

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10991 HOUSE RULES



# RECORDS CERTIFICATION



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*William J. Carter*

\_\_\_\_\_  
Signature of Camera Operator

*8/11/2005*

\_\_\_\_\_  
Date

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**LONGEVITY  
POLICY  
LEGISLATIVE  
EMPLOYEES**

# Alaska State Legislature

## House of Representatives



State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

#### MEMORANDUM

TO: Suzi Lowell, Chief Clerk  
Alaska House of Representatives

FROM: Representative Norman Rokeberg, Chairman  
House Rules Committee

DATE: January 28, 2003

RE: House Rules Committee Meeting Schedule

A handwritten signature in black ink, appearing to read "Norman Rokeberg", written over the "FROM" field of the memorandum.

The House Rules Committee will meet as follows:

Tuesday, February 4, 2003  
1:30 p.m., Fahrenkamp Room (Room 203)

Topic: Organizational Meeting  
Consideration of Proposed Change in Longevity Policy in the  
Senate/House Employment Policy

# Alaska State Legislature

## Legislative Affairs Agency



Office of the Executive Director


Terry Miller Legislative Office Building, Room 217

Mailline Address: State Capitol, Rm. 3 Juneau, Alaska 99801-1182 Phone (907) 465-3800 Fax (907) 465-3234

### MEMORANDUM

TO: Senator John Cowdery, Chairman  
Senate Rules Committee

Representative Norman Rokeberg, Chairman  
House Rules Committee

FROM: Pam Varni, Executive Director 

DATE: January 25, 2003

SUBJECT: Change in Longevity Policy

The Senate/House Employment Policy that has been in effect since 1988 has worked well with the exception of the longevity steps of J-M. According to the policy "Steps J-M will be granted in accordance with AS 39.27.022."

AS 39.27.022(d) permits a committee of the Legislature to determine whether longevity pay increments will be granted under AS 39.27.022 to employees under the authority of that committee.

Because of the problems we have had over the years with this section and also to retain professional long-term staff without penalizing them when they switch ranges because of budget constraints or the individual Legislator does not have that range available to them attached is a proposed new longevity policy.

For example, what happens to a staff person with longevity is they might be at a Range 19K and then be lowered to a Range 17. According to the existing policy we must place them at a Range 17F and not a 17K. This is because the policy states continuous service.

The House and Senate Rules Committees are respectfully requested to make this change in the longevity policy. Other committees will be asked to adopt this same policy so it is consistent throughout the Legislative Branch.

Also attached is a memo from Tam Cook, Director of Legal Services agreeing that this portion of the policy can be changed by a legislative committee.

Enclosures

### SENATE RULES COMMITTEE MOTION

MOTION: I move that the Senate Rules Committee not adopt AS 39.27.022 – Pay increments for longevity for State service but instead adopt their own plan which better applies to legislative service. This new policy is before the Members and would be effective January 16, 2003.

### HOUSE RULES COMMITTEE MOTION

MOTION: I move that the House Rules Committee not adopt AS 39.27.022 – Pay increments for longevity for State service but instead adopt their own plan which better applies to legislative service. This new policy is before the Members and would be effective January 16, 2003.

**PROPOSED SENATE/HOUSE LONGEVITY POLICY**  
**EFFECTIVE JANUARY 16, 2003**

- Step A - No prior legislative experience
- Step B - Two legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step C - Four legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step D - Six legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step E - Eight legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step F - Ten legislative sessions of at least 100 days each, or one full year with the legislature at comparable or higher level.
  
- Step J - Fourteen legislative sessions of at least 100 days each, or two full years with the legislature at a comparable or higher level.
- Step K - Eighteen legislative sessions of at least 100 days each, or two full years with the legislature at a comparable range or higher level.
- Step L - Twenty-eight legislative sessions of at least 100 days each, or five full years with the legislature at a comparable or higher level.
- Step M - Thirty-six legislative sessions of at least 100 days each, or four full years with the legislature at a comparable or higher level.

## CURRENT SENATE/HOUSE LONGEVITY POLICY

- Step A - No prior legislative experience
- Step B - Two legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step C - Four legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step D - Six legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step E - Eight legislative sessions of at least 100 days each, or one full year with the legislature at a comparable or higher level.
- Step F - Ten legislative sessions of at least 100 days each, or one full year with the legislature at comparable or higher level.

Must have 7 years of **continuous** service to pass "F" step.

- Step J - Must be at "F" step for two **continuous** years to go to "J" step.
- Step K - Must be at "J" step for two **continuous** years to go to "K" step.
- Step L - Must be at "K" step for five **continuous** years to go to "L" step.
- Step M - Must be at "L" step for four **continuous** years to go to "M" step.

### AS 39.27.022. Pay Increments For Longevity in State Service.

(a) Pay increments, computed at the rate of 3.75 per cent of the employee's base salary, shall be provided after an employee has remained in the final step within a given range for two years, provided that the **employee has worked continuously for the state for seven years** and provided that the current annual rating by the employee's supervisors is designated as "good" or higher.

(b) Additional increments, each computed at the rate of 3.75 per cent of the employee's base salary, shall be provided under the same restrictions as provided in (a) *of this section when the employee has remained in the final step for four, nine and thirteen years.*

(c) Longevity pay increments provided for in (a) and (b) of this section are approved under AS 39.25.150 (2) as an amendment to the pay plan for employees of the state.

(d) This section applies to employees of the legislature only if the committee responsible for adopting employment policies concerning the employee adopts a written policy that the section applies. This section applies to the employees of the office of the ombudsman only if the ombudsman adopts a policy that the section applies. This section applies to the employees of the office of victims' rights only if the victims' advocate adopts a policy that the section applies.

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

SENATE-HOUSE JOINT JOURNAL SUPPLEMENT

3/22/88

TUESDAY

No. 17

EMPLOYMENT POLICY

SENATE/HOUSE LEGISLATIVE EMPLOYEES

Effective Date: July 1, 1988

House approved 3/22/88  
Journal page 26.

Senate approved 3/24/88  
Journal page 3.

EMPLOYMENT POLICY  
SENATE/HOUSE LEGISLATIVE EMPLOYEES

INTRODUCTION

This Policy governs the employment of those legislative employees under the authority of the Senate or House Rules Committees during the legislative session and under the authority of the Senate President or Speaker or the House during the interim. These employees include staff to individual legislators, staff to standing and special committees, the staff of the Senate Secretary's and Chief Clerk's offices and those employees under the direct supervision of the Rules Committees, i.e. employees in the legislative lounge, the xerox machine operators and the staffs of the Sergeant at Arms.

These Senate/House legislative employees are to be hired under the following provisions:

Within the budget constraints, the Rules Committee Chairman during session and the President and Speaker during interim will determine the number of employees and at what pay ranges each of the individual legislators and Committee Chairmen will be authorized to hire and for what period of time.

Employees will be selected by and serve at the pleasure of the individual legislator.

The individual legislator will submit a request for the authorization to hire to their respective Rules Chairman during session and to the Senate President or Speaker of the House as appropriate during interim. The authorization to hire will be forwarded to the LAA Personnel Office. At that time, the employee will be able to complete the necessary paperwork and be put on the payroll.

SALARY SCHEDULE

	RANGE
Chief Clerk Senate Secretary	22, 21
Legislative Assistant	21, 20
Administrative Assistant Assistant Chief Clerk Assistant Senate Secretary Sergeant at Arms	19, 18

EMPLOYMENT POLICY  
SENATE/HOUSE LEGISLATIVE EMPLOYEES

Enrolling Clerk	18, 17
Engrossing Clerk	
Assistant Enrolling Clerk	17, 16
Assistant Engrossing Clerk	
Assistant Sergeant at Arms	
Researcher	
Lounge Supervisor	
Machine Operator	15, 14, 13
Legislative Secretary	
Clerk	12, 11, 10
Collator	
Lounge Attendant	
Xerox Operator	
Messenger	10, 9
Page	

BENEFITS

Except as provided for hourly employees, all employees will be paid on a monthly basis on the salary schedule in effect for classified and partially exempt State employees. (See AS 39.27.011(a).)

NOTE: No commitment for the continuation of employment is to be assumed. Employees serve at the pleasure of their respective supervisor and upon the authorization of the appropriate authority.

Employees do not receive a geographic pay differential, either during session or interim.

All monthly paid employees receive full medical, retirement and leave benefits. Monthly paid employees do not receive compensatory time or overtime and are on call 7 days per week.

Employees are not compensated for transportation or moving expenses.

Hourly pay based on the current salary schedule will also be available for short term employment. Hourly employees may receive retirement benefits.

LONGEVITY

Longevity may be granted effective the 16th of the month following an employee's eligibility.

EMPLOYMENT POLICY  
SENATE/HOUSE LEGISLATIVE EMPLOYEES

Longevity increases are determined according to the following criteria:

- Step A - No prior legislative experience.
- Step B - Two legislative sessions of a least 100 days each or one full year with the legislature at a comparable or higher level.
- Step C - Four legislative sessions of a least 100 days each or one full year with the legislature at a comparable or higher level.
- Step D - Six legislative sessions of a least 100 days each or one full year with the legislature at a comparable or higher level.
- Step E - Eight legislative sessions of a least 100 days each or one full year with the legislature at a comparable or higher level.
- Step F - Ten legislative sessions of a least 100 days each or one full year with the legislature at a comparable or higher level.

Steps J-M will be granted in accordance with AS 39.27.022.

A comparable level of service is defined as work performed in a position with similar duties and responsibilities and a guideline may be as follows:

- Ranges 21,20
- Ranges 19,18
- Ranges 17,16
- Ranges 15,14,13
- Ranges 12,11,10,9

When promoted to a position with a higher range that is not comparable, step placement above Step A may be granted in order that the employee receive, in effect, a one step increase. Subsequent longevity steps may be granted upon completion of additional qualifying experience.

Those employees who would not be eligible under the revised Policy for the step which they are currently being paid will retain that step until they would be eligible for the next step under the revised Policy.

LEAVE

Legislative employees are subject to the statutes regarding the accrual and use of personal leave. All employees who receive leave benefits accrue leave at a rate based on their prior service in positions with leave benefits. The Legislative Affairs Agency Personnel Office should be notified by the supervisor when an employee is absent either in a memorandum or with submission of a leave slip. Leave slips should be completed by the employee, signed by the employee's supervisor and submitted to LAA Personnel immediately upon the employee's return to work.

