

115 26 HOUSE LABOR & COMMERCE

1 Development or the Department of Labor and Workforce Development may issue a
2 citation for a violation if there is probable cause to believe a person has violated this
3 chapter with respect to contractor activities. The Department of Commerce,
4 Community, and Economic Development may issue a citation for a violation if there is
5 probable cause to believe a person has violated this chapter with respect to home
6 inspection activities. Each day a violation continues after a citation for the violation
7 has been issued constitutes a separate violation.

8 * Sec. 2. AS 08.18 is amended by adding a new section to read:

9 **Sec. 08.18.125. Administrative fine and procedure.** (a) Notwithstanding
10 any other remedy available under this chapter and except as provided in (e) of this
11 section, the department may impose an administrative fine of not more than \$1,000 for
12 the first violation and not more than \$1,500 for a second or subsequent violation of
13 either AS 08.18.011 or 08.18.025.

14 (b) The department shall issue a written notice of an administrative fine
15 imposed under (a) of this section, together with a statement of the reason for the fine, a
16 copy of the applicable procedures, and notice of an opportunity to request a hearing,
17 including the contact information for making the request, within 30 days after the date
18 of the notice of the fine.

19 (c) If a person who is issued a notice of an administrative fine under (b) of this
20 section fails to request a hearing within 30 days after the date of the notice, the right to
21 a hearing is waived and the administrative fine is not subject to judicial review. A
22 hearing request must be in writing and must clearly state the issues to be raised at the
23 hearing. The department shall schedule a hearing before a hearing officer not earlier
24 than 10 days after receiving the request for a hearing.

25 (d) A decision of a hearing officer under this section is a final administrative
26 decision subject to review by a superior court under AS 44.62 (Administrative
27 Procedure Act).

28 (e) The department may not impose an administrative fine on a person who is
29 acting as a contractor or home inspector in an area with a population of 1,000 or less
30 that is not connected by road or rail to Anchorage or Fairbanks.

31 * Sec. 3. AS 08.18.131 is amended to read:

1 **Sec. 08.18.131. Injunction; civil penalty.** In an action instituted in the
2 superior court by the Department of Commerce, Community, and Economic
3 Development or the Department of Labor and Workforce Development, the court may
4 enjoin a person from acting in the capacity of a contractor in violation of this chapter.
5 In an action instituted in the superior court by the Department of Commerce,
6 Community, and Economic Development, the court may enjoin a person from acting
7 in the capacity of a home inspector in violation of this chapter. In addition to other
8 relief, the court may impose a civil penalty of not more than \$1,000 [\$250] for each
9 violation. Each day that an unlawful act continues constitutes a separate violation.

10 * **Sec. 4.** AS 08.18.141 is repealed and reenacted to read.

11 **Sec. 08.18.141. Violations.** (a) A contractor or a person acting in the
12 capacity of a contractor is guilty of a class B misdemeanor if the person

13 (1) knowingly violates AS 08.18.011 or 08.18.025; and

14 (2) has been previously

15 (A) convicted of violating AS 08.18.011 or 08.18.025;

16 (B) found guilty of a violation under AS 08.18.117 if the
17 violation involved AS 08.18.011 or 08.18.025; or

18 (C) fined under AS 08.18.125.

19 (b) A contractor or a person acting in the capacity of a contractor who violates
20 a provision of this chapter, other than a violation under (a) of this section, is guilty of a
21 violation punishable under AS 12.

22 (c) Criminal prosecution for a violation of this chapter does not preclude the
23 Department of Commerce, Community, and Economic Development or the
24 Department of Labor and Workforce Development from seeking available civil or
25 administrative remedies.

26 * **Sec. 5.** AS 08.18.161 is amended to read:

27 **Sec. 08.18.161. Exemptions.** To the extent that this chapter governs
28 contractors, this chapter does not apply to

29 (1) an authorized representative of the United States government, the
30 State of Alaska, or a political subdivision or agency of the state;

31 (2) an officer of a court when acting within the scope of office;

1 (3) a public utility operating under the regulations of the public service
2 commission in construction, maintenance, or development work incidental to its own
3 business;

4 (4) a construction, repair, or operation incidental to the discovering or
5 producing of petroleum or gas, or the drilling, testing, abandoning, or other operation
6 of a petroleum or gas well or a surface or underground mine or mineral deposit when
7 performed by an owner or lessee;

8 (5) the sale or installation of finished products, materials, or articles of
9 merchandise that are not actually fabricated into and do not become a permanent,
10 fixed part of a structure:

11 (6) construction, alteration, or repair of personal property;

12 (7) a person who only furnished materials, supplies, or equipment
13 without fabricating them into, or consuming them in the performance of, the work of
14 the contractor;

15 (8) work on one project under one or more contracts, the aggregate
16 contract price of which for labor and materials and all other items is less than \$5,000;
17 this exemption does not apply when the work is only a part of a larger or major
18 operation, whether undertaken by the same or a different contractor, or when the work
19 is divided into contracts of amounts less than \$5,000 for the purpose of evasion of this
20 chapter or otherwise; this exemption does not apply to a person who advertises or puts
21 out a sign or card or other device that might indicate to the public that the person is a
22 contractor, or that the person is qualified to engage in the contracting business; a
23 contractor who performs work priced at \$2,500 or more, under this exemption, shall
24 nevertheless keep in force public liability and property damage insurance with
25 coverage in at least the amounts set out in AS 08.18.101;

26 (9) an owner who contracts for a project with a registered contractor;

27 (10) a person working on that person's own property, whether occupied
28 by the person or not, and a person working on that person's own residence, whether
29 owned by the person or not;

30 (11) an owner or tenant of commercial property who uses the owner's
31 or tenant's own employees to do maintenance, repair, and alteration work upon that

1 property;

2 (12) an owner who occupies the property after construction for not
3 less than three consecutive years and acts as the owner's own contractor and in
4 doing so hires workers on an hourly basis, hires subcontractors, purchases materials
5 and, as such, sees to the paying for all labor, subcontractors, and materials; in this
6 case, the owner shall be limited to construction of one home, duplex, triplex, four-
7 plex, or one commercial building a year;

8 (13) a person performing construction work incidental to farming,
9 dairying, agriculture, horticulture, stock or poultry raising, mining, logging, fishing,
10 clearing, or other work upon the land in rural districts for fire prevention purposes, or
11 access road building, unless the person is a licensee.

12 * Sec. 6. AS 44.64.030(a)(6) is amended to read:

13 (6) AS 08 (occupational licensing), other than AS 08.08,
14 AS 08.18.125, and AS 08.62.046;

15 * Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 APPLICABILITY. (a) AS 08.18.125, 08.18.131, and 08.18.141, as added or
18 amended by secs. 2 - 4 of this Act, apply to a violation occurring on or after the effective date
19 of this Act. However, for the purposes of AS 08.18.141, a previous conviction or fine may
20 have occurred before, on, or after the effective date of this Act.

