. What kind of information does your agency receive from the ABC Board enforcement staff? (*Check all that apply.*)

16 Notice of violation issued to licensee in your area  
 12 License revocations or suspensions in your area  
 6 Available federal enforcement grants  
 6 Available training sessions  
 12 Enforcement assistance  
 6 None  
 3 Other

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<sup>36</sup> Item response totals may not equal the number of responses received. Some respondents did not answer all questions; others answered all that applied.

**APPENDIX F**  
 Department of Revenue  
 Alcoholic Beverage Control Board  
 Summary of Responses from Enforcement Agencies  
 (continued)

5. Does your agency enforce laws controlling the sale of alcoholic beverages in your area?

- 24 Yes
- 0 No
- 3 Sometimes

6. Does your agency share investigative information with the ABC Board's enforcement staff and notify them of arrests made on licensed premises?

- 19 Yes, always share information
- 4 Only when ABC requests the information
- 1 Occasionally ABC is sent copies of liquor-related arrests and reports
- 2 No, never share information

7. Do you contact the ABC Board enforcement staff regarding problem licensees in your area?

	<u>Yes</u>	<u>No</u>	<u>Sometimes</u>	<u>Unsure</u>	<u>N/A</u>
Bars	19	5	2	0	1
Liquor stores	18	6	0	0	1
Restaurants:					
Beer and wine only	11	5	3	2	2
Full license	13	5	4	1	2

8. Do you feel the enforcement staff of the ABC Board complements, duplicates or conflicts with the efforts of your law enforcement personnel?

- 15 Complements
- 1 Duplicates
- 1 Conflicts
- 11 ABC Board enforcement staff is not active in my area

9. Are there any existing alcoholic beverage control laws or regulations that you feel are obsolete, vague, unduly restrictive and/or inadequate?

- 5 Yes
- 22 No

**APPENDIX F**  
Department of Revenue  
Alcoholic Beverage Control Board  
Summary of Responses from Enforcement Agencies  
(continued)

10. How effective is the enforcement staff of the ABC Board at enforcing the laws controlling the sale of alcoholic beverages in your area?

- 6 Very effective
- 6 Somewhat effective
- 11 Not effective<sup>37</sup>
- 3 Not applicable. We are a damp/dry community

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<sup>37</sup> Enforcement agencies which responded "Not effective" included five from areas off the road system, four from the Southcentral area, and two from the Northern area.

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**STATE OF ALASKA**  
**DEPARTMENT OF REVENUE**  
**Alcoholic Beverage Control Board**

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March 7, 2003

Members of the Legislative Budget  
and Audit Committee  
Alaska State Legislature  
State Capitol, Room 519  
Juneau, Alaska 99801-1182

RE: Alcoholic Beverage Control Board Audit, Audit Control Number 04-20019-03

Dear LB & A Members:

In her letter of February 19, 2003, Legislative Auditor Pat Davidson asked that I respond to the recommendations contained in the DEPARTMENT OF REVENUE ALCOHOLIC BEVERAGE CONTROL BOARD SUNSET REVIEW, dated November 29, 2002. It is my pleasure to give the ABC Board's perspective on the eight recommendations made in the audit and the analysis of need.

Recommendation No. 1

The Legislature should consider having the Department of Public Safety (DPS) conduct criminal investigations, rather than the ABC Board.

Of course, it is the Legislature's job to consider amending the law if those changes will provide better service, increased efficiency, and improved accountability in the provision of important government services. Fracturing the ABC Board's ability to meet its statutory mandate under AS 04.06.090(a) to "control the manufacture, barter, possession, and sale of alcoholic beverages in the state" (emphasis added) by having another agency conduct an important element of the ABC Board mission will not provide better service, increased efficiency or improved accountability.

In 1999, the Legislature felt the same way when it added additional criminal investigation responsibilities to the ABC Board to investigate prostitution and gambling on liquor-licensed premises. This amendment to AS 04.06.110 was not considered a major change when it was passed. Rather, it legally clarified a long-standing and generally accepted practice of ABC investigators to investigate illegal practices of

gambling and prostitution on licensed premises. In 1993, the Department of Law questioned an ABC investigator's authority to execute a search warrant for gambling devices on licensed premises. The Commissioner of Public Safety issued special commissions for all ABC investigators so there would be no legal question regarding ABC investigators conducting the criminal investigations in the same manner as they had done since Statehood. In 1999, the statutory change eliminated the need for the special commissions by granting direct authority for conducting these specific criminal investigations. The Department of Public Safety was supportive of the clarification of ABC Board authority.

The changes to regulations in 15 AAC 104.505 to allow ABC investigators to carry firearms were adopted following a great deal of study over nearly two years and public hearings that produced a great deal of comment. During the public comment period the Governor's Office, Department of Law, and the Department of Public Safety (DPS) remained silent. It was only after adoption of the regulations and ABC Board authorization to carry firearms did the Commissioner of Public Safety revoke the limited public safety commissions given to the ABC investigators.

Since statehood, there have been provisions for enforcement of criminal laws regarding the sale of alcoholic beverages that fall under the purview of the ABC Board. AS 04.06.110, the section cited in the recommendation, grants powers to the ABC Board employees "necessary for the enforcement of the **criminally punishable** provisions of this title, regulations of the board, and other **criminally punishable laws and regulations...**"(emphasis added). AS 04.06.075 says that the ABC Director "**shall** enforce this title and regulations adopted by the board" (emphasis added). There are numerous sections of Title 4 that involve enforcement of criminal offenses.

The larger question is why do the statutes give an agency the statutory duty to enforce laws, but not the necessary authority or means to do so. This has been the status quo for many years and its resulted in alcohol laws being made the "stepchild" when it comes to enforcement. Alcohol abuse is a factor in the majority of the crime committed in Alaska. Alcohol also is involved in many suicides and accidental deaths and the high occurrence of fetal alcohol syndrome and fetal alcohol effect in Alaska is well documented. It would be reasonable to assume that enforcement of alcoholic beverage laws should be a priority in Alaska. Historically, this has not been the case when it comes to support of the ABC Board, the primary agency mandated to perform this important public safety and health task. Alaska State Trooper and local police academies have not even been providing instruction in alcoholic beverage law.

The solution of peeling off alcohol enforcement from the ABC Board's licensing function would create more inefficiencies and loss of organizational synergy than is cited in the audit. The connection of having the organization that licenses your business to operate and enforces the rules and laws is a powerful and effective compliance tool. Shifting part of the enforcement responsibility to another agency would break this meaningful connection and would render enforcement more ineffective. Alternative A involves contracting with money the ABC Board does not have; no mention is made of

how this function would be funded. The next obstacle would be the matter of who would get to direct and control the DPS staff under the contradictory "as-needed" and "as-available" contractual enforcement scenario recommended by the audit. Which will it be, "as-needed" or "as-available"? Given the history of alcohol enforcement in Alaska and the emphasis a short staffed DPS has placed on other law enforcement priorities, I am afraid the winner will be "as-available" or maybe even "if-available at all". Utilizing "the many locations served by DPS" under Alternative A means we will be using various Alaska State Troopers (AST) personnel who are, on the whole, not very familiar with alcoholic beverage law. This is not efficient if our role becomes that of on-the-job trainer. The paperwork to keeping track of "billable hours" of various troopers at various levels of pay and geographical differential rates would also present new challenges. The ABC Board has had experience contracting DPS for the Underage Drinking Grant and the experience does not lead us to think Alternative A is the means to improve efficiency and accountability.

Alternative B of removing the criminal investigation function from the ABC Board is also a recipe for greater inefficiency and less enforcement of alcoholic beverage laws. The audit says that these "less serious crimes...need not be slighted", but over forty years of experience tells that they will be. This arrangement also sets up a situation where some alcohol violations will be investigated twice, once by the ABC Board for possible administrative action and once by DPS for criminal purposes. That is simply not the best use of limited public resources.

The audit states that "there would be significant inefficiencies in attempting to turn ABC into a four-officer, statewide police force", but no explanation for this assertion is provided. The ABC Board only wants to police Title 4 statewide for one reason; that is what the law mandates it to do. The efficiency is there because of the focus on Title 4 and gambling and prostitution on liquor licensed premises. The efficiency comes from being able to work with local law enforcement and AST on an equal footing as peace officers. The effectiveness comes from focus on a small, but important area of law that addresses alcoholic beverages with a comprehensive 360° approach of licensing, education, and administrative and criminal enforcement. The statutes set out a clear, accountable, and efficient blueprint to follow in providing alcoholic beverage control. The audit recommends changing the law, contracting out important responsibilities, weakening synergy between licensing and enforcement and blurring lines of accountability and responsibility. The result would be less effective and efficient alcohol beverage law enforcement.

ABC Investigators could access other sources of funding and improve alcoholic beverage enforcement if peace officer powers were restored. The Federal Underage Drinking Grant funds it now passes through to local police departments and AST detachments could be used if ABC personnel had the limited police powers. Far more compliance checks could be completed with greater quality control and uniformity if the ABC Board ran more of the underage compliance checks. Presently, law enforcement personnel do nearly all of the compliance checks on overtime. ABC Investigators could do twice as many checks for the same amount of funding if they did them as part of a

regular shift. Limited peace officer powers would also allow ABC Investigators the opportunity to access funding for National Highway Safety program initiatives focused on underage drinking and service of drunken persons by liquor licensees.

The ABC Board simply desires to carry out its statutory mandate. The ABC Board wants more effective and accountable enforcement as set out in Title 4.

#### Recommendation No. 2

The ABC Board should seek amendment to Title IV to allow the board to summarily suspend liquor licenses.

The ABC Board agrees with this recommendation, but it is concerned that there may be Alaska Constitution issues in Article 1, Section 7 limiting a statutory change of this kind. This part of the Alaska Constitution states "No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

This recommendation gives the ABC Board significantly increased authority over the operations of liquor-licensed businesses. This change could certainly alter the dynamic of the suspension and revocation process as you describe by closing a business deemed to be a "clear and immediate danger" to public health and safety. Clearly, this recommendation coupled with increased enforcement authority discussed in the previous recommendation would provide further protection for the public's health, safety, and welfare.

The standard of showing clear and immediate danger to the public in the operation of a liquor license is much tougher than questioning the judgment and competence of a physician. The statute providing the ABC Board with this power would have to be very carefully drafted to address potential challenge as a taking without due process. Provision would also need to be made for a fairly quick post-deprivation hearing in those cases. These changes would involve additional costs. Additional resources for the Department of Law would be needed to take license revocations to formal hearing more quickly. Under the present ABC budget, no money is allocated to compensate the Department of Law for use of an Assistant Attorney General and scant funding is available to pay for administrative hearing officers. Therefore, this statute change would come with a fiscal note.

Recommendation No. 3

The ABC Board should conduct routine background checks on all licensees as they renew their licenses or should track licensees through the DPS information system.

The ABC Board agrees with this recommendation, but would offer an alternative means of implementing this change. This recommendation provides greater protection for the public. The question is whether the cost of this increased protection, borne primarily by the licensee, and the increased workload on an overburdened criminal background check system is worth the benefit. Under the present law (AS 12.62.160(c)(3)), the only background screening method available to the ABC Board is the national and state fingerprint check. This extensive and expensive alternative has kept the ABC Board from considering this additional procedure for renewals. Renewals are concentrated during a 4-1/2 month window between the middle of October to the first week of March. This concentrated activity makes this part of the licensing cycle very busy and any additional processing steps would place further demands on the small ABC Board staff.