EMPLOYMENT POLICY  
SENATE/HOUSE LEGISLATIVE EMPLOYEES

Employees accrue leave time on the following basis:

- 2 days (15 hours) for each full monthly pay period for employees with 0-2 years of service in a leave accruing position.
- 2.25 days (16.075 hours) for each full monthly pay period for employees with 2-5 years of service in a leave accruing position.
- 2.5 days (18.75 hours) for each full monthly pay period for employees with 5-10 years of service in a leave accruing position.
- 3 days (22.5 hours) for each full monthly pay period for employees with 10 or more years of service in a leave accruing position.

This Policy is effective July 1, 1988.

EXCEPTION: Those current employees who would qualify under the revised Employment Policy for a longevity step increase January 16, 1988 are authorized to receive the increase retroactive to that date.

# 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

January 23, 2003

**SUBJECT:** Longevity increases for employees approved by the Rules Committees

**TO:** Pam Varni  
Executive Director

**FROM:** Tamara Brandt Cook  
Director

TBC

You ask for language that could be considered and adopted by each of the Rules Committees that would apply to employees who are hired and serve with the approval of those committees and that would treat longevity pay increments in the way that step increases are handled under the Employment Policy adopted by both the House and the Senate. I suggest the following:

### HOUSE RULES COMMITTEE AND SENATE RULES COMMITTEE LONGEVITY PAY INCREMENT POLICY

The "Employment Policy - Senate/House Legislative Employees" adopted by both the House of Representatives and the Senate, effective July 1, 1988, specifically provides: "Longevity may be granted effective the 16th of the month following an employee's eligibility." The Policy sets out the criteria for determining increases for steps A - F and states "Steps J - M will be granted in accordance with AS 39.27.022." AS 39.27.022(d) permits a committee of the legislature to determine whether longevity pay increments will be granted under AS 39.27.022 to employees under the authority of that committee. The House Rules Committee and the Senate Rules Committee find that AS 39.27.022 is not appropriately tailored to meet the needs of legislative staff who are hired and serve under the authority of the Rules Committees. Therefore, the House Rules Committee and the Senate Rules Committee reject application of AS 39.27.022 and adopt the following longevity pay increments for employees under the authority of the Rules Committees:

- Step J - Fourteen legislative sessions of at least 100 days each or two full years with the legislature at a comparable or higher level.
- Step K - Eighteen legislative sessions of at least 100 days each or two full years with the legislature at a comparable or higher level.
- Step L - Twenty-eight legislative sessions of at least 100 days each or five full years with the legislature at a comparable or higher level.

Pam Varni  
January 23, 2003  
Page 2

Step M - Thirty-six legislative sessions of at least 100 days each or four full years with the legislature at a comparable or higher level.

TBC:med  
03-048.med

**HB**

**120**

# Alaska State Legislature

## House of Representatives



State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

Official Business

### COMMITTEE ON RULES Representative Norman Rokeberg, Chairman

#### MEMORANDUM

TO: House Rules Committee Members

FROM: Rep. Norman Rokeberg, Chairman  
House Rules Committee

DATE: April 10, 2003

RE: HB 120, Amendment 2

A handwritten signature in black ink, appearing to read "Norm Rokeberg".

Attached are CS HB 120 (RLS) and a memorandum from Mike Ford, Legal Services.

I have checked with the sponsor of the amendment (Rep. McGuire) and the sponsor of the legislation (Rep. Coghill) and both are satisfied with the amendment. Therefore, I have filed the committee substitute with the Clerk's Office.

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

AMENDMENT

OFFERED IN THE HOUSE RULES

BY REPRESENTATIVE COGHILL

TO: HB 120\Version V

- 1 Page 2, line 19.
- 2 Insert:
- 3 (3) is not a contract of insurance under Alaska law.

# 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

April 10, 2003

**SUBJECT:** Service contracts as insurance (CSHB 120(RLS))

**TO:** Representative Norman Rokeberg  
Attn: Janet

**FROM:** Michael F. Ford   
Legislative Counsel

The CS you requested is attached. I included amendment #2 adopted by the committee, but did so in a different manner than that adopted by the committee. I included the language of amendment #2 as a new clause in the beginning of subsection (e) to avoid putting substantive provisions in the definition.

Please contact me if you have further questions.

MFF:mdr  
03-071.mdr

Enclosure:

**AMENDMENT**

**TO: CS HB 120 (RLS) BY: Rokeberg**  
**23-LS0537\Ford, 4/8/03**

**OFFERED BEFORE: The House Rules Committee**

**Page 2, line 18:**

**DELETE: “, or a part of the household structure”**

**INSERT: after “system,”, insert “or”**

**Line 18 would then read:**

**“limited to a household system or appliance.”**

# FISCAL NOTE

STATE OF ALASKA  
2003 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 120 (RLS)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
Title Excluding Service Contracts from Reg BRU Insurance (116)  
Component Insurance  
Sponsor Rep. Coghill  
Requester House Rules Component No. 354

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2003) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Janet S. Seitz, Staff  
Division: House Rules Committee  
Approved by: Representative Norman Rokeberg, Chairman  
Agency: House Rules Committee

Phone (907) 465-3764  
Date/Time 4/9/03 7:52 PM  
Date 4/9/2003

◇◇◇ A Quick Fax Letter ◇◇◇  
**CHARTRAND LAW OFFICE**

130 N. Cherry, Suite 202 • Olathe, KS 66061 • Phone: 913-768-4700 • Fax: 913-768-4900  
24 hour voice mail/wireless phone 913-269-4701  
E-mail: CHARTLAW @ aol.com

April 10, 2003

From: Arthur J. Chartrand, Esq.

9:35 AM CST

To: Janet

AT: Rules committee

Voice Phone 907-465-4968

FAX # 907-465-2040

Temp Fax

Fax Home

Pages to follow: 2

Re: HB 120

Dear Janet:

Thanks for the teleconference yesterday. Again we fully support HB 120 as is and desire it being adopted. Unfortunately, the DOI has just not afforded itself an education yet to fully understand this industry and all the new thinking since NAIC declared these not to be the business of insurance. I think I made some limited progress with staffers there this week, but they clearly are misinformed on the status of the industry and current legal thinking on what is insurance.

Attached is the Mississippi law signed into law just a few weeks ago. We fully expect similar type law to be enacted within weeks in Ohio, and related proposals to effectively accomplish the same in Oregon and Nevada. This comes on clear and total trend in recent years of South Dakota, North Dakota, Idaho and Montana and nearly passed measure in New Hampshire--the latter tabled action until 2004 but indications are it will easily pass it out in 2004. There remain less than a handful of states with remnants of Insurance Code treatment and NO STATE in over ten years has taken any measure to declare service contracts to be insurance. The remaining confusion is largely based upon the incorrect notion of a "home warranty." "Warranty" is a generic marketing term covering a market which is almost entirely of prepaid household service contracts.

Two suggestions if possible and if will not hinder adoption:

1.) Add clear statement below E:

**"Said contracts as defined above are not contracts of insurance under Alaska law. Exemption from the code is great, but this clause forecloses future arguments and is the NAIC position.**

2.) We would prefer the "part of a household structure" language remain only to extent that some household service contacts do provide to service or repair leaks in roofing systems. This is a valuable consumer benefit and adds little if any to cost of contract. Some states simply add a clause saying "and may cover service, repair or replacement to roofing systems." The term "household system" may not be enough for those later to conclude roof systems allowed because may argue roof systems are structural part of house.

This still leaves a large and important distinction between household service contracts and true "home warranties" that are often offered by builders or others that purport to cover the entire house structure. Thank you. I would appreciate it if we could be kept apprised of developments. We are willing to help in any way.

Visit us at [WWW.CHARTLAW.COM](http://WWW.CHARTLAW.COM)



MS Just Passed

HOUSE BILL NO. 1073

AN ACT TO DEFINE THE TERM "SERVICE CONTRACT"; TO PROVIDE THAT SERVICE CONTRACTS ARE NOT A CONTRACT OF INSURANCE UNDER MISSISSIPPI LAW AND IS EXEMPT FROM TITLE 83, MISSISSIPPI CODE OF 1972; TO PROVIDE THAT SERVICE CONTRACTS ARE SUBJECT TO THE MISSISSIPPI CONSUMER PROTECTION ACT; TO REPEAL SECTIONS 83-57-1 THROUGH 83-57-79, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE REGULATION OF HOME WARRANTIES BY THE COMMISSIONER OF INSURANCE; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. (1) The terms "service contract," "home warranty" or "home service contract," as used in this section, means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement or maintenance of property or to reimburse, in whole or in part, the owner of such property for the repair, replacement or maintenance of property if so operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear. A service contract may contain a provision for incidental payment under such contract where service, repair or replacement is not feasible or economical.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make and administration of a service contract is not a contract of insurance under Mississippi law and is exempt from the provisions of Title 83, Mississippi Code of 1972.

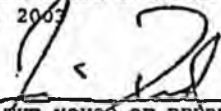
(3) Service contracts shall be subject to the provisions of the Mississippi Consumer Protection Act, Section 75-24-1 et seq.

(4) Nothing contained herein shall repeal or alter the regulation of vehicle service contracts currently defined and regulated under Section 83-65-101 et seq.

SECTION 2. Sections 83-57-1, 83-57-3, 83-57-5, 83-57-7, 83-57-9, 83-57-11, 83-57-13, 83-57-15, 83-57-17, 83-57-19, 83-57-21, 83-57-23, 83-57-25, 83-57-27, 83-57-29, 83-57-31, 83-57-33, 83-57-35, 83-57-37, 83-57-39, 83-57-41, 83-57-43, 83-57-45, 83-57-47, 83-57-49, 83-57-51, 83-57-53, 83-57-55, 83-57-57, 83-57-59, 83-57-61, 83-57-63, 83-57-65, 83-57-67, 83-57-69, 83-57-71, 83-57-73, 83-57-75, 83-57-77 and 83-57-79, Mississippi Code of 1972, which provide for the regulation of home warranties by the Commissioner of Insurance, are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage, and shall be applicable to all proceedings pending before the Department of Insurance or the courts of this state on the effective date of this act.

PASSED BY THE HOUSE OF REPRESENTATIVES  
February 6, 2003

  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

PASSED BY THE SENATE  
March 6, 2003

  
PRESIDENT OF THE SENATE

APPROVED BY THE GOVERNOR

  
GOVERNOR

3/14/03 AT 5:15 AM.