21 (b) AS 08.18.161(12), as amended by sec. 5 of this Act, applies to contract work
22 begun on or after the effective date of this Act.

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

25 REVISOR'S INSTRUCTION. The amendment to AS 44.64.030(a)(6) by sec. 6 of this
26 Act is to be reconciled with secs. 82 and 96, ch. 163, SLA 2004, so that both are given effect.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 81

BY: Representative Tom Anderson

TITLE: "An Act establishing an administrative fine and procedure for construction contractors in certain circumstances; increasing the amount of a civil penalty for persons acting in the capacity of contractors or home inspectors; modifying the elements of a crime involving contractor registration and residential contractors; and exempting the administrative hearings for imposing an administrative fine on construction contractors from the hearings conducted by the office of administrative hearings in the Department of Administration."

Under current law, the State of Alaska investigates and enforces violations of construction contractor laws. Both the Departments of Labor and Commerce, Community & Economic Development have authority to pursue violations of work performed by unregistered construction contractors. For the most part, they rely upon the public complaints, and follow up with investigations (depending on the availability of resources). Under current laws, these agencies enforce violation by issuing citations. After a citation is issued, the impetus falls to the Department of Law as to whether or not to prosecute the matter in Court.

With over 1,600 unregistered contractors operating under this exemption, numerous reports have been made about these unregistered businesses offering construction services in violation of the laws. Enforcement efforts have proven to be difficult and many consumers are unaware their contractor may not be qualified to provide construction services, and even worse, have little or no insurance and warranty protections.

HB 81 would amend the law to allow DCCED of DOL to issue civil penalty violations for first and second-time violations. Instead of going through the Dept. of Law, a violator would either pay a fine (proposed at \$1,000 and \$1,500) or appeal to an administrative hearing officer. This system would be much more effective toward penalizing first-time violations quickly and effectively. Additional offenses would go through the current criminal violation process.

I urge your support for this legislation.

HB

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Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

MEMORANDUM

Date: February 2, 2005

To: Members of the House Labor and Commerce Committee

From: Representative Max Gruenberg

A handwritten signature in dark ink, appearing to read "MG", is written over the printed name "Max Gruenberg".

Re: HB 90 – Treasury Warrants

Thank you for your support in passing out HB 90 which makes it clear that Alaska state treasury warrants are negotiable instruments. I appreciate your support.

Attached is a copy of the National Bank v. Univentures 1231 case I cited in today's testimony.

NATIONAL BANK OF ALASKA,
National Banking Association,
Appellants,

v.

UNIVENTURES 1231 and State of
Alaska, Department of Admin-
istration, Appellees.

No. S-4087.

Supreme Court of Alaska.

Jan. 24, 1992.

Bank brought action against state, state's landlord, landlord's managing partner, and assignee of warrant to recover amount that bank paid on treasury warrant for payment of rent. The Superior Court, Third Judicial District, Anchorage, J. Justin Ripley, J., determined that warrant was not negotiable instrument. Bank appealed. The Supreme Court, Moore, J., held that state treasury warrant for rent payment was "negotiable instrument."

Reversed.

1. Appeal and Error ¶893(1)

Whether state treasury warrant was negotiable instrument was question of law examined de novo.

2. Bills and Notes ¶151

State treasury warrant for rent payment was "negotiable instrument." AS 45.03.104(a).

See publication Words and Phrases for other judicial constructions and definitions.

3. Bills and Notes ¶148

Instrument can be negotiable without being draft, check, certificate of deposit, or note. AS 45.03.104, 45.03.104(b)(1).

David Floerchinger and Deirdre D. Ford, Staley, DeLisio, Cook & Sherry, Inc., Anchorage, for appellants.

Sally J. Kucko and Rick L. Owen, Groh, Eggers & Price, Anchorage, for appellees Univentures 1231.

Alaska Rep. 823-826 P.2d-7

Jeffrey W. Bush, Asst. Atty. Gen., and Charles E. Cole, Atty. Gen., Juneau, for appellee State of Alaska, Dept. of Admin.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

MOORE, Justice.

National Bank of Alaska (NBA) brought an action against the State of Alaska, Univentures 1231 (Univentures), Charles D. LeViege, and Lee D. Garcia to recover the amount which NBA paid on a warrant issued by the state. The superior court held that the warrant is not a negotiable instrument under the Uniform Commercial Code as enacted in Alaska, and that NBA therefore could not recover as a holder in due course under the code. NBA appeals. The sole issue on appeal is whether the superior court was correct in finding that the state treasury warrant is a non-negotiable instrument under Article III of the Uniform Commercial Code. We reverse.

I.

The State of Alaska is a tenant in a large office building which is owned by Univentures. On November 24, 1987, the state made a lease payment of \$28,143.47 to Univentures with state treasury warrant No. 21045102. Charles LeViege, the managing partner of Univentures, assigned the warrant on behalf of Univentures to Lee Garcia.

As a result of a dispute which arose among the partners of Univentures, the state was notified on November 25, 1987 that it should no longer pay Charles LeViege the monthly rent due the partnership. The state was directed to hold the rent in abeyance pending the naming of a court-appointed receiver. On November 27, 1987, the state treasury placed a stop-payment order on warrant No. 21045102.

Garcia presented the warrant to NBA, the state's clearing bank, on November 30, 1987. NBA paid Garcia \$28,143.47 on the warrant but did not debit the state's ac-

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Digest

count because of the stop-payment order. On January 14, 1988, NBA filed an action against the State of Alaska, Charles LeViege, and Lee Garcia, to recover the sum of \$28,143.47 which NBA had paid to Lee Garcia in exchange for the warrant. The state deposited an equivalent sum with the court and moved to join Univentures as a party. Samuel and Catherine LeViege answered on behalf of Univentures.

NBA moved for summary judgment claiming that it is a holder in due course under AS 45.03.302(a). NBA argued that the warrant is a negotiable instrument and that it paid the warrant in good faith, without knowledge of facts which would indicate the instrument may not be payable as its terms provide. As such, NBA maintained that it took the warrant free from the defenses presented by Univentures and the state. The state and Univentures opposed NBA's motion, arguing that NBA is not a holder in due course because the warrant is not a negotiable instrument, and because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures filed a cross-motion for summary judgment.

The superior court granted Univentures' cross-motion for summary judgment and denied NBA's motion for summary judgment. Judge Ripley, in ruling for Univentures, specifically found that the warrant is not a negotiable instrument and that NBA

therefore is not a holder in due course. Pursuant to the parties' stipulation, \$16,000.00 of the money deposited with the court was immediately disbursed to Univentures and NBA in equal amounts. The court ordered that the remaining \$12,143.47 be held by the court pending appeal of the court's determination that the warrant is not negotiable. This appeal followed.

II.

