

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10947 HOUSE LABOR & COMMERCE

HB

467

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 24, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: March 29, 2004

The LABOR AND COMMERCE Committee considered:

HB 467

HOUSE BILL NO. 467

COMMEMORATIVE QUARTERS COMMISSION

"An Act establishing an Alaska Commemorative Coin Commission to develop the design concepts and to make recommendations regarding the final design of the Alaska quarter under the 50 States Commemorative Coin Program Act; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 467 (574)
 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>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
<u>GOV</u>	<u>1</u>	<u>X</u>		

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<u>James Crawford for</u>	CRAWFORD	<u>X</u>			
<u>John Lynn</u>	LYNN	<u>X</u>			
<u>John Rokeberg</u>	ROKEBERG				<u>X</u>
<u>William Dahlstrom</u>	DAHLSTROM				<u>X</u>
<u>John Guttenberg</u>	GUTTENBERG				<u>X</u>
Chair: <u>Tom Anderson</u>	ANDERSON	<u>X</u>			
Chair:					

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 467

BY: Representative Tom Anderson

TITLE: "An Act establishing the Alaska Commemorative Coin Commission to develop the design concepts and to make recommendations regarding the final design of the Alaska quarter under the 50 States Commemorative Coin Program Act; and providing for an effective date."

House Bill 467 follows the federal authorizing legislation, the "50 States Commemorative Coin Program Act", and establishes the 11-member Alaska Commemorative Coin Commission. Over a ten-year period from 1999 through 2008, the United States has and will annually issue five quarter dollar coins with state designs displayed on the reverse side of the coins. Each state has an opportunity to develop and submit designs representative of the state. A quarter honoring the State of Alaska is scheduled to be issued in 2008.

The Alaska Commemorative Coin Commission will consist of 11 members, of which 6 will be public members appointed by the governor. The presiding officer from the Alaska House of Representatives and the Alaska Senate will appoint a majority and a minority member from each body. The governor or designee will occupy the 11th seat.

The Office of the Governor will initiate a public process to solicit narrative design concepts for the Alaska quarter. The commission shall review and consider all of the narrative design concepts it receives and will submit to the United States Mint not less than three, and not more than five, design concepts for the Alaska quarter. When the United States Mint provides the State of Alaska with its final designs, the commission will review the designs and make final recommendations to the governor.

The calendar year in which the Alaska quarter is to be issued will coincide with events leading to celebration of the 50th anniversary of Alaska statehood.

I urge your support of this important piece of legislation.

LEGAL SERVICES

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

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

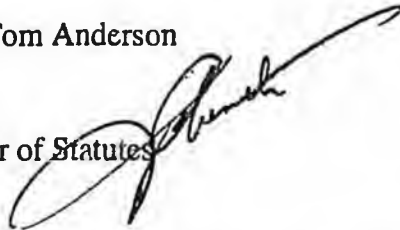
MEMORANDUM

February 25, 2004

SUBJECT: House Bill 467, establishing the Alaska Commemorative Coin Commission to make recommendations regarding the final design of the Alaska state quarter -- sectional analysis (Work Order No. 23-LS1678\A)

TO: Representative Tom Anderson

FROM: Jack Chenoweth
Assistant Revisor of Statutes



Jim Shine has asked for preparation of a sectional analysis of the above-captioned bill.

Now starting its sixth year of coin circulation, most people are familiar with the designs on the United States quarter that commemorate the various states. Under the schedule for coin issuance, the program is set to end at the end of 2008, with the Alaska commemorative coin scheduled to be issued in the second half of 2008.

Bill section 1 describes the purpose of the Act. It notes the key provision of the federal authorizing legislation, the 50 States Commemorative Coin Program Act, that requires each state governor to initiate a concept selection process that would culminate in selection of a final design.

Bill section 2 establishes the 11-member Alaska Commemorative Coin Commission, with the governor to appoint 6 members and authorizing the governor himself or his designee to take a seventh seat, and allowing the presiding officers of each chamber to appoint a majority and a minority member from each chamber. The bill section also contains other boilerplate provisions covering vacancies, reimbursement for expenses, and quorum requirements.

Bill section 3 spells out in general terms the commemorative coin selection process for the Alaska quarter, beginning with the solicitation of a design process, the review, consideration and recommendation of between three and five of the design concepts received, and the eventual selection of a final recommended design. Under the federal authorizing Act, the governor shall approve the final recommendation that would serve as the design for the Alaska commemorative quarter. There is a specific provision that reminds the commission that, in 2008, the year of the quarter's issuance and circulation, the state will be approaching the 50th anniversary of Statehood.

Representative Tom Anderson
February 25, 2004
Page 2

Bill section 4 terminates the Alaska Commemorative Coin Commission January 1, 2009.

Bill section 5 gives the measure a January 1, 2005, effective date.

A copy of the federal Act mentioned in the bill's purpose provision is enclosed. Its bill sections 1 - 3 are relevant.

JBC:med
04-233.med

Enclosure

50 States Commemorative Coin Program Act (Enrolled Bill)

--S.1228--

S.1228

One Hundred Fifth Congress

of the

United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday,

the seventh day of January, one thousand nine hundred and ninety-seven

An Act

To provide for a 10-year circulating commemorative coin program to commemorate each of the 50 States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the '50 States Commemorative Coin Program Act'.

SEC. 2. FINDINGS.

The Congress finds that--

(1) it is appropriate and timely--

(A) to honor the unique Federal republic of 50 States that comprise the United States; and

(B) to promote the diffusion of knowledge among the youth of the United States about the individual States, their history and geography, and the rich diversity of the national heritage;

(2) the circulating coinage of the United States has not been modernized during the 25-year period preceding the date of enactment of this Act;

(3) a circulating commemorative 25-cent coin program could produce earnings of \$110,000,000 from the sale of silver proof coins and sets over the 10-year period of issuance, and would produce indirect earnings of an estimated \$2,600,000,000 to \$5,100,000,000 to the United States Treasury, money that will replace borrowing to fund the national debt to at least that extent; and

(4) it is appropriate to launch a commemorative circulating coin program that encourages young people and their families to collect memorable tokens of all of the States for the face value of the coins.

SEC. 3. ISSUANCE OF REDESIGNED QUARTER DOLLARS OVER 10-YEAR PERIOD COMMEMORATING

EACH OF THE 50 STATES.

Section 5112 of title 31, United States Code, is amended by inserting after subsection (k) the following new subsection:

“(1) REDESIGN AND ISSUANCE OF QUARTER DOLLAR IN COMMEMORATION OF EACH OF THE 50 STATES-

“(1) REDESIGN BEGINNING IN 1999-

“(A) IN GENERAL- Notwithstanding the fourth sentence of subsection (d)(1) and subsection (d)(2), quarter dollar coins issued during the 10-year period beginning in 1999, shall have designs on the reverse side selected in accordance with this subsection which are emblematic of the 50 States.

“(B) TRANSITION PROVISION- Notwithstanding subparagraph (A), the Secretary may continue to mint and issue quarter dollars in 1999 which bear the design in effect before the redesign required under this subsection and an inscription of the year ‘1998’ as required to ensure a smooth transition into the 10-year program under this subsection.

“(2) SINGLE STATE DESIGNS- The design on the reverse side of each quarter dollar issued during the 10-year period referred to in paragraph (1) shall be emblematic of 1 of the 50 States.

“(3) ISSUANCE OF COINS COMMEMORATING 5 STATES DURING EACH OF THE 10 YEARS-

“(A) IN GENERAL- The designs for the quarter dollar coins issued during each year of the 10-year period referred to in paragraph (1) shall be emblematic of 5 States selected in the order in which such States ratified the Constitution of the United States or were admitted into the Union, as the case may be.

“(B) NUMBER OF EACH OF 5 COIN DESIGNS IN EACH YEAR- Of the quarter dollar coins issued during each year of the 10-year period referred to in paragraph (1), the Secretary of the Treasury shall prescribe, on the basis of such factors as the Secretary determines to be appropriate, the number of quarter dollars which shall be issued with each of the 5 designs selected for such year.

“(4) SELECTION OF DESIGN-

“(A) IN GENERAL- Each of the 50 designs required under this subsection for quarter dollars shall be-

“(i) selected by the Secretary after consultation with--

“(I) the Governor of the State being commemorated, or such other State officials or group as the State may designate for such purpose; and

“(II) the Commission of Fine Arts; and

“(ii) reviewed by the Citizens Commemorative Coin Advisory Committee.

“(B) SELECTION AND APPROVAL PROCESS- Designs for quarter dollars may be submitted in accordance with the design selection and approval process developed by the Secretary in the sole discretion of the Secretary.

“(C) PARTICIPATION- The Secretary may include participation by State officials, artists from the

States, engravers of the United States Mint, and members of the general public.

`(D) STANDARDS- Because it is important that the Nation's coinage and currency bear dignified designs of which the citizens of the United States can be proud, the Secretary shall not select any frivolous or inappropriate design for any quarter dollar minted under this subsection.

`(E) PROHIBITION ON CERTAIN REPRESENTATIONS- No head and shoulders portrait or bust of any person, living or dead, and no portrait of a living person may be included in the design of any quarter dollar under this subsection.

`(5) TREATMENT AS NUMISMATIC ITEMS- For purposes of sections 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

`(6) ISSUANCE-

`(A) QUALITY OF COINS- The Secretary may mint and issue such number of quarter dollars of each design selected under paragraph (4) in uncirculated and proof qualities as the Secretary determines to be appropriate.

`(B) SILVER COINS- Notwithstanding subsection (b), the Secretary may mint and issue such number of quarter dollars of each design selected under paragraph (4) as the Secretary determines to be appropriate, with a content of 90 percent silver and 10 percent copper.

`(C) SOURCES OF BULLION- The Secretary shall obtain silver for minting coins under subparagraph (B) from available resources, including stockpiles established under the Strategic and Critical Materials Stock Piling Act.

`(7) APPLICATION IN EVENT OF THE ADMISSION OF ADDITIONAL STATES- If any additional State is admitted into the Union before the end of the 10-year period referred to in paragraph (1), the Secretary of the Treasury may issue quarter dollar coins, in accordance with this subsection, with a design which is emblematic of such State during any 1 year of such 10-year period, in addition to the quarter dollar coins issued during such year in accordance with paragraph (3)(A).'

Design Concept Parameters

Legislation

Public Law 105-124 provides for designs to be submitted in accordance with the design selection and approval process developed by the Treasury Secretary in the sole discretion of the Secretary. The law further requires that, "because it is important that the Nation's coinage and currency bear dignified designs of which the citizens of the United States can be proud, the Secretary shall not select any frivolous or inappropriate design" and "no head and shoulders portrait or bust of any person, living or dead, and no portrait of a living person may be included in the design."

Criteria

Designs shall maintain a dignity befitting the Nation's coinage.

Designs shall have broad appeal to the citizens of the State and avoid controversial subjects or symbols that are likely to offend.

Suitable subject matter for design concepts include State landmarks (natural and man-made), landscapes, historically significant buildings, symbols of State resources or industries, official State flora and fauna, State icons (eg.. Texas Lone Star, Wyoming bronco, etc.), and outlines of the State.

State flags and State seals are not considered suitable for designs.

Designs limited to one or two concepts, as opposed to multiple concepts, translate best as designs on the small template of the quarter.

Consistent with the authorizing legislation, the States are encouraged to submit concepts that promote the diffusion of knowledge among the youth of the United States about the State, its history and geography, and the rich diversity of our national heritage.

Priority consideration will be given to designs and concepts that are enduring representations of the State. Coins have a commercial lifespan of at least 30 years and are collected for generations.

Inappropriate design concepts include, but are not limited to the following: logos or depictions of specific commercial, private, educational, civic, religious, sports, or other organizations whose membership or ownership is not universal.