# Alaska State Legislature

House of Representatives



Official Business

**COMMITTEE ON RULES**  
**Representative Norman Rokeberg, Chairman**

State Capitol, Rm. 214  
Juneau, Ak 99801-1182  
(907) 465-3764

## **HOUSE RULES COMMITTEE FILES FOR APRIL 10, 2003 MEETING**

**Attached are:**

1. **CSHB 120 (RLS), 23-LS0537\V, Ford, 4/8/03. Change from last RLS draft is on page 2, lines 22-27, basically the addition of lines 26-27.**
2. **Fiscal note, CSHB 120 (RLS)**

**Please bring the following files to the meeting tomorrow:**

**HB 120  
HCR 7  
HCR 16**

**Thank you.**

23-LS0537\V  
Ford  
4/8/03

**CS FOR HOUSE BILL NO. 120(RLS)**

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

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE COGHILL**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act excluding service contracts from regulation as insurance; relating to insurance  
2 licensing for motor vehicle service contracts and home warranties; and providing for an  
3 effective date."

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

5 \* Section 1. AS 21.03.021 is amended by adding a new subsection to read:

6 (e) This title does not apply to a service contract offered, issued for delivery,  
7 delivered, or renewed in this state. In this subsection, "service contract"

8 (1) means a contract or agreement for a separate or additional  
9 consideration, for a specific duration, to

10 (A) maintain, service, repair, or replace tangible personal  
11 property, or to indemnify for repair, replacement, or maintenance, for an  
12 operational or structural failure due to a defect in materials or workmanship or  
13 normal wear and tear, with or without additional provision for incidental  
14 indemnity payments when service, repair, or replacement is not reasonably or

1 commercially feasible;

2 (B) repair, replace, or maintain tangible personal property  
3 damaged as a result of power surges or as a result of accidental damage from  
4 the handling of property damaged by power surges; or

5 (C) repair, replace, or maintain household consumer goods,  
6 household appliances, and household systems, including damage resulting  
7 from operational or structural failure due to a defect in materials or  
8 workmanship or normal wear and tear;

9 (2) does not include

10 (A) mechanical breakdown insurance;

11 (B) a contract that requires an indemnity payment per incident  
12 and the payment exceeds the purchase price of the property serviced;

13 (C) retainers paid to licensed attorneys;

14 (D) insurance on a motor vehicle subject to registration under  
15 AS 28.10.011; or

16 (E) a home warranty; in this subparagraph, "home warranty"  
17 means a warranty that covers the entire home and does not include a warranty  
18 limited to a household system, appliance, or a part of the household structure.

19 \* Sec. 2. AS 21.27.010(h) is amended to read:

20 (h) This chapter does not apply to a person

21 (1) licensed to practice as an attorney at law while the person is acting  
22 as an attorney at law; or

23 (2) who sells, solicits, or negotiates a

24 (A) service contract on a motor vehicle subject to  
25 registration under AS 28.10.011; or

26 (B) home warranty; in this subparagraph, "home  
27 warranty" has the meaning given in AS 21.03.021(e)(2)(E).

28 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 120 (RLS)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Community & Economic Development  
 Title Service Contract Sales Are BRU Insurance (116)  
Not Insurance Component Insurance  
 Sponsor Representative Coghill  
 Requester House Rules Component No. 354

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (1004)</b>	<b>(18.0)</b>	<b>(18.0)</b>	<b>(18.0)</b>	<b>(18.0)</b>	<b>(18.0)</b>	<b>(18.0)</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF (Premium Taxes)						
1005 GF/Program Receipts						
1037 GF/Mental Health						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would exempt service contracts from the definition of insurance, therefore, insurance companies servicing them will no longer pay premium taxes. If this occurs the division estimates a loss of up to \$18,000.00 per year in premium taxes, but most likely a lesser amount.

Prepared by: Linda S. Hall Phone 907-269-7900  
 Division Insurance Date/Time 4/8/03 5:46 PM  
 Approved by: Commissioner Edgar Blatchford Date 4/8/2003  
 Agency Community & Economic Development

**CS FOR HOUSE BILL NO. 120(RLS)**

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

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE COGHILL**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act excluding service contracts from regulation as insurance; relating to insurance**  
2 **licensing for motor vehicle service contracts; and providing for an effective date."**

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

4 **\* Section 1.** AS 21.03.021 is amended by adding a new subsection to read:

5 (e) This title does not apply to a service contract offered, issued for delivery,  
6 delivered, or renewed in this state. In this subsection, "service contract"

7 (1) means a contract or agreement for a separate or additional  
8 consideration, for a specific duration, to

9 (A) maintain, service, repair, or replace tangible personal  
10 property, or to indemnify for repair, replacement, or maintenance, for an  
11 operational or structural failure due to a defect in materials or workmanship or  
12 normal wear and tear, with or without additional provision for incidental  
13 indemnity payments when service, repair, or replacement is not reasonably or  
14 commercially feasible;

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(B) repair, replace, or maintain tangible personal property damaged as a result of power surges or as a result of accidental damage from the handling of property damaged by power surges; or

(C) repair, replace, or maintain household consumer goods, household appliances, and household systems, including damage resulting from operational or structural failure due to a defect in materials or workmanship or normal wear and tear;

(2) does not include

(A) mechanical breakdown insurance;

(B) a contract that requires an indemnity payment per incident and the payment exceeds the purchase price of the property serviced;

(C) retainers paid to licensed attorneys;

(D) insurance on a motor vehicle subject to registration under AS 28.10.011; or

(E) a home warranty; in this subparagraph, "home warranty" means a warranty that covers the entire home and does not include a warranty limited to a household system, appliance, or a part of the household structure.

\* Sec. 2. AS 21.27.010(h) is amended to read:

(h) This chapter does not apply to a person

(1) licensed to practice as an attorney at law while the person is acting as an attorney at law; or

(2) who sells, solicits, or negotiates a service contract on a motor vehicle subject to registration under AS 28.10.011.

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

# Alaska

## Department of Community and Economic Development

### Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: [Insurance@dced.state.ak.us](mailto:Insurance@dced.state.ak.us) • Website: [www.dced.state.ak.us/insurance/](http://www.dced.state.ak.us/insurance/)

April 1, 2003

Representative John Coghill  
House Majority Leader  
State Capitol Room 204  
Juneau, Alaska 99801

Dear Representative Coghill:

Attached please find a partial list of companies who sell extended warranties in Alaska. The list has three categories, extended warranty other than auto, extended warranty mechanical breakdown and extended warranty auto service contract. As you can see, the premium tax breakdown for home and auto warranties are split almost evenly.

This information was available at the last hearing, however, the bill passed out of committee without testimony. As previously stated, insurance companies do not segregate these premium amounts on their annual reports. Therefore we called the top five, plus a few others as time permitted, before the last hearing to gather the information you requested on auto and home warranty premiums.

Our concern for home warranties is two-fold; the impact the exemption has on premium taxes and more importantly, the lack of protection available to consumers when these products are excluded from being considered insurance products. When considered an insurance product, the division is able to assist consumers if questions or problems about their coverage arise. When service contracts are not considered insurance products, consumers must use their own resources to resolve problems with the service contract provider.

We are willing to consider more encompassing language to replace "portable air conditioners, heaters and hot tubs" if appropriate terminology can be found that clearly describes what is to be exempt. Without clear language the division will need to continue to respond to

questions to clarify what products are exempt and what products are not.

I hope this information is helpful. I am available to discuss this at your convenience.

Sincerely,

A handwritten signature in cursive script that reads "Stan Ridgeway". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Stan Ridgeway  
Deputy Director

**Extended Warranty Other Than Auto**

	Premiums	
	Written	Tax
<b>Top 5 taxpayers in this category:</b>		
American Bankers Ins Co fo Florida	19,238.00	519.43
Balboa Insurance Co	-	-
Continental Casualty Co	-	-
Insurance Co of the State of PA	-	-
Gulf Ins Co	-	-
	<u>19,238.00</u>	<u>519.43</u>

**Other taxpayers:**

Greenwich Ins Co - Contractual Liability	91,381.00	2,467.29
Westchester Fire Ins Co - blank	435,378.00	11,755.21
Combined Specialty Ins Co - Contractual liab.	141,845.00	3,829.82
	<u>668,604.00</u>	<u>18,052.31</u>

**Extended Warranty Mechanical Breakdown**

	Premiums	
	Written	Tax
<b>Top 5 taxpayers in this category:</b>		
American Bankers Ins Co fo Florida	19,238.00	519.43
Federal Ins Co	-	-
Royal Ins Co of America	-	-
Firemans Fund Ins Co	53,911.00	1,455.60
Allstate Ins Co	(379.00)	(10.23)
	<u>72,770.00</u>	<u>1,964.79</u>

**Other taxpayers:**

CIM Ins Corporation	(41,885.00)	(1,130.90)
Lyndon Property Ins Co - Warranty	68,588.00	1,851.88
MIC Property and Casualty Ins Corp	602,875.00	16,277.63
FFG Ins Co - Liability for Automobile repairs	20,469.00	552.66
	<u>650,047.00</u>	<u>17,551.27</u>

**Extended Warranty Auto Service Contract**

**All Taxpayers:**

Western Diversified Casualty Ins Co	(3,489.00)	(94.20)
American Road Ins Co - ASC	(257,610.00)	(6,955.47)
American Road Ins Co - Automobile Floorplan	169,022.00	4,563.59
Heritage Indemnity Co	217,556.00	5,874.01
Triton Ins Co - VSI - Collateral Protection	1,136,888.00	30,695.98
	<u>1,262,367.00</u>	<u>34,083.91</u>

*# 2,673,026.00 # 72,171.71*

23-LS0537AS  
Ford  
3/31/03

**CS FOR HOUSE BILL NO. 120( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE COGHILL**

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

1 **"An Act excluding service contracts from regulation as insurance; relating to insurance**  
2 **licensing for motor vehicle service contracts; and providing for an effective date."**

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

4 **\* Section 1.** AS 21.03.021 is amended by adding a new subsection to read:

5 (e) This title does not apply to a service contract offered, issued for delivery,  
6 delivered, or renewed in this state. In this subsection, "service contract"

7 (1) means a contract or agreement for a separate or additional  
8 consideration, for a specific duration, to

9 (A) maintain, service, repair, or replace tangible personal  
10 property, or to indemnify for repair, replacement, or maintenance, for an  
11 operational or structural failure due to a defect in materials or workmanship or  
12 normal wear and tear, with or without additional provision for incidental  
13 indemnity payments when service, repair, or replacement is not reasonably or  
14 commercially feasible;

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(B) repair, replace, or maintain tangible personal property damaged as a result of power surges or as a result of accidental damage from the handling of property damaged by power surges;

(C) repair, replace, or maintain household consumer goods, household appliances, and household systems, including damage resulting from operational or structural failure due to a defect in materials or workmanship or normal wear and tear;

(D) provide a home warranty;

(2) does not include

(A) mechanical breakdown insurance;

(B) a contract that requires an indemnity payment per incident and the payment exceeds the purchase price of the property serviced;

(C) retainers paid to licensed attorneys; or

(D) insurance on a motor vehicle subject to registration under AS 28.10.011.