Article III of the Uniform Commercial Code provides that the holder in due course of an instrument takes the instrument free of all but a very limited class of defenses that the original payor might have against the original payee. AS 45.03.305.¹ The code defines a holder in due course as one who takes a negotiable instrument for value, in good faith, and "without notice that [the instrument] is overdue or has been dishonored or of any defense against or claim to it on the part of any person." AS 45.03.302(a). If a holder of an instrument is not a holder in due course, the holder takes the instrument subject to all valid claims to the instrument, as well as subject to several classes of defenses. AS 45.03.306.²

[1] The superior court held that NBA was not a holder in due course because the state treasury warrant involved is not a negotiable instrument to which the Uni-

1. AS 45.03.305 provides:

To the extent that a holder is a holder in due course the holder takes the instrument free from

- (1) all claims to it on the part of any person; and
- (2) all defenses of any party to the instrument with whom the holder has not dealt except
 - (A) infancy, to the extent that it is a defense to a simple contract;
 - (B) such other incapacity, or duress, or illegality of the transaction as renders the obligation of the party a nullity;
 - (C) such misrepresentation as has induced the party to sign the instrument with neither knowledge nor reasonable opportunity to obtain knowledge of its character or its essential terms;
 - (D) discharge in solvency proceedings; and
 - (E) any other discharge of which the holder has notice when the holder takes the instrument.

2. AS 45.03.306 provides:

Unless the person has the rights of a holder in due course, a person takes the instrument subject to

- (1) all valid claims to it on the part of any person;
- (2) all defenses of a party which would be available in an action on a simple contract;
- (3) the defenses of want or failure of consideration, nonperformance of a condition precedent, nondelivery, or delivery for a special purpose (AS 45.03.408); and
- (4) the defense that the person or a person through whom the person holds the instrument acquired it by theft, or that payment or satisfaction to the holder would be inconsistent with the terms of a restrictive endorsement; the claim of a third person to the instrument is not otherwise available as a defense to a party liable on the instrument unless the third person personally defends the action for the party.

form Commercial suit, the superior NBA took the state's defense stop-payment or 403(a).⁴ NBA as negotiable instr therefore a holder the warrant is a question of law *novus*. See *Hick* 159, 163 n. 6 (Al grounds, 437 U L.Ed.2d 397 (197

[2] Alaska Statute that for a writing instrument it must:

- (1) be signed
- (2) contain an order to pay and no other notation, or signature or drawer this chapter

(3) be payable time, and

(4) be payable Alaska Statute the Code is to be applied to promote and policies." and policies of Code are:

- (1) to simplify, law governing transactions;

3. Univentures as summary judgment negotiable instrument due course because payment order warrant. Univentures notice of the stop-payment order 27, 1987, in its state treasury warrant apparently found the edge of the stop-payment order the warrant, for that NBA is entitled the court if this 21045102 is a negotiable instrument consider whether stop-payment order point on appeal, party.

4. AS 45.04.403(a):

form Commercial Code applies.³ As a result, the superior court concluded that NBA took the warrant subject to the state's defense that it had issued a valid stop-payment order pursuant to AS 45.04.403(a).⁴ NBA argues that the warrant is a negotiable instrument, and that NBA is therefore a holder in due course. Whether the warrant is a negotiable instrument is a question of law, which we examine *le novo*. See *Hicklin v. Orbeck*, 565 P.2d 159, 163 L. 6 (Alaska 1977) *rev'd on other grounds*, 437 U.S. 518, 98 S.Ct. 2482, 57 L.Ed.2d 397 (1978).

[2] Alaska Statute 45.03.104(a) provides that for a writing to be a negotiable instrument it must:

- (1) be signed by the maker or drawer;
- (2) contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the maker or drawer except as authorized by this chapter;
- (3) be payable on demand or at a definite time, and
- (4) be payable to order or to bearer.

Alaska Statute 45.01.102(a) provides that the Code is to be "liberally construed and applied to promote the underlying purposes and policies." The underlying purposes and policies of the Uniform Commercial Code are:

- (1) to simplify, clarify, and modernize the law governing commercial transactions;

3. Univentures argued in its cross-motion for summary judgment that even if the warrant is a negotiable instrument, NBA is not a holder in due course because NBA had notice of the stop-payment order when it paid Garcia on the warrant. Univentures claimed that NBA was given notice of the stop-payment order on November 27, 1987, in its role as the clearing bank for state treasury warrants. The superior court apparently found that NBA did not have knowledge of the stop-payment order when it accepted the warrant, for the final judgment provides that NBA is entitled to the funds on deposit with the court if this court determines warrant No. 21045102 is a negotiable instrument. We do not consider whether NBA had knowledge of the stop-payment order, for that issue is not a stated point on appeal, and was not briefed by either party.

4. AS 45.04.403(a) provides:

- (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties;
- (3) to make uniform the law among the various jurisdictions.

AS 45.01.102(b).

[3] Warrant No. 21045102 satisfies all four elements of the definition of a negotiable instrument. First, the warrant is signed by the maker, Governor Steve Cowper. Second, the warrant contains an unconditional promise or order to pay a sum certain of \$28,143.47. A promise or order otherwise unconditional is not made conditional by the fact that the instrument is limited to payment out of a particular fund if the instrument is issued by a government or governmental agency or unit. AS 45.03.105(a)(7). Third, the warrant is payable at a definite time. Although the warrant states that it "will be deemed paid unless redeemed within two years after the date of issue," AS 45.03.109 provides that an instrument is payable at a definite time if by its terms it is payable on or before a stated date. AS 45.03.109(a)(1). Finally, the warrant clearly indicates that it is payable to the order of Univentures. An "instrument is payable to order if by its terms it is payable to the order or assigns of a person specified in the instrument with reasonable certainty." AS 45.03.110(a). Because the warrant meets the statutory definition in AS 45.03.104, we hold that the warrant is a negotiable instrument.⁵

A customer may, by order to the bank, stop payment of an item payable for the customer's account, but the order must be received at a time and in a manner which afford the bank a reasonable opportunity to act on it before an action by the bank with respect to the item described in AS 45.04.303.

5. AS 45.03.104(b) classifies certain writings which satisfy the definition of "negotiable instrument" as drafts, checks, certificates of deposit, and notes. We reject the state's argument that an instrument must fit within one of these categories before it can qualify as a negotiable instrument. Negotiability is determined by the four-pronged test of AS 45.03.104, not by the name affixed to a particular writing. If it were necessary to categorize the warrant at issue in this case, it would be a draft. An instrument is a draft if it is an order. AS 45.03.104(b)(1).