Concepts or background materials submitted to the Mint which are covered by copyright, trademark, or other rights (such as privacy and publicity rights) **must** include a release acceptable to the Mint from the rights owner that allows the concept or materials to be used on the coin, in marketing and promotional materials, and on the Mint's website for unlimited worldwide distribution without charge or restriction. **(Please Note: Any artwork submitted without proper releases will not be considered.)**

Quarterdesigns is not an official government website or connected to any official entity in any way. For the official US Mint Quarters website-Click Here. Quarterdesigns is an independent website and makes no claims of completeness of design concepts for any state. Contained here are images gathered from the internet and other resources regarding the state quarters. Quarterdesigns includes a collection of designs submitted to states, but in no way is a complete archive of all of the finalists concepts or submissions. Many states have had thousands of designs submitted from which ultimately

finalists are chosen.

Quarterdesigns is a non-commercial website for informational, educational and research purposes for the multitudes collecting state quarters.

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50 State Commemorative Quarter Release Dates

Year	Quarter Mintage	Release Date	State	Statehood Date	State Totals
1999	4,430,940,000	January 01, 1999	Delaware	December 07, 1787	774,824,000
		March 08, 1999	Pennsylvania	December 12, 1787	707,332,000
		May 17, 1999	New Jersey	December 18, 1787	662,228,000
		July 19, 1999	Georgia	January 02, 1788	939,932,000
		October 12, 1999	Connecticut	January 09, 1788	1,346,624,000
2000	6,470,932,000	January 03, 2000	Massachusetts	February 06, 1788	1,163,784,000
		March 13, 2000	Maryland	April 28, 1788	1,234,732,000
		May 22, 2000	South Carolina	May 23, 1788	1,308,784,000
		August 07, 2000	New Hampshire	June 21, 1788	1,169,016,000
		October 16, 2000	Virginia	June 25, 1788	1,594,616,000
2001	4,806,984,000	January 02, 2001	New York	July 26, 1788	1,275,040,000
		March 12, 2001	North Carolina	November 21, 1789	1,055,476,000
		May 21, 2001	Rhode Island	May 29, 1790	870,100,000
		August 06, 2001	Vermont	March 04, 1791	882,804,000
		October 15, 2001	Kentucky	June 01, 1792	723,564,000
2002	3,313,304,000	January 02, 2002	Tennessee	June 01, 1796	648,068,000
		March 11, 2002	Ohio	March 01, 1803	632,032,000
		May 20, 2002	Louisiana	April 30, 1812	763,804,000
		August 2, 2002	Indiana	December 11, 1816	689,800,000
		October 15, 2002	Mississippi	December 10, 1817	579,600,000
2003	2,280,400,000	January 2, 2003	Illinois	December 03, 1818	463,200,000
		March 17, 2003	Alabama	December 14, 1819	457,400,000
		June 2, 2003	Maine	March 15, 1820	448,800,000
		August 4, 2003	Missouri	August 10, 1821	453,200,000
		October 20, 2003	Arkansas	June 15, 1836	457,800,000
2004		January 26, 2004	Michigan	January 26, 1837	
		March 29, 2004*	Florida	March 03, 1845	
		May, 2004*	Texas	December 29, 1845	
		August, 2004*	Iowa	December 28, 1846	
		October, 2004*	Wisconsin	May 29, 1848	
2005		January, 2005*	California	September 09, 1850	
		March, 2005*	Minnesota	May 11, 1858	

		May, 2005*	Oregon	February 14, 1859	
		August, 2005*	Kansas	January 29, 1861	
		October, 2005*	West Virginia	June 20, 1863	
2006		January, 2006*	Nevada	October 31, 1864	
		March, 2006*	Nebraska	March 01, 1867	
		May, 2006*	Colorado	August 01, 1876	
		August, 2006*	North Dakota	November 02, 1889	
		October, 2006*	South Dakota	November 02, 1889	
2007		January, 2007*	Montana	November 08, 1889	
		March, 2007*	Washington	November 11, 1889	
		May, 2007*	Idaho	July 03, 1890	
		August, 2007*	Wyoming	July 10, 1890	
		October, 2007*	Utah	January 04, 1896	
2008		January, 2008*	Oklahoma	November 16, 1907	
		March, 2008*	New Mexico	January 06, 1912	
		May, 2008*	Arizona	February 14, 1912	
		August, 2008*	Alaska	January 03, 1959	
		October, 2008*	Hawaii	August 21, 1959	

*Approximate release dates

These figures were derived from the [US Mint web site](#).

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Design Selection Process

Overview

The Fifty States Commemorative Coin Program Act ([Public Law 105-124](#)), signed by President Clinton on December 1, 1997, provides for the redesign of the reverse side of the quarter dollars with designs emblematic of each of the 50 States. The Washington portrait will remain on the obverse of the quarters. The program provides for five States to be featured each year for a ten-year period and that each State will be honored in the order of that State's admission to the United States.

Procedure

Stage 1

The Mint will contact the Governor approximately 24 months prior to the beginning of the year in which the State will be honored to initiate the State design process. The Governor will appoint an individual from the State to serve as the Mint's liaison for this program.

Stage 2

The State will identify and provide to the Mint a minimum of 3 and a maximum of 5 different design concepts or themes emblematic of the State. The process for identifying concepts will be one of the States' choosing. Concepts should be provided to the Mint, accompanied by supporting material as appropriate – for example, photographs or sketches of landmarks, landscapes, historical buildings, or official depictions of State symbols. If copyrighted materials are used, releases must be provided from the copyright holders. **(Please Note: Any artwork submitted without proper releases will not be considered.)**

Stage 3

The Mint will review concepts for appropriateness and coinability. If fewer than three concepts are submitted, the Mint will develop additional concepts as necessary.

Stage 4

The Mint will produce drawings of all design concepts.

Stage 5

The Citizens Commemorative Coin Advisory Committee (CCCAC) will review drawings and recommend candidate designs.

Stage 6

The U.S. Fine Arts Commission will review candidate designs.

Stage 7

Candidate designs will be presented to the Secretary of the Treasury for review and approval.

Stage 8

The Mint will return approved designs to the Governor for selection of the State design.

Stage 9

The State will select the State design through a process determined by the Governor, within a timeframe specified by the Mint.

Stage 10

Final design will be returned to Treasury for approval by the Secretary or his designee.

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Frequently Asked Questions (FAQ)

How do I submit a design?

Your design must be submitted to the Governor of your state or to the selection committee approved by the Governor. The Governor of your state will be contacted approximately 18 to 24 months prior to the release of their state quarter. Most Governors have appointed a selection committee to organize the collection of submissions. Watch your Governors website for info on when and where to submit a design.

What is required to submit a design?

The design will need to be submitted on an 8.5 x 11 sheet of paper. The design concept can be a written description, computer drawing, a sketch or a finished drawing. A quarter template ([GIF](#), [EPS](#) or [PDF](#)) provided by the mint can be used, but is not required. An Entry Form and signed Release Form must be submitted along with the design.

How are designs selected for the state quarters?

Designs for the quarter will be reviewed by a selection committee approved by the Governor. The committee will make recommendations to the Governor regarding preliminary designs. The Governor and First Lady will select no fewer than 3 and no more than 5 preliminary designs to be submitted to the U.S. Mint. The U.S. Mint reviews the designs for appropriate images and clarity of reproduction. All designs submitted to the U.S. Mint are subject to modifications as needed to meet Federal specifications for coinability. Final design images created by the U.S. Mint may combine elements of more than one design concept. Creators of successful designs surrender all rights to images used in production, marketing, promotions, and other activities related to the U.S. Mint's 50 State Quarters Program. Artists must provide proof of design originality.

Who is selecting the final designs?

The Governor will in whatever method he chooses select the final design from the artists concept drawings returned to him from the U.S. Mint. Final approval is made by the Secretary of the Treasury.

What designs are acceptable for the 50 State Quarters?

Designs should be tasteful, and have broad appeal to the citizens of the state. They should avoid controversial subjects or symbols that may offend others. Suitable images may include: landscapes, state landmarks (natural or man-made), historically significant events, historically significant buildings, symbols of state resources or industries, official state flora and fauna, state icons, and state outlines. Priority consideration will be given to designs and concepts that are enduring representations of the state.

Are there any images unacceptable for the 50 State Quarters?

Yes. The U.S. Mint will not accept state flags and seals, logos, or emblems of specific commercial, private, educational, civic, religious, or sports organizations. Images may not include the likeness of a living person.

If I use copyrighted material in my design, what do I need to do?

Copyrighted material may be used if it is possible to obtain the legal rights to prepare design renderings. If copyrighted materials are used, the copyright holder must complete the U.S. Mint's Release Form. If you wish to send artwork that depicts a concept, please sign and send the Release Form with your submission.

Can anyone submit a design?

Yes. Designs may be submitted by anyone, of any age. Most states have only opened their contest to receive submissions from residents of their state. All designs become the property of the state. Most designs will not be returned.

What is the deadline for submitting a design?

States are asked to submit 3 to 5 designs to the U.S. Mint approximately 18 months prior to the release date of the state quarter.

Will my design be returned to me?

Probably not. Most designs become the property of the state and will not be returned.

Can a person submit more than 1 design?

The method of collection of submissions is at the discretion of the Governor of your state or the appointed selection committee. Most states have opened their contest only to residents of the state and only accepted 1 design per resident.

When and how will the design finalists be notified?

This varies by the deadline required by the U.S Mint for the individual state and is at the discretion of the Governor or the appointed selection committee.

What is the 50 State Commemorative Quarter Program?

The 50 State Commemorative Quarter Program is a 10-year initiative commemorating each of the 50 states. States are honored in the order in which they ratified the Constitution and joined the Union. The first quarters went into circulation in 1999. The program will end with the final states in 2008. The program may be extended to accommodate additional states if acquired before the end of the program.

When will a commemorative quarter for my state be released?

The complete list of states and when their coins will be issued can be found on the [50 State Commemorative Quarter Release Dates](#) page.

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 467
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
 Title "An Act establishing an Alaska RDU Executive Operations
Commemorative Coin Commission..." Component Executive Office
 Sponsor Representative Anderson
 Requester House State Affairs Component No. 6

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services		25.4	25.4			
Travel		6.9	15.1			
Contractual		5.0	1.5			
Supplies		1.5	1.5			
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	38.8	43.5	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF		38.8	43.5			
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	0.0	38.8	43.5	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time					
Part-time		1	1		
Temporary					

ANALYSIS: (Attach a separate page if necessary)

This fiscal note requires the Office of the Governor to provide the Commemorative Coin Commission with support for the 11-member commission.

The personal services estimate is for a Range 14 half-time position to provide support for the Commission. Transportation costs are based on an assumption that the Commission will have one organizational meeting and two planning meetings in FY06. In FY07 it is assumed the Commission will have four meetings in different locations of the state to review designs and submit recommendations to the Governor.

The contractual cost estimate is for statewide advertising for the solicitation process for narrative design concepts from the public.