\* Sec. 2. AS 21.27.010(h) is amended to read:

(h) This chapter does not apply to a person

(1) licensed to practice as an attorney at law while the person is acting as an attorney at law; or

(2) who sells, solicits, or negotiates a service contract on a motor vehicle subject to registration under AS 28.10.011.

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

# ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:

**3340 Badger Road, Suite 290**  
**North Pole, AK 99705**  
**(907)-488-5725**  
Fax# (907)-488-4721



**Session Contact:**  
**(907)-465-3719**  
FAX# (907)-465-3258  
**State Capitol**  
**Room 204**

## REPRESENTATIVE JOHN COGHILL

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### SPONSOR STATEMENT - HB 120

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The last administration and its director of the Division of Insurance concluded that service contracts are considered insurance. Leaving the interpretation of service contracts to the will of an administration could eliminate the willingness of manufacturers to offer such contracts in Alaska.

In a 1980, Attorney General's Opinion, Avrum Gross set out guidelines for determining whether a prepaid legal services plan was insurance. He determined it was not. One determinate was that the "plan was principally engaged in offering service, not in indemnifying against risks."

Twenty states have adopted statutes or regulations treating service contracts as separate and distinct from insurance, but have done so by adopting provisions that require more government and more regulation overview. These states include Washington, Illinois, Texas, South Carolina, New York, Nevada, Wyoming and others.

HB 120 exempts service contracts from Title 21 regarding insurance. Six other states, Idaho, Montana, Nebraska, North Dakota, South Dakota and West Virginia, have taken the same approach as HB 120 and exempted service contracts from insurance statutes rather than creating more bureaucracy.

Insurance covers repair or replacement from perils such as fire, earthquake, or flood. Service contracts cover repair and replacement from a faulty part or normal wear and tear that is pretty predictable.

Incidental indemnity is in the legislation to cover a cash settlement for an appliance that repair is not possible for a variety of reasons including the possibility that parts are no longer made for the appliance. Incidental is the key word because a cash settlement would be rare and is not the primary function of the contract. If incidental indemnity is not in the statute, claims that would otherwise be settled through a cash payment would be denied.

Finally, HB 120 provides that persons who sell motor vehicle service contracts do not have to be licensed to sell insurance.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 120(L&C)  
 (H) Publish Date: 3/20/2003

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Excluding service contracts from regulation as BRU Division of Insurance  
insurance Component \_\_\_\_\_  
 Sponsor Representative Coghill Component No. \_\_\_\_\_  
 Requester \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation has no fiscal impact on state spending.

Prepared by: Representative Tom Anderson, Chairman Phone \_\_\_\_\_  
 Division: House Labor and Commerce Date/Time 3/19/03 12:00 AM  
 Approved by: Representative Tom Anderson Date 3/19/2003  
 Agency: House Labor and Commerce

HB

162

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: May 6, 2003

FURTHER REFERRALS:

Date of Committee Action: MAY 10, 2003

The RULES Committee considered:

HB 162

HOUSE BILL NO. 162

INCREASE BUSINESS LICENSE FEE

"An Act increasing the fee for a state business license; and providing for an effective date."

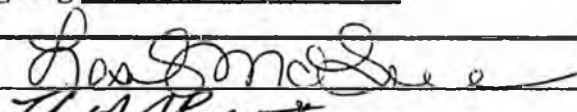
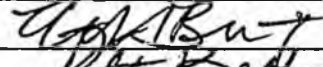
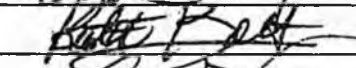

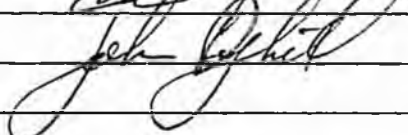
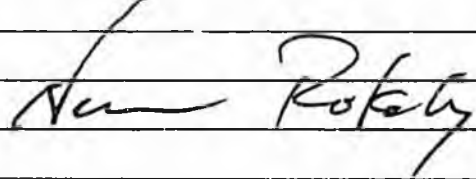
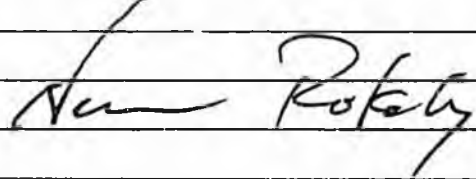
Recommends it be replaced with [ ] HCS or [  ] CS for HB 162 (RLS)  
 For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_ [ ] Same Title [ ] New Title

- [ ] 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
New Fiscal Notes forthcoming				

<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
	McGuire			<input checked="" type="checkbox"/>	
	Berkowitz		<input checked="" type="checkbox"/>		
	Kott	<input checked="" type="checkbox"/>			
	Moran				
	Co. Ph. 1				
Chair: 	Rose				<input checked="" type="checkbox"/>
Chair: 	Rose				<input checked="" type="checkbox"/>

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB162(RLS)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Increase Business License Fee BRU Management & Administration  
 Component Recorder's Office/UCC  
 Sponsor Rules by Request  
 Requester (H) RLS Component No. 802

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no fiscal impact associated with implementation of this legislation. The Recorder's Office/UCC portion of this legislation allows the Recorder's Office to charge fees in excess of the average cost of operations. This legislation on its own does not change the current fees charged, which are set through regulation.

Prepared by: Nico Bus, Acting Director Phone 465-2406  
 Division: Support Services Date/Time 5/12/2003  
 Approved by: Tom Irwin, Commissioner Date 5/12/2003  
 Agency: Natural Resources

Frank H. Murkowski, Governor



**Office of the Commissioner**

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

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

Email: [questions@dced.state.ak.us](mailto:questions@dced.state.ak.us) • Website: [www.dced.state.ak.us/](http://www.dced.state.ak.us/)

May 7, 2003

The Honorable Norman Rokeberg, Chair  
House Rules Committee  
House of Representatives  
Alaska State Capitol, Room 214  
Juneau AK 99811

Re: HB162 – INCREASE BUSINESS LICENSE FEES

Dear Representative Rokeberg:

The Department of Community and Economic Development respectfully requests that this bill be placed on the calendar to be scheduled for the floor.

HB162 creates annual licensing for business licenses and is estimated to generate an additional \$9.9 million in revenue. The bill also proposes to make the following changes to the current program:

1. Establish two categories of licensure: Sole Proprietors and All Others;
2. Establish annual fees of \$100 for Sole Proprietors and \$300 for All Others;
3. Charge annual fees of \$50 for Sole Proprietors age 65 and older;
4. Require tobacco endorsements attached to a business license to be paid annually at \$100 per location.

The bill was amended by the House Finance Committee to allow the Recorder's Office in the Department of Natural Resources to charge recording and uniform commercial code fees in excess of the average cost of operations.

Thank you for considering this request. Please feel free to call me at 465-2501 if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Ed, Blatchford".

Edgar Blatchford  
Commissioner

## **Talking Points**

### **HB162 Increase Business License Fees**

- The cost of a business license has been \$25 per year since 1949.
- As stated in a 1960 Attorney General's opinion, the main purpose of the Alaska Business Act is to generate revenue. In these times of reduced State revenues and after a fifty-four year reprieve, we are looking at these fees as a legitimate source of funds.
- The Governor's original bill called for an annual fee of \$200 per year. In the House Labor and Commerce Committee, the bill was amended to establish a three tiered approach with the cost of a license based on the number of employees. This was a fair attempt to make the proposed increase easier on small businesses. However, this approach makes administering the program more difficult, and results in businesses that may be able to afford the higher fee, paying a lower fee, in an effort to keep fees low for very small home businesses.
- The House Finance Committee substitute changes the bill to a two tiered approach, with the cost of a license based on the legal form of the business entity; \$100 a year for sole proprietors and \$300 a year for all other forms of business. That includes corporations, limited liability companies, partnerships, limited liability partnerships and limited partnerships. In addition to generating more revenue, this is easier to administer because applicants for a business are required to state the form of their business at the time they apply for a license.
- In Sec.2 of the bill there is also a provision that allows those sole proprietors who have reached the age of 65 to pay a fee of \$50 per year.
- The projected new revenue from the business license fee section (2) is \$9,905,325
- There has been no opposition to this bill from business groups. While NO ONE steps forward and volunteers to an increase in taxes, most obviously understand the need for increased revenue.
- The House Finance Committee substitute also exempts the Department of Natural Resources from AS 37.10.050 and allows them to charge recording and Uniform Commercial Code fees in excess of the average cost of operations.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 162  
 (H) Publish Date: 3/5/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title An Act increasing the fee for a State BRU Occupational Licensing (117)  
business license;.... Component Occupational Licensing  
 Sponsor \_\_\_\_\_  
 Requester \_\_\_\_\_ Component No. 2360

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES - 1175</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1175 - BusLic Receipts	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>
<b>TOTAL</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>	<b>6,935.0</b>

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

**POSITIONS**

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 The bill increases the business license fee from \$25.00 per year to \$200.00 per year. Business Licensing regulation 12 AAC 12.010(a) specifies that business licenses are issued on a biennial cycle, and therefore licensees will be expected to pay \$400.00 license fees upon issuance of new or renewed licenses.

**REVENUE:**  
 The revenue increase identified above is based on licensees that would be eligible to renew, assuming that 40% of the 73,000 licensees would not renew due to the fee increase.

Prepared by: Tom Lawson Phone (907) 465-2144  
 Division: Administrative Services Date/Time 3/5/03 9:56 AM  
 Approved by: Edgar Blatchford, Commissioner Date 3/5/2003  
 Agency: Department of Community & Economic Development

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: CSHB 162(FIN)  
 (H) Publish Date: 5/6/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Natural Resources  
 Title Increase Business License Fee BRU Management & Administration  
 Component Recorder's Office/UCC  
 Sponsor Rules by Request  
 Requester (H) FIN Component No. 802

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no fiscal impact associated with implementation of this legislation. The Recorder's Office/UCC portion of this legislation allows the Recorder's Office to charge fees in excess of the average cost of operations. This legislation on its own does not change the current fees charged, which are set through regulation.