The purposes for which the Uniform Commercial Code was enacted support the conclusion that warrants which satisfy the statutory definition of negotiability must be deemed negotiable. Univentures claims that state warrants should be deemed non-negotiable because the state must retain its rights to assert the defenses of a maker in order to maintain and protect its fiscal policies, practices, and procedures. This argument is directly contrary to the Code's policy of promoting commercial transactions by allowing a party to ascertain the negotiability of an instrument from its face. 5 R. Anderson, *Uniform Commercial Code*, § 3-104:4 (1984) ("The whole idea of the facilitation of easy transfer of notes and instruments requires that a transferee be able to trust what the instrument says, and be able to determine the validity of the note and its negotiability from the language in the note itself."). To carve out an exception to the statutory definition of negotiability would jeopardize Article III's purposes of clarifying and modernizing commercial transactions by allowing reliance on written instruments. The transferee of an instrument must be able to rely on the negotiability of the instrument as evidenced by the instrument's terms, so that the transaction is not stalled while the transferee verifies its rights on the instrument.⁶

No Alaska case law addresses the issue of whether a state treasury warrant constitutes a negotiable instrument. Prior to the enactment of the Uniform Commercial Code, warrants issued by states, local governments, and municipalities were almost universally deemed non-negotiable. See, e.g., *Negotiability of County, Municipal, School, State, or Town Warrants*, 36 A.L.R. 949, 949 (1925); *Hamilton Nat'l Bank v. Pool*, 144 S.W.2d 670, 671 (Tex.

6. If the state truly believes that the non-negotiability of treasury warrants is essential to maintain and protect its fiscal policies, the state could make its warrants non-negotiable simply by printing "non-negotiable" on the face of the warrants.

7. All of the cases cited by Univentures and the state are distinguishable from the present case for the reason that all were based upon a "law merchant" which has now been replaced in

App.1940); *State v. Liberty Nat'l Bank & Trust Co.*, 414 P.2d 281, 283 (Okla.1966). The drafters of the Uniform Commercial Code apparently intended to change this body of law, however, as evidenced by the Official Code Comment to § 3-105. 5 R. Anderson, *Uniform Commercial Code*, § 3-105:1, at 228 (1984) ("[Section 3-105(1)(g)] will permit some municipal warrants to be negotiable if they are in proper form.")⁷

Those courts which have considered the negotiability of government warrants have generally found those warrants to be negotiable so long as they satisfy the Code's requirements. The Louisiana Court of Appeal held that a warrant issued by a levee district to pay a construction company was a negotiable instrument. *St. James Bank & Trust Co. v. Board of Comm'rs*, 354 So.2d 233 (La.App.1978). The construction company in that case had negotiated the warrant to a bank. After the levee's Board of Commissioners stopped payment on the warrant, the warrant was returned to the bank unpaid. The court found that the warrant was a negotiable instrument because it satisfied the requirements of § 10:3-104 of the Louisiana statutes. That section is identical to AS 45.03.104. *Id.* at 234.

Similarly, the Supreme Court of Nebraska held that a warrant issued by a county sanitary and improvement district was a negotiable instrument. *Sanitary & Improvement Dist. v. Continental Western*, 215 Neb. 843, 343 N.W.2d 314 (1983). In that case, the sanitary and improvement district which had issued capital and improvement warrants sought a judicial declaration of the invalidity of the warrants. After examining the warrants in light of § 3-104 of the Nebraska Uniform Commer-

Alaska by the Uniform Commercial Code. See *Prince v. LeVan*, 486 P.2d 959, 962 (Alaska 1971) ("By legislative declaration the code is the law, and if general principles appear inconsistent, they must be considered displaced under [this section]. Moreover, even where inconsistency does not exist, the code must be regarded as supreme; general principles even when consistent with the code are merely supplementary.")

cial Code, 45.03.104, held that

We are of opinion that the court's opinion is correct. We are of opinion that the court's opinion is correct. We are of opinion that the court's opinion is correct.

The decision is reversed. The court

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Form: former husband of his minor Superior Court charge, favor of

8. *Carney* 544, 548. The court's opinion is correct. We are of opinion that the court's opinion is correct. We are of opinion that the court's opinion is correct.

cial Code, which is almost identical to AS 45.08.104, the Supreme Court of Nebraska held that they were negotiable instruments.

We are mindful of a 1987 attorney general opinion which concluded that state treasury warrants are not negotiable. While attorney general opinions are entitled to some deference in matters of statutory construction, they are not always correct.⁸ In this instance we are unconvinced by the attorney general's opinion. It fails to consult the language and policies of the Uniform Commercial Code, and it relies mainly on cases examining the negotiability of warrants arising prior to the enactment of the Uniform Commercial Code.

The decision of the superior court is REVERSED. The \$12,143.47 on deposit with the court is awarded to NBA.⁹



Minnie L. JOHNSON, Appellant,

v.

Leroy Benjamin JOHNSON, Appellee.

No. S-4063.

Supreme Court of Alaska.

Jan. 24, 1992.

Former wife brought action against former husband, seeking equitable division of his military retirement benefits. The Superior Court, Third Judicial District, Anchorage, Milton M. Souter, J., decided in favor of husband, and wife appealed. The

8. *Carney v. State Board of Fisheries*, 785 P.2d 544, 548 (Alaska 1990) ("Opinions of the attorney general, while not controlling on matters of statutory interpretation, are entitled to some deference."); *Girves v. Kenai Peninsula Borough*, 536 P.2d 1221, 1225 (Alaska 1975) ("We hold that the 1962 Attorney General's opinion is in error insofar as it concludes that the territorial government of Alaska had no power to accept the right-of-way granted in 43 U.S.C. § 932 (1964).").

Supreme Court held that, in light of amendment to Uniform Services of Former Spouses' Protection Act (USFSPA) prohibiting reopening of divorce decrees in order to equitably distribute previously undivided military retirement benefits, former wife was not entitled to equitable division of husband's military pension.

Affirmed.

1. Judgment ⇐336

Where parties' property rights have been purportedly adjudicated and incorporated into final judgment, relief may only be granted within parameters of rule providing for relief from judgment. Rules Civ.Proc., Rule 60(b).

2. Divorce ⇐4

In light of amendment to Uniform Services of Former Spouses' Protection Act (USFSPA) prohibiting reopening of divorce decrees in order to equitably distribute previously undivided military retirement benefits, former wife was not entitled to equitable division of husband's military pension following final divorce decree which did not address husband's military retirement benefits, even though amendment was enacted during pendency of wife's appeal. 10 U.S.C.A. § 1408(c)(1).

3. Divorce ⇐252.3(4)

Military retirement benefits may be equitably divided.

4. Appeal and Error ⇐1107

Generally, where controlling law changes between entering of judgment below and consideration of matter on appeal, appellate court should apply new or altered law where legislature intended retroactive application.

9. The parties to this appeal stipulated that if we reverse the superior court's determination that the warrant is a negotiable instrument, Univentures waives all other claims to the interpled money against NBA and the state, including the claim that NBA was not a holder in due course of the instrument.

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FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 90
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act requiring warrants drawn on RDU: Centralized Administrative Services
the state treasury to be negotiable instruments Component: Finance
 Sponsor: House State Affairs
 Requester: House State Affairs Component No.: 59

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact. It simply codifies in law a 1992 ruling by the Alaska Supreme Court (National Bank of Alaska vs. Univentures and the State of Alaska, Department of Administration, file #S-4087) that reversed a Superior Court ruling on the negotiability of warrants issued by the state. The Supreme Court held that state warrants are negotiable instruments subject to the UCC rules governing holders in due course.