Prepared by: Gall Fenumial, Asst. Admin. Director Phone 465-3885
 Division Office of the Governor, Administrative Services Date/Time 3/16/04 1:53 PM
 Approved by: Linda J. Perez, Director Date 3/16/2004
 Agency Office of the Governor, Administrative Services

HB

488

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS: Judiciary

Date of Committee Action: April 2, 2004

The LABOR AND COMMERCE Committee considered:

HB 488

HOUSE BILL NO. 488

CLAIMS AGAINST STATE EMPLOYEES

"An Act relating to actionable claims against state employees; relating to the state's defense and indemnification of its employees and former employees with respect to claims arising out of conduct that is within the scope of employment; amending the Public Employment Relations Act regarding claims against the state or state employees; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 488 (LBC)
 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>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			X

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Handwritten signature</i>	CRAWFORD			X	
<i>Handwritten signature</i>	LYNN			X	
<i>Handwritten signature</i>	GATTO			X	
<i>Handwritten signature</i>	ROKEBERG	X			
<i>Handwritten signature</i>	NAHLSTROM			X	
<i>Handwritten signature</i>	STUTTENBERG			X	
Chair: <i>Handwritten signature</i>	ANDERSON	X			
Chair:					

CS FOR HOUSE BILL NO. 488(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to actionable claims against state employees; and providing for an**
2 **effective date."**

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

4 *** Section 1. AS 09.50 is amended by adding a new section to read:**

5 **Sec. 09.50.253. Actionable claims against state employees. (a) Except as**
6 **provided in (f) of this section, the remedy against the state provided by AS 09.50.250**
7 **for injury or loss of property or personal injury or death arising or resulting from an**
8 **act or omission of a state employee while acting within the scope of the employee's**
9 **office or employment is exclusive of any other civil action or proceeding for money**
10 **damages by reason of the same subject matter against the employee whose act or**
11 **omission gave rise to the claim or against the estate of the employee. Any other civil**
12 **action or proceeding for money damages arising out of or relating to the same subject**
13 **matter against the employee or the employee's estate is precluded without regard to**
14 **when the act or omission occurred.**

1 (b) A state employee against whom a civil action or proceeding is brought
2 under (a) of this section shall deliver all pleadings and process served upon the
3 employee, or a copy of the papers served, to the person designated by the head of the
4 employee's agency to receive the papers and to the attorney general. The state
5 employee shall deliver these documents within the time period established by the
6 attorney general in a regulation adopted under this section. The initial delivery of
7 these documents to the attorney general constitutes an agreement by the employee to
8 cooperate with the attorney general in the state employee's defense of the action or
9 proceeding and a consent that the attorney general conduct the defense as the attorney
10 general considers advisable and in the best interests of the employee, including
11 settlement in the attorney general's discretion.

12 (c) Upon certification by the attorney general that the state employee was
13 acting within the scope of the employee's office or employment at the time of the
14 incident out of which the claim arose, any civil action or proceeding commenced upon
15 the claim in a state court is considered an action or proceeding against the state under
16 the provisions of this title, and the state is substituted as the party defendant. The civil
17 action or proceeding certified under this subsection is subject to the same limitations
18 and defenses applicable to an action or proceeding against the state. The attorney
19 general or the attorney general's designee shall defend the civil action or proceeding
20 on behalf of the state.

21 (d) If the attorney general refuses to make the certification under (c) of this
22 section, the state employee may, at any time before trial, petition the superior court to
23 find and certify that the employee was acting within the scope of the employee's office
24 or employment at the time of the incident out of which the claim arose. Upon
25 certification by the court, the civil action is considered to be a civil action or
26 proceeding brought against the state under the provisions of this title, and the state is
27 substituted as the party defendant. Upon certification by the court, the state shall
28 reimburse the state employee the employee's reasonable costs and attorney fees
29 incurred in bringing the petition. A copy of the petition under this subsection shall be
30 served upon the state in accordance with the provisions of Rule 4(d)(7), Alaska Rules
31 of Civil Procedure. The petition to the superior court is the exclusive remedy to

1 challenge the noncertification decision by the attorney general of a state employee
2 under this section.

3 (e) A claim or suit for damages may not be filed against the state or the
4 attorney general arising out of the process for certification under this section.

5 (f) This section does not extend or apply to a civil action or proceeding against
6 an employee of the state that is brought for a violation of the Constitution of the
7 United States or that is brought for a violation of a law of the state under which an
8 action or proceeding against an employee is expressly authorized.

9 (g) The provisions of this section are in addition to and do not supercede a
10 term in a state employee collective bargaining agreement addressing legal defense and
11 indemnity.

12 (h) In this section,

13 (1) "acting within the scope of the employee's office or employment"
14 means acts or omissions

15 (A) that the state employee is employed or authorized to
16 perform;

17 (B) of the state employee that occur substantially within the
18 authorized time and space limit;

19 (C) that are activated by a purpose to serve the state; and

20 (D) that do not constitute acting, or failing to act, with wilful,
21 reckless, or intentional misconduct, or with gross negligence or malice;

22 (2) "state employee"

23 (A) means

24 (i) a permanent, probationary, seasonal, temporary,
25 provisional, or nonpermanent employee in the executive, legislative, or
26 judicial branch of state government, whether in the classified, partially
27 exempt, or exempt service; or

28 (ii) a person appointed to a board or commission of
29 state government;

30 (B) does not include an employee of

31 (i) the University of Alaska;

- 1 (ii) the Alaska Railroad Corporation; or
2 (iii) a political subdivision of the state, including a
3 regional educational attendance area.

4 * Sec. 2. AS 09.50.300 is amended to read:

5 **Sec. 09.50.300. Compromise by attorney general.** Except as provided in
6 AS 09.50.253, the [THE] attorney general may, with the approval of the court,
7 arbitrate, compromise, or settle any action filed under AS 09.50.250 - 09.50.300.

8 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 **APPLICABILITY.** This Act applies to a cause of action that arose on or after the
11 effective date of this Act.

12 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **REVISOR'S INSTRUCTIONS.** The revisor of statutes is instructed to change the
15 heading of art. 3 of AS 09.50 from "Article 3. Claims Against State" to "Article 3. Claims
16 Against the State or State Employees."

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

THE
FOLLOWING
DOCUMENT(S)
ARE
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ORIGINAL
COPIES

Public Safety Employees Association, Inc.
"Representing Alaska's Finest"

March 23, 2004

Senator Con Bunde, Chairman
Senate Judiciary Committee
Alaska Legislature

Re: Senate Bill 338

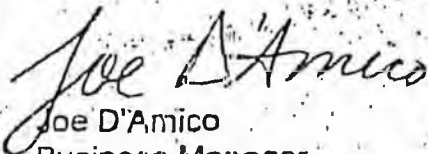
Dear Senator Bunde,

The Public Safety Employees Association (PSEA) represents over 1,300 Law Enforcement Officers from 8 different agencies throughout Alaska. We have been following Senate Bill 338 and its counterpart in the House with great interest. As you know, oftentimes a law enforcement officer has to make a life-and-death decision in a split-second. Too often, litigious suspects are able to bring a lawsuit against these public servants with little or no merit hoping for a big settlement.

In the original form, Senate Bill 338 raised concerns for our members, as some protections provided for in the Collective Bargaining Agreement would have been lost. However, after working with representatives of the Attorney General, we were pleased to see amendments which resulted in the adoption of the Committee Substitute. The CS actually increases the level of protection for Law Enforcement Officers from these types of suits.

The Public Safety Employees Association supports the CS for Senate Bill 338 in its current form. If you or any other members of the Judiciary Committee have any questions, please feel free to contact me.

Sincerely,



Joe D'Amico
Business Manager
Public Safety Employees Association

HOUSE LABOR &
COMMERCE

COMMITTEE
PACKET
Index

March 1, 2004

1

HB 488

*Claims Against
State Employees*

2

HB 517

*Security Account
Beneficiary Designation*

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



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(907) 465-3500
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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 13, 2004

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of article III, section 18, of the Alaska Constitution, I am transmitting a bill relating to: (1) indemnification of tort claims against state employees; and (2) the attorney general's decision whether to indemnify an employee and arbitration of that decision.

Current Alaska law addresses lawsuits against the state in AS 09.50.250. However, the statutes fail to address a core concept of the Federal Tort Claims Act (FTCA). Under the FTCA, if a lawsuit is filed against a federal employee, and the attorney general of the United States certifies the employee was acting in the scope of employment, the United States is substituted as the defendant for the employee. The individual employee is no longer a defendant in the case. This bill adds this critical concept to Alaska law.

This bill would allow state employees to carry out their duties knowing that if there is a lawsuit filed against them for an act or omission within the scope of their employment, the lawsuit will not proceed against them as an individual. They will not be subject to the burdens court rules place on a "party" including being subject to an award of costs and fees to a prevailing party. The public would benefit as services would not be interrupted while state employees participate in lawsuits.

The bill would further provide that the decision of the attorney general whether to indemnify an employee is not subject to arbitration. An employee who is denied indemnification can contest that decision in the courts.

I urge your prompt and favorable action on this measure.

Sincerely yours,

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

Frank H. Murkowski
Governor

Enclosure

HOUSE BILL NO. 488
"AN ACT RELATING TO ACTIONABLE CLAIMS
AGAINST STATE EMPLOYEES"

SECTIONAL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL

Section 1: Creates new sections in Title 9. Proposed 09.50.253 converts lawsuits and claims against individual state employees, when acting within the scope of the employee's office or employment, into a claim against the state. The state is substituted as the defendant in the action. It provides that the Attorney General determines whether the claim arose within the scope of the employee's office or employment. (This term is defined in section 3 of the bill). The Attorney General then certifies the action and the individually sued state employee is dismissed from the lawsuit with the state substituted as the defendant. The attorney general or the attorney general's designee then defends the action. All defenses and limitations applicable to the state are then applicable to the action.

If the Attorney General does not certify that the state employee was acting within the scope of the employee's office or employment, the state employee may petition the superior court for relief. If the superior court finds that the state employee was acting within the scope of the employee's office or employment, the state is then substituted as the defendant in the underlying claim.

The section does not apply to civil actions or proceedings against a state employee for a violation of the United States Constitution or in violation of a state statute expressly authorizing an action.

For actions against individuals not covered by AS 09.50.253, proposed sections

AS 09.50.254 through 09.50.257 provide for the defense of individuals acting within the scope of employment. These sections codify the state's longstanding practices with respect to defense of suits against state employees, currently contained in several different collective bargaining agreements and case by case decisions or department policies for employees and officials who are not covered by collective bargaining agreements. These sections provide a remedy for those denied a defense, and permit the attorney general to provide a defense with a reservation of the right to seek reimbursement if the employee is found to have acted outside the scope of employment.

Section 2: This is a conforming amendment to AS 09.50.300.

Section 3: This section provides the definitions for the core terms used in the bill: "arising within the scope of the employee's office or employment" and "state employee". Excluded from the definition of "state employee" are the University of Alaska, the Alaska Railroad Corporation, and a political subdivision of the state. The Attorney General does not provide representation to these entities and each may sue and be sued pursuant to its own authorizing statutes. (University of Alaska, AS 14.40.040; Alaska Railroad Corporation, AS 42.40.010, AS 42.40.900; and political subdivisions of the state, AS 09.65.070)

Section 4: This section removes the subject matter of the bill, defense of state employees, from bargaining, to assure uniform treatment of all state employees with respect to the defense of claims litigation.¹

¹ The section is also in response to a superior court decision that would allow arbitration of the decision not to defend. Arbitration of such decisions is likely to result in variable and inconsistent determinations.

- Section 5: This section assures that the law does not disturb existing collective bargaining agreements, but that new agreements are in conformity with the law.
- Section 6: This section applies the law prospectively, to causes of action arising after it is enacted.
- Section 7: Includes instructions to the Revisor to change the heading of art. 3 of AS 09.50.
- Section 8: Provides an immediate effective date.

Currently the state's collective bargaining agreements provide that decisions to defend are not arbitrable, but one employee union sought to avoid the affect of its agreement. The Alaska Labor Relations Agency upheld the contract provision, but the union appealed to the superior court, which reversed the agency. The state has appealed the case to the Alaska Supreme Court.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 488
(H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title An Act relating claims against RDU Civil
state employees and claims arising.... Component Torts & Workers' Compensation
Sponsor Rules _____
Requester Governor Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 09.50 by converting claims against state employees acting within the scope of their employment into claims against the state."

Passage of this legislation is not anticipated to have any foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone _____
Division: Administrative Services Date/Time 2/13/04 3:22 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/13/2004
Agency: Department of Law

HB

489

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: March 17, 2004

The LABOR AND COMMERCE Committee considered:

HB 489

HOUSE BILL NO. 489

AVTEC ADMINISTRATION

"An Act relating to the administration of the Alaska Vocational Technical Center; and providing for an effective date."