Prepared by: Nico Bus, Acting Director Phone 465-2406  
 Division: Support Services Date/Time 5/2/2003  
 Approved by: Tom Irwin, Commissioner Date 5/2/2003  
 Agency: Natural Resources

# FISCAL NOTE

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

Fiscal Note Number: 3  
 Bill Version: CSHB 162(FIN)  
 (H) Publish Date: 5/6/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Increase Business License Fee BRU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor Rules by Request of the Governor  
 Requester House Finance Component No. 2360

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	146.4	146.4	146.4	146.4	146.4	146.4
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	30.0	30.0	30.0	30.0	30.0	30.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	12.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>193.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1175 )</b>	<b>9,905.3</b>	<b>9,905.3</b>	<b>9,905.3</b>	<b>9,905.3</b>	<b>9,905.3</b>	<b>9,905.3</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1175 - BusLic Receipts	193.4	181.4	181.4	181.4	181.4	181.4
<b>TOTAL</b>	<b>193.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>	<b>181.4</b>

Estimate of any current year (FY2003) cost: 0.0

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

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

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

CSHB 162 (FIN) creates annual licensing for Business Licenses. The bill also proposes to make the following changes to the current program -

- 1) Establish two categories of licensure: Sole Proprietors and All Others;
- 2) Establish annual fees at \$100 for Sole Proprietors, and \$300 for All Others;
- 3) Charge annual fees of \$50.00 for Sole Proprietors age 65 years and older;
- 4) Require tobacco endorsements attached to a business license to be paid annually, \$100 per location.

Detailed explanation of the costs shown above are attached.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144  
 Division Occupational Licensing Date/Time 5/5/03 2:00 PM  
 Approved by: Edgar Blatchford, Commissioner Date 5/5/2003  
 Agency Department of Community & Economic Development

**FISCAL NOTE #3**

**STATE OF ALASKA  
2003 LEGISLATIVE SESSION**

**BILL NO. CSHB 162(FIN)**

**ANALYSIS CONTINUATION**

CSSB 114(L&C): An act increasing the fee for a state business license...

**PERSONAL SERVICES: \$146.4**

1 - Administrative Clerk III position, Range 10, PFT, located in Anchorage, \$40.3  
Currently, the business licensing program is supported by one dedicated position in Anchorage. By switching from a biennial to annual cycle, this position is needed to support the increased workload of the program.

1 - Analyst Programmer III position, Range 13, PFT, located in Juneau, \$65.8  
The change in licensing from biennial to annual will require reprogramming and ongoing maintenance of all business licensing programs including databases and the online licensing programs, receipting, integration of online purchase/renewal systems and over-the-counter system for accepting credit card payments, and reporting systems.

Funding for an Administrative Clerk III position, Range 10, PFT, located in Juneau, \$40.3.  
Currently, the position is funded by RSA from the Department of Health & Social Services for tobacco enforcement related purposes; however, RSA funds are likely to be reduced. Maintaining this position with business license receipts is essential to operating the business licensing program on an annual cycle. This position processes business license applications, verifies payments and information provided for issuance of tobacco endorsements, prints licenses with endorsements, and ensures sufficient numbers of Tobacco Signs and Penalty lists are sent to the business owner.

**TRAVEL: \$0.0**

No travel is required.

**CONTRACTUAL SERVICES: \$30.0**

Funding needed to reprint basic forms, public notices, and revise regulations, \$10.0  
Funding needed to revise and mail renewal packets, \$20.0

**SUPPLIES: \$5.0**

Basic operating supplies to change licensing cycles.

**EQUIPMENT: \$12.0 (one-time costs)**

Basic office equipment and work station configuration for the new positions.

**REVENUE:**

The revenue is based on the calculations shown on page 3.

**FISCAL NOTE #3**

**STATE OF ALASKA  
2003 LEGISLATIVE SESSION**

**BILL NO. CSHB 162(FIN)**

**ANALYSIS CONTINUATION**

CSSB 114(L&C): An act increasing the fee for a state business license...

**REVENUE**

Based on the total of 69,315 business licenses on 4/17/03.

Fee for Sole Proprietorship - \$100. (Based on estimated dropout of 25% of 41,253 = 10,313.)

Fee for Corporation, Limited Liability Company, Partnership  
Limited Liability Partnership, or Limited Partnership - \$300.

		Annual Revenue	Current Revenue	NEW REVENUE
Sole Proprietors	30,940 x \$100.	\$3,094,000.	\$1,031,325.	\$2,062,675.
All Others	28,062 x \$300.	8,418,600.	701,550.	7,717,050.
			Sub-Total New Revenue:	\$9,779,725.
Tobacco Endorsements				
	1,256 x \$100.	\$125,600.	0	\$125,600.
			<b>TOTAL NEW REVENUE:</b>	<b>\$9,905,325.</b>

**TOTAL BUSINESS LICENSES ON 4/17/03**

Sole Proprietor	41,253
Corporation or Limited Liability	19,663
Partnership, Limited Liability Partnership, or Limited Partnership	8,399
<b>TOTAL LICENSES:</b>	<b>69,315</b>

**HB**

**2009**



23-LS0420V  
Cook  
4/30/03

**CS FOR HOUSE BILL NO. 209(RLS)**

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

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVES CHENAULT, Kohring, Wolf**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to municipal property tax adjustments for property affected by a**  
2 **disaster."**

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

4 **\* Section 1. AS 29.45.230(a) is amended to read:**

5 (a) The municipality may by ordinance provide for assessment or  
6 reassessment and reduction of taxes for property destroyed, damaged, or otherwise  
7 reduced in value as a result of a [NATURAL] disaster.

8 **\* Sec. 2. AS 29.45.230(d) is amended to read:**

9 (d) In [ENACTING] an ordinance [OR RESOLUTION] authorized by this  
10 section, the municipality shall establish criteria for the reduction of taxes on  
11 property damaged, destroyed, or otherwise reduced in value as a result of  
12 disaster, and may, consistent with this section, prescribe procedures, restrictions, and  
13 conditions for [OF] assessing or reassessing property and of remitting, refunding, or  
14 forgiving taxes.

1 \* Sec. 3. AS 29.45.230(e) is repealed.

# Alaska State Legislature

*Interim*

145 Main Street Loop, Suite 223  
Kenai, Alaska 99611  
Phone: (907) 283-7223  
Fax: (907) 283-7184



*Session*

Capitol Room 502  
Juneau, Alaska 99801-1182  
Phone: (907) 465-6890 or 465-3779  
Fax: (907) 465-2833

## House Finance Committee

Representative Mike Chenault

### Memorandum

Date: April 30, 2003

To: Representative Norm Rokeberg, Chair  
House Rules Committee

From: Representative Mike Chenault

A handwritten signature in cursive, appearing to read "Mike Chenault", written over the "From:" line.

Re: Hearing Request for HB 209

Please schedule HB 209 for a hearing in the House Rules Committee at your earliest convenience. Included in this packet are the Sponsor Statement, Fiscal Note and copy of CS HB 209 (CRA). A proposed amendment is enclosed as well.

If you have any questions, please contact my staff, Leona Oberts at #6890.

# STATE OF ALASKA

**REPRESENTATIVE  
MIKE CHENAULT**

Official Business

Interim:  
145 Main St. Loop, Second Floor  
Kenai, Alaska 99611  
(907) 283-7223  
Fax: (907) 283-3075



**HOUSE OF REPRESENTATIVES**

Session:  
Capitol Building, Room 432  
Juneau, Alaska 99801-1182  
(907) 465-3779  
Toll Free: (800) 469-3779  
Fax: (907) 465-2833

## **SPONSOR STATEMENT HB 209**

HB 209 will allow municipalities to provide for a tax reduction for property destroyed, damaged or otherwise reduced in value as a result of a disaster. A municipality can adopt by ordinance criteria for assessment or reassessment of property values.

This legislation broadens the municipalities' authority to define "disaster" to include for example, a fire or flood that occurs within a home. It repeals Section 29.45.230: (e) In this section "disaster" means a major disaster declared by the President of the United States under federal law or a disaster declared by the governor under AS 26.23.010-26.23.110.

Arizona, California, Idaho, Mississippi, Pennsylvania, and South Dakota are states that currently provide pro-ration of taxes for casualty loss. Many other states are currently considering similar legislation.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 209(CRA)  
 (H) Publish Date: 4/9/03

Revision Date/Time (Note if correction):  
 Title Muni Tax: Property Affected by Disaster

Dept. Affected: DCED  
 BRU Comm Assist & Ec Dev (405)  
 Component Community & Business  
Development  
 Component No. 2486

Sponsor Representative Chenault  
 Requester House Community & Regional Affairs

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This Legislation removes current statutory language requiring a disaster declaration from the governor or president in order to have a reassessment of an area which suffered a natural disaster. This is a local tax issue and would have no fiscal impact on this department.

Prepared by: Gene Kane, Acting Director  
 Division: Community and Business Development  
 Approved by: Edgar Blatchford, Commissioner  
 Agency: Department of Community and Economic Development

Phone 269-4580  
 Date/Time 4/7/03 4:04 PM  
 Date 4/7/2003

**HB 209**

**“An act relating to municipal property tax adjustments for property affected by a disaster.”**

**Amendment #1**

Page 1 Line 10 Please delete “may” after municipality and before establish;  
Please add “shall” in its place.

*Included HSOH201I  
Cook 4/30/03*

**HB**

**234**

# 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

April 24, 2003

**SUBJECT:** Alcoholic Beverage Control Board (CSHB 234(FIN))

**TO:** Representative Bill Williams  
Co-Chair of the House Finance Committee  
Attn: Tim

**FROM:** Michael F. Ford   
Legislative Counsel

The CS you requested is enclosed. I wanted to point out additional changes required as a result of adding sec. 1 to the bill. By moving the ABC board to the Department of Public Safety, an existing provision of law, AS 44.25.020(4), which provides for clerical support to the board from the Department of Revenue, should be repealed.

Also, conforming changes should be made in AS 04.06.090(c) to remove the reference to the Department of Revenue. The committee may also want to look at AS 04.11.590 and AS 04.11.610 to see if references to the "Department of Revenue" are still appropriate.

Please contact me if you have further questions.