Since that Supreme Court decision, the state has administered its warrants as negotiable instruments, so no administrative changes are necessary if this legislation passes. It will simply codify in statute the ruling of the Supreme Court.

Prepared by: Kim J. Garnero, Director Phone 465-3435
 Division: Finance Date/Time 2/1/05 1:40 PM
 Approved by: Michael Tibbles, Deputy Commissioner Date 2/1/2005
 Agency: Department of Administration

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
345 W. Sterling Highway
Suite 102B
Homer, Alaska 99603
907-235-2921
907-235-4008 FAX



Session:
Alaska State Capitol, Room 102
Juneau, Alaska 99801
907-465-2689
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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sponsor Statement

HB 90

Requiring state treasury warrants to be negotiable instruments.

House Bill 90 continues the committee's work last session on House Bill 373—State Dated Warrants. It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants. This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures 1231, 824 P.2d 1377 (Alaska 1992), which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code and were therefore subject to the "holder in due course" defense. This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding. HB 373 simply codifies the holding the National Bank of Alaska v. Univentures 1231.

The State Affairs Committee is introducing this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

Contact: Peter Naoroz
465-2840

Released: January 21, 2005

ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:
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Homer, Alaska 99603
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HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

Sectional Analysis

HB 90

Requiring state treasury warrants to be negotiable instruments.

Section 1. Payment of warrants.

Adds language that clarifies the nature of a warrant issued by the Department of Administration against the state treasury. The language originates in a 1992 Supreme Court decision, *National Bank v. Univentures*, and it states that state treasury warrants (those things that we think of as "checks") constitute a negotiable instrument, and they must be paid according to the terms of the Uniform Commercial Code § 3-104(1)(b).

Adds language stating that "negotiable instrument" has the meaning given in AS 45.03.104(a).

Title 45 TRADE AND COMMERCE
Chapter 45.03 NEGOTIABLE INSTRUMENTS

Sec. 45.03.104. Negotiable instrument.

(a) Except as provided in (c) - (d) of this section, "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if the unconditional promise or order

- (1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;
- (2) is payable on demand or at a definite time; and
- (3) does not state any other undertaking or instruction by the person promising or ordering payment to do an act in addition to the payment of money, but the promise or order may contain an undertaking or power to give, maintain, or protect collateral to secure payment, an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or a waiver of the benefit of a law intended for the advantage or protection of an obligor.

Talking Points
HB 90

House Bill 90 continues the work of the House State Affairs Committee work last session on House Bill 373—Stale Dated Warrants.

It clarifies existing statutes governing state treasury warrants by providing that warrants, like bank checks, are negotiable instruments under the Uniform Commercial Code.

During the 1980s, there was a long-standing dispute between commercial banks and the State of Alaska regarding the negotiability of state treasury warrants.

This dispute was ultimately resolved by the Alaska Supreme Court in National Bank of Alaska v. Univentures in 1992, which held that state treasury warrants were negotiable instruments under the Uniform Commercial Code.

This was an important protection for businesses with financial dealings with the State. Although the Division of Finance amended its business practices to comply with the Supreme Court ruling, Alaska statutes have never been amended to incorporate this holding.

HB 90 simply codifies the holding the National Bank of Alaska v. Univentures 1231. The House State Affairs Committee introduced this legislation in order to clarify Alaska statutes and continue the modernization of the state treasury warrant system.

HB

93

Conceptual Amendments adopted in House Labor & Commerce

Amendment #1

Page 4, Line 13 insert "per week" after 20 hours

Amendment #2

Combine Page 3, Lines 14-16 and Page 8, Lines 25-26 into one 'standard' and use in both instances. The committee wants to maintain the language "that threatens" but also wants to include the language "that cannot be overcome".

Amendment #3

Page 10, Line 4 insert "by certified mail" after the word complaint

ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4th Ave
Anchorage, AK 99501
Room 610



Phone (907)-269-0265
Fax# (907)-269-0264

Representative Tom Anderson

FACSIMILE

To: Jean Mischel Fax: 465-2029
From: Josh Applebee Date: 1/19/2006
Re: HB 93 changes
CC:

Urgent For Review Please Comment Please Reply Please Recycle

Good Morning ,

Attached are the conceptual amendments adopted by the House Labor & Commerce Committee on Wed. Jan 18 for HB 93 24-LS0384II. The only concern I have is with amendment #2 so if we can agree on the language for that you can make the changes and provide a final at that time.

Let me know if there is anything else you need.

-Josh

465-4954

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

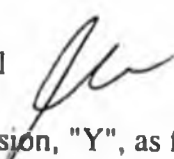
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 13, 2006

SUBJECT: Update to CSHB 93() (Work Order No. 24-LS0384U)

TO: Representative Tom Anderson
Attn: Heath Hilyard

FROM: Jean M. Mischel
Legislative Counsel 

This version differs from the previous version, "Y", as follows:

1. Former sections 23 and 26 have been deleted.

Former section 23 repealed two uncodified provisions from 2004 (secs. 11 and 12, ch. 163, SLA 2004) that added the Office of Administrative Hearings to the summary suspension process for dentists and dental hygienists. Those provisions were uncodified only before July 1, 2005, when their delayed effective dates were met. Since this bill was introduced prior to July 1, 2005, the repeal of the uncodified provisions was then necessary. But since this bill has not yet passed the legislature, the repeal of those provisions must now be made in codified law (see secs. 5 and 17).

Former section 26 applied a contingent retroactive effective date to section 5, pertaining to dental hygienist summary suspensions, and to former section 23. The retroactive date should have been July 1, 2005 but, since the bill draft had been more recently modified, that date was erroneously changed to July 1, 2006.

Both sections 23 and 26 are now moot since the delayed effective date of July 1, 2005 for the 2004 amendments has passed. Therefore, those two sections have been deleted in this version.

2. Section 17 has been added.

New section 17 is the codified version of the 2004 change pertaining to summary suspensions of dentists through the Office of Administrative Hearing (AS 08.36.320(c)). That subsection now appears as an amendment to exclude the summary suspension of dentists from the Office of Administrative Hearings. Section 5, pertaining to dental hygienists, is unchanged except that a retroactive effective date is no longer required as noted above. (See also sec. 22).

If I may be of further assistance, please advise.