The alternative of an APSIN--based review for renewal would be a good compromise in protection of the public interest and the additional work involved in conducting background checks. The DFYS system with Department of Public Safety is one alternative for using APSIN. ABC investigators have access to APSIN now based on statutory authority to conduct criminal investigations. AS 12.62.160 prevents doing APSIN checks for licensing purposes. Changes to this law to allow its use for liquor licensing renewal background checks would be the most straightforward and cost effective way to check for criminal violations of renewing licensees. I will recommend that the ABC Board request legislation to amend AS 12.62.160 to allow for access to APSIN for licensing purposes. This statute change could require a modest fiscal note.

Recommendation No. 4

The director should ensure that all fines are collected and deposited into the general fund.

I understand this recommendation, have already taken corrective action, and will implement this recommendation in the future. I still believe that the ABC Board has a great deal of discretion in reaching informal settlements under the Administrative Procedures Act. The one settlement involving a payment in lieu of fine was with the Breakers Bar in Nome. On November 19, 2002, while I was in Nome, I retrieved the Breakers Bar \$1,000 payment in lieu of fine from the Nome Police Department. At the next meeting of the ABC Board held on January 30, 2003, the Board amended the

informal settlement with the Breakers Bar to require that the \$1,000 fine be paid to the State of Alaska rather than the Nome Police Department. On February 12, 2003, I wrote to Wayne A. Locke, the Breakers Bar licensee, advising him of the need to replace the Nome check with one made out to the ABC Board.

#### Recommendation No. 5

##### The ABC Board and its director should provide goals for the enforcement staff.

I agree that goals for enforcement staff can be clearer and the Enforcement Supervisor has already begun preparing activity benchmarks for premise inspections and training of local police and state troopers. The handling of police reports has been simplified and streamlined to prevent backlogs for the issuance of Notices of Violation (NOVs) from law enforcement reports in the future. However, I do not agree that enforcement activities are unorganized and inefficient.

The emphasis on enforcement for the last two years has been on reducing underage access to alcohol. This is a worthwhile area in which to focus more time and energy since there are many negative effects on society due to underage alcohol use and abuse. Studies show there is a direct correlation between when young people begin to consume alcohol and problems with alcohol and other drugs when they become adults. The ABC Board made a conscience decision to focus on reducing underage access to alcohol by managing a grant for this purpose. This grant provides badly needed funding to help carry out this important job. Goals were set to reduce "failure rates" of licensees selling to underage persons and we are making progress on this compliance check program. When we started, the failure rates statewide were over 50%. After the first three years of the program, that rate is down to about 30% statewide and 16% in Anchorage. Our goal is failure rate of 10% statewide. Placing emphasis on this activity has reduced activities like premise inspections. Managing the grant has taken more time than I anticipated, but it has allowed us to be more visible in the enforcement arena. As I noted in my response to Recommendation No. 1, the ABC Board could do these compliance checks better and cheaper if it had the peace officer powers necessary to directly conduct the program.

I believe investigative staff spends ample time on regulatory activities (criminal background checks; inspections when issuing licenses; answering regulatory and local option questions over the telephone, in person, or by email; reviewing and approving restaurant designation permits; reviewing and approving catering and special event permits; hosting regular meetings of liquor licensees and representatives of law enforcement; performing research for ABC Board meetings; and assisting licensing staff with regulatory issues). There is "interest" in performing "police-type" activities, but I do not, given the limitations on our powers, believe that much effort is expended in this area. The ABC Board relies largely on local police and State Troopers to be our liquor law enforcement surrogates. Staff did spend time talking to the representative from

Legislative Audit about our interest in doing more criminal enforcement because of its strong belief that this important enforcement job that is mandated to the ABC Board was not being adequately addressed by police and troopers.

Recommendation No.6

The director should upgrade the ABC Board licensing database.

I concur with this recommendation and an overhaul of the existing database to improve its use and accessibility will be a high priority. Since my November 5, 2002 response to Management Letter No. 1, we have upgraded the ABC Software to include MS Access 2000, established a new template to incorporate enforcement information into the database, and begun the task of an in-house upgrade by the Records and Licensing Supervisor with assistance from Department of Revenue IT personnel. This work is temporarily on hold as licensing staff addresses the demands of liquor license renewals. Work on the database improvements should resume within a month. The goal is to have the new database operational within six months. The hands-on approach will make it easier to maintain, update and repair our database. The ABC Board will include, if feasible receipting functions and licensing permit forms.

Over the next year, the ABC Board will also complete a review of all of its files to address errors, omissions, and deficiencies. The ABC Board will also review license refund payments of \$15,300 and, upon verification of disqualification for the payment, I will seek refund to the State. It is impossible to ascertain how much, if any, of these funds will be retrieved, but returned funds will be deposited into the general fund. I will develop policies and procedures to provide closer supervisory review of license applications and license refund payments.

Filing of NOVs in license files have been brought current. Lack of clerical support will require premise inspection reports to be kept separate from license files, but this information is available upon request to allow interested parties to make determinations regarding licensee suitability. Development of the database will afford the best opportunity to integrate at least the most recent inspection into the license file.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

I agree with this recommendation. A draft procedural manual has been completed for the Records and Licensing Supervisor position and one of the licensing clerk positions. Other staff positions for the ABC Board have either started or will soon start drafting procedural manuals for the position they now occupy. Particular focus will be placed on strengthening internal controls and providing greater uniformity in providing

services to the public, local governments, licensees and potential licensees, state officials, and law enforcement personnel. Initial drafts of procedural manuals should be complete by June 30, 2003. Once manuals are prepared they will be properly maintained.

#### Recommendation No. 8

The ABC Board should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

The ABC Board through its chairman and its director did urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

This concludes my response to your recommendations.

#### Analysis of Public Need

On page 15 of your audit you summarize ABC Board Actions. One type of action that is not captured in the chart is licenses that are not renewed or voluntarily relinquished under threat of revocation. This is a very inexpensive (no hearing officer expenses or assistant attorney general time) and effective manner in dealing with problem licenses or licenses that have not been operated for several years. There have been four licenses taken out of circulation in this manner during the last audit review period. I disagree that the forced sale and denial of renewal of licenses are not effective penalties. The economic toll of not getting one's license renewed is just as great as a revocation and a forced sale of a license by a publicly known deadline places a big disadvantage on the seller of a liquor license. While the license remains in a forced sale, the problem licensee is removed from the scene. This benefits the public without the cost, time, and protracted effort of formal administrative or legal proceedings.

The ABC Board agrees, in part, with questionnaire comments that its enforcement staff is "too small or too busy to respond" to requests for assistance. Lack of a sufficient travel budget and limitations on peace officer powers is also a big factor in not being able to respond to requests. Local politics is often a big obstacle to addressing problem liquor licensees. That is one reason why a sufficiently staffed and empowered ABC enforcement would be in the public interest.

The graph on page five shows that if funding for the ABC Board had merely kept pace with inflation the travel budget would be \$48,400 instead of the present \$21,200 and the overall budget would be about \$140,000 higher at \$846,000. The ABC budget did not grow appreciably during years of increasing budgets (\$559,000 and 12 positions in FY81) so there was no fat in its budget when belt-tightening and across-the-board cuts came. Public safety budgets at the State and local level have also been squeezed at the same time as the public is asking for increased alcohol enforcement. With alcohol enforcement statutorily falling to the ABC Board, it is easy for law enforcement agencies

to find other areas of emphasis. Funding for alcohol enforcement needs to be increased, focused, and made a priority if Alaska is to seriously reduce alcohol related social, health, and safety problems. Enforcement provided at a level needed to deter and prevent violations and crime is much cheaper than treatment and incarceration.

Chapter 87, SLA 2001 is another significant legislative change I would add to your report on page 19. This new law allows liquor licensees to bring civil action against persons under the age of 21 and seek up to a \$1,000 civil fine and reasonable court costs. This law has the potential to be highly effective by allowing liquor licensees to police their own premises through a bounty on young people illegally seeking access to alcohol. Alaska is unique with this approach, but other states are showing an interest in this law. This is an innovative way to "privatize" alcohol enforcement without burdening the police, ABC Board, district attorneys, and criminal judges.

Executive Order 110, introduced by Governor Murkowski on March 5, 2003, moves the entire ABC Board function from the Department of Revenue to the Department of Public Safety for administrative purposes only. This change is a positive one as it reflects the important public safety function of alcoholic beverage control and regulation. This transfer reflects a third alternative for Recommendation No. 1, but keeps the ABC functions intact. I do not believe the change will be unduly disruptive to the ABC Board staff and it does address the need to enhance alcoholic beverage enforcement activity.

The ABC Board would request that it be granted a four-year extension in its sunset date to June 30, 2007. The audit did find areas that need to be addressed. However, I do not believe they rise to the level to justify the shortening of the sunset period. ABC staff has started work to upgrade the database and significant progress, if not complete remedy, can be made over the next few months.

Thank you for the opportunity to respond.

Sincerely,

Douglas B. Griffin  
Director

cc: ABC Board Members  
William Corbus, Commissioner, Department of Revenue  
William Tandeske, Commissioner, Department of Public Safety

March 19, 2003

Ms. Pat Davidson, CPA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Dear Ms. Davidson:

This letter is written in response to the Preliminary Audit Report, Department of Revenue, Alcoholic Beverage Control Board (ABC), Sunset Review dated November 29, 2002. The Department of Public Safety (DPS) would like to take this opportunity to thank the Division of Legislative Audit for allowing the department to comment on the recommendations of the preliminary audit. This is especially important given Executive Order 110, which moves the ABC Board from the Department of Revenue to the Department of Public Safety. The Department's positions are stated below each recommendation.

Recommendation No. 1

The legislature should re-evaluate the need for gambling and prostitution investigations by the ABC Board.

The Department of Public Safety supports the mission of the ABC Board as stated in AS 04.06.090(a) to "control the manufacture, barter, possession, and sale of alcoholic beverages in the state." We concur with the audit findings that when the legislature amended Title IV by adding authority for investigation of gambling and prostitution as it relates to enforcement of alcohol licensing that it expanded the mission of the board beyond alcohol control.

Criminal investigations into gambling and prostitution, whether or not they occur in a licensed premises, should be conducted by Alaska State Troopers or officers of a local police department. To be effective, criminal investigations into gambling and prostitution often require undercover operatives and surreptitious tape recordings, which are more appropriately dealt with by experienced police investigators.

We believe that the transfer of the ABC Board to the DPS will serve to facilitate the investigation of these crimes in or around licensed premises. Relocation of the ABC Offices to DPS facilities

Ms. Pat Davidson  
March 19, 2003  
Page 2 of 3

will further encourage the flow of information related to criminal activities on licensed premises from ABC employees to the State Troopers.

Although not a specific point of this written recommendation. I would like to comment on the discussion in the preliminary audit of the question of ABC Board staff carrying firearms. Authorization for the use of deadly force by public servants in the course and scope of employment is a critically serious matter; therefore, we believe this authorization should only be given to employees whose primary responsibility is to protect life and property. I am in complete agreement with earlier determinations of my predecessors that ABC staff do not need to carry firearms or use deadly force to complete assigned duties.