MFF:med  
03-435.med

Enclosure

*5/5/03  
make advised  
these taken care  
of in executive  
order*

23-LS0862X  
Ford  
4/30/03

**CS FOR HOUSE BILL NO. 234(RLS)**

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

**TWENTY-THIRD LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MCGUIRE, Crawford**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to the Alcoholic Beverage Control Board; relating to the sale of beer**  
2 **manufactured at a brewpub; and providing for an effective date."**

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

4 **\* Section 1.** AS 04.06.010 is amended to read:

5 **Sec. 04.06.010. Establishment of board.** There is established in the  
6 Department of Public Safety the [THE] Alcoholic Beverage Control Board [IS  
7 ESTABLISHED] as a regulatory and quasi-judicial agency. [THE BOARD IS IN  
8 THE DEPARTMENT OF REVENUE, BUT FOR ADMINISTRATIVE PURPOSES  
9 ONLY.]

10 **\* Sec. 2.** AS 04.11.135(d) is amended to read:

11 (d) Notwithstanding (a) of this section, the holder of a brewpub license who  
12 under the provisions of AS 04.11.450(b) formerly held a brewery license and a  
13 restaurant or eating place license and who, under the former brewery license,  
14 manufactured beer at a location other than the premises licensed under the former

1 restaurant or eating place license may

2 (1) manufacture not more than 150,000 gallons of beer in a calendar  
3 year on premises other than the premises licensed under the beverage dispensary  
4 license;

5 (2) provide a small sample of the manufactured beer free of charge at  
6 the location the beer is manufactured unless prohibited by AS 04.16.030; and

7 (3) sell the beer authorized to be manufactured under this subsection

8 (A) on the premises licensed under the beverage dispensary  
9 license or other licensed premises of the beverage dispensary licensee that are  
10 also licensed as a beverage dispensary;

11 (B) to a wholesaler licensed under AS 04.11.160; sales under  
12 this subparagraph may not exceed 15,000 gallons or the amount sold under this  
13 subparagraph in calendar year 2001, plus 10 percent, whichever amount is  
14 greater; or

15 (C) to an individual who is present on the premises described  
16 under (A) of this paragraph. or where the beer is manufactured, in quantities  
17 of not more than five gallons per day.

18 \* Sec. 3. AS 44.66.010(a)(1) is amended to read:

19 (1) Alcoholic Beverage Control Board (AS 04.06.010) - June 30, 2007  
20 [2003];

21 \* Sec. 4. This Act takes effect July 1, 2003.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 234(L&C)  
 (H) Publish Date: 4/14/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Brewpubs; ABC Board BRU ABC Board  
 Component ABC Board  
 Sponsor Representative McGuire  
 Requester House Labor and Commerce Component No. 100

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

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation would remove the statutory limitation on the volume of beer that a brewpub can sell to a licensed wholesaler. This change would not effect the operating expenses of the ABC Board.

This legislation also would extend the sunset date of the ABC Board from June 30, 2003 to June 30, 2006.

Prepared by: Douglas B. Griffin, Executive Director Phone 269-0350  
 Division Alcoholic Beverage Control Board Date/Time 4/8/03 7:28 AM  
 Approved by: Larry Persily, Deputy Commissioner Date 4/8/2003  
 Agency Department of Revenue

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: CSHB 234(FIN)  
 (H) Publish Date: 4/28/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Brewpubs; ABC Board BRU Statewide Support  
 Component Alcohol Beverage Control Board  
 Sponsor Representative McGuire  
 Requester House Finance Component No. 2690

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

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

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

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

CSHB 234(FIN) extends the repeal of the ABC Board to FY2007. FY2004 funding for the ABC Board in the Department of Public Safety is as follows:

\$755.0 of GF and \$157.5 of I/A in the following line items: PS, \$672.2; Travel, \$28.3; Contractual, \$192.1; Supplies, \$6.6; and Equipment, \$13.3.

Prepared by: Karen Morgan, Director Phone 465-5488  
 Division Administrative Services Date/Time 4/24/03 9:57 AM  
 Approved by: Commissioner William Tandeske Date 4/24/2003  
 Agency Department of Public Safety

# Alaska State Legislature

*Session:*  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



*Interim:*  
716 W 4<sup>th</sup> Avenue, Suite 300  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### CSHB 234 (FIN)

23-I S0862/W

*"An Act relating to the Alcoholic Beverage Control Board; relating to peace officer powers of the director and employees of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; and providing for an effective date."*

#### Sponsor Statement

Committee Substitute for House Bill 234 contains three primary components. First, this version establishes the Alcoholic Beverage Control Board under the Department of Public Safety. Because the ABC Board is a quasi-judicial agency under statute and investigators of the board have significant investigative responsibilities, the Department of Public Safety believes this reorganization to be in the public interest to establish uniform investigative procedures among all agencies and board under its charge.

Second, CSHB 234 addresses current inconsistencies under AS 04.11.135(d) regarding sales of beer by brewpubs in quantities of not more than 5 gallons per day (so-called "growlers"). Under current statutory language, sales of these growlers are limited to brewpubs that brew their beer on their premises but this restriction unfairly disadvantages Alaskan brewpub operators who may brew their product in one location in the state and dispense their product at another. Although most brewpub operators in Alaska are not hindered by this restriction, brewing and dispensing their product in the same location, this amendment will lift this arbitrary restriction for any current and future operators who brew and dispense in two different locations within the state of Alaska.

Lastly, CSHB 234 extends the life of the Alcoholic Beverage Control Board until June 30, 2007.

# Alaska State Legislature

Session:  
State Capitol  
Juneau, AK 99801  
Phone: (907) 465-2995  
Fax: (907) 465-6592



Interim:  
716 W 4<sup>th</sup> Avenue, Suite 300  
Anchorage, AK 99501-2133  
Phone: (907) 269-0250  
Fax: (907) 269-0249

## Representative Lesil McGuire

Chair, Judiciary Committee

### CSHB 234 (FIN)

23-LS0862/W

*"An Act relating to the Alcoholic Beverage Control Board; relating to peace officer powers of the director and employees of the Alcoholic Beverage Control Board; relating to the sale of beer manufactured at a brewpub; and providing for an effective date."*

#### Sectional Analysis

**Section 1** – Amends AS 04.06.010 by establishing the Alcoholic Beverage Control Board within the Department of Public Safety (Pg 1, Ln. 6-7) and removing language that makes this inclusion "for administrative purposes only." (Pg. 1, Ln. 8-9)

**Section 2** – Amends AS 04.06.110 by removing language that authorizes ABC Board investigators to investigate violations of laws pertaining to gambling, prostitution, and other related offenses. (Pg. 2, Ln. 3-9)

**Section 3** – Amends AS 04.11.135 (d) by removing the same language as found in AS 04.11.135 (a) regarding the amount of beer that maybe sold to a wholesaler (Pg. 2, Ln. 26-28) and amends AS 04.11.135 (d)(3)(C) by adding language that will allow brewpub licensees to sell beer to an individual present on the premises, in quantities of 5 gallons a day or less, at the same location where that brewpub licensee also is the holder of beverage dispensary license<sup>1</sup> (Pg.2, Ln. 29-30).

**Section 4** – Amends AS 44.66.010(a)(1) by extended the date of existence for the Alcoholic Beverage Control Board from June 30, 2003 to June 30, 2007 (Pg. 3, Ln. 2).

**Section 5** – Provides for an effective date for provisions of this Act of July 1, 2003.

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<sup>1</sup> This corrects the arbitrary restriction on Alaska's brewpub licensees who may manufacture their beer in one location in the state, and dispense it in another.

## **Alcoholic Beverage Control Board Transfer to DPS Issues**

The current day-to-day operations of the ABC staff functions seem to be exceptionally autonomous. By statute, they have been placed in the Department **"for administrative purposes only."**

This change allows the Department of Public Safety, who is the primary law enforcement entity for the State of Alaska to work with the staff on the day-to-day operations and enforcement posture/procedures. Thus allowing the ABC Board to continue to focus on licensing issues, public hearings, and other high level issues involving the industry.

AS 04.06.110 Modifies peace officer powers. Incorporates recommendation of Legislative Audit in the Sunset Review of ABC Board. Removing the authority of the investigation of violations of laws against gambling and promoting prostitution. This allows the investigators to refocus on enforcement of alcohol laws.

The above recommended changes is intended to allow the Department of Public Safety to develop long-term strategies to address the Governors goals involving alcohol involved crimes and allow the department to work with the ABC employees to help address their responsibilities despite their limited staff.



## Alaska Division of Legislative Audit

### Audit Digest #04-20019-03



\* Requires Acrobat Reader 

SUMMARY OF: A Special Report on the Department of Revenue, Alcoholic Beverage Control Board, Sunset Review, November 29, 2002.

#### PURPOSE OF THE REPORT

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the board). As required by AS 44.33.050(a), the committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations.

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. The assessment of the operations and performance of the board was based on AS 44.66.050(c). This statute sets out criteria that are to be used in determining a demonstrated public need for the board.

#### REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection to the general public through the issuance, renewal, and temporary suspension of liquor licenses. Protection has also been provided through investigations of suspected licensing violations and enforcement of the state's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of the report, the ABC Board has met the various statutory criteria. With the exceptions noted in the Findings and Recommendations section, the board is effectively and efficiently meeting its statutory responsibilities and is operating in the public interest. The ABC Board is organized under statute as a regulatory and quasi-judicial agency; however, it appears to be spending a disproportionate amount of time and resources on police efforts rather than on the regulatory function. We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the life of the Alcoholic Beverage Control Board to June 30, 2006. This three-year extension will give the board ample time to correct the deficiencies noted in this report and it will trigger a timely follow-up audit to determine if these deficiencies have been fully addressed.

#### FINDINGS AND RECOMMENDATIONS

1. The legislature should consider having the Department of Public Safety conduct criminal investigations, rather than the ABC Board.

Title IV was revised in 1999 to have ABC Board staff investigate violations of gambling and prostitution on licensed premises. The Department of Public Safety is better equipped to handle these types of investigations. There would be significant inefficiencies in attempting to turn ABC into a four-officer, statewide police force.

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

Currently the ABC Board does not have the power to summarily suspend a liquor license prior to revocation. Since revocation does not take effect until all due process rights have been exhausted, licensees whose liquor licenses have been revoked may be able to operate for two or more years after the revocation was imposed. Summarily suspending a license involves the immediate cessation of alcohol sales by a licensee while the board pursues revocation of the license. This process provides greater protection to the public while still providing due process rights to the licensee. This power would be similar to that held by other occupational licensing boards and would be used when continued operation by a licensee would pose a clear and immediate danger to the public.