JMM:med
06-032.med

HB93

- JIM TOWLE, EXEC. DIR.
AK DENTAL SOCIETY
- DR. GEORGE SHAFER, D.M.D.
1977 -
SERVED ON STATE DENTAL LIC. BOARD
- MAINTAIN PROFESSIONAL STANDARDS OF
DENTISTRY
- RICK URION

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: HB 93
 Bill Version: _____
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Dentists and Dental Hygienists RDU Corp. Bus & Prof Licenses (117)
 Component Corp, Bus & Prof Licensing
 Sponsor Anderson
 Requester Labor and Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	131.1	131.1	131.1	131.1	131.1	131.1
Travel	6.0	6.0	6.0	6.0	6.0	6.0
Contractual	62.4	62.4	62.4	62.4	62.4	62.4
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	12.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	212.5	200.5	200.5	200.5	200.5	200.5

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

CHANGE IN REVENUES (1156)	212.5	200.5	200.5	200.5	200.5	200.5
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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						
1156 Receipt Supported Services	212.5	200.5	200.5	200.5	200.5	200.5
TOTAL	212.5	200.5	200.5	200.5	200.5	200.5

Estimate of any current year (FY2008) cost: \$154.3

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 93 provides the Board of Dental Examiners significant authority to conduct its licensing functions independently. The bill authorizes the Board to establish its own procedures for conduct of investigations, hearings, and to employ or contract legal, investigative and administrative services.

Currently, administrative, budgetary, technical and investigative support are provided by the Division of Corporations, Business and Professional and Licensing under AS 08.01, Centralized Licensing. The Board does not have its own budget appropriation structure. Given the new authority in the bill to employ or contract services, the division anticipates staffing support from the division to cease unless otherwise requested by the Board. The costs above are explained on the following pages.

Prepared by: Jennifer Strickler, Chief Phone (907) 465-2144
 Division: Corporations and Licensing Date/Time 1/17/06 3:40 PM
 Approved by: William C. Noll, Commissioner Date 1/17/2006
 Agency: Commerce, Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 93

ANALYSIS CONTINUATION

Personal Services: \$131.1

This funding provides for the following positions -

- 1 - Occupational Licensing Examiner, PFT, GGU, Range 13B - \$57.5
- 1 - Investigator III, PFT, GGU, Range 18A - \$73.6

Currently, the Board receives support from these positions in the Division of Corporations and Licensing. The services provided are charged to the board based on positive timekeeping, making the Board responsible only for services it actually receives. The new Board authority to employ services directly will require its own dedicated positions through the State system.

*In FY05, the Board spent \$78.2 on direct personal services; which is anticipated to be replaced by the new costs above.

(Indirect costs for clerical support, accounting, management, etc. are not new costs and therefore not included in this fiscal note. In FY05, the personal services indirect cost to the Dental Board totaled \$28.9 and is expected to continue.)

Travel: \$6.0

This funding is based on the cost of one additional meeting for the Board, whether the funding is used by the Board to hold one extra meeting for a disciplinary hearing in person as required by Section 9 of the bill; or whether this funding is to be used by the peer review or disciplinary committee.

*In FY05, the Board spent \$13.5 on travel. This funding is expected to continue with the addition of \$6.0 new costs.

(Indirect FY05 travel costs totaled \$0.4. This cost is not new and therefore not included in this fiscal note but is expected to continue.)

Contractual Services: \$62.4

This funding assumes that at least the same level of legal services used in FY05 will continue. However, the Board's new authority to contract or employ legal services could raise this cost rapidly and significantly. The Division currently operates under agreement with the Department of Law to obtain legal services for all licensing programs. The programs are then charged back based on actual attorney time. The new authority provided in the bill allows the Board to contract or employ services directly, and the Board will need to do so in accordance with State procurement requirements.

*In FY05, the Board spent \$62.4 on contractual services. It assumes the activity of the peer review and disciplinary committees will generate need for additional legal services, resulting in costs remaining high.

(Indirect FY05 contractual services costs totaled \$25.2. This cost is not new and therefore not included in this fiscal note but is expected to continue.)

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

BILL NO. HB 93

ANALYSIS CONTINUATION

Supplies: \$1.0

Provides funding for general operating supplies of the two new positions.

(Indirect FY05 supplies cost \$1.8. This cost is not new and therefore not included in this fiscal note but is expected to continue.)

Equipment: \$12.0 (one-time costs)

Provides funding for equipment and space needs of the two new positions.

New Costs resulting from HB93:	\$212.5
Existing Direct Cost in FY05:	\$154.3
Indirect Costs in FY05:	<u>\$56.3</u>
TOTAL Costs:	\$423.1

(For comparison purposes, FY05 Direct and Indirect Costs for the Board of Dental Examiners totaled \$210.6. The independent authority to contract and employ services provided in FY05 anticipates an increase of \$212.5).

Note: If the Board of Dental Examiners remains in Centralized Licensing (AS 08.01.010(13)) indirect costs will apply resulting from the self sufficiency mandate of AS 08.01.065. If the Board is removed from AS 08.01 and made autonomous, other costs will apply.

**The current Board cost under the present organizational structure is \$210.6, and is included in the Governor's FY06 operating budget.

LEGAL SERVICES

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Mail Stop 3101

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

MEMORANDUM

January 13, 2006

SUBJECT: Update to CSHB 93() (Work Order No. 24-LS0384M)

TO: Representative Tom Anderson
Attn: Heath Hilyard

FROM: Jean M. Mischel
Legislative Counsel

This version differs from the previous version, "Y", as follows:

1. Former sections 23 and 26 have been deleted.

Former section 23 repealed two uncodified provisions from 2004 (secs. 11 and 12, ch. 163, SLA 2004) that added the Office of Administrative Hearings to the summary suspension process for dentists and dental hygienists. Those provisions were uncodified only before July 1, 2005, when their delayed effective dates were met. Since this bill was introduced prior to July 1, 2005, the repeal of the uncodified provisions was then necessary. But since this bill has not yet passed the legislature, the repeal of those provisions must now be made in codified law (see secs. 5 and 17).

Former section 26 applied a contingent retroactive effective date to section 5, pertaining to dental hygienist summary suspensions, and to former section 23. The retroactive date should have been July 1, 2005 but, since the bill draft had been more recently modified, that date was erroneously changed to July 1, 2006.

Both sections 23 and 26 are now moot since the delayed effective date of July 1, 2005 for the 2004 amendments has passed. Therefore, those two sections have been deleted in this version.

2. Section 17 has been added.

New section 17 is the codified version of the 2004 change pertaining to summary suspensions of dentists through the Office of Administrative Hearing (AS 08.36.320(c)). That subsection now appears as an amendment to exclude the summary suspension of dentists from the Office of Administrative Hearings. Section 5, pertaining to dental hygienists, is unchanged except that a retroactive effective date is no longer required as noted above. (See also sec. 22).

If I may be of further assistance, please advise.

JMM:med
06-032.med

24-LS0384V

Mischel

1/12/06

CS FOR HOUSE BILL NO. 93()**IN THE LEGISLATURE OF THE STATE OF ALASKA****TWENTY-FOURTH LEGISLATURE - SECOND SESSION****BY****Offered:****Referred:****Sponsor(s): REPRESENTATIVE ANDERSON****A BILL****FOR AN ACT ENTITLED**

1 "An Act relating to dentists and dental hygienists and the Board of Dental Examiners;
2 establishing certain committees for the discipline and peer review of dentists; excluding
3 the adjudicatory proceedings of the Board of Dental Examiners and its committees from
4 the Administrative Procedure Act and from the jurisdiction of the office of
5 administrative hearings; and providing for an effective date."