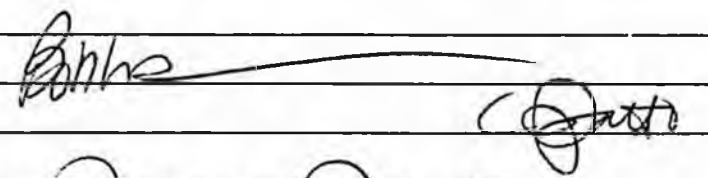
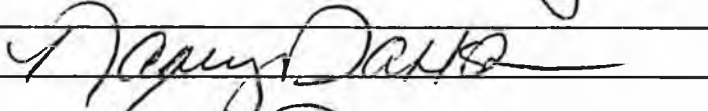
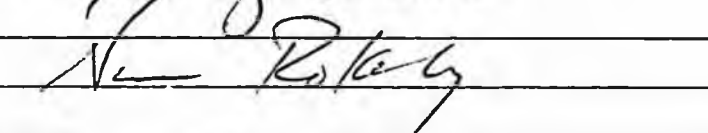
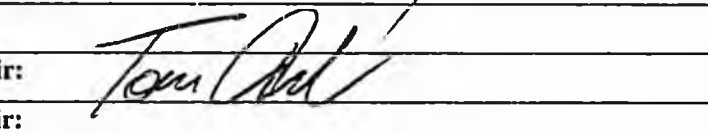
Recommends it be replaced with HCS or CS for _____ (_____)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

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

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LWF	1			X

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	LYNN GATTO	X	X		
	NATHLSTROM	X			
	Holeberg				X
Chair: 	ANDERSON	X			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 489
(H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: "An Act relating to the administration of the RDU: Business Partnerships
Alaska Vocational Technical Center..." Component: Alaska Vocational Technical Center
Sponsor: Rules Committee
Requester: Governor Component Number: 2686

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Katherine Farnham, Director Phone 269-7490
Division: Business Partnerships Division Date/Time 2/12/04 3:49 PM
Approved by: Greg O'Claray, Commissioner Date 2/12/2004
Agency: Department of Labor and Workforce Development

HB

490

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS: Judiciary

Date of Committee Action: March 24, 2004

The LABOR AND COMMERCE Committee considered:

HB 490

HOUSE BILL NO. 490

EMPLOYMENT SECURITY ACT AMENDMENTS

"An Act relating to the release of employment security records, to the admissibility of determinations and decisions regarding unemployment compensation benefits, and to contributions, interest, penalties, and payments under the Alaska Employment Security Act; providing that property under the Alaska Employment Security Act is not subject to the Uniform Unclaimed Property Act; and providing for an effective date."

Recommends it be replaced with HCS or CS for _____ (_____)
 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.:
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 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LWF	1			X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>Howard Crawford</i>	CRAWFORD			X	
<i>[Signature]</i>	LYNN	X			
<i>[Signature]</i>	GATTO	X			
<i>[Signature]</i>	REKBERG			X	
<i>[Signature]</i>	DAHLSTROM	X			
<i>[Signature]</i>	GUTTENBERG			X	
Chair: <i>[Signature]</i>	ANDERSON	X			
Chair: <i>[Signature]</i>					

HB 490/SB 342

Mr. Chairman, members of the committee: My name is Tom Nelson, I am the Director of the Employment Security Division, Alaska Department of Labor and Workforce Development. I will be speaking to sections 4-7, 9, & 11-13 of House Bill 490, and I understand representatives of the Department of Law will be addressing the other sections of this legislation.

The proposed statute changes are largely housekeeping and clarification of existing statute. The changes provide Alaska language alignment with federal law and will bring us into compliance with the unemployment insurance overpayment arrangement we have with other states.

Section 4 authorizes the department to adopt regulations providing for the distribution of unclaimed excess contributions.

Sections 5, 6, & 9 clarifies statute by adding the terms manager and limited liability company to existing definitions.

Section 7 brings Alaska into conformity with the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) and provides the Employment Security Division the ability to collect unemployment insurance overpayments on behalf of other states caused by reasons other than fraud. States participating in this agreement already provide this service to Alaska.

Section 11 aligns Alaska language with federal law by clarifying which health professionals are excluded from the definition of employment. Only student nurses and medical interns are excluded and this clears up existing language.

Section 12 clarifies language that provides an exclusion from the definition of wages of payments or benefits provided by an employer for purposes of educational assistance to its employees. Federal law already provides this exclusion from their definition of wages.

Section 13 removes reference to the provisions of Department of Revenue law regarding disposal of abandoned property. Federal law requires that unclaimed excess contributions be deposited back into the Trust Fund.

Thank you for the opportunity to testify. I will be happy to answer any questions.

HOUSE BILL 490
**“AN ACT RELATING TO THE RELEASE OF EMPLOYMENT
SECURITY RECORDS, TO THE ADMISSIBILITY OF
DETERMINATIONS AND DECISIONS REGARDING UNEMPLOYMENT
COMPENSATION BENEFITS, AND TO CONTRIBUTIONS, INTEREST,
PENALTIES, AND PAYMENTS UNDER THE ALASKA EMPLOYMENT
SECURITY ACT; PROVIDING THAT PROPERTY UNDER THE
ALASKA EMPLOYMENT SECURITY ACT IS NOT SUBJECT TO THE
UNIFORM UNCLAIMED PROPERTY ACT; AND PROVIDING FOR AN
EFFECTIVE DATE.”**

**SECTIONAL ANALYSIS
OFFICE OF THE ATTORNEY GENERAL**

- Section 1:** Currently under AS 23.20.110(g), when the Employment Security Division (“ESD”) provides employment security records to officers and employees of another state agency or a federal agency, the officers and employees must keep employment security records confidential. This section would amend AS 23.20.110(g) to add that when ESD provides employment security records to officers or employees of a municipal agency, the municipal officers and employees must also keep the records confidential. This amendment is necessary because under section 2 of the bill, ESD will be providing employment security records to municipal attorneys when they need them for criminal investigations and prosecutions.
- Section 2:** This section will allow ESD to release employment security records for criminal investigations and prosecutions. ESD periodically receives requests for employment security records from the U.S. Attorney’s Office, the District Attorney’s Office, municipalities, and the FBI for purposes related to criminal investigations and prosecutions. Under AS 23.20.110, employment security records are confidential and does not allow the release of these records for criminal investigations or prosecutions purposes, except for employment security fraud cases. The U.S. Department of Labor has approved the amendment to allow ESD to release confidential employment security records for criminal investigation and prosecution purposes. Other states have allowed the release of these records for criminal investigation and prosecution purposes.

- Section 3:** This section would amend AS 23.20.115. AS 23.20.115 provides that it is a class B misdemeanor for an officer or employee of the state or a federal agency to make an unauthorized disclosure of employment security records. The amendment to AS 23.20.115 adds that it is a class B misdemeanor for an officer or employee of a municipality to make an unauthorized disclosure of employment security records.
- Section 4:** ESD may have excess contribution from employers. Currently under AS 23.20.225(e), these excess contributions are disposed of according to the Uniform Unclaimed Property Act, AS 34.45.110-34.45.430. The proposed amendment will allow ESD to develop its own procedures to deal with unclaimed excess contributions.
- Section 5:** Under the Employment Security Act, officers and employees of a corporation may be liable for employment security taxes if the corporation fails to pay the taxes. This section will add that members, managers and employees of a limited liability company ("LLC") may be liable for employment security taxes if the LLC fails to pay the taxes.
- Section 6:** This section will allow a member, manager, or employee of a LLC to appeal a determination of tax liability.
- Section 7:** Currently under AS 23.20.390(e), ESD can only recover, on behalf of another state, unemployment compensation benefits that a person fraudulently obtained. This bill would amend AS 23.20.390(e) to allow ESD to collect, on behalf of another state, any benefits to which a person was not entitled, even those that were not fraudulently obtained. This bill would bring Alaska into conformity with the Interstate Reciprocal Overpayment Recovery Arrangement.
- Section 8:** AS 23.20.497 currently provides that unemployment compensation decisions are not admissible in another action or proceeding. This amendment will clarify that under AS 23.20.497 unemployment compensation decisions are not admissible in an arbitration proceeding.
- Section 9:** This section would amend AS 23.20.520(10), which defines "employing unit," to include a limited liability company.

- Section 10:** This section defines “municipal agency.”
- Section 11:** This section will bring the Employment Security Act in conformity with the Federal Unemployment Tax Act (“FUTA”). Under FUTA, employed student nurses and medical interns are exempt from FUTA. This section would amend AS 23.20.526(a)(16) to similarly provide that employed student nurses and medical interns are exempt from the Employment Security Act. Therefore employers will not have to pay employment security taxes for these employees and these employees will not be able to collect unemployment benefits.
- Section 12:** This section will also bring the Employment Security Act in conformity with FUTA. Under FUTA, educational assistance provided by an employer that meets the requirements of 26 U.S.C. 127(b) does not meet the definition of “wages.” This section would amend AS 23.20.530 to provide that “wages” does not include educational assistance provided by an employer that meets the requirements of 26 U.S.C. 127(b).
- Section 13:** This section provides a conforming amendment to section 4. The proposed amendment to AS 34.45.760(14) provides that for purposes of the Uniform Unclaimed Property Act, “property” does not include excess contributions under the Employment Security Act.
- Section 14:** The Act would take effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 490
(H) Publish Date: 2/16/04

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: "An Act relating to..." RDU: Employment Security
the Alaska Employment Security Act..." Component: Unemployment Insurance
Sponsor: _____
Requester: _____ Component Number: 2276

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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 (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This technical legislation will have no fiscal impact on the department.

Prepared by: Thomas W. Nelson, Director Phone 465-5933
Division: Employment Security Division Date/Time 12/29/03 3:34 PM
Approved by: Greg O'Claray, Commissioner Date 12/29/2003
Agency: Department of Labor and Workforce Development

HB

502

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 16, 2004

FURTHER REFERRALS: HES

Date of Committee Action: April 2, 2004

The LABOR AND COMMERCE Committee considered:

HB 502

HOUSE BILL NO. 502

DISPENSING OPTICIANS: BOARD & REGULATION

"An Act relating to dispensing opticians and dispensing optician apprentices."

Recommends it be replaced with HCS or CS for _____ (_____)
 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
- NVA
- 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				X

<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
	CRAWFORD			X	
	LYNN			X	
	GATTO	X			
	ROKEBERG				
	DAHLSTROM			X	
	GUTTENBERG	X			
Chair:	ANDERSON				
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 502
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Dispensing Opticians: RDU Occupational Licensing (117)
Board and Regulation Component Occupational Licensing
 Sponsor Representative Holm
 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 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 502 makes several amendments to the dispensing optician licensing statutes in AS 08.71. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/29/04 1:12 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/29/2004
 Agency Department of Community and Economic Development

Subject: hb 502

Date: Tue, 30 Mar 2004 18:30:02 -0900

From: "Robin & Steven" <espresso20@alaska.net>

To: <Representative_Tom_Anderson@legis.state.ak.us>

Regarding House Bill 502.

This bill will be read before you today and we would like you to pass it immediately.

The requirements for licensed opticians need to be increased. In the state of Alaska, a hairdresser is licensed after working 2000 hours or attending 1650 hours of a training school. Are we sending the message that someone flying our airplanes or driving our highways with the incorrect eyeglasses is less a threat to the public than a bad haircut????

The argument will be made that anyone can help select a frame or dispense pre packaged contact lenses. What about the special fitting needs of children or the elderly that require more expertise to make sure the visual needs of the patient are being met? Incorrect fit can be as harmful as no correction at all in some cases. We are not interested in the almighty retail bottom line here, we are interested in continuing in a highly trained and specialized field that we have all devoted major portions of our lives to. As in any profession with special skills and training, we deserve to be recognized and paid for our expertise.

Thank you,
Robin Marquiss
Licensed Optician

STATE OF ALASKA



Interim:

119 North Cushman, Rm. 205
Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:

State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

HB 502 "DISPENSING OPTICIANS: BOARD & REGULATION" Sponsor Statement

17 March

"An Act relating to dispensing opticians and dispensing optician apprentices."