3. The ABC Board should conduct routine background checks on all licensees as they renew their licenses or should track licensees through the public safety information system.
4. The director should ensure that all fines are collected and deposited into the General Fund.
5. The ABC Board and its director should provide goals for the enforcement staff.
6. The director should upgrade the ABC Board licensing database.
7. The director should require staff to prepare and maintain procedural manuals.
8. The ABC Board members should urge the governor's office to fill board vacancies within the 30-day timeline required by statutes.

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\* Requires Acrobat Reader 

December 4, 2002

Members of the Legislative Budget  
and Audit Committee:

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

DEPARTMENT OF REVENUE  
ALCOHOLIC BEVERAGE CONTROL BOARD  
SUNSET REVIEW

November 29, 2002

Audit Control Number

04-20019-03

This review examines the activities of the Alcoholic Beverage Control Board (ABC Board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner. Alaska Statute 44.66.010 specifies that the ABC Board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations. We recommend that the legislature extend the ABC Board's termination date until June 30, 2006.

The audit was conducted in accordance with generally accepted government auditing standards. Field work procedures utilized in the course of developing the findings and discussion presented in this report are outlined in the Objectives, Scope, and Methodology section. Audit results may be found in the Report Conclusions, Findings and Recommendations, and Analysis of Public Need sections of the report.

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Alcoholic Beverage Control Board (ABC Board or the board) to determine if there is a demonstrated public need for its continued existence and if it has been operating in an efficient and effective manner.

As required by legislative intent, this report shall be considered during the legislative oversight process in determining whether the ABC Board should be reestablished. Currently, under AS 44.66.010(a)(1), the board will terminate on June 30, 2003 and will have one year from that date to conclude its administrative operations.

### Objectives

The ABC Board was created to regulate the manufacture, sale, barter, and possession of alcoholic beverages in order to protect the public health, safety, and welfare of citizens in the State. To this end, our primary objective in this audit was to determine whether there is a public need for the board and if it should continue to exist.

The secondary objective was to review the board's major functions of licensing, inspections, and investigations for effectiveness in meeting public need and for efficiency of operation.

### Scope

Alaska Statute 44.66.050 requires the factors outlined in the Analysis of Public Need section of this report to be evaluated as part of this audit in order to determine the need for the ABC Board's continued existence. We reviewed ABC Board activity that occurred from FY 98 through FY 02. We also reviewed the Board's proceedings to determine whether it complied with Alaska Statutes and regulations.

### Methodology

We reviewed and evaluated the following during the course of our examination:

- Title IV and other applicable Alaska Statutes.
- Proposed and passed legislation concerning alcohol and the ABC Board since the previous sunset audit.
- Title 15, Chapter 104 of the Alaska Administrative Code.
- *Final Report of the Criminal Justice Assessment Committee, May 2000* and follow-up status reports.
- ABC Board licensing files.
- ABC Board meeting minutes.
- ABC Board operating budgets and financial records.

- Newspaper articles pertaining to liquor licensing in Alaska.
- Responses to the questionnaires we sent out to governing bodies, law enforcement agencies, community councils, and a sample of active licensees.

In addition, we attended two board meetings, one in person and one via teleconference. We interviewed ABC Board staff, the chairman of the ABC Board, and local community council questionnaire respondents. We also contacted the Alaska Ombudsman, the Attorney General's office, the Division of Equal Employment Opportunity, the Human Rights Commission, the Department of Revenue, and the Office of the Governor.

## ORGANIZATION AND FUNCTION

The Alcoholic Beverage Control Board (ABC Board or the board) was established in 1959 by Title IV<sup>1</sup> of the Alaska Statutes as a regulatory and quasi-judicial agency. For administrative purposes, the ABC Board is assigned to the Department of Revenue. The purpose of the board is to regulate the manufacture, barter, possession, and sale of alcoholic beverages in the State. Control is exercised through board review and consideration of liquor license applications for original issuance, renewal, and transfer, and also through revocation and suspension of licenses. In addition, the board has the power to propose and adopt regulations and to hear appeals concerning actions of ABC Board personnel.

The board is composed of five members appointed by the governor and confirmed by the legislature. Traditionally, appointed members represent all geographic areas of the State. Two of the members are required by statute to be representatives of the alcoholic beverage industry, while the other three are public members. Board members are appointed for overlapping three-year terms. A director, appointed by the governor, serves as the executive officer and is responsible for enforcing Title IV and the regulations adopted by the board.

Title IV specifies the type of licenses, licensing fees, and the activities allowed under each class of license issued by the board. Title IV also establishes procedures for the issuance of new and renewal licenses.

ABC Board employees ensure that over 1,800 licensees comply with Title IV. Employees provide three functions including administration, licensing, and enforcement. These services are briefly described below.

Administration: The ABC Board director and an administrative assistant comprise the administrative staff. They have a wide variety of administrative duties including oversight of staff, preparation of budget documents, calculation and issuance of revenue sharing payments to local municipalities, direction of special enforcement investigations and public hearings.

Licensing: The three-member licensing staff is responsible for processing license applications, maintaining licensing records and files, collecting licensing fees, and answering licensing questions asked by the public and licensees.

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### Alcoholic Beverage Control Board Members

Bob Klein, Chairman  
Anchorage, Industry Member  
Term expires January 31, 2003

Jan Wrentmore  
Skagway, Industry Member  
Term expires March 1, 2005

Toni Lee Jackson  
Copper Center, Public Member  
Term expires January 31, 2003

Ellen Ganley  
Fairbanks, Public Member  
Term expires March 1, 2005

Duane Udland  
Anchorage, Public Member  
Term expires March 1, 2004

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<sup>1</sup> Title IV, Alcoholic Beverages, AS 04.06.010 - 04.21.080.

Enforcement: The four-member enforcement staff currently consists of two Anchorage-based investigators, one Fairbanks-based investigator and one Juneau-based investigator. Investigators perform various duties including inspecting licensed premises, investigating complaints of suspected licensing violations, overseeing a federal underage drinking grant, and responding to questions from licensees and the public. Investigators monitor server training courses and perform background checks on applicants. They also give lectures relating to alcoholic beverage control laws and regulations on behalf of the board and provide Title IV training to law enforcement agencies on request.

The ABC Board office is located in Anchorage. In FY 03, the board has an operating budget of \$711,200 for its nine staff positions and activities.

## REPORT CONCLUSIONS

In our opinion, the Alcoholic Beverage Control Board (ABC Board or the board) should continue to regulate the manufacture, sale, barter, and possession of alcoholic beverages in Alaska in order to protect the public's health, safety, and welfare. The board has provided protection to the general public through the issuance, renewal, and temporary suspension of liquor licenses. Protection has also been provided through investigations of suspected licensing violations and enforcement of the State's alcoholic beverage control laws and regulations.

As indicated in the Analysis of Public Need section of this report, in our opinion the ABC Board has met the various statutory sunset criteria. With the exceptions noted in the Findings and Recommendations section of this report, we believe that the board is effectively and efficiently meeting its statutory responsibilities, and is operating in the public interest. The ABC Board is organized under statute as a regulatory and quasi-judicial agency; however, it appears to be spending a disproportionate amount of time and resources on police efforts rather than on the regulatory function.

We recommend that Alaska Statute 44.66.010(a)(1) be amended to extend the termination date of the Alcoholic Beverage Control Board to June 30, 2006. This three-year extension will give the board ample time to correct the deficiencies noted in this report and it will trigger a timely follow-up audit to determine if these deficiencies have been fully addressed.

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## FINDINGS AND RECOMMENDATIONS

### Status of Prior Audit Recommendations

Our prior sunset audit<sup>2</sup> contained three recommendations. The first advised the Alcohol Beverage Control Board (ABC Board or the board) to take steps to ensure that objections from affected neighborhoods were considered prior to the issuance, transfer, or renewal of a license. The board has increased the awareness of local governing bodies regarding the value of public input. The board has also attached conditions to licenses in response to neighborhood objections. However, according to some questionnaire responses and interviews with community council representatives, there still is not enough consideration of public input in how licenses are issued or renewed. In addition, the community councils would like to receive training on the liquor licensing process so they better understand what options are available to them when an application for a license is received for issuance, transfer, or renewal. (See Appendix E.)

The second recommendation was that the board review the liquor license fee-sharing program to ensure the funds were properly spent by the participating governing bodies. The board has implemented an additional regulation to ensure that the municipalities who participate in the revenue sharing program are in compliance.

The third recommendation advised the board to ensure the amounts, of license fees refunded to the local governing bodies as part of the revenue share program, were correct. This is still of concern and is included in current Recommendations No. 6 and 7.

### Recommendation No. 1

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

Major changes were made to the ABC Board's statutes and regulations during the past five years. Effective July 1999, AS 04.06.110 was amended, as follows, to add ABC staff investigation of gambling and prostitution offenses.

*The director and the persons employed for the administration and enforcement of this title may, with the concurrence of the commissioner of public safety, exercise the powers of peace officers when those powers are specifically granted by the board. Powers granted by the board under this section may be exercised only when necessary for the enforcement of the criminally punishable provisions of this title, regulations of the board, and other criminally punishable laws and regulations, including investigation of violations of laws against prostitution and promoting prostitution described in AS 11.66.100 – 11.66.130 and laws against gambling, promoting gambling, and related offences described in AS 11.66.200 – 11.66.280*

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<sup>2</sup> Department of Revenue, Alcoholic Beverage Control Board, September 8, 1997. (Audit Control No. 04-1452-97.)

*[GOVERNING THE MANUFACTURE, BARTER, SALE, CONSUMPTION, AND POSSESSION OF ALCOHOLIC BEVERAGES IN THE STATE].<sup>3</sup>*

The stated mission of the ABC Board, according to AS 04.06.090(a), is to "*control the manufacture, barter, possession, and sale of alcoholic beverages in the state.*" Adding gambling and prostitution to this list significantly expanded the mission of the board as to the types of investigations conducted. Whereas prior to the amendment violations of Title IV and its regulations were subject to conviction for class A misdemeanors,<sup>4</sup> the new language imposed conviction for class B and C felonies on some violations.

Although the DPS commissioner has historically authorized limited police powers to the investigative staff of the board, these powers were usually restricted to issuing subpoenas and serving search warrants. These limited police powers allowed the board's staff to better perform its job. This was much different than the 1999 expansion of the board's mission mentioned above and is an aspect that should be continued.