Recommendation No. 2

The ABC Board should seek an amendment to Title IV to allow the board to summarily suspend liquor licenses.

The Department of Public Safety concurs with this recommendation.

We do however note that in his response, the Director of the ABC Board opined that there might be Alaska Constitution issues at Article I, Section 7, limiting a statutory change this kind. DPS has not reviewed that question.

Recommendation No. 3

The ABC Board should conduct routine background checks on all licenses as they renew their licenses or should track licensees through the DPS information system.

The Department of Public Safety concurs with this recommendation. We believe it is appropriate for the ABC Board to monitor the *criminal history record* of all licenses. This is particularly important at the time when licensees renew their licenses.

Preliminary analysis is that we would write a program for the Alaska Public Safety Information Network (APSIN) system similar to the program written for the Division of Family and Youth Services (DFYS) to generate an automated message to ABC staff whenever a previously identified individual is arrested or convicted of a felony, a Title IV violation, and other relevant offenses in Alaska.

Recommendation No. 4

The director should ensure that all fines are collected and deposited into the General Fund.

The Department of Public Safety concurs with this recommendation.

Ms. Pat Davidson  
March 19, 2003  
Page 3 of 3

Recommendation No. 5

The ABC Board and its director should provide goals for the enforcement staff.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 6

The director should upgrade the ABC Board licensing database.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 7

The director should require staff to prepare and maintain procedural manuals.

The Department of Public Safety concurs with this recommendation.

Recommendation No. 8

The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

The Department of Public Safety concurs with this recommendation.

Executive Order 110 moving the ABC Board from the Department of Revenue to the Department of Public Safety will not become effective until July 1, 2003. As such we have not had an opportunity to closely review the administrative operations of the Board and therefore are not aware of the intricacies or timelines for implementation of these recommendations.

Again, I appreciate the opportunity to comment on the preliminary audit findings.

Sincerely,

William Tandeske  
Commissioner

March 21, 2003

Members of the Legislative Budget  
and Audit Committee

We have reviewed the responses to our preliminary audit report on the Alcoholic Beverage Control Board (ABC Board or the board) from the ABC Board itself and from the Department of Public Safety (DPS). Nothing contained in their responses gives us cause to reconsider our findings. However, several issues warrant further discussion.

After the completion of our fieldwork and the preparation of the preliminary audit report, Governor Murkowski introduced Executive Order No. 110 to the legislature. Unless the legislature disapproves of it by resolution, this order will transfer the administration of the ABC Board from the Department of Revenue to DPS on July 1, 2003. The purpose of the transfer is to strengthen enforcement of alcoholic beverage control laws through the law enforcement expertise and assistance of DPS.

DPS is in total agreement with our findings. The ABC Board is in substantial agreement. The notable exception is that the board believes that its staff should conduct criminal investigations of gambling and prostitution. Because of operational economies of scale, training, and experience concerns, we believe these investigations would be better conducted by DPS and local law enforcement. We recommended that the board either contract with DPS for these services or that this criminal investigation function be removed from the board. Removal would leave DPS and local police forces with the investigative responsibility for these crimes. In its response, DPS states that

*Criminal investigations into gambling and prostitution, whether or not they occur in a licensed premise, should be conducted by Alaska State Troopers or officers of a local police department. To be effective, criminal investigations into gambling and prostitution often require undercover operatives and surreptitious tape recordings, which are more appropriately dealt with by experienced police investigators.*

As such, we anticipate that DPS will soon be addressing the question of whether to contract with the board for these investigative services or to request a statute change to accomplish it. Either of these alternatives will allow the ABC Board and its staff to retain focus on their mission as a regulatory and licensing agency.

Through its response to the preliminary report and in our discussions with the department, DPS has indicated its commitment to addressing the deficiencies in the ABC Board's operations. Given this commitment, we fully support Executive Order No. 110.

The ABC Board also expresses concern that our recommendation to allow the board to summarily suspend liquor licenses might conflict with the Alaska Constitution. Specifically, it references Article I, Section 7, which states that "*No person shall be deprived of life, liberty, or property, without due process of law.*" However, we did not suggest the board dispense with due process. Rather, we stated that, in instances where the licensee is a danger to the public, the beverage license should be summarily suspended while the licensee pursues his due process rights.

Although this is the same suspension procedure used by occupational licensing boards<sup>1</sup> in the State, the ABC Board takes exception to it and states that

*The standard of showing clear and immediate danger to the public in the operation of a liquor license is much tougher than questioning the judgment and competence of a physician.*

We disagree. There are few things more difficult to evaluate than professional judgment and competence. In contrast, determining whether a liquor licensee presents a clear and immediate danger to the public can be objectively measured. For example, a licensee who continually over serves, serves to minors, and serves after "closing" represents danger to public health and safety. The board would need to adopt regulations establishing the criteria necessary to identify emergency situations in which the public health, safety, or welfare requires summary action. The regulations could use both violation types and violation counts, along with time frames in which they occur, in developing a summary suspension rule.

The ABC Board has also asked that its termination date be extended for four years, rather than three. Although DPS's commitment to improving the board's operations is encouraging, given the magnitude of the current deficiencies, we continue to recommend a three-year extension of the termination date to June 30, 2006.

In summary, we reaffirm the findings presented in this report.

Pat Davidson  
Legislative Auditor

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<sup>1</sup> See AS 08.01.075(c).

**HB**

**242**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 4, 2003

FURTHER REFERRALS: Finance

Date of Committee Action: April 25, 2003

The LABOR AND COMMERCE Committee considered:

HB 242

HOUSE BILL NO. 242

EXAM FOR CPA'S

"An Act relating to licensing of certified public accountants."

Recommends it be replaced with [ ] HCS or [] CS for HB 242 (LR)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
<u>CED</u>				<input checked="" type="checkbox"/>

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>Bobbs</u>	LYNN	<input checked="" type="checkbox"/>			
<u>Starrup &amp; Crawford</u>	GATTO	<input checked="" type="checkbox"/>			
<u>Starrup &amp; Crawford</u>	CRAWFORD	<input checked="" type="checkbox"/>			
<u>Starrup &amp; Crawford</u>	GUTTENBERG	<input checked="" type="checkbox"/>			
<u>Starrup &amp; Crawford</u>	DAHLSTROM	<input checked="" type="checkbox"/>			
<u>Starrup &amp; Crawford</u>	ROKBERG	<input checked="" type="checkbox"/>			
Chair: <u>Tom Anderson</u>	ANDERSON	<input checked="" type="checkbox"/>			
Chair:					

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 242  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction):  
Title Exam for CPA's

Dept. Affected: DCED  
BRU Occupational Licensing (117)  
Component Occupational Licensing

Sponsor Representative Hawker  
Requester House Labor and Commerce

Component No. 2360

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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>						
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<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>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
<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 (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 242 specifies in statute the examination required for CPA licensure. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager  
Division Occupational Licensing  
Approved by: Edgar Blatchford, Commissioner  
Agency Department of Community & Economic Development

Phone 907-465-2144  
Date/Time 4/24/03 2:39 PM  
Date 4/24/2003

# Representative Mike Hawker

## Alaska State Legislature



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### *House District 32:*

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Anchorage  
Rainbow  
Indian  
Bird  
Girdwood  
Portage  
Whittier  
Sunrise  
Hope

### **House Bill 242-Exam for CPA's Sponsor Statement**

House Bill 242 updates Alaska Statute to recognize changes in the standardized testing procedures for Certified Public Accountants (CPA) adopted by the American Society of Certified Public Accountants (AICPA).

The Alaska Board of Public Accountancy has been administering the Uniform CPA Examination prepared and graded by the AICPA since the 1960's. All US jurisdictions require CPA's to pass the Uniform CPA Examination. The examination format will change from paper and pencil to computer based in May 2004. Current Alaska statute requires a "written" examination. HB 242 makes acceptable any form of the Uniform Certified Public Accounting Examination of the AICPA.

HB 242 further requires the Alaska Board of Public Accountancy to establish by regulation what constitutes a passing grade. The Alaska Board is adopting AICPA prepared model exam regulations. These regulations provide national uniformity of scheduling, credits and passing requirements. HB 242 repeals statute sections on the frequency of examination, reexamination and standards for passing the examination that have become inconsistent with the new computerized examination and grading system being implemented by the AICPA.

HB242 also includes an AICPA suggested transitional provision to facilitate completion of the CPA examination by persons who began, but had not completed, the CPA examination process under the old format and grading system.

A detailed history with specifics on the CPA examination and the proposed changes prepared by the Alaska Division of Occupational Licensing is attached to this sponsor statement. HB 242 was drafted in cooperation with the Department of Community and Economic Development, Division of Occupational Licensing and the Alaska Board of Public Accountancy. It has their full support.

# Representative Mike Hawker

## Alaska State Legislature



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*House District 32:*

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Anchorage  
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Bird  
Girdwood  
Portage  
Whittier  
Sunrise  
Hope

### **Sectional Analysis** **House Bill 242-Exam for CPA's**

#### **Section 1.**

Amends AS 08.04.130-Examination

Requires an applicant to pass an examination designated by the board. The board shall use the Uniform Certified Public Accountant Examination of the American Institute of Certified Public Accountants and their grading service. The board will decide what constitutes a passing grade.

#### **Section 2.**

Amends AS 08.04.195 – Reciprocity with other jurisdictions

- (a) The board may issue a certificate to an applicant who holds a certificate issued in another jurisdiction if the applicant
- (1) passed the Uniform Certified Public Accountant Examination of the American Institute of Certified Public Accountants

#### **Section 3.**

Repeals AS 08.04.140, 08.04.160, and 08.04.170

#### **Section 4.**

Amends the uncodified law by adding a section providing various conditions for transition.

## House Bill 242-Exam for CPA's Effected Statutes

### Sec. ~~08.04.130~~. Examination.

An applicant shall pass a written examination in accounting and reporting, in auditing, and in other related subjects that the board determines appropriate. The examination shall be designated in advance by the board as an examination for the certificate of certified public accountant. The board shall use the uniform certified public accountant examination and advisory grading service, if available.

### Sec. ~~08.04.140~~. Frequency of examination.

The examination shall be held by the board as often as it determines desirable but not more than three times each year. If the uniform certified public accountants' examination is available less frequently, an examination shall be held not less than twice each year.

### Sec. 08.04.160. Re-examination.

An applicant who fails an examination may take as many examinations as the applicant chooses. An applicant who receives a passing grade in at least two subjects or who has received a passing grade in accounting practice before May 1, 1994, has the right to be reexamined in only the remaining subjects at succeeding examinations within five years after the first examination if the applicant takes an examination in the remaining subjects at least once each calendar year unless excused by the board for good cause. An applicant who receives a passing grade in the remaining subjects has passed the entire examination. An applicant must attain a minimum grade of 50 percent on each subject required to be written but not passed at an examination sitting to receive credit for passing subjects on which a grade of at least 75 percent was attained at that sitting.

### Sec. 08.04.170. Examination standards.

(a) An applicant passes the examination by attaining a grade of at least 75 percent in each subject in which the applicant is examined. The board may give credit to an applicant who has passed all or part of the examination in another state if the board determines that the standards under which the examination was held are as high as the standards established for the examination in this state.