HB 502 clarifies the education and training requirements to become an optician, allows qualified opticians from other states to practice in Alaska, and sets out requirements to fit and sell contact lenses. This bill also transfers the Optician's apprenticeship program to the U.S. Department of Labor. Currently, the amount of training does not meet the threshold for the Department of Labor. The State of Alaska needs to be on par with other states and require a high amount of training and high degree of licensing in this field.

The current statute is unclear and inadequate. HB 502 puts specific qualifications on the amount of hours an optician must have to qualify for both spectacles and contact lenses. This legislation raises the amount of hours required to least 4,000 hours of training to dispense eyeglasses and at least 2,000 more hours to dispense contact lenses. This distinction clarifies the language and requires an appropriate amount of training for the Opticians in Alaska to effectively serve the public.

LEGAL SERVICES

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

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 4, 2004

SUBJECT: Sectional summary of HB 502 relating to dispensing opticians and apprentices (Work Order No. 23-LS1731\D)

TO: Representative Jim Holm
Attn: Matt

FROM:  Theresa L. Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends the license-requirement section to use the term "dispensing optician." Deletes "spectacles" (covered by "eyeglasses") and "artificial eyes" from the listed items to be dispensed.

Section 2. Replaces "dispenses" with "act as a dispensing optician for." Deletes "spectacles" and "artificial eyes." Makes a technical change.

Section 3. Increases the number of hours of training required, whether as an apprentice or as a practicing optician. Establishes separate training requirements for eyeglasses and for contact lenses. Conforms the apprentice training requirements to the change in sec. 6 regarding the entity with whom the person must register.

Section 4. States that there is no examination requirement for licensing persons who have licenses in other jurisdictions, if the other jurisdiction's licensing requirements are at least substantially equivalent to this state's.

Section 5. Adds two new subsections. The first subsection allows persons designated as master opticians by the American Board of Opticianry to receive licenses for eyeglasses. The second subsection allows persons with certain designations from certain identified contact lens organizations to be issued licenses for contact lenses.

Section 6. Requires an apprentice to register with the U.S. Department of Labor rather than the Department of Community and Economic Development. Removes language characterizing the apprenticeship as service. Removes an obligation of the Board of Dispensing Opticians.

Representative Jim Holm

March 4, 2004

Page 2

Section 7. Changes what must be stated in the authorization that is needed for fitting contact lens. Allows duplicate contact lenses to be dispensed from a written prescription that provides the information necessary to exactly duplicate the previous contact lenses. Prohibits providing contact lenses after the most recent prescription expires unless authorized by the prescription issuer.

Section 8. Limits the exemption for preassembled articles sold as merchandise. Prohibits the sale of contact lenses under the exemption.

Section 9. Provides some transition provisions for persons who have completed certain requirements when the bill takes effect and for persons in a training program when the bill takes effect.

If I may be of further assistance, please advise.

TLB:med

04-266.med

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 502
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Dispensing Opticians: RDU Occupational Licensing (117)
Board and Regulation Component Occupational Licensing
 Sponsor Representative Holm
 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 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 502 makes several amendments to the dispensing optician licensing statutes in AS 08.71. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/29/04 1:12 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/29/2004
 Agency Department of Community and Economic Development



Alaska Division of Legislative Audit

Audit Digest #08-20022-03



* Requires Acrobat Reader



SUMMARY A Sunset Review of the Department of Community and Economic Development,
OF: Board of Dispensing Opticians, September 12, 2003.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians. The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of the Board of Dispensing Opticians.

REPORT CONCLUSIONS

Under AS 44.66.050(d)(4), part of a sunset review is to provide "*an assessment of alternative methods of achieving the purposes of the program.*" In the prior audit we considered the merits of regulating opticians through a registration process and placing primary reliance on the successful completion of nationally recognized examinations to ensure competency.

Most states do not "regulate" or license opticians at all. According to the Opticians Association of America, only 22 states license dispensing opticians. Texas has a voluntary registration program – which allows the individual to advertise as a "registered optician" if they have met certain established criteria related to competency. Such an approach may be a viable alternative for Alaska.

Under this approach, an individual could advertise as being a registered optician once they provided proof to the Division of Occupational Licensing (OccLic) that they had met the necessary testing and continuing education requirements. Presumably, such designation would have some commercial advantages, assuring consumers the practitioner had met an established standard of competency.

The future operational viability of the board is questionable. In the long term, the number of new applicants seeking licensure as opticians may be reduced significantly due to creation of the optician assistant designation. Combined with fiscal instability brought on by licensing fee revenues insufficient to cover the operating costs of the board, the long-term viability of the Board of Dispensing Opticians (BDO) is problematic. Given these concerns, we recommend the legislature not extend the termination date for the board. Accordingly, the board will terminate operations at June 30, 2005.

In our view, the public can be adequately protected by competition in the marketplace, ongoing supervision of assistants, or professional standards already established for practicing opticians and ophthalmologists.

FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (EDO), we believe it is important for the board to take the following two actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing.

Opticianry statutes should be amended to address the following concerns:

The amount of apprentice training hours necessary for licensure should be clarified. Currently, AS 08.71.110(a)(2)(A) states an individual must complete "at least 1,800 hours of training as an apprentice...". In regulation, BDO specifies the individual complete a board-approved course, accumulate 1,800 hours of training, and pass the necessary examinations to be licensed in dispensing spectacles. The regulations also state that in order for an individual to be licensed to dispense contact lenses they must complete an additional 1,800 hours and pass the relevant national examination. State law makes no distinction related to these endorsements.

Modification of apprentice registration requirements at AS 08.71.160.

Recognition, in statute, of a process to license individuals from other jurisdictions.

Recommendation No. 2

The Division of Occupational Licensing in conjunction with the board should increase optician's licensing fees to eliminate the cumulative deficit.

Another increase in optician's licensing fees is necessary to eliminate the cumulative deficit. Licenses are renewed every two years; therefore, the revenue generated in the renewal year must be sufficient to fund most of the board's costs of the nonrenewal or subsequent year. The recent increase in licensing renewal fees for dispensing opticians and optician's apprentices appears to be sufficient to cover the board's costs for the two-year period. Depending on the amount of revenue collected in the nonrenewal year, the increased licensing fee may also reduce a small portion of the board's continuing deficit. Alaska Statute 08.01.065(c) requires fees for an occupation to be set to approximate the regulatory costs for the occupation. We recommend the board and OccLic review the regulatory costs and licensing fees to ensure that BDO sufficiently eliminates the cumulative deficit and meets annual operating costs.

 HTML Audit Report HTML Format	 Audit Report PDF Format *	2003 Audit Report List	Legislative Audit Home Page
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* Requires Acrobat Reader 

March 11, 2004

Representative Jim Holm
State Capital, Room 416
Juneau, Alaska 99801



Representative Holm,

Thank you for your letter requesting more information about the potential effects of HB 502, which you have introduced.

You ask what the current problem is, if the current level of training is directly affecting consumers, and if the increased requirement will have an impact on prices. There are several problems with the opticianry statute resulting from legislation passed a few years ago, though we are not proposing that they all be dealt with in HB 502.

From the time it was originally passed in 1973 until just a few years ago Alaska statute required 6000 hours of apprenticeship training to become a licensed optician. In 2002 the level was lowered to 1800 hours in SB 270, which also repealed our practical exam, leaving us with no way to evaluate the technical qualifications of our apprentices. HB 502 strengthens the training that an apprentice will receive by re-establishing some of the hours we lost. Simply put, SB 270 went too far. In HB 502 we are simply asking for some balance between entry into the field of opticianry and the quality of care optical patients receive.

To directly answer your question, the first problem is that we can not properly train new entrants into our field in 1800 hours. Is the current level of training affecting consumers? Not yet, because the people training under this new, lower standard aren't in the field yet. Please understand that when consumers do have a problem, they rarely report it to the state. Instead, they come to my office on Old Steese, and to the other offices of qualified, licensed opticians, for proper care. You ask if increasing the hours of training will cause prices to rise. No, it won't. No more than decreasing the hours would have caused prices to drop (which they did not). Opticianry in Alaska is highly competitive and that competition determines the price paid by consumers.

HB 502 also formally transfers our apprenticeship program to the US Department of Labor. DOL requires training in both spectacles and contact lenses to become an optician. Major changes to SB 270 were added in House Rules, quite late in the session, under the 24-hour rule, and quite late in the day. Unfortunately, the result is that not only is the requirement for training inadequate, it is unclear. Legislative auditors recently made the same observation. Under current law we do not meet the training threshold for the DOL program. If for no other reason, and there are many, HB 502 should be passed to rectify this problem.

You ask about training and the state exam. SB 270 repealed our state exam; we now rely on the American Board of Opticianry (ABO) exam as the written test for spectacles and the National Contact Lens Examiners Certifying (NCLEC) exam for contacts. These tests are used nationwide to evaluate the basic knowledge needed by an optician; however they do not evaluate hands-on competency or technical acumen. Only a formal training program can guarantee that the apprentice is getting the skills needed to go out into the labor force and properly fit Alaska's consumers with glasses or contacts.

HB 502 sets out the requirements for selling contact lenses. This is especially important since a contact lens is a medical device and rests directly on the cornea. Improper fitting can lead to many adverse complications which could lead to scarring, infection and even blindness. Anyone selling or fitting contact lenses should be highly trained and licensed.

HB 502 also retains the Career Progression Plan (CPP) as the distance learning portion of the apprenticeship, this course was developed by the National Academy of Opticianry to provide the apprentice and the mentor with a step by step process to follow as they work through the apprenticeship program. The CPP is given in three sections with an exam at the end of each section. Upon completion of the CPP, the ABO and NCLEC exams, 4000 hours of documented apprenticeship for spectacles and an additional 2000 hours in apprentice training for contacts an applicant can submit all the required paperwork and fees to the State for licensing.

Opticians are like a pharmacist to the eye doctor. We are trained to take the prescription, make recommendations based on power, lens availability, visual task needs and other factors. Each prescription is individual; there are many aspects involved in taking those numbers written by the doctor and incorporating them into a visual remedy for patients.

With the expanse of ever changing technology and information about new and improved materials available today the trained licensed optician is always learning new and improved ways to help the consumer with their individual visual needs. We attend continuing education seminars yearly to learn all we can about our ever-changing field.

I am aware that certain groups, who lobby nationally against basic standards for opticianry, may oppose HB 502. They represent large corporate chains who would like to employ entry level clerks and call them opticians. As an eyeglass wearer I hope you realize that outside corporate executives cannot simply put a white lab coat on someone and expect that they will know all the aspects of opticianry. In sponsoring HB 502 I hope you will lead the Alaska Legislature in taking a stand against this dumbing down of Alaska's opticians by implementing HB502 and continuing licensure in Alaska.

The Opticians Association of Alaska supports HB502 and we ask that you protect Alaska's consumers by requiring that anyone who presents themselves as an optician is properly trained and licensed.

Sincerely,

Christi Brand, President
Opticians Association of Alaska



opticians association of america

advancing america's opticians

Thursday, March 04, 2004

www.oaa.org

State Licensing Boards

Alaska State Board of Dispensing Opticians

Division of Occupational
Department of Commerce and Economic
Development
PO Box 110806
Juneau, AK 99811-0806
Phone: 907/ 465-5470
Fax: (907) 465-2974

- Education equivalent to four years attendance at a high school. Has either:
 - Completed at least 1,800 hours (required for each aspect) as an apprentice after registering with the department as an apprentice. or;
 - Been engaged for at least 1,800 hours as a practicing optician in good standing in a state, territory, district, or possession of the United States.
- *Graduation from an associate degree program in a recognized school or college of opticianry may be substituted for the experience required.
- Has passed the applicable National Examination.
 - Has passed a course designed in the board's regulations.
- * Graduation from an associate degree program in a recognized school or college of opticianry may be substituted for the course designated in the board's regulations.