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

7 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section
8 to read:

9 **PURPOSE.** It is the purpose of this Act to modify the existing framework used to
10 license and discipline dentists and dental hygienists in order to improve the practice of
11 dentistry and dental hygiene in the state and to better protect the public. It is the further
12 purpose of this Act to provide peer review and to ensure confidentiality for the complainants
13 and the licensee, to involve licensed dentists and dental hygienists in the decision-making

1 process, and to better address patient and public complaints.

2 * Sec. 2. AS 08.01.080 is amended to read:

3 **Sec. 08.01.080. Department regulations.** The department shall adopt
4 regulations to carry out the purposes of this chapter including but not limited to
5 describing

6 (1) how an examination is to be conducted;

7 (2) what is contained in application forms;

8 (3) how a person applies for an examination or license;

9 **(4) how to maintain the confidentiality of information required to**
10 **be confidential under AS 08.01.087.**

11 * Sec. 3. AS 08.01.087 is amended by adding new subsections to read:

12 (d) Except as otherwise provided under AS 08.36, the department shall
13 maintain the confidentiality of information involving a dental hygienist or dentist
14 licensed in the state under AS 08.32 or AS 08.36 or a person who is a patient or
15 complainant of a licensed dentist or dental hygienist if the information pertains to the
16 health, discipline, or rehabilitation of the licensee or other person.

17 (e) Not more than 30 days after receiving confidential information under (d) of
18 this section, the department shall make available for inspection and copying by a
19 licensee all information pertaining to a complaint against the licensee, including the
20 name of the accuser, the nature of the complaint, and all evidence provided to the
21 department in support of the complaint. If the department fails to make the
22 information available as required under this subsection, the information withheld from
23 the licensee must be excluded from a disciplinary hearing involving the licensee.

24 * Sec. 4. AS 08.32.160 is amended to read:

25 **Sec. 08.32.160. Grounds for discipline, suspension, or revocation of license.**
26 The board may revoke or suspend the license of a dental hygienist, or may reprimand,
27 censure, or discipline a licensee, **or impose another form of discipline that the**
28 **board determines is warranted and necessary,** if, after a hearing, the board finds
29 that the licensee

30 (1) **knowingly** used [OR KNOWINGLY COOPERATED IN] deceit,
31 fraud, or intentional misrepresentation to obtain a license or registration;

1 (2) engaged in deceit, fraud, or intentional misrepresentation in the
2 course of providing or billing for professional services or engaging in professional
3 activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the
6 licensee's ability to continue to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under
8 this chapter or under AS 08.36, or with an order of the board;

9 (6) continued to practice after becoming unfit due to

10 (A) professional incompetence;

11 (B) addiction or dependence on alcohol or other drugs that
12 threatens or compromises patient care, has the potential to compromise
13 patient care, or impairs the licensee's ability to practice safely;

14 (C) physical or mental disability that threatens or
15 compromises patient care, has the potential to compromise patient care,
16 or impairs the licensee's ability to practice safely;

17 (D) failure to keep informed of or use current professional
18 theories and practices;

19 (7) engaged in lewd or immoral conduct in connection with the
20 delivery of professional service to patients;

21 (8) performed clinical procedures [FOR COMPENSATION] without
22 being under the supervision of a licensed dentist.

23 * Sec. 5. AS 08.32.171 is repealed and reenacted to read:

24 **Sec. 08.32.171. Disciplinary sanctions.** The board may summarily suspend
25 the license of a licensee who refuses to submit to a physical or mental examination
26 under AS 08.36.070(b)(1) upon proof by clear and convincing evidence that the
27 licensee poses an immediate threat of harm to patient care in the absence of a physical
28 or mental examination. A decision to suspend a license under this section is a final
29 administrative decision subject to judicial review under AS 44.62.560 and 44.62.570.

30 * Sec. 6. AS 08.36.010(a) is amended to read:

31 (a) There is created the Board of Dental Examiners consisting of nine

1 members who reside in the state. Six members shall be currently licensed dentists
 2 under this chapter who have been engaged in the practice of dentistry in the state for
 3 at least five years immediately preceding appointment, two members shall be dental
 4 hygienists currently licensed under AS 08.32 who have been engaged in the clinical
 5 practice of dental hygiene in the state for at least five years immediately preceding
 6 appointment, and one member shall be a public member.

7 * Sec. 7. AS 08.36.010 is amended by adding new subsections to read:

8 (c) At least five board members who are licensed dentists must maintain a
 9 practice of dentistry in the state during the term of the appointment, and at least one
 10 member who is a licensed dental hygienist must maintain a practice of dental hygiene
 11 in the state during the term of the appointment.

12 (d) In this section, "practice of dentistry" and "practice of dental hygiene"
 13 must include at least an average of 20 hours of private clinical practice in the state,
 14 excluding temporary absences because of illness or travel, that is regulated by the
 15 board under this chapter.

AM. 1 "PER WEEK" ADOPTED

16 * Sec. 8. AS 08.36.025 is amended to read:

17 **Sec. 08.36.025. Suspension of board members.** A member against whom an
 18 accusation or complaint has been filed under this chapter [AS 44.62] for violation of
 19 AS 08.32.160 or AS 08.36.315 is suspended from the board until the decision of the
 20 board on the accusation or complaint takes effect [UNDER AS 44.62.520].

21 * Sec. 9. AS 08.36.030 is repealed and reenacted to read:

22 **Sec. 08.36.030. Officers.** The board shall elect a president, vice-president, and
 23 secretary from among its members, each to serve a term of not more than two years. If
 24 the president is absent or incapable of performing the duties of president, the vice-
 25 president shall succeed to the presidency until the president is able to return to the
 26 duties of president. All officers must be licensed dentists except for the position of
 27 secretary. The president's duties include coordination, supervision, and direction of the
 28 functions of the board, with the assistance of the department or other staff and the
 29 concurrence of the board.

30 * Sec. 10. AS 08.36.040 is amended to read:

31 **Sec. 08.36.040. Meetings.** The board shall meet at the call of the president at

1 least four times annually and at other times necessary to conduct its business. In the
2 absence of a call of the president, a majority of the board may call a meeting. A
3 meeting of the board may be conducted telephonically except for a meeting
4 conducted for the purpose of holding a disciplinary hearing. A disciplinary
5 hearing shall be conducted in person.