(b) A candidate must, at each examination taken, be examined or reexamined in all subjects for which conditional credit has not been given.

(c) The board may in particular cases waive or defer any of the requirements of AS 08.04.160 - 08.04.170 regarding the circumstances in which the various subjects of the examination must be passed upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet the requirement.

(d) The applicant must attain a minimum grade of 50 percent on each part not passed at that examination sitting to receive credit for passing subjects on which a grade of at least 75 percent was attained at that sitting.

### Sec. ~~08.04.195~~. Reciprocity with other jurisdictions.

(a) Notwithstanding AS 08.04.100 - 08.04.130, the board may issue a certificate to an applicant who holds a certificate, or its equivalent, issued by another jurisdiction if the applicant.

(1) passed the uniform certified public accountant examination given by the other jurisdiction in order to receive the applicant's initial certificate from the jurisdiction;

Frank H. Murkowski, Governor



**Division of Occupational Licensing**

P.O. Box 110806, Juneau, AK 99811-0806

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April 23, 2003

**HB 242 "An Act relating to licensing of certified public accountants."**

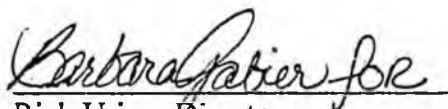
The Department supports this bill.

The Alaska State Board of Public Accountancy has administered the paper-pencil Uniform CPA Examination prepared by the American Institute of Certified Public Accountants (AICPA) since the 1960s. The AICPA is responsible for preparing and grading the Uniform CPA Examination and establishing appropriate passing standards with input from the Psychometric Oversight and Content Committees. According to examination information provided by the AICPA, the Uniform CPA Examination was first administered in 1917 and by the 1960s, all jurisdictions in the United States required CPAs to have passed the Uniform CPA Examination. (Licensing applications for CPAs licensed in the early 1960s verify that the Alaska board asked applicants whether they had passed the Uniform CPA Examination.) The Boards of Accountancy of all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands now use the Uniform CPA Examination, which is given twice a year; once in May and once in November.

Over the past several years, the AICPA, in conjunction with all State Boards of Public Accountancy, have been implementing plans to convert the current paper-pencil examination to a computerized version. The computerized version will not change the basic content of the examination, but rather the method in which it will be administered to the CPA examination candidate. The anticipated start date for the computerized examination is no later than May 2004. The final paper-pencil examination is scheduled for November 2003.

The AICPA has provided State Boards of Public Accountancy with model exam regulations that would allow for uniformity of examination credits and time afforded for exam candidates to pass all sections of the examination. The computerized examination will be offered during two months of each calendar quarter. Candidates will be able to schedule times to take exam sections at their convenience. The model regulations will permit candidates to sit for each section of the exam individually, and in any order. A passing score on any one section will remain valid for 18 months; all remaining sections must be passed within 18 months of passing the first section(s) in order for a candidate to retain credit for the first section(s) passed. In the event all four sections of the exam are not passed within the 18-month period, credit for any section(s) passed outside the 18-month period will expire and that section(s) must be retaken.

The Alaska Board of Public Accountancy has expressed its desire to adopt the recommendations as provided in the model exam regulations and ensure Alaska candidates are examined and afforded the same conditions for examination recognition, as will be provided in the majority of other licensing jurisdictions. It is expected that essentially all licensing jurisdictions will adopt the model exam regulations.

  
Rick Urion, Director  
Division of Occupational Licensing

Barb-7yI

## Computer-Based Uniform CPA Examination

The final paper-and-pencil based Uniform CPA Exam will be administered in November 2003. The computer-based Uniform CPA Exam (CBT) is scheduled for implementation in April 2004.

Here are some of the anticipated changes that will become effective upon implementation of the CBT:

### Test Sites

Prometric will administer the CBT **only** at authorized CPA Exam testing sites throughout the United States, Guam, Puerto Rico, the Virgin Islands, and the District of Columbia. Alaska will have one testing center located in Anchorage. After receiving an application and nonrefundable application fee, and upon approval by the Alaska Board of Public Accountancy and submitting the required fees to NASBA, the candidate will be authorized by NASBA to contact Prometric to schedule a specific testing date and time.

### Structure

The CPA Exam will continue to be comprised of four-sections. The four CBT sections will correspond to the paper-and-pencil exam sections as follows:

#### Paper-and-Pencil

Auditing (4.5 Hours)  
Financial Accounting & Reporting (4.5 Hours)  
Accounting & Reporting (3.5 Hours)  
Business Law & Professional Responsibilities  
(3 Hours)

#### Examination Computer-Based Test

Auditing & Attestation (4.5 Hours)  
Financial Accounting & Reporting (4 Hours)  
Regulation (3 Hours)  
Business Environment & Concepts  
(2.5 Hours)

For additional information on structure and content, visit [www.cpa-exam.org](http://www.cpa-exam.org).

### Credit Status

The CBT will utilize a "rolling" 18-month credit status system to replace the conditional credit system of the paper-and-pencil exam. Credit status is established by passing one section of the examination. The credit is valid for 18 months from the specific date that the section was passed. As other sections of the CPA Exam are passed, those sections will also have an established credit status date, each of which is valid 18 months from the specific date that the section was passed. A candidate passes the CPA Exam when, within an 18-month period, the candidate attains status credits for all four sections of the CPA Exam.

### Conditional Credit Transitioning

Candidates who have established conditional credit under the paper-and-pencil exam will have their conditional credit transitioned into the CBT as demonstrated above under Structure. These candidates must pass all remaining portions of the Exam in no more than six examination opportunities and no later than May 2007.

### **Passing Scores**

The AICPA will continue to use 75% as the minimum score for passing a section of the exam. Applicants may sit for each section of the exam individually, and in any order, up to four times a year within the testing windows. (The testing facility will be closed every third month for maintenance). There will be no minimum score requirement on failed sections, and it is no longer required that applicant's pass at least two sections simultaneously to attain conditional credit.

### **Application Deadlines**

There will be no need for application deadlines.

### **Fees**

Proposed Fees for the CBT are as follows:

Fees to be Paid to the Alaska Board of Public Accountancy

First-time Candidate: \$ 50 for Initial Application and Authorization to Test (ATT)

Reexam Candidate: \$ 25 for Authorization to Test (re-exam)

#### Fees to be Paid to NASBA:

Auditing and Attestation	\$134.50
Financial Accounting and Reporting	\$126.00
Regulation	\$109.00
Business Environment and Concepts	<u>\$100.50</u>
Total fees paid to NASBA for ALL four sections	\$470.00

#### Fees to be Paid to Prometric Testing Center:

First year of CBT – per test section hour	\$17.00
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### **Additional Information**

- Visit the AICPA Web site at [www.cpa-exam.org/global/latestnews.html](http://www.cpa-exam.org/global/latestnews.html).
- Visit the NASBA Web site at [www.nasba.org](http://www.nasba.org).



**7. EDUCATIONAL HISTORY:**

High School Name	Location	Date Graduated
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College or University			
Name	Address	Dates in Attendance	Degree Type

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**8. PAST EXPERIENCE**

List your accounting experience – use separate sheet if necessary.

Employer, Address, Telephone No.	Dates of Employment	Position/Title
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**9. PERSONAL DATA (AS 08.04.450)**

- |  |                          |                          |
|--|--------------------------|--------------------------|
|  | YES                      | NO                       |
| a. Have you ever had your certificate, license or permit to practice public accountancy in another jurisdiction suspended, revoked, restricted, reprimanded, or otherwise acted upon by that jurisdiction's licensing board? ..... | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Have you ever had the right to practice before a federal or state agency denied, suspended, or revoked? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| c. Have you ever been convicted of a felony under the laws of any state or of the United States?.....  | <input type="checkbox"/> | <input type="checkbox"/> |
| d. Have you ever been convicted of any crime of which dishonesty or fraud was an essential element under the laws of any state or of the United States? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Have you ever been found guilty of gross negligence in the practice of public accounting, or other acts discreditable to the accounting profession? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| f. Have you ever had an application for a fidelity or surety bond denied? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| If so, what date? _____  |                          |                          |
| Name of Surety Company _____   |                          |                          |
| Address _____  |                          |                          |

If you answered "yes" to any of these questions, please submit a detailed statement of explanation and legal documentation, if applicable. All information supplied with applications is considered public information except information considered confidential by state or federal law. Information about licensees, including mailing addresses, is available from the division's website at: [www.dced.state.ak.us/occ](http://www.dced.state.ak.us/occ) under "Occupational License Search."

**10. CHARACTER REFERENCES**

List three character references

Full Name	Address	Telephone Number	Relationship
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**11. PROFESSIONAL SOCIETIES**

List the professional societies of which you are a member.

\_\_\_\_\_

\_\_\_\_\_

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE, the statements contained in this application are true and correct, and that all credentials supplied by me to support my application are true and correct. I understand that any falsification of credentials may result in failure to obtain certification in the State of Alaska or subsequent revocation of my certificate.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date of Application

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Attach recent  
passport size,  
color photograph

**ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY  
AUTHORIZATION FOR INTERSTATE EXCHANGE OF EXAMINATION AND CERTIFICATION INFORMATION**

This form is essential to the application you are filing with this board. Before your application can be considered for approval, the information requested below must be officially verified by the accountancy board where you passed the examination as well as each state where you hold or have held a certificate, license or permit. You are advised to check with the licensing board(s) before forwarding this form to determine if there are additional requirements to be met before the information will be released.

(Copy this form as needed before completing Section A.)

**SECTION A**

TO BE COMPLETED BY THE APPLICANT (Please type or print legibly):

Name of Applicant: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Daytime Telephone Number: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Date of Birth: \_\_\_\_\_

I hereby request and authorize the \_\_\_\_\_ Board of Accountancy to provide any and all pertinent information requested in this form to the Board of Accountancy in the State of Alaska to complete an application filed with that agency.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

**SECTION B THROUGH D ARE TO BE COMPLETED BY THE BOARD OF ACCOUNTANCY ONLY**

**SECTION B. VERIFICATION OF EXAMINATION CREDITS**

The following are grades awarded on the Uniform CPA Examination(s) for the applicant as reported by the AICPA Advisory Grading Service and approved unchanged by this Board. (Please use Section E of this form to explain if any of the grades were changed; if an exam other than the Uniform CPA Exam was used; or if there is any reason why they should not be accepted by another board.)

**IMPORTANT**

1. Was the applicant identified in Section A ever denied a sitting(s)?  Yes  No
2. If the applicant has not completed the CPA Exam, are there any restrictions preventing him/her from sitting in your state?  Yes  No (Please use Section E to explain.)
3. Does your Board consider this applicant's credit to be valid and in good standing at the present time?  
 Yes  No (If no, please attach an explanation.)
4. Date credits expire, if any \_\_\_\_\_.

(Please list all grades, including failing, recorded for applicant)

Date of Examination	AICPA I.D. Number	Auditing	LPR (Law)	FARE (Theory)	ARE (Practice)

**SECTION C. CERTIFICATION/LICENSURE (permit) STATUS:**

Certificate to Practice Public Accounting:

If licensing is the responsibility of another agency, please forward and request completion of applicable section.