Arkansas Board of Dispensing Opticians

PO Box 627
Helena, AR 72342
Phone: 800/ 333-7652 x 6713

- High School Graduate or & 21 years of age
- Passing of NCLE & state practical examinations
- 6,000 hours registered, or
- formal accredited program (min. 18 months)
- resident of Arkansas
- Opticianry licenses from other states will be recognized per Board approval

Connecticut Board of Medical Quality Assurance

410 Capital Avenue, MS# 12APP

Arizona State Board of Dispensing Opticians

1400 W. Washington #320
Phoenix, AZ 85007
Phone: 602/ 542-3095
Fax: 602/ 542-3093

- High School Graduate or G.E.D
- 3 years apprenticeship, or,
- 2-year COA accredited program plus 1 year apprenticeship, or
- 3 years as an optician in a non-licensure state with qualified skills
- Opticianry licenses from other will be recognized if equally qualified
- Successfully completed the ABO and NCLE written examinations.

California Medical Board

1426 Howe Avenue, Suite 54
Sacramento, CA 95825-3236
Phone: 916/ 263-2634
Fax: 916/ 924-2567

- Passing of NOCE & NCLE
- Other establishment regulations required

Florida Department of Health

Board of Opticianry
4052 Bald Cypress Way Bin C-08

PO Box 340308
Hartford, CT 06134
Phone: 860/ 509-7563
Fax: 860/ 509-8457

- Passing of NOCE & NCLE
- Passing of state practical examinations
- Passing of state law written examinations
- 4 years registered apprenticeship, or
- 2 years approved accredited program
- Opticianry licenses from other states will be recognized with Board approval

Georgia State Board of Dispensing Opticians

166 Pryor Street, SW
Atlanta, GA 30303
Phone: 404/ 656-3912
Fax: 404/ 657-4220

- Passing of NOCE & NCLE
- Passing of state practical examinations
- 2 years registered apprenticeship, or
- Graduate of formal opticianry program
- Opticianry licenses from other states will be recognized with Board approval

Kentucky Board of Ophthalmic Dispensers

PO Box 1360
Frankfurt, KY 40602
Phone: 502/ 564-3296
Fax: 502/ 564-4818

- Passing of NOCE & NCLE
- Passing of state practical examinations
- Passing of written rules & regulations examinations
- 2 years registered apprenticeship, or
- A.S. from COA accredited program
- High school graduate

Nevada State Board of Dispensing Opticians

PO Box 70503
Reno, NV 89570
Phone: 775/ 853-1421

- Passing of NOCE & NCLE
- Passing of state practical examinations
- 3 years registered apprenticeship, or
- 2 years formal opticianry education, plus 1 year of apprenticeship.
- High school graduate & 18 years of age

New Jersey State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians

PO Box 45011
Newark, NJ 07101

Tallahassee, FL 32399-3258
Phone: 850/ 245-4474
Fax: 850/ 921-5389

- Passing of NOCE and NCLE
- Passing of state practical examinations
- Passing of written FL rules & regulations examinations
- 3 years registered apprenticeship, or
- A.S. from COA accredited program
- High school graduate & 18 years of age

Hawaii Board of Dispensing Opticians

Department of Commerce and Consumer Affairs
Professional and Vocational Licensing Division
Po Box 3469
Honolulu, HI 96801
Phone: 808/ 586-2704
Fax: 808/ 564-4818

- Passing of NOCE & NCLE
- Passing of state practical examinations
- Passing of Hi rules & regulations
- Passing of state practical examinations
- 3 years registered apprenticeship, or
- A.S. from COA accredited program
- High school graduate

Massachusetts Board of Registration of Dispensing Opticians

239 Causeway Street
Boston, MA 02114
Phone: 617/ 727-5339
Fax: 617/ 727-1627

- Passing of NOCE & NCLE
- Passing of state practical examinations
- 3 years registered apprenticeship, or
- 2 years formal opticianry education, plus 1 year of apprenticeship.

New Hampshire Department of Health and Human Services

Office of Program Support
129 Pleasant Street
Concord, NH 03301
Phone: 603/ 271-5127
Fax: 603/ 271-5590

- Must register with the division of Public health services

New York State Board of Ophthalmic Dispensing

Cultural Education Center, Room 3019
Albany, NY 12230
Phone: 518/ 474-6374

Phone: 973/ 504-6435

Fax: 973/ 648-3355

- Passing of state practical examinations
- 36 months apprenticeship & 30 credits in Ophthalmic science from accredited program, or
- A.A.S. degree in Ophthalmic science & 4 months of apprenticeship
- Other state opticianry licenses not recognized

North Carolina State Board of Opticians

Po Box 222 N. Person Street

Raleigh, NC 27611

Phone: 919/ 733-9321

Fax: 919/ 733-0040

- Passing of state written & practical examinations
- 3.5 years apprenticeship & 6 months internship, or
- 2 years at a COA accredited program & 6 months internship
- 18 years of age
- Waiver examination for out-of-state licenses

Rhode Island Board of Opticians

State Department of Health, Division of Professional Regulation

104 Health Dept. Building

Providence, RI 02908

Phone: 401/ 222-2827

- Passing of NOCE & state practical examinations
- 3 years apprenticeship, or,
- 2 years at approved opticianry program & 1 year apprenticeship
- High school graduate & 18 years of age

Tennessee Board of Dispensing Opticians

Department of Health Related Boards

1st Floor Cordell Hull Bldg.

421 5th Avenue North

Nashville, TN 37247

Phone: 615/ 532-5159

Fax: 615/ 532-5164

- Passing of NOCE, NCLE & state practical exams
- 3 years apprenticeship, or,
- 2 years at approved opticianry program
- 18 years of age

Vermont Opticians Licensing Board

Division of Licensing and Regulation

Office of the Secretary of State

Montpelier, VT 05609-1106

Phone: 802/ 828-2837

- Passing of NOCE examinations
- 3 years apprenticeship, or,
- 2 years at approved opticianry program

Fax: 518/ 474-6375

- Passing of NOCE & NCLE
- Passing of state practical examinations
- 2 years registered apprenticeship, or,
- 2 years formal opticianry education
- High school graduate
- Other state opticianry licenses not recognized

Ohio Optical Dispensers Board

77 S. High Street, 16th Floor

Columbus, OH 43266-0328

Phone: 614/ 466-9707

Fax: 614/ 644-8112

- Passing of NOCE
- 2 years apprenticeship, or,
- 2 years formal opticianry program
- 18 years of age, high school graduate or equivalent

South Carolina Board of Examiners in Opticianry

PO Box 11329

Columbia, SC 29211-1329

Phone: 803/ 896-4300

Fax: 803/ 734-4218

- Passing of NOCE, NCLE & state practical examinations
- 2 years apprenticeship, or,
- 2 years at approved opticianry program, or
- 2 years as an optician in an unlicense state, or
- license as optician in a licensed state

Texas Opticians Registry Office

Texas Department of Health

1100 West 49th Street

Austin, TX 78756-3199

Phone: 512/ 834-6661

Fax: 512/ 834-6677

Virginia State Board of Opticians

Department of Commerce

3600 West Broad Street

Richmond, VA 23230-4917

Phone: 804/ 367-8500

- Passing of NOCE & state practical examinations
- 3 years apprenticeship, or,
- 2 years at approved opticianry program
- 18 years of age
- Opticianry licenses from other states will be recognized per Board approval

Washington Dispensing Opticians

Examining Committee

Department of Health

PO Box 47870

Olympia, WA 98504-7870

Phone: 360/ 236-4948

Fax: 360/ 586-0745

- Passing of state written & practical examinations
- 3 years apprenticeship, or,
- 2 years at approved opticianry program, or
- 5 years practicing optician in other state
- 18 years of age

| [Top](#) | [Back](#) | [Home](#) | [E-mail](#) |

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ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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October 2, 2003

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS
SUNSET REVIEW

October 2, 2003

Audit Control Number
08-20022-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(9), the Board of Dispensing Opticians is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Dispensing Options should not be extended. As discussed in the Report Conclusions section, various changes made in the opticianry statutes in 2002 have led to a situation that makes the board's long-term viability problematic. We recommend the legislature consider a registration process for opticians, but not extend the termination date and allow the board to go into its one-year wrap-up period.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

A handwritten signature in black ink that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function.....	3
Report Conclusions.....	5
Auditor Comments.....	9
Findings and Recommendations.....	13
Analysis of Public Need.....	17
Agency Responses	
Department of Community and Economic Development.....	23
Board of Dispensing Opticians	25

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dispensing Opticians (BDO) to determine if the termination date for the board should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if BDO should be reestablished. Currently, AS 08.03.010(c)(9) specifies that BDO will terminate on June 30, 2004. If no action is taken by the legislature, the board will have one year from that date to conclude its administrative operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed opticians.
4. To assess and report on the board's response to legislative concerns regarding use of, and alternatives to, a practical examination for licensing applicants as opticians.
5. To assess and report on actions taken in response to legislative concerns about charging licensees adequate licensure fees to cover the operating expenses of board.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of Dispensing Opticians and the registration of optician apprentices.
- Files and documentation related to individuals licensed as dispensing opticians and dispensing optician apprentices.
- Files and documentation related to individuals who applied for licensure as a dispensing optician.
- Minutes of board meetings, budget documents, and annual reports related to, or issued by, BDO.
- Annual reports issued by the board.
- Complaints filed with the Division of Occupational Licensing.

Additionally, we conducted interviews with Division of Occupational Licensing staff, a program manager with the U.S. Department of Labor, and members of the board, including the current board chair.

ORGANIZATION AND FUNCTION

Alaska Statute 08.71.010 establishes the Board of Dispensing Opticians (BDO). The board consists of five members, specified in statute to be made up of four licensed opticians and one public member appointed by the governor.

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

1. Registering dispensing optician apprentices.
2. Licensing opticians through examination or credentials.
3. Establishing, amending, or eliminating regulations that affect the standards of professional opticianry practice.

BOARD OF DISPENSING OPTICIANS
(As of June 30, 2003)

James D. Rothmeyer, Optician, Chair

Larry E. Harper, Optician

David G. Matthews, Optician

Roberta (Bobbie) Rawcliffe, Public Member

Cindy S. Tidd, Optician

4. Taking disciplinary actions in accordance with the Administrative Procedures Act when a person has violated dispensing opticians' statutes or regulations.

Licensed dispensing opticians, from a commercial perspective, are somewhat uniquely situated. The optician provides services that also can be provided by two other licensed professionals – optometrists and ophthalmologists (the latter being a licensed physician specializing in care of the eyes). State law specifies the rights, privileges, and obligations of dispensing opticians are designed not to *"limit or restrict a licensed physician or optometrist from the practices enumerated"* in the dispensing optician statutes. Additionally, statute provides that *"each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a Dispensing Optician licensed [under state law]."*

Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are affiliated with optometrists or ophthalmologists.

Department of Community and Economic Development (DCED), Division of Occupational Licensing (OccLic)

The Department of Community and Economic Development (DCED), Division of Occupational Licensing (OccLic), provides administrative and investigative assistance to the Board of Dispensing Opticians. This includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

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

Alaska Statute 08.01.087 empowers OccLic with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In 2002 the legislature extended the termination date of the Board of Dispensing Opticians (BDO) for only two years to June 30, 2004. This reflected the legislature's concern regarding various aspects of the board's operations and enabling statutes. These concerns were set out in both the 2002 legislation extending the termination date of the board and a letter of intent from the House Labor and Commerce Committee. We incorporated these issues into the scope of this sunset review and present conclusions regarding how the board responded to these specific legislative concerns.

As discussed in the box below, the legislature was concerned about the board not setting fees high enough to cover operating costs. Additionally, the legislature wanted BDO to research and report on options for conducting a practical examination for licensure as a dispensing optician.

Practical examination eliminated

A BDO subcommittee researched and analyzed alternatives for the practical examination. In addition to revising the state practical exam to make it more objective, the subcommittee reviewed other alternatives including the purchase of exam and grading services from a private sector contractor.