6 * Sec. 11. AS 08.36.070 is amended to read:

7 **Sec. 08.36.070. General powers.** (a) The board shall

8 (1) provide for the examination of applicants and issue licenses to
9 those applicants it finds qualified;

10 (2) register licensed dentists and licensed dental hygienists who are in
11 good standing;

12 (3) affiliate with the American Association of Dental Examiners and
13 pay annual dues to the association;

14 (4) establish peer review and confidentiality procedures for
15 hearings, direct investigations, hold hearings, and order the disciplinary sanction of a
16 person who violates this chapter, AS 08.32, or a regulation of the board;

17 (5) supply forms for applications, licenses, permits, certificates, and
18 other papers and records;

19 (6) enforce the provisions of this chapter and AS 08.32 and adopt or
20 amend the regulations necessary to make the provisions of this chapter and AS 08.32
21 effective;

22 (7) adopt regulations ensuring that renewal of registration is contingent
23 upon proof of continued professional competence by a licensed dentist or licensed
24 dental hygienist;

25 (8) provide the department with the requirements for proof of
26 continued professional competence and request the department to make these
27 requirements available to each licensed dentist and licensed dental hygienist at least
28 one year before the date on which the dentist or dental hygienist must renew
29 registration;

30 (9) at least annually cause to be published in a newspaper of general
31 circulation in each major city in the state a summary of disciplinary actions the board

1 has taken during the preceding calendar year that identifies only the name of the
2 licensee, the type of discipline imposed, and a reference to the statute or
3 regulation violated by the licensee; a copy of the summary published under this
4 paragraph shall be delivered to the named licensee; if possible, the delivery shall
5 be by electronic mail or facsimile;

6 (10) issue permits or certificates to licensed dentists, licensed dental
7 hygienists, and dental assistants who meet standards determined by the board for
8 specific procedures that require specific education and training;

9 (11) regulate the reentry into practice of inactive dentists and dental
10 hygienists;

11 (12) require, as a condition of a license or license renewal issued by
12 the board, that an applicant or licensee has, at the time of licensing or renewal and
13 maintains throughout the period of a license, current certification in cardiopulmonary
14 resuscitation techniques, except that the board may waive this requirement under an
15 agreement with the applicant or licensee if the applicant or licensee documents, to the
16 satisfaction of the board, the existence of a physical impairment that results in an
17 inability to be certified in cardiopulmonary resuscitation techniques and the agreement
18 specifies that the applicant or licensee will ensure that another person who is certified
19 in cardiopulmonary resuscitation techniques will be in the same office [ROOM] as the
20 applicant or licensee whenever the applicant or licensee is practicing dentistry [ON A
21 LIVING PATIENT WHO IS ALSO PRESENT]; the board may include in the
22 agreement an expiration date or provide that the agreement remains in effect until
23 reviewed by the board;

24 (13) maintain confidentiality over patient, complainant, and
25 licensee information that contains personal health information or is otherwise
26 required to be kept confidential under federal or state law;

27 (14) rely on the department for legal, investigative, and
28 administrative services as necessary to carry out the board's duties under this
29 chapter.

30 (b) The board may

31 (1) order a licensed dentist or licensed dental hygienist to submit to a

1 reasonable physical or mental examination if there is substantial evidence that the
2 dentist's or the dental hygienist's physical or mental capacity to practice safely during
3 the past 12 months is at issue and the examination is reasonably necessary to
4 determine whether the licensee has violated AS 08.32 or this chapter; an
5 examination ordered by the board shall be conducted in the state by a person
6 who is licensed in the state and otherwise qualified to perform the examination,
7 as determined by the board; a licensee may submit for the board's consideration
8 another medical evaluation in addition to an examination ordered by the board;
9 [AND]

10 (2) authorize its representative to inspect the practice facilities or
11 patient or professional records of a dentist at reasonable times and in a reasonable
12 manner to monitor compliance with this chapter and with AS 08.32; and

13 (3) monitor informal and confidential chemical dependency
14 intervention programs that may include a licensee's colleague, family member, or
15 friend.

16 * Sec. 12. AS 08.36.080 is repealed and reenacted to read:

17 **Sec. 08.36.080. Application of Administrative Procedure Act.** (a) The
18 administrative adjudication procedures of AS 44.62 (Administrative Procedure Act)
19 do not apply to adjudicatory proceedings of the board or the board's committees
20 except that final administrative determinations by the board are subject to judicial
21 review as provided in AS 44.62.560 and 44.62.570.

22 (b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by
23 the board.

24 (c) An order issued under AS 08.36.070(b)(1) may be appealed to the superior
25 court. The court shall review the matter de novo.

26 * Sec. 13. AS 08.36.315 is amended to read:

27 **Sec. 08.36.315. Grounds for discipline, suspension, or revocation of license.**
28 The board may revoke or suspend the license of a dentist, or may reprimand, censure,
29 or discipline a dentist, or both, or impose another form of discipline that the board
30 determines is warranted and necessary, if the board finds after a hearing that the
31 dentist

1 (1) knowingly used or knowingly cooperated in deceit, fraud, or
2 intentional misrepresentation to obtain a license;

3 (2) engaged in deceit, fraud, or intentional misrepresentation in the
4 course of providing or billing for professional dental services or engaging in
5 professional activities;

6 (3) advertised professional dental services in a false or misleading
7 manner;

8 (4) received compensation for referring a person to another dentist or
9 dental practice;

10 (5) has been convicted of a felony or other crime that affects the
11 dentist's ability to continue to practice dentistry competently and safely;

12 (6) engaged in the performance of patient care, or permitted the
13 performance of patient care by persons under the dentist's supervision, that does not
14 conform to minimum professional standards of dentistry regardless of whether actual
15 injury to the patient occurred;

16 (7) failed to comply with this chapter, with a regulation adopted under
17 this chapter, or with an order of the board;

18 (8) continued to practice after becoming unfit due to

19 (A) professional incompetence;

20 (B) failure to keep informed of or use current professional
21 theories or practices;

22 (C) addiction or dependence on alcohol or other drugs that
23 threatens or compromises patient care, has the potential to compromise
24 patient care, or impairs the dentist's ability to practice safely;

25 (D) physical or mental disability that cannot be overcome
26 through an accommodation for purposes of complying with this chapter;

27 (9) engaged in lewd or immoral conduct in connection with the
28 delivery of professional service to patients;

29 (10) permitted a dental hygienist or dental assistant who is employed
30 by the dentist or working under the dentist's supervision to perform a dental procedure
31 in violation of AS 08.32.110 or AS 08.36.070(a)(10);

1 (11) failed to report to the board a death that occurred on the premises
2 used for the practice of dentistry within 48 hours.

3 * **Sec. 14.** AS 08.36.315 is amended by adding new subsections to read:

4 (b) A dentist's choice to employ one of several treatment modalities
5 recognized or approved by an accredited dental school or an approved provider of
6 continuing education for dentists may not be grounds for discipline imposed under (a)
7 of this section.

8 (c) The board may not discriminate against a licensee solely on the basis of a
9 mental or physical impairment or disability. The board may reinstate a license of a
10 person who suffers from a mental or physical impairment or disability on proof of
11 completion of rehabilitation through