1. The individual identified in Section A of this form holds a certificate/license/permit issued by this board on \_\_\_\_/\_\_\_\_/\_\_\_\_, which remains valid until \_\_\_\_/\_\_\_\_/\_\_\_\_, and is currently in good standing in this state. (Please note any exceptions to the above statements in Section E of this form.)

2. The individual completed an Ethics examination.  Yes  No

If yes, please state: Type \_\_\_\_\_ Date Passed: \_\_\_\_\_ Grade: \_\_\_\_\_

3. If the individual does not hold a certificate/license/permit from your board, please indicate the requirements to be met for issuance or reinstatement:

- \_\_\_\_\_ Pay appropriate fees and/or post bond
- \_\_\_\_\_ Complete acceptable accounting/auditing experience
- \_\_\_\_\_ Complete continuing professional education requirements
- \_\_\_\_\_ Other (please specify): \_\_\_\_\_

**SECTION D. ADDITIONAL INFORMATION REQUESTED:**

**SECTION E. EXCEPTIONS OR EXPLANATIONS OF INFORMATION PROVIDED:**

The information provided herein is correct to the best of my knowledge

OFFICIAL BOARD SEAL

\_\_\_\_\_ Board

\_\_\_\_\_ Board Official Signature

\_\_\_\_\_ Title

\_\_\_\_\_ Date

Please return this form to:

Department of Community and  
Economic Development  
Alaska State Board of Public Accountancy  
P.O. Box 110806  
Juneau, Alaska 99811-0806  
(907) 465-3811



- (4) Experience in the preparation of written explanations and comments on the findings of the examination and on the content of the accounting records. YES NO
- (a) Has the applicant prepared written explanations and comments on the findings of the examination and on the content of the accounting records-either in the working papers or in reports to clients or both? .....
- (b) In your opinion, does this preparation constitute satisfactory qualifying experience?.....
- (5) Experience in the analysis and preparation of audited or reviewed financial statements including explanations and notes.
- (a) Has the applicant experience in the analysis and preparation of audited or reviewed financial statements and explanations and notes of them? .....
- (b) Has the applicant prepared analysis or explanations of such financial statements-either as a result of an audit or otherwise?.....
- (c) In your opinion, does such preparation constitute satisfactory qualifying experience?.....
- (6) Has the applicant 500 hours of experience performing the attest function under the direct supervision of a CPA? (No more than 100 review hours may be used to satisfy the 500-hour requirement. No compilation is acceptable as attest functions hours.) If no, please indicate how many hours applicant has in this area. \_\_\_\_\_ hours.....

Attest Classification/Categorization (Government, Retail, Construction, etc.)	Number of Engagements	Audit Hours	Review Hours
<b>TOTAL</b>			

I, \_\_\_\_\_, certify that the above-named applicant has been employed by me or my  
 Printed name of Supervising CPA

firm for the period indicated herein, and in the course of such employment has obtained experience under my supervision as outlined on this form. I FURTHER CERTIFY that as the supervising CPA, I have held an active CPA certificate/license/permit during this period of supervision.

Firm Name: \_\_\_\_\_ Type of Firm: \_\_\_\_\_

Position: \_\_\_\_\_

Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

\_\_\_\_\_  
 Date Signed (Current Date) Signature

\_\_\_\_\_  
 CPA Certificate Number State of Issuance

Please return this form directly to:

Department of Community and Economic Development  
 Division of Occupational Licensing  
 Alaska State Board of Public Accountancy  
 P.O. Box 110806, Juneau, Alaska 99811-0806  
 (907) 465-3811

**ALASKA STATE BOARD OF PUBLIC ACCOUNTANCY  
CERTIFICATION OF QUALIFYING EXPERIENCE IF APPLYING BY RECIPROCITY**

An applicant for Reciprocal Certification must have five years of experience outside Alaska in the practice of **Public Accounting**. The five years must occur after the applicant passes the Uniform CPA Examination and within the 10 years immediately preceding the application.

This form is essential to the application you are filing with this board. Before your application can be considered for approval, the information requested below must be completed by an employer, partner, or other CPA who can testify to your practice as a certified public accountant. Forward this form to the appropriate person. They will complete the remainder of this form and return it directly to this agency. **(Copy the form as needed before completing Section A.)**

**SECTION A - To be completed by applicant (Please type or print legibly):**

FULL NAME of Applicant: \_\_\_\_\_  
First
Middle
Last

Period of Employment:	
<b>FULL TIME:</b> From _____ To _____ <span style="margin-left: 40px;">Mo. Day Yr. Mo. Day Yr.</span>	<b>PART TIME:</b> From _____ To _____ <span style="margin-left: 40px;">Mo. Day Yr. Mo. Day Yr.</span>
Total Hours: _____	Hours per week (average): _____

**SECTION B – To be completed by employer, partner, or other CPA who can verify applicant’s practice:**

Briefly describe applicant's job duties and responsibilities: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

I CERTIFY THAT THE ABOVE-NAMED APPLICANT HAS BEEN EMPLOYED BY THIS FIRM FOR THE PERIOD INDICATED HEREIN.

Firm Name: \_\_\_\_\_ Type of Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Business Telephone: \_\_\_\_\_

\_\_\_\_\_  
 Date Signed (Current Date) Signature

\_\_\_\_\_  
 CPA Certificate Number Printed Name

\_\_\_\_\_  
 State of Issuance Title

**Please return this form directly to:**

Department of Community and Economic Development  
 Division of Occupational Licensing  
 Alaska State Board of Public Accountancy  
 P.O. Box 110806, Juneau, Alaska 99811-0806  
 (907) 465-3811

**State of Alaska**  
**Department of Community and Economic Development**  
**Division of Occupational Licensing**  
**Alaska State Board of Public Accountancy**  
 P.O. Box 110806, Juneau, AK 99811-0806  
 (907) 465-3811  
 E-mail: license@dced.state.ak.us

**CPA SUPERVISOR VERIFICATION**

In order to verify your experience under the direct supervision of a CPA, this form must be completed by the licensing authority in the jurisdiction where the supervising CPA is certified and permitted to engage in the practice of public accountancy. You are advised to check with that board before forwarding this form to determine if there is a fee or additional requirements need to be met before the information will be released.

**SECTION A. To be completed by applicant**

After completing Section A, submit this form for verification to the State Board of Accountancy where the supervising CPA holds a certificate/license/permit to practice public accounting.

Please type or print legibly:

Applicant's Last Name	First Name	Middle Initial	Maiden Name
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SUPERVISING CPA INFORMATION	
Name of Direct Supervisor	Name of Firm/Company
CPA Certificate Number	State of Issuance
Duration of Supervised Experience: From: _____ To: _____	
Date	Date

**SECTION B.**

TO BE COMPLETED BY THE BOARD OF ACCOUNTANCY WHERE THE ABOVE SUPERVISING CPA IS CERTIFIED AND PERMITTED TO ENGAGE IN THE PRACTICE OF PUBLIC ACCOUNTING, AND MAILED DIRECTLY TO THE ALASKA BOARD OF PUBLIC ACCOUNTANCY AT THE ABOVE ADDRESS.

By completion of this form, I acknowledge that the above-referenced supervisor was certified/licensed/permitted to engage in the practice of public accounting during the period(s) specified above:

I certify that \_\_\_\_\_, certificate number \_\_\_\_\_ in the state of \_\_\_\_\_ held a certificate/license/permit to engage in the practice of public accounting during the period(s) specified above.

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OFFICIAL BOARD SEAL

Board

Board Official Signature

Title

Date

HB

247





## Personalized Service by Experienced Alaskans

We understand the unique challenges facing Alaskan businesses.

Founding President/CEO David Hoffman has been an Alaskan leader in business and economic development for 20 years. He has managed businesses, ranging from start-ups to a corporation with annual sales of \$90 million. He is the former Commissioner of the Alaska Department of Community and Regional Affairs and has been a consultant to businesses throughout the country.

Development Officer and Business Consultant Jason Evans is an Inupiaq from Nome. He has worked throughout Alaska as a business consultant and project manager. Loan Closer/Administrator Carrie Couey has 15 years of Alaskan experience in all aspects of lending. She is also a paralegal. Executive Assistant Alice Ahmaogak Glenn ("Kannik") is an Inupiaq from Barrow who lived in California's Silicon Valley for many years before returning home. She has strong ties to her Inupiaq culture and heritage.

2121 Abbott Road, Suite 101  
Anchorage, AK 99507  
(907) 349-4904  
Toll-free: 1-888-315-4904  
Fax: (907) 349-4924  
E-mail: [info@alaskagrowth.com](mailto:info@alaskagrowth.com)  
Website: [www.alaskagrowth.com](http://www.alaskagrowth.com)

ALASKA  
Growth Capital

ALASKA  
Growth Capital

The New Source  
For Business Financing  
and  
Consulting Services



# Alaska Growth Capital - What Are We?

## WE FOCUS ONLY ON BUSINESSES

Alaska Growth Capital is a commercial lending institution that is licensed and regulated by the State of Alaska. We can make loans to viable businesses that are deemed "too risky" by banks. We do not accept deposits, do consumer lending, or finance housing projects.

## FINANCIAL PRODUCTS

We provide financing for all business needs, including construction lending, lines of credit, permanent working capital, equipment, and leasehold improvements. We participate in the SBA, USDA, and BIA loan guarantee programs.

## LOANS AND TERMS

Our loans range from \$100,000 to \$600,000 and normally have terms from three to seven years. Interest rates depend on the risk level of the business. We customize each financing package to meet the unique needs of your business.

## CONSULTING SERVICES

We often provide no cost consulting services to our borrowing clients, before and after closing. We also provide strategic planning services on a fee basis to businesses that are not borrowers. Our clients benefit from our affiliation with the 21 subsidiary companies of Arctic Slope Regional Corporation (ASRC). ASRC, the owner of Alaska Growth Capital, is the largest corporation based in Alaska.

## WE REACH OUT TO NONTRADITIONAL BORROWERS

Alaska Growth Capital provides a financing alternative to businesses that may have trouble gaining access to traditional bank financing. We can provide stand-alone financing or participate with banks in joint financing. We make a special effort to reach out to businesses that are rural, minority-owned, or technology-oriented.

## WE TARGET BUSINESSES THAT ARE EXPANDING ALASKA'S ECONOMY

Alaska Growth Capital can finance any business operation within the state, but we focus on businesses that are expanding Alaska's economy. We are primarily interested in industrial sectors such as manufacturing, resource development and service providers that have the potential to capture business held by out-of-state companies.

## VENTURE CAPITAL INVESTMENTS

In addition to lending funds, we can make a venture capital investments in new or rapidly-growing companies. If we can make an equity investment, we must have a clear "exit strategy" that allows us to get our money back once the client company has achieved its financial goals.

## THE APPLICATION PROCESS

Call today for a loan application or download the application from our website. Once you provide the required information, we can quickly make a decision on whether you qualify for a loan.