Eventually, consideration of these alternatives was abandoned. BDO essentially decided to acquiesce to the legislature's decision when it repealed the requirement of applicants to pass a practical examination for optician licensure. This action was taken as part of the 2002 sunset extension legislation. No final report was completed for submission to the Chair of the House Labor and Commerce Committee or the Legislative Auditor – as was required in the original letter of intent.

In place of the state practical exam, dispensing optician candidates now must pass, with a score acceptable to the board, the National Contact Lens Examiners (to dispense contacts) and the National Opticianry Competency exam (to dispense spectacles).

Legislature Concerned about Fees, Costs, and Examination Requirements

Section 1 of Chapter 58, SLA 2002 set out the following legislative findings and intent:

- a. The legislature finds that the Board of Dispensing Opticians has not collected sufficient fees to cover its costs and may not have been complying properly with AS 08.01.065(c).
- b. It is the intent of the legislature that during the next review of the board under AS 44.66.050, an analysis and determination be made about the extent to which the board is complying with AS 08.01.065(c) and what factors, if any, hamper the board's ability to cover its costs with fee collections.

A letter of intent issued by the House Labor Commerce Committee and attached to the legislation specified the:

*Board of Dispensing Opticians
research the options for conducting
a practical examination for licensure
as a dispensing optician. ...*

Despite large fee increases, BDO is currently, and prospectively will remain, in deficit

The board has been in a deficit position since FY 98. As reflected by the schedule on page 18 of this report, at the end of FY 03 the cumulative deficit was over \$22,000.¹

In recent years, relatively large increases in costs identified as "contractual" have had a significant impact to the continuing deficit. Most recently in FY03, BDO spent over \$3,800 for one-time examination fees to the National Academy of Opticianry and the Contact Lens Society of America. In the same fiscal year, the board spent almost \$3,000 on advertising and printing services which were primarily due to changes made in the regulations. Significant changes of this sort typify the unpredictable nature of contractual costs thus making fee setting difficult.

The department and board took action to reduce the cumulative deficit by increasing biennial licensing fees for both dispensing opticians and optician apprentices.² For the renewal period starting July 2003, fees for dispensing opticians and optician apprentices increased by \$210 (55%) and \$150 (300%), respectively. The FY 03 license renewal fees for opticians were \$590, up from the previous level of \$380. Prospectively, at this time BDO is facing renewal fees ranging from \$800-\$1,000 for the upcoming renewal cycle in June 2005 to eliminate the deficit and cover annual board operating costs.

Optimistically assuming that revenues for the next two years remain the same, and expenditures are reduced by 20%, BDO will still be facing a substantial continuing deficit at the end of the next biennial renewal period (2005). Given this conservative projection the Division of Occupational Licensing (OccLic), in conjunction with BDO, will need to increase fees to come into compliance with AS 08.01.065(c). For further discussion of this concern, see Recommendation No. 2.

Registration and reliance on national examination may be a viable licensing alternative

Under AS 44.66.050(d)(4) part of a sunset review is to provide "*an assessment of alternative methods of achieving the purposes of the program.*" In the prior audit we considered the

¹ Since licenses are renewed every two years, revenues generated by renewal fees alternate between high and low years. In license renewal years, the board does cover its operating costs, although the cumulative deficit continues. In the low revenue, non-renewal, years the costs are such that the deficit grows. Prior to the collection of biennial licensing renewal fees in FY 03, the board's cumulative deficit was \$38,700.

² The cumulative deficit decreased by approximately \$16,300 from FY 02 to FY 03.

merits of regulating opticians through a registration process and placing primary reliance on the successful completion of nationally recognized examinations to ensure competency.³

Most states do not "regulate" or license opticians at all. According to the Opticians Association of America, only 22 states license dispensing opticians.⁴ Texas has a voluntary registration program – which allows the individual to advertise as a "registered optician" if they have met certain established criteria related to competency.⁵ Such an approach may be a viable alternative for Alaska.

Under this approach an individual could advertise as being a registered optician, once they provided proof to OccLic that they had met the necessary testing and continuing education requirements. Presumably, such designation would have some commercial advantages, assuring consumers the practitioner had met an established standard of competency.

Changing over to a registration, rather than licensing, process would not necessarily result in the disappearance of the optician profession and its related services. The scope of practice for opticians, to a large extent if not completely, falls within the purview and scope of optometrist and ophthalmologist professions.⁶ Given such circumstances, jurisdictions in which opticians are not licensed or registered still have opticians working – often in conjunction with licensed optometrists.

Termination date for the board should not be extended

BDO is serving a public purpose by promoting the competent and safe practice of opticianry. The board does this by: establishing standards for licensed professionals; monitoring the manner in which they practice; and, has carried out these responsibilities in a satisfactory manner. A licensed optician provides enhanced quality control in the dispensing of spectacles and contact lenses. Having an individual with the training to evaluate the

³ The American Board of Opticianry (ABO) and the National Contact Lens Examiners are national, nonprofit organizations which conduct voluntary certification programs for dispensing opticians. The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively. While there are no prerequisites to take the examination, the ABO comments that candidates with two to three years of full-time, board-based, hands-on experience, or with formal optical schooling, are more successful in passing the examination.

⁴ Information from the internet website maintained by the Opticians Association of America is at: <http://www.oaa.org/navbar/4oamembers/8license/index.htm> (September 13, 2003)

⁵ An individual is allowed to register as an optician upon demonstrating they have seven classroom hours of recognized training prior to submitting a registration application and they had taken and passed, either or both, of the ABO examination or the National Contact Lens Examiners examination. See: <http://www.tdh.state.tx.us/hcqsl/plc/optician.htm#requirements> (September 13, 2003)

⁶ This situation is explicitly recognized in state law at AS 08.71.230(1) which states no part of the optician licensing statute is to be construed as limiting or restricting "a licensed physician or optometrist from the practices enumerated in [the opticianry statutes], and each licensed physician and optometrist has all the rights and privileges which may accrue under [the statutes] to dispensing opticians...."

prescription of lenses – either eyeglasses or contact lens – and assisting in the proper fitting is a valuable, though not essential, service to the public.

As reflected in both the Auditor Comments and Findings and Recommendations sections of this report, the future operational viability of the board is questionable. In the long term, the number of new applicants seeking licensure as opticians may be reduced significantly due to creation of the optician assistant designation. Combined with fiscal instability involving operating costs, the long-term viability of the board is problematic. Given these concerns, we recommend the legislature not extend the termination date for the board.

In our view, the public can be adequately protected by competition in the marketplace, ongoing supervision of assistants, or professional standards already established for practicing opticians and ophthalmologists.

By not passing any extension legislation, BDO would go into a wrap-up phase. In the one-year wrap-up period, we recommend that the board formally recognize the U.S. Department of Labor (USDOL) apprentice program in regulation – as a means for individuals to continue training to be opticians – under the supervision of practicing opticians.

Additionally, during this wrap-up period, the legislature may want to consider putting a registration system in place. Such a process would allow individuals who have passed one or both of the national licensing examinations to show proof and obtain an “endorsement” from the State of Alaska – allowing them to advertise as a registered optician. The statute could require the optician to renew their registration every two years by showing proof they have obtained a required amount of continuing professional education.

AUDITOR'S COMMENTS

In 2002 the legislature, in the process of extending the termination date of BDO, made a small but important change to the opticianry statutes. The legislature created a statutory designation of optician assistant, in addition to the paraprofessional optician apprentice that was already recognized in law.

Previously, eyewear salespersons, termed stylists, had to register as an apprentice

The number of individuals registered as optician apprentices have always been very disproportionate to the number of apprentices who eventually sought licensure as opticians. In recent years, there have been almost 200 registered apprentices on record at the Division of Occupational Licensing (OccLic); but, each year only four or five, at most, would apply to take the optician licensing examination.

This situation developed from the statutory requirement that all nonlicensed personnel, involved in fitting eyewear in optical shops, had to be registered as an optician's apprentice. This registration was required whether the customer sales representative, or as they are often referred to as "stylists," worked for an optician; optometrist, ophthalmologist, or a large nationally-affiliated chain store. As a result, individuals who had little or no interest in becoming a licensed optician had to register as an apprentice.⁷

Key distinction between apprentices and assistants involve standards of supervision

BDO wanted to be sure apprentices were supervised appropriately. The general intent of this public policy was apprentices would someday be licensed opticians and it was important they be appropriately supervised by whatever professional was responsible for providing the oversight. Accordingly, BDO adopted specific requirements⁸ about supervision, requiring the professional involved:

- (1) be physically present at the same site as the apprentice at least once per day and not be absent for more than two hours while the apprentice is performing dispensing optician tasks;*

⁷ The statutory designation of an optician assistant has had an immediate impact on the number of individuals registering as a dispensing optician apprentice. In FY 00 through FY 02, the number of individuals registering as apprentices averaged 35 each year. In FY 03 the number of individuals registering as an apprentice decreased to eleven (11). The decrease of registered apprentices is substantial, but the financial impact will be minimal because of higher apprentice registration fees.

⁸ See regulations at 12 AAC 30.125.

(2) frequently observe and review performance of assigned tasks; and,

(3) ensure correct performance of assigned tasks.

These requirements, especially the regulation requiring the supervising professional to be physically present on the premises for a specific period of time, are much more restrictive than the standards applicable to the new optician assistant designation.

Under the 2002 amendments to the opticianry statutes, assistants must be supervised to the extent necessary to provide "*needed direction, control, consultation, instruction, evaluation and personal inspection of the work performed.*"⁹ This statutory language gives the supervising professional much more discretion in the supervision of assistants than they have under BDO regulations for apprentices.

Relaxed supervision standards may lead to less demand for opticians, devaluing licensure

Most licensed opticians in Alaska are employed by, or are a contractor with, other eye care professionals – optometrists and ophthalmologists. A current board member has estimated that as many as 80% of opticians work for, or in conjunction with, these other two eye care professionals. One reason that many of these opticians are employed in such settings is this arrangement allows an optometrist or ophthalmologist to meet supervision requirements for apprentices in the selling and fitting of eyeglasses and contact lenses.

Under the new state law, an optometrist or ophthalmologist can employ and designate stylists and customer service representatives as assistants while reasonably asserting they provide the necessary "*direction, control, consultation, instruction...*" over the phone, by e-mail, or with intermittent face-to-face contact. Such an arrangement eliminates the need to be physically present or to rely on another qualified supervising professional such as an optician. As a result, optometrists and ophthalmologists have less incentive to hire or contract with an optician.

Less demand and high licensing fees may lead to many opticians opting out of licensure

The creation of the optician assistant designation will likely serve to undercut the need for apprentices and, in the long run, may substantially reduce the number of people seeking to be licensed as a dispensing optician. The reduced supervision standards for assistants, coupled with the prospect of continued large increases in licensing fees, may lead to a situation where currently-licensed opticians no longer see the value of remaining licensed. Additionally, in the long term, such disincentives would further discourage interested individuals from enrolling in apprentice programs – further reducing the prospective number of individuals seeking licensure.

⁹These supervision standards are set out in state law at AS 08.71.240(4).

Optician license devaluation seems to have little adverse effect on public health and welfare

Given the scenario previously discussed, our overarching concern is what impact, if any, does the opticianry statute changes have on the health, safety, and welfare of the public. Based on the number and type of complaints often made to OccLic, there is no obvious direct impact. We reviewed investigative case-file summaries for both the Board of Dispensing Opticians and the Board of Optometric Examiners for FY 02 and FY 03. There is no evidence showing that a minimally-supervised assistant's services as being inferior to those services provided by licensed opticians or registered apprentices.

The harm that unlicensed opticians can potentially cause the public does not appear to warrant state licensure. The presence of licensed opticians and well-supervised apprentices can save the public from loss of time, money, and general aggravation involved with making return visits to a prescribing professional to remedy improperly fitted glasses. However, the avoidance of these costs, discomforts, and hassles does not necessarily warrant state licensure and oversight.

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FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following two actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing.