A major change to the regulations<sup>5</sup> took effect in March 1999, shortly before the statute change. The new regulation allowed ABC staff to carry firearms, if authorized by the board and with the DPS commissioner's concurrence. The ABC Board authorized the use of firearms by the enforcement staff at its April 1999 board meeting. However, this authorization was rescinded in June 1999 when the DPS commissioner revoked the limited police powers he had previously approved.

The question of allowing ABC Board staff to carry firearms in the performance of its duties has been decided for now. The Attorney General's office and DPS have determined that ABC staff should not need to use deadly force to complete its assigned duties. We agree with that determination.

As pointed out by the Alaska Criminal Justice Assessment Committee,<sup>6</sup>

*The purpose of the Department of Revenue is to raise revenue, not to assist law enforcement. To ensure quality enforcement of Title 4, [the criminal investigation] function should be moved to a law enforcement department. Licensing functions would remain with the Alcoholic Beverage Control Board.*

The statute change and the firearm situation has already caused administrative inefficiencies and morale problems within ABC. We believe there would be significant inefficiencies in attempting

<sup>3</sup> The new language is bolded; the language it replaced is capitalized and in brackets.

<sup>4</sup> AS 04.16.180. Penalties for violation.

<sup>5</sup> 15 AAC 104.505(b) states, "*Consistent with federal, state, and local law, the board's investigative personnel may carry firearms in the performance of their duties, if authorized by the board.*"

<sup>6</sup> The Alaska Criminal Justice Assessment Committee was created in 1997 to participate in a federally-funded Criminal Justice System Project. Governor Tony Knowles, Chief Justice Warren Matthews, Senate President Mike Miller, and House Speaker Gail Phillips appointed a "blue-ribbon" committee with members representing all three branches of government, other community groups, and individuals interested in criminal justice. The Commission issued its final report in May 2000 and followed up with a status report on its recommendations in January 2002. The January 2003 draft update also carries this recommendation.

to turn ABC into a four-officer, statewide police force. DPS has already set up the administrative and operational controls unique to this type of service. To prevent the wasting of resources and their diversion away from the licensing function, we offer the following alternatives to the present approach:

- Alternative A – No statutory change, but require the ABC Board to contract with DPS to provide criminal investigation services. The board would retain some control over that function by recommending targets while DPS personnel performed the investigations.

Alaska Statute 04.06.090(d) allows the board to contract ". . . with other departments and agencies of the state . . . [as] necessary to carry out the purposes of this title." A contract with DPS would allow the board to purchase state trooper time when and where it is needed to enforce the provisions of Title IV. For example, the board could contract for a one-half full-time equivalent (.5 FTE) trooper position. These services would be on an as-needed and as-available basis for gambling, prostitution, and alcohol investigations as designated by the board. This approach would take advantage of the many locations served by DPS.

- Alternative B – Remove the criminal investigation function from the ABC Board.

These criminal investigations would be handled by DPS, which already has jurisdiction. Although these are perhaps less serious crimes than many investigated by DPS, they need not be slighted. DPS could even set up a dedicated alcohol, gambling, and prostitution team if the legislature believed it to be necessary. Through the budgetary process, the legislature could ensure that the appropriate emphasis continues.

Either of the above alternatives would allow the ABC Board and its staff to retain focus on their mission as a regulatory and licensing agency.

Regardless of how this function is eventually structured, we encourage the board to share information with DPS and local police forces that would assist them in making the most of their limited resources.

#### Recommendation No. 2

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

The process for revoking a license can take several years if the license holder chooses to pursue all avenues of due process accorded by law. The due process rights granted liquor licensees range from informal hearings before the board to an appeal before the Supreme Court. Since the revocation does not take effect until all due process rights have been exhausted, licensees whose liquor licenses have been revoked may be able to operate for two or more years after the revocation is imposed.

As a result, the ABC Board has resorted to either denying a license renewal or allowing a licensee a set period of time to sell the liquor license in question rather than revoking the license.

Relative to revocation, these procedures reduce the length of time a licensee actually operates after the sanction has been imposed.

However, the board's revocation and nonrenewal practices still allow these licensees to remain open for some time. The practice of allowing some of these licensees to continue to operate is not in the public interest. It sends the wrong message to other licensees. The current practice's value as a deterrent is greatly reduced.

Summarily suspending<sup>7</sup> a license takes effect immediately and is used when the licensee is a danger to the public. After a license is summarily suspended, revocation is the next step. However, the licensee will not be operating the business while exercising his due process rights. This approach is used by the occupational licensing boards in Alaska and would seem to be appropriate for the ABC Board also.

Currently the ABC Board does not have the power to summarily suspend a liquor license. The board should seek an amendment to its statute to give it this authorization.

### Recommendation No. 3

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

Alaska Statute<sup>8</sup> allows the board to conduct background checks during the license renewal process. However, the board does not currently require routine background checks for renewals. Although licensees are asked on the renewal application whether they have been convicted of a felony or Title IV violation during the prior license period, they are not asked about driving while intoxicated convictions or other offenses that may be relevant. In addition, the board does not appear to verify the information provided on the renewal applications. False statements on an application are a class B felony.<sup>9</sup> Arrests and convictions will show up on a background check.

An alternative to a complete background check on licensees at renewal time is to request the Department of Public Safety to provide information from the Alaska Public Safety Information Network (APSIN) system. Similar to the APSIN information provided to the Division of Family and Youth Services (DFYS) on an on-going basis, the ABC Board could be electronically notified whenever the previously identified individuals are arrested or convicted. This "real time" reporting of arrests and convictions would provide both helpful and timely information to the ABC Board.

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<sup>7</sup> Guidance for summarily suspending licenses comes from Business and Professions, Centralized Licensing, AS 08.01.075(c) which states, "A board may summarily suspend a licensee from the practice of the profession before a final hearing is held or during an appeal if the board finds that the licensee poses a clear and immediate danger to the public health and safety."

<sup>8</sup> AS 04.11.295 provides that "The board may require an applicant for renewal of a license under this title to submit fingerprints to the Department of Public Safety. . . ."

<sup>9</sup> AS 04.11.210 states, "If a false statement is made in an application . . . the applicant is guilty of perjury . . . ."

The ABC Board should institute background checks as part of the renewal process or request DPS to provide information from APSIN to track its licensees.

#### Recommendation No. 4

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

Alaska Statute<sup>10</sup> requires all fines imposed by the board be deposited into the General Fund.

The board has instituted a new procedure used in settlement agreements with licensees which does not follow the requirements of this statute. The new procedure evolved when the board imposed a \$1,000 fine on a licensee in a settlement agreement. To avoid having the fine paid into the General Fund, which the board sees as lost money,<sup>11</sup> and in an effort to provide restitution, the board instructed the director to refer to the fine as a "donation" and to have the licensee pay it to a local police department.

Current statutes provide the board with only three penalties it can impose on licensees who have violated Title IV: civil fines,<sup>12</sup> and/or temporary suspension or revocation.<sup>13</sup> The statutes do not give the board authority to require a licensee to pay "restitution" or make a "donation" to a third party. (The process of imposing penalties should be clearly spelled out in the agency's procedural manuals. See Recommendation No. 7.)

As a result, the ABC Board has diverted money that should have been deposited into the General Fund and been available for appropriation by the legislature into the control of a third party. Diversion of monies from the General Fund to another entity may violate the state constitution. It erodes the legislature's most significant power, that of appropriation. Executive or judicial branch agencies appropriating general funds may violate the most basic separation of powers doctrine. While in this instance the \$1,000 involved is not material to either the ABC Board or the State, court decisions have maintained that all appropriations must be made by the legislature.

The board should follow the direction provided by statute and the constitution and deposit all fines into the General Fund. The board should also seek the return of any such "donations" made in the past.

#### Recommendation No. 5

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

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<sup>10</sup> AS 04.11.590 (a) directs that fines ". . . shall be transferred by the board to the Department of Revenue and deposited in the General Fund."

<sup>11</sup> The board sees these revenues as lost because the money goes into the General Fund, rather than being designated for the board's own use.

<sup>12</sup> AS 04.11.575(a). Civil fine.

<sup>13</sup> AS 04.11.370. Suspension and revocation of licenses and permits.

The enforcement staff lacks focus in its activities. Of primary concern is the backlog of unissued notices of violation (NOVs) stemming from police reports and compliance checks conducted under a federal underage drinking grant.<sup>14</sup> NOVs are issued to licensees when staff becomes aware that violations of Title IV have taken place at a licensed premise. Throughout FY 02, the staff was at least six months behind<sup>15</sup> in the issuance of NOVs for premises in Anchorage. The backlog limits the ability of the board to monitor the liquor industry.

The enforcement staff is spending the majority of its time managing an underage drinking grant and is allowing other enforcement work to go unfinished. As a result, the licensees, who are cited by law enforcement for selling to a minor during a compliance check, are not issued NOVs in a timely manner.

The public welfare is not adequately protected when licensees who have violated Title IV and have been cited by the police do not receive the associated NOV for six months or more. The board and local governing bodies cannot adequately review the licensee during the renewal period without complete information.

Another concern is that between FY 94 and FY 02 the number of premise inspections conducted has dropped by 62%. Spending an inordinate amount of time on the underage drinking grant and replacing the premise inspection with a walk-through procedure are two of the reasons for the decline in premise inspections. Staff stated that the walk-through consists of an investigator walking into a licensed premise, looking around briefly for drunk or underage customers, and walking out. This substitution frees up more time for the investigator.

However, investigators are not tracking which licensees have been given a walk-through, what the results were, or whether the licensee even knew it had taken place. Walk-throughs are not effective without planning, consistency, and notification of enforcement presence. With the current process, the effectiveness of a walk-through cannot be evaluated by the director or the board.

The staff is directed by the board to enforce Title IV and given a variety of ways to enforce it. However, without board-directed goals, the enforcement staff cannot seem to prioritize its workload. Staff currently appears to be more interested in performing police-type activities than regulatory activities. As a result, it appears that enforcement activities are unorganized and inefficient.

The board and the director should establish specific goals for the enforcement staff so it can perform more efficiently and effectively.

#### Recommendation No. 6

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<sup>14</sup> This federal grant program aids states in reducing underage drinking. The grant amount began in FY 00 and has grown to approximately \$100,000. The grant funds are primarily passed through to the Alaska State Troopers and local law enforcement agencies who then conduct compliance checks ("stings") on local liquor stores.

<sup>15</sup> This backlog was cleared up by the ABC Board staff in late October 2002.