Alaska Growth Capital seeks to work with healthy companies that have the potential for significant growth and profitability. The primary criteria we consider are the following:

- Dedicated and experienced management
- Past performance
- Current economic viability of the business
- Potential for future growth in sales and profits
- Competitive advantages such as proprietary technology, technical superiority, unique skills or special access to a specific resource or market

If you want your company to grow with the help of Alaska Growth Capital contact us at:

(907) 349-4904 or 1-888-315-4904

E-mail us at: [info@alaskagrowth.com](mailto:info@alaskagrowth.com)  
or check our website at: [www.alaskagrowth.com](http://www.alaskagrowth.com)

*Alaska Growth Capital is licensed as a BIDCO (Business and Industrial Development Corporation.) It has received financial support through a loan from the Alaska Science and Technology Foundation.*

ALASKA  
Growth Capital

## HB 247 ASTF/BIDCO/International Trade

### Testimony by Edgar Blatchford, Commissioner Alaska Department of Community & Economic Development to the House Labor & Commerce Committee

5 May 2003

- The bill repeals the existing AS 37.17 statutes that create the Alaska Science and Technology Foundation (ASTF) and programs it administers: foundation grants and the BIDCO (Business and Industrial Development Corporation) assistance program.
- The statute creating the international trade and business endowment in the ASTF is also repealed.
- Subject to appropriation, the bill provides for the transfer to the general fund of the money remaining in the ASTF endowment fund and in the international trade and business endowment.
- Oversight administration of existing ASTF grants and BIDCO assistance program loans and other financial assistance would be transferred to the Alaska Industrial and Export Authority.
- A new BIDCO assistance program, very similar to the repealed BIDCO assistance program is established and administered by the Department of Community and Economic Development (DCED).
- ASTF was created in 1988 with an endowment of more than \$100 million to support grants for technology projects, knowledge projects, small business innovation research bridging grants and direct grants to teachers. Through its endowment, ASTF has generated about \$126 million in income for distribution. Between 1988 and 2002, one half the endowment income -- \$63 million -- has been appropriated and spent for "non-ASTF purposes":
  - \$35 million for University of Alaska operations, Alaska Aerospace Development Corporation (AADC) operations, and Trade and Development operations;
  - \$17 million was appropriated to the state general fund; and
  - \$11 million was used to match federal funding for construction of AADC's \$39 million Kodiak Launch Complex.
- The remaining \$63 million was distributed by the ASTF board over the last 14 years:
  - \$25 million in technology project grants;
  - \$10 million in knowledge project grants;
  - \$8 million to partners;
  - \$5 million to wiring K-12 schools and science museums or internet connectivity;
  - \$2 million in K-12 science and math teacher grants;
  - Contributions to the principal of the ASTF endowment (less than \$500,000); and
  - \$13 million in ASTF operations.
- In mid-March the Legislature passed and the Governor signed into law a supplemental appropriation reducing ASTF FY 2003 operations to amounts spent and obligated to date and included intent language to ASTF to wind down operations by May 15, 2003. The Governor's FY04 budget provided no funding for ASTF.
- Thank you for the opportunity to speak before you today and I urge you to support passage of HB247.

# FISCAL NOTE

**STATE OF ALASKA  
2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 247  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title: Science & Tech Foundation/Bidco/Int. Trade BRU: AK Science & Technology Foundation (128)  
 Component: AK Science & Technology Foundation  
 Sponsor: Rules By Request of the Governor  
 Requester: Senate Finance Component No.: 2012

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0					
Travel	0.0					
Contractual	0.0					
Supplies	0.0					
Equipment						
Land & Structures						
Grants & Claims	0.0					
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>						
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>					
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Statutory Designated)	0.0					
Other (Science & Tech Endowment)	0.0					
<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 (FY2003) cost: 10,608.6  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This legislation repeals the statutes relating to the Alaska Science and Technology Foundation (ASTF) and its programs, including the BIDCO assistance program; transfers oversight of the former ASTF programs to the Alaska Industrial Development and Export Authority; and establishes a replacement Alaska BIDCO assistance program in the Department of Community and Economic Development. This legislation eliminates the Alaska Science and Technology Endowment as of June 30, 2003. Subject to an appropriation in the FY04 operating budget bill, the balance of the Endowment (estimated at \$89 million) will be transferred to the General Fund. This legislation also eliminates the International Trade & Business Endowment and subject to an appropriation in the FY04 operating budget bill, the balance (estimated at \$4.4 million) will be transferred to the General Fund.

Prepared by: Tom Lawson, Director Phone 907-465-2505  
 Division: Administrative Services Date/Time: 5/2/03 9:54 AM  
 Approved by: Edgar Blatchford, Commissioner Date: 5/2/2003  
 Agency: Department of Community & Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 247  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Science & Tech Foundation/BIDCO/Int.Trade BRU AIDEA (125)  
 Component AIDEA  
 Sponsor Rules by Request of the Governor  
 Requester House Labor & Commerce Component No. 1234

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	75.5					
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>75.5</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>						
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<b>CHANGE IN REVENUES (1004)</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
1002 Federal Receipts						
1003 GF Match						
1004 GF	75.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>75.5</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 (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

POSITIONS	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Full-time	1					
Part-time						
Temporary						

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

This legislation transfers oversight administration of outstanding Alaska Science & Technology Foundation grants to the Alaska Industrial Development & Export Authority. Pursuant to the existing grants, grantees have repayment obligations to the state. The requested funds will pay for one Grants Administrator at a range 20C. This position will administer the outstanding ASTF grants, including analyzing the grants that are in repayment status and the remaining open grants. The grants administrator will determine and then implement the appropriate management procedures for grants that are expected to repay or continue to repay funds under the terms of the ASTF grant agreements.

As of 4/1/03, \$299,345 has been returned to ASTF from 29 grantees. Repayments are based on either royalty income or annual gross revenues related to the funded project. SB173 requires that amounts required to be paid by a grantee under the terms of the respective grant agreement shall be paid into the general fund. In 2002 ASTF received over \$85,000 in grantee repayments. This position will develop an estimate of future grantee repayments.

Prepared by: Sara Fisher-Goad, Financial Analyst Phone 907.269.4623  
 Division Alaska Industrial Development and Export Authority Date/Time 5/2/03 9:54 AM  
 Approved by: Edgar Blatchford, Commissioner Date 5/2/2003  
 Agency Department of Community & Economic Development

FRANK H. MURKOWSKI  
GOVERNOR  
GOVERNOR@GOV.STATE.AK.US



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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 3, 2003

The Honorable Pete Kott  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Kott:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating primarily to the Alaska Science and Technology Foundation (ASTF) and the programs it currently administers.

The bill would repeal the existing AS 37.17 statutes that create the ASTF, its endowment fund, and the programs it administers -- foundation grants and the BIDCO assistance program. The statute creating the international trade and business endowment in the ASTF also would be repealed. Subject to appropriation, the bill would provide for the transfer to the general fund of the money remaining in the ASTF endowment fund and in the international trade and business endowment.

Oversight administration of existing ASTF foundation grants and BIDCO assistance program loans and other financial assistance would be transferred to the Alaska Industrial Development and Export Authority. A new Alaska BIDCO assistance program, very similar to the repealed BIDCO assistance program, also would be established, to be administered by the Department of Community and Economic Development.

The bill also would make amendments in several other statutes to conform them to the changes described above.

I urge your prompt and favorable consideration of this bill.

Sincerely,

A handwritten signature in cursive script that reads "Frank H. Murkowski".

Frank H. Murkowski  
Governor

Frank H. Murkowski, Governor

*Alaska* Department of Community  
and Economic Development

Office of the Commissioner

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • Text Telephone: (907) 465-5437

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April 4, 2003

The Honorable Tom Anderson, Chair  
House Labor & Commerce Committee  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Re: An Act repealing statutes pertaining to the Alaska Science and  
Technology Foundation et al.

Dear Representative Anderson:

The Governor introduced House Bill 247 to repeal statutes pertaining to the Alaska Science and Technology Foundation (ASTF) and the programs it currently administers. The bill would repeal the existing AS 37.17 statutes that created the ASTF, its endowment funds, and the programs it administers (foundation grants and the BIDCO assistance program). The statute creating the international trade and business endowment in the ASTF also would be repealed. Subject to appropriation, the bill would transfer to the general fund monies remaining in the ASTF endowment fund and in the international trade and business endowment fund.

Oversight administration of existing ASTF foundation grants and BIDCO assistance program loans and other financial assistance would be transferred to the Alaska Industrial Development and Export Authority (AIDEA). A new Alaska BIDCO assistance program, similar to the repealed BIDCO assistance program, would be established and administered by the Department of Community and Economic Development. The bill would also make amendments in several other statutes to conform them to the changes described.

We respectfully request that you schedule HB 247 for a hearing in House Labor & Commerce, and we urge favorable action on this bill. We will be happy to meet with you and other members of the committee to provide any further information you may require. Thank you for considering our request.

Sincerely,



Edgar Blatchford  
Commissioner

**HB**

**250**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 7, 2003

FURTHER REFERRALS: State Affairs

Date of Committee Action: April 16, 2003

The LABOR AND COMMERCE Committee considered:

HB 250

HOUSE BILL NO. 250

STATE CONTRACTS

"An Act relating to protests of state contract awards, to claims on state contracts, to the arbitration of certain state construction contract claims, and to hearings and appeals under the State Procurement Code; making conforming amendments in the State Procurement Code; and providing for an effective date."

Recommends it be replaced with  HCS or  CS for HB 250 (LSC)  
 For Senate Bills with new title:  Technical File  New Title: HCR \_\_\_\_\_  Same Title  New Title

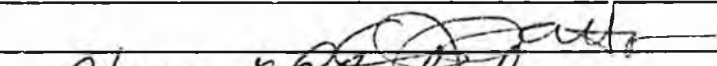
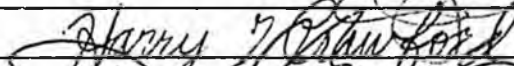
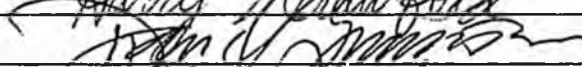


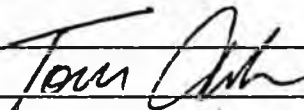

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOT			✓	

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	GATTO	X			
	CRAWFORD	✓			
	GUTTENBERG	✓			
	DAHLSTROM	X			
	ROKEBERG	✓			
Chair: 	ANDERSON	X			
Chair: 					

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 250  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DOT&PF  
 Title State Contracts BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Holm Component No. \_\_\_\_\_  
 Requester HL&C

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>						

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

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

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	***	***	***	***	***	***
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

\*\*\* The additional costs associated with this bill are based on historical claims costs. The baseline costs for the Rule 79 and 82 provisions, requiring the payment of Attorney fees and claims costs, are estimated at \$145,000 per year. (The historical high would have been \$341,000 per year and the low would have been \$7,300.) This baseline may be increased based on such factors as complexity of litigation, length of trial, etc. The \$145,000 has not been adjusted for Rule 68 offers of judgement as they are not easily applied. In addition to the anticipated Rule 79 and 82 costs, there will be additional attorney fees associated with litigating these awards. This is estimated at 20 hours per claim or \$6,000 per year. Most construction claims are associated with federal funded projects, however, Rule 79 and 82 costs and fees are not eligible for federal participation and would have to be paid with General Fund dollars.

Prepared by: Mark O'Brien Phone 465-3900  
 Division: Commissioner's Office Date/Time 4/16/03 12:04 PM  
 Approved by: Mike Barton Date 4/16/2003  
 Agency: DOT&PF

23-LS0501VH  
Bannister  
4/14/03

CS FOR HOUSE BILL NO. 250( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES HOLM, Wilson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to protests of state contract awards, to claims on state contracts, to the  
2 arbitration of certain state construction contract claims, and to hearings and appeals  
3 under the State Procurement Code; making conforming amendments in the State  
4 Procurement Code; and providing for an effective date."