When the 2002 legislature extensively revised the opticianry statutes, there were a few sections in the new statute that left inconsistent or vague requirements in place. We suggest BDO review these various sections of the statute. From this review, the board should develop proposed legislation to amend or delete these sections to better reflect current practices, regulations, and achieve the intended policy objectives. Specifically, we recommend review and revisions involving:

1. The amount of apprentice training hours necessary for licensure should be clarified. Currently, AS 08.71.110(a)(2)(A) states an individual must complete "*at least 1,800 hours of training as an apprentice...*" in order to qualify to receive a license from the board. In regulation, BDO specifies¹⁰ the individual complete a board-approved course, accumulate 1,800 hours of training, and pass the necessary examinations to be licensed in dispensing spectacles.

The regulations also state that in order for an individual to be licensed to dispense contact lenses they must complete an additional 1,800 hours and pass the relevant national examination. State law makes no distinction related to these endorsements. Under a plain reading of state law, an individual can be licensed as a dispensing optician with no reference to any limitation on what they can dispense and with 1,800 hours of apprentice training. This is not consistent with state regulation that requires 3,600 hours for full endorsement.

This discrepancy could lead to a situation where an individual, who met other licensing requirements including successful completion of required national examinations, can claim endorsements to dispense both contact lenses and spectacles after just 1,800 hours of apprentice training. The board could be open to legal action if it tried to enforce its regulatory requirements on such an individual. Since the change in the law, no one applying for licensure has challenged the board regarding this discrepancy.

As we recommended in the prior sunset review, the board, in conjunction with the legislature, reevaluated the reasonableness of the amount of apprenticeship training

¹⁰See regulations at 12 AAC 30.075.

necessary for licensure and significantly reduced the amount of apprentice training time required. Compared to the previous apprentice training requirement of 6,000 hours that the board had in place prior to FY 03 and the apprenticeship periods found in other jurisdictions, we agree the 3,600 hour requirement for both endorsements is a reasonable requirement.

The wording of the current statute does not clearly specify that 1,800 hours are required for each license endorsement. This leads to situations where the statute and the regulation are not congruently matched. The board should adopt language to clarify the apprenticeship training requirement, especially as it relates to the minimum number of training hours necessary for each type of endorsement.

2. Modification of apprentice registration requirements at AS 08.71.160. The creation of the optician assistant has had a significant impact on the opticianry profession. The impetus behind the change was to reduce the number of registered apprentices and associated board costs. The optician assistant position helped to accomplish those goals by segregating individuals who previously registered because it was a job requirement from those seeking professional licensure. The anticipated results from the statutory changes were evidenced by the immediate decrease in numbers of registered apprentices (66%) and a reduction of associated board costs, albeit slight. However, the continuing, apprentice registration requirements result in unnecessary administrative duties and costs to the board. This is especially true in light of the development of the U.S. Department of Labor (USDOL) optician apprenticeship program.

Since the 2002 legislative changes to the opticianry statutes, the board, in conjunction with USDOL officials, has developed and implemented a dispensing optician apprentice program. USDOL administers the program; the Opticians Association of Alaska is the sponsor. The program was designed specifically to meet Alaska's dispensing optician statutory and regulatory requirements. There are many advantages of the apprentice program including specific training guidance for individuals seeking licensure as a dispensing optician, better prepared optician candidates, and for employers, access to federal grants to help offset the cost of the apprentice. Currently, individuals must register with the state; however, USDOL registration and participation in the apprenticeship program is optional.

The board should modify the apprentice registration statute by adding a requirement in the opticianry regulations that apprentices register with USDOL and complete the optician apprenticeship program. Implementation of such changes will eliminate all administrative duties and costs to the board relating to apprentice registration. The USDOL program has been designed to meet the state's statutory and regulatory requirements. Additionally, the structure of the newly-designed apprentice program will facilitate a better prepared and more competent dispensing optician candidate. It should be a requirement that apprentices register with and participate in the USDOL program and the state requirement for apprentices to register should be eliminated.

3. Recognition, in statute, of a process to license individuals from other jurisdictions. Currently, an individual from another jurisdiction with licensing requirement experience that is less than Alaska requires, can only obtain licensure by participating in the state's apprenticeship process. This puts an undue burden on qualified individuals, new to the state, who worked in the profession for several years.

BDO has suggested that if individuals pass the American Board of Opticianry (ABO) master-level examination, the board would be willing to license these individuals to practice in Alaska. This testing is appropriate for individuals who possess dispensing optician experience gained in another jurisdiction that has licensing requirements less stringent than those required in Alaska.

Since more than half of the states do not license opticians, many individuals practicing in these states are often permitted to call themselves opticians by virtue of passing a national licensing examination. Because these individuals would not easily qualify for licensure in Alaska under the current statute, this represents a significant barrier for entry into the profession. Allowing these individuals to be licensed, by virtue of successfully completing the ABO advanced exam, BDO can make the profession more accessible while ensuring the individual possesses the necessary competence to practice.

Recommendation No. 2

The Division of Occupational Licensing (OccLic), in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit.

As discussed in the report conclusions section of this report, it is clear another increase in opticianry licensing fees is necessary to eliminate the cumulative deficit and meet annual operating costs of the board. Licenses are renewed every two years; therefore, the revenue generated in the renewal year must be sufficient to fund most of the board's costs for the nonrenewal or subsequent year. The recent increase in licensing renewal fees for dispensing opticians and optician's apprentices appears to be sufficient to cover the board's costs for the two-year period. Depending on the amount of revenue collected in the nonrenewal year, the increase licensing fee may also reduce a small portion of the board's continuing deficit.

BDO members object to some of the charges made to the board by Department of Law (DOL). In recent years DOL charged BDO with litigation costs it incurred relating to a national contact lenses distribution case. BDO reports DOL pursued this matter unilaterally, with no direction or request from the board. Although these charges to the board may have been services not approved by the board, they do not contribute significantly to the cumulative deficit.¹¹ The major contributing factor to the deficit is board costs have exceeded license renewal fees without BDO instituting necessary fee adjustments to cover costs. As a result, the deficit has continued to grow for several years.

¹¹ In FY 00 and FY 01, there were no charges from the Department of Law. In FY 02 and FY 03, legal costs were approximately \$5,500 and \$1,100, respectively.

Without further increases to the renewal licensing fee for dispensing opticians, the cumulative deficit will remain and the board will likely meet annual operating costs – only.

Alaska Statute 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs for the occupation. We recommend that the board and OccLic review the regulatory costs and licensing fees to ensure that BDO licensing fees are sufficient eliminate the cumulative deficit and to meet annual operating costs.

A ANALYSIS OF PUBLIC NEED

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

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

The Board of Dispensing Opticians (BDO), by implementation of prior audit recommendations, has operated in the public interest. The current BDO is responsive to outside suggestions and is conscientious of its fiduciary responsibilities. Further, BDO, in conjunction with USDOL, has developed and implemented an optician apprenticeship program. As discussed in Recommendation No. 1 we encourage the board to mandate adoption of the USDOL apprenticeship program to replace the current state apprentice registration process.

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

Most of BDO's revenue is from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BDO receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the OccLic for revenues and expenditures associated with BDO. We did not audit this information, but present it below for general information purposes.

Alaska Statute 08.01.065(c) requires "...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As the schedule on the next page reflects, the board was running a substantial deficit at the end of FY 03. As discussed in Recommendation No. 2, the Division of Occupational Licensing should increase fees substantially to bring BDO into compliance with state law.

State of Alaska
Board of Dispensing Opticians
Schedule of License Revenues and Board Expenditures
FY 00 - FY 03
(Unaudited)

	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>
Revenue	\$ 46,500	\$ 17,300	\$ 32,700	\$ 11,800
Direct Expenses				
Personal Services	13,900	19,200	14,200	16,500
Travel	1,300	2,600	3,400	4,800
Contractual	9,300	8,900	2,900	2,300
Supplies	200	-	100	-
Equipment	-	-	-	-
Total Expenses	<u>24,700</u>	<u>30,700</u>	<u>20,600</u>	<u>23,600</u>
Indirect Expense	<u>5,500</u>	<u>3,800</u>	<u>4,900</u>	<u>5,000</u>
Total Expenses	<u>30,200</u>	<u>34,500</u>	<u>25,500</u>	<u>28,600</u>
Annual Surplus (Deficit)	<u>16,300</u>	<u>(17,200)</u>	<u>7,200</u>	<u>(16,800)</u>
Beginning Cumulative Surplus (Deficit)	<u>(38,700)</u>	<u>(21,500)</u>	<u>(28,700)</u>	<u>(11,900)</u>
Unallocated Administrative Indirect Revenue	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (22,400)</u>	<u>\$ (38,700)</u>	<u>\$ (21,500)</u>	<u>\$ (28,700)</u>

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

All of BDO's board meetings had time available for public comment.

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

BDO, while not necessarily endorsing the statutory changes made by the 2002 legislature, did work constructively with legislative staff to develop changes in state law related to the opticianry profession.

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

The location, date, and time of upcoming meetings and exams were advertised in Alaskan newspapers, as well as on the Board of Dispensing Opticians' web page with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside suitable time for the board to receive public comment. Minutes from the meetings of the board reflect public participation at various meetings.

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

During the 48-month period from July 1, 1999 through June 30, 2003, OccLic opened eight investigative cases related to individuals certified by the board. None of the cases involved complaints made by clients or individuals from the general public. Six of the complaints were opened by OccLic as a result of a site visit/shop inspection. One of the complaints was made by an optometrist. Only one complaint appears to have originated from a member of the general public. Five of the complaints involved unlicensed practice by dispensing opticians, three of which were optician apprentices.

Of the seven cases closed as of the date of our review, two resulted in licensure action involving Memorandums of Agreement. Of the remaining cases, one was closed finding no violation, three were closed with warnings issued by BDO, and one by compliance. The one case not closed, as of the date of our review, is still being actively investigated even though it was opened in May 2001.

We have reviewed the nature and extent of complaints filed involving dispensing opticians. In our view OccLic, in conjunction with the BDO, has proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

There were no complaints filed with the Office of the Ombudsman or the Office of Victims' Rights for the period under review.

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

The table below summarizes licensing activity for the prior four fiscal years, listing the number of new licenses issued each year for each license type, as well as the total number of current certificates. The number of individuals registering as dispensing opticians has remained stable, while the number of apprentice registrants has decreased significantly as a result of Chapter 58 SLA 2002 (see discussion in both Auditor Comments and Report Conclusions section of this report).

	New Licenses Issued				Total Current Licensees/ Registrants
	FY 00	FY 01	FY 02	FY 03	
Dispensing Optician	2	3	3	4	107
Apprentice	40	32	34	11	191

Once an individual registers as an apprentice, they remain registered with OccLic indefinitely; there is no renewal requirement for the apprentice license. Apprentices are required to file any supervisory changes and submit the appropriate fee.

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

We did not find any evidence that BDO was not complying with state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.

As discussed in Recommendation No. 1, legislation is needed to clarify various aspects of the opticianry statutes. Changes needing to be addressed:

1. The discrepancy between statute and regulation suggests that applicants may become licensed opticians with only 1,800 hours of registered practical experience. For an individual to be licensed as a dispensing optician with an endorsement to dispense both eyeglasses and contact lenses, they would need 3,600 hours of experience. Currently, this distinction is not made clear in state law.

2. The need for apprentices to continue registering with the Division of Occupational Licensing. With the creation of the optician assistant classification and establishment of an apprenticeship program administered by USDOL, the need for individuals to formally register as apprentices with the Division of Occupational Licensing is no longer necessary. Rather, as a condition for being licensed as a dispensing optician the statute should be modified to require applicants to complete a board-recognized apprenticeship program. Further, opticianry regulations should be developed requiring apprentices to register with USDOL and complete the optician apprenticeship program.
3. The need to recognize in statute a procedure available for individuals, who practiced as a dispensing optician in other states with licensing requirements less stringent than Alaska, to be licensed as dispensing opticians through the successful completion of a national "masters" examination.

As discussed in Recommendation No. 2, fees should again be increased to come into compliance with state law.

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