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

6 \* Section 1. AS 36.30.620(b) is amended to read:

7 (b) If a claim [CONTROVERSY] asserted [BY A CONTRACTOR]  
8 concerning a contract awarded under this chapter cannot be resolved by agreement, the  
9 procurement officer shall, after receiving a written request by the contractor for a  
10 decision, issue a written decision. The procurement officer shall make the decision  
11 not [SHALL BE MADE NO] more than 90 days after receipt [BY THE  
12 PROCUREMENT OFFICER] of all necessary information from the contractor. If  
13 [FAILURE OF] the contractor fails to furnish necessary information requested by  
14 [TO] the procurement officer, the procurement officer shall proceed to decide

1 [CONSTITUTES A WAIVER OF] the claim and may, in the procurement officer's  
2 discretion, deny all or part of the claim because of the failure to furnish necessary  
3 information. During an appeal under this chapter, the contractor may not rely  
4 on or introduce information that the contractor has failed to furnish to the  
5 procurement officer in support of the claim. Before issuing the decision, the  
6 procurement officer shall review the facts relating to the claim [CONTROVERSY]  
7 and obtain necessary assistance from legal, fiscal, and other advisors.

8 \* Sec. 2. AS 36.30.620(c) is amended to read:

9 (c) Upon the written request of the procurement officer, the [THE] time  
10 for issuing a decision under (b) of this section may be extended for up to 60  
11 additional days [GOOD CAUSE] by the commissioner [OF ADMINISTRATION,  
12 OR FOR A CONTROVERSY INVOLVING A CONSTRUCTION CONTRACT OR  
13 PROCUREMENT FOR THE STATE EQUIPMENT FLEET, THE  
14 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES,] if the  
15 claim [CONTROVERSY] concerns an amount in excess of \$50,000. Upon the  
16 written request of the procurement officer showing that good cause exists for a  
17 second extension, the commissioner may extend the time for issuing a decision  
18 under (b) of this section up to 90 additional days after the first extension. The  
19 contractor shall be provided with an opportunity to oppose or otherwise respond  
20 to the request for a second extension. If a second extension is granted, the  
21 commissioner [THE PROCUREMENT OFFICER] shall notify the contractor and  
22 the procurement officer in writing that the time for the issuance of a decision has  
23 been extended and of the date by which a decision shall be issued. In this subsection,  
24 "commissioner" means the commissioner of administration or, for a claim  
25 involving a construction contract or procurement for the state equipment fleet,  
26 the commissioner of transportation and public facilities.

27 \* Sec. 3. AS 36.30.620(d) is amended to read:

28 (d) The procurement officer shall furnish a copy of the decision to the  
29 contractor by certified mail or other method that provides evidence of receipt. The  
30 decision must include [A]

31 (1) a description of the claim [CONTROVERSY];

- 1 (2) a reference to the pertinent contract provisions;
- 2 (3) a statement of the agreed upon and disputed facts;
- 3 (4) findings of fact about the claim;
- 4 (5) a determination of any amount payable;
- 5 (6) a statement of reasons supporting the decision; and
- 6 (7) a [(5)] statement substantially as follows:

7 "This is the final decision of the procurement officer. This decision  
8 may be appealed to the commissioner of (administration/transportation  
9 and public facilities). If you appeal, you must file a written notice of  
10 appeal with the commissioner within 14 days after you receive this  
11 decision."

12 \* **Sec. 4.** AS 36.30.620(e) is amended to read:

13 (e) If the procurement officer does not issue a written decision [IS NOT  
14 MADE] by the date it is due, the contractor may proceed as if the procurement officer  
15 had issued a decision adverse to the contractor.

16 \* **Sec. 5.** AS 36.30 is amended by adding new sections to read:

17 **Sec. 36.30.627. Construction contract claim appeals.** (a) An appeal from a  
18 decision of the procurement officer of a claim involving a construction contract shall  
19 be resolved by

20 (1) binding and final arbitration under AS 09.43.010 - 09.43.180  
21 (Uniform Arbitration Act) if the claim is

22 (A) less than \$250,000 and the contractor requests arbitration  
23 of the claim; or

24 (B) \$250,000 or more and both the agency and the contractor  
25 agree to arbitration of the claim; or

26 (2) a hearing under AS 36.30.630 if the claim is not handled by  
27 arbitration under (1) of this subsection.

28 (b) In this section, a claim includes all issues, causes of action, and  
29 controversies arising from a construction contract for which a contractor or the  
30 contracting agency asserts compensation is due.

31 **Sec. 36.30.629. Subpoenas and discovery.** In appeals under AS 36.30.627,

1 the arbitrator or hearing officer may

2 (1) issue subpoenas, including subpoenas duces tecum, to compel the  
3 attendance of witnesses and the production of documents;

4 (2) allow the taking of depositions for discovery or to perpetuate  
5 testimony; and

6 (3) refer a subpoena or subpoena duces tecum to the superior court for  
7 enforcement and the imposition of appropriate sanctions.

8 \* Sec. 6. AS 36.30.630 is amended to read:

9 **Sec. 36.30.630. Hearing on a contract claim [CONTROVERSY].** (a)  
10 Except as provided in (b) of this section, a hearing shall be conducted according to  
11 AS 36.30.670 and regulations adopted by the commissioner of administration on a  
12 contract claim [CONTROVERSY] appealed to the commissioner of administration or  
13 the commissioner of transportation and public facilities or referred to either  
14 commissioner under AS 36.30.620(f).

15 (b) Except as provided in AS 36.30.627(a)(1), within [WITHIN] 15 days  
16 after receipt of an appeal on a contract claim [CONTROVERSY] the commissioner of  
17 administration or the commissioner of transportation and public facilities, as  
18 appropriate, may adopt the decision of the procurement officer as the final decision  
19 without a hearing.

20 \* Sec. 7. AS 36.30 is amended by adding a new section to read:

21 **Sec. 36.30.631. Attorney fees, costs, and offers of judgment.** (a) An  
22 arbitrator in the arbitration of a construction contract claim under AS 36.30.627(a)(1)  
23 and a hearing officer for the hearing of a construction contract claim conducted under  
24 AS 36.30.627(a)(2) shall award the prevailing party attorney fees and costs incurred in  
25 the arbitration or hearing. The award shall be made as provided by Rules 68, 79, and  
26 82 of the Alaska Rules of Civil Procedure.

27 (b) Either party to an arbitration of a construction contract claim conducted  
28 under AS 36.30.627 or a hearing of a construction contract claim conducted under  
29 AS 36.30.630(a) may serve on the adverse party an offer to allow a final decision to be  
30 entered in complete satisfaction of the claim. The offer shall be made, accepted, or  
31 rejected as provided for an offer of judgment under Rule 68 of the Alaska Rules of

1 Civil Procedure. Acceptance or rejection of the offer has the same consequences as  
2 acceptance or rejection of an offer of judgment made in a civil action under Rule 68 of  
3 the Alaska Rules of Civil Procedure.

4 \* Sec. 8. AS 36.30.632 is amended to read:

5 **Sec. 36.30.632. Delegation.** The commissioner of administration and the  
6 commissioner of transportation and public facilities may delegate responsibilities  
7 under AS 36.30.590 - 36.30.630 [AS 36.30.590 AND 36.30.630] to the head of the  
8 contracting agency.

9 \* Sec. 9. AS 36.30.680 is amended to read:

10 **Sec. 36.30.680. Final decision by the commissioner.** A decision by the  
11 commissioner of administration or the commissioner of transportation and public  
12 facilities after a hearing under this chapter is final. A decision shall be sent within 20  
13 days after the hearing to all parties by personal service or certified mail, except that a  
14 decision by the commissioner of transportation and public facilities involving  
15 procurement of construction shall be sent to all parties by personal service or  
16 certified mail within 45 [90] days after receipt by the commissioner of  
17 transportation and public facilities of the hearing officer's decision [TO ALL  
18 PARTIES BY PERSONAL SERVICE OR CERTIFIED MAIL].

19 \* Sec. 10. AS 36.30.687(d) is amended to read:

20 (d) A person who in a matter relating to a procurement or a contract  
21 [CONTROVERSY OR] claim under this chapter makes a misrepresentation to the  
22 state through a trick, scheme, or device is guilty of a class C felony.

23 \* Sec. 11. AS 36.30.695 is amended to read:

24 **Sec. 36.30.695. Other rules of procedure.** the commissioner may adopt by  
25 regulation additional rules of procedure providing for the expeditious arbitration,  
26 hearing, and other administrative review of all contract claims [OR  
27 CONTROVERSIES], both before the contracting agency and through an appeal heard  
28 de novo.

29 \* Sec. 12. AS 36.30.695 is amended by adding new subsections to read:

30 (b) Except as provided by (c) of this section, an arbitrator shall issue a final  
31 decision, and a hearing officer shall issue a recommended decision, within the

1 following time limits after the date the record on the claim is closed:

2 (1) 30 calendar days for a claim of less than \$100,000;

3 (2) 45 calendar days for a claim of \$100,000 or more but less than  
4 \$1,000,000; or

5 (3) 60 calendar days for a claim of \$1,000,000 or more.

6 (c) The commissioner of administration or the commissioner of transportation  
7 and public facilities may, for good cause shown, grant an arbitrator or a hearing officer  
8 additional time to issue a decision.

9 (d) If an arbitrator or hearing officer fails to issue a decision within the time  
10 allowed for a decision under (b) or (c) of this section, the arbitrator or hearing officer  
11 is disqualified from acting as an arbitrator or hearing officer in another proceeding  
12 under this chapter for one year after the decision is issued.

13 (e) The venue for an arbitration or hearing under this chapter is the judicial  
14 district where the office of the contracting agency is located, unless the agency and the  
15 contractor agree on another location.

16 (f) If a party fails to appear at a proceeding under this chapter, the arbitrator or  
17 hearing officer may proceed in the party's absence.

18 (g) Subject to appropriation, any money awarded by an arbitrator's decision  
19 shall be paid within 45 days after the date that the arbitrator's decision is final. Subject  
20 to appropriation, any money awarded by a hearing officer's recommended decision  
21 that is approved by the commissioner of transportation and public facilities shall be  
22 paid within 45 days after the date that the commissioner's decision is delivered to the  
23 contractor and the agency, unless the commissioner's decision is appealed under  
24 AS 36.30.685.

25 \* **Sec. 13.** AS 36.30.870 is amended by adding a new subsection to read:

26 (c) The commissioner of administration shall adopt regulations establishing  
27 the procedures for arbitration under AS 36.30.627(a), including establishing the  
28 qualifications for arbitrators and the method for appointing neutral arbitrators to  
29 conduct arbitrations

30 \* **Sec. 14.** AS 36.30.990 is amended by adding a new paragraph to read:

31 (24) "hearing" does not include a hearing in an arbitration.

1 \* Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to  
2 read:

3 APPLICABILITY. This Act applies to a contract if the contract is entered into on or  
4 after the effective date of this Act.

5 \* Sec. 16. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 TRANSITION: REGULATIONS. The commissioner of administration may  
8 immediately proceed to adopt regulations necessary to implement this Act. The regulations  
9 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
10 of the other sections of this Act.

11 \* Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes shall substitute "claim" for  
14 "controversy" in

- 15 (1) AS 36.30.620(f);
- 16 (2) AS 36.30.623;
- 17 (3) AS 36.30.625(a);
- 18 (4) AS 36.30.625(c);
- 19 (5) AS 36.30.687(a); and
- 20 (6) AS 36.30.750(b).

21 (b) The revisor of statutes shall substitute "claims" for "controversies" in

- 22 (1) AS 36.30.750(a); and
- 23 (2) AS 36.30.750(b).

24 \* Sec. 18. Section 16 of this Act takes effect immediately under AS 01.10.070(c).

# STATE OF ALASKA



*Interim:*  
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Fairbanks, Alaska 99701  
(907) 456-7423  
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*Session:*  
State Capitol Building  
Juneau, Alaska 99801  
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## REPRESENTATIVE JIM HOLM DISTRICT 9

### SPONSOR STATEMENT

#### House Bill 250, State Contracts

4/14/3

Construction claims occur when the parties to the contract disagree as to whether a specific element of a project is within the scope of work defined by a construction contract. For projects undertaken by the State of Alaska, the Alaska procurement code defines a process for resolving these differences.

Ideally such a process should resolve differences in a fair and expeditious manner.

At this time, however, the perception in the construction community is that the process has slowly deteriorated so that it is no longer fair or expeditious. As now prescribed, when a contractor files a claim, the procurement officer involved with the claim initially evaluates the claim and issues a ruling on the perceived merits. If the contractor is not satisfied, an appeal is made to the procurement officer's supervisor.

There is no review by an independent party unless a contractor elects to appeal the supervisor's decision. Even then, the hearing officer is selected by the State, which raises a concern about the true independence of the hearing officers, since the State has sole discretion to maintain the hearing officer list. Delays are rampant. Justice is delayed. Contractors are forced to expend money defending their claim, but that money cannot be recovered in the process. Small contractors cannot afford to participate in the claims process because of these costs. Claims of less than \$250,000 are frequently not pursued because of the great expense involved. The entire process is ripe for review and revision.

The purpose of HB 250 is to modify the construction claims process to once again create a fair and expeditious claims process. Specifically HB 250 will modify the procurement code pertaining to construction claims in the following manner:

1. If a procurement officer does not issue a written decision by the due date, the contractor may seek arbitration.
2. On appeals of all construction claims, the parties can agree to binding arbitration.
3. The timelines for decisions have been tightened, and redundant requirements have been eliminated.
4. An arbitrator or hearing officer who does not issue a decision by the deadline is disqualified for a year.
5. Qualifications for arbitrators and hearing officers will be established by the commissioner of administration in regulation.
6. The contractor is entitled to recover some of the claims costs incurred.

Prompt passage of HB 250 will expedite contractor's claims and return fairness to the process.

STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

# Representative Jim Holm



119 N. Cushman  
Fairbanks, AK 99701  
TEL 456-7423, FAX 451-9293

House District 9

State Capitol  
Juneau, AK 99801  
TEL 465-3466, FAX 465-2937

## Sectional Analysis

### CS HB 250 (L&C), State Contracts

4/14/3

**NOTE:** The word "CLAIM" is substituted for "CONTROVERSY" throughout the bill because "claim" is more technically correct and inclusive.

**Section 1 and Section 4:** Currently, if a contractor asserts a claim that cannot be resolved by agreement, the State can keep requesting more information from the contractor and thus "keep the clock running" until the State determines it has "enough" information. Section 4 allows the contractor to seek arbitration if the State does not issue a written decision by the due date. Section 1, on the other hand, allows the State to deny the claim, or a portion thereof, if the contractor does not furnish the requested information; it also prohibits the contractor from introducing new information later.

**Section 2:** Currently, state agencies have no penalty for missing deadlines, but if a contractor misses a deadline his claim is denied. This section places parameters on the State's deadlines, requiring the State to show good cause for an extension and allowing the contractor an opportunity to oppose the State's request for a second extension.

**Section 3:** "*Findings of fact about the claim*" and "*determination of any amount payable*" are added to the list of what the State's written decision must contain.

**Section 5:** The following new sections are added:

36.30.627 (a) provides that an appeal from the State's decision shall be resolved by binding and final arbitration

- o on a claim less than \$250,000 if the contractor requests it,
- o on a claim of more than \$250,000 if both the contractor and the State agree to it, or by a hearing if the contractor and the State do not agree to arbitration.

36.30.627 (b) defines what a claim includes.

36.30.629 allows the state to subpoena people and documents, and to take depositions, in hearings and arbitrations defined in this chapter.

**Section 6:** This section changes "controversy" to "claim" as it applies to binding and final arbitration.

**Section 7:** Currently, a contractor is not allowed to recover his costs or attorney fees. This new section allows the party who prevails in the case (the State or the contractor) to collect fees, and also to make a settlement offer, under the Alaska Rules of Civil Procedure.

**Section 8:** This substitutes "-" for "and", thus making the Commissioner's delegation powers in the appeal of a decision inclusive of all the sections 36.30.590 through 36.30.630.

**Section 9:** This section more clearly defines who receives the State's decisions and shortens the time frame.

**Section 10:** "*Controversy or claim*" becomes "*contract claim*" as regards penalties for misrepresentation.

**Section 11:** "*Expeditious administrative review*" becomes "*expeditious arbitration, hearing, and other administration review.*"

**Section 12:** A new section is added to establish a venue for arbitration or hearing and a time frame for the State to issue a final decision. It also encourages the arbitrators or hearing officers to deliver timely decisions by disqualifying for a year them if they do not. Finally, it provides that any money awarded in the decision shall be paid within 45 days.

**Section 13:** A new paragraph is added giving the commissioner of administration power to adopt regulations establishing the procedures for arbitration and the qualifications for arbitrators.

**Section 14:** This removes "hearing" from the definition of arbitration.

**Sections 15, 16, and 17** are temporary "uncodified" acts establishing 1) that the bill applies to a contract entered into on or after the bill's effective date, 2) that the commissioner of administration may immediately adopt regulations to implement the bill, and 3) that "controversy" be replaced with "claim" in all applicable statutes.

**Section 18** provides for the bill to become effective immediately upon passage.

HB

251

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 7, 2003

FURTHER REFERRALS: Finance

Date of Committee Action: April 27, 2003

The LABOR AND COMMERCE Committee considered:

HB 251

HOUSE BILL NO. 251

MARINE PILOT FOR FOREIGN PLEASURE CRAFT

"An Act exempting certain foreign pleasure craft from the mandatory pilotage requirement."

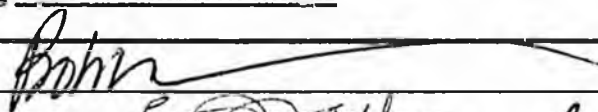
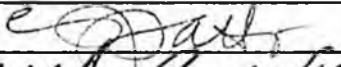
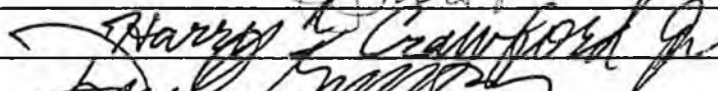
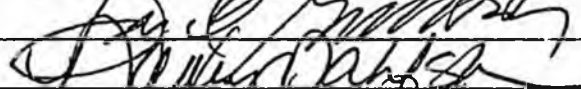
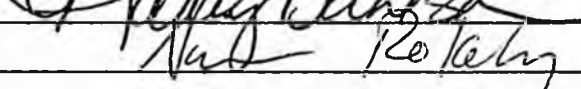

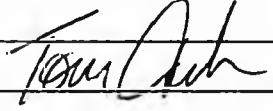
Recommends it be replaced with [ ] HCS or [  ] CS for HB 251 (LJC)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [ ] New Title

- [ ] attach amendments
- [ ] add new referral to \_\_\_\_\_ Committee
- [ ] Letter of Intent \_\_\_\_\_ Committee

List of Abbrev for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LEG  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	GATTO	X			
	CRAWFORD	✓			
	GUTTENBERG	✓			
	DAHLSTROM	X			
	ROKERY	X			
Chair: 	ANDERSON	X			
Chair:					

23-LS0865\U  
Utermohle  
4/22/03

**CS FOR HOUSE BILL NO. 251( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

BY

Offered:  
Referred:

Sponsor(s): **REPRESENTATIVES DAHLSTROM, Harris, Hawker**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to pilotage of certain foreign pleasure craft."**

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

3 **\* Section 1.** AS 08.62.180 is amended to read:

4 **Sec. 08.62.180. Exemptions.** This chapter does not apply to

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

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

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

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

14 (A) on the rivers of Alaska; or

15 (B) in the coastwise trade on the west or north coast of the

1 United States including Alaska and Hawaii, and including British Columbia,  
2 Yukon Territory, and Northwest Territories, Canada;

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

5 (A) British Columbia and Southeastern Alaska on the inside  
6 water of Southeastern Alaska south of 59 degrees, 29 minutes North latitude, if  
7 reciprocal exemptions are granted by Canada to vessels owned by the State of  
8 Alaska and those of United States registry; or

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

11 (6) pleasure craft of United States registry;

12 (7) pleasure craft of foreign registry of less than 20 meters in length  
13 overall [300 GROSS TONS AS MEASURED UNDER 46 C.F.R. 69.51 - 69.75]; and

14 (8) vessels of the Canadian Navy or Canadian Coast Guard that have a  
15 home port in British Columbia, Canada, while navigating the inside water of  
16 Southeastern Alaska.

17 \* Sec. 2. AS 08.62 is amended by adding a new section to read:

18 **Sec. 08.62.182. Pilotage of certain pleasure craft of foreign registry.** The  
19 operator of a pleasure craft of foreign registry of 20 meters or more in length overall,  
20 but not more than 53 meters in length overall, shall, before entering state water beyond  
21 Alaska pilot stations, employ a pilot licensed by the state under this chapter and shall  
22 proceed to a port of entry designated by the board. Except as otherwise provided by  
23 the board by regulation, while in state water, a vessel subject to this section is not  
24 required to employ a pilot after discharging the marine pilot at the designated port of  
25 entry. Before entering state water, the owner or operator of the vessel shall arrange for  
26 pilotage services to a designated port of entry through an agent who is registered with  
27 the board. The operator of a vessel subject to this section shall follow procedures  
28 established by the board for clearing state water before the vessel leaves the state.

CS FOR HOUSE BILL NO. 251( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES DAHLSTROM, Harris, Hawker

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to exemption of certain foreign pleasure craft from the mandatory  
2 pilotage requirement."

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

4 \* Section 1. AS 08.62.140 is amended by adding a new subsection to read:

5 (b) The application fee for an exemption under AS 08.62.180(b) from the  
6 mandatory pilotage requirement of this chapter is

7 (1) \$3,000 for a pleasure craft of not more than 100 feet in length  
8 overall;

9 (2) \$5,000 for a pleasure craft of more than 100 feet in length overall  
10 but less than 200 feet in length overall.

11 \* Sec. 2. AS 08.62.180 is amended to read:

12 Sec. 08.62.180. Exemptions. This chapter does not apply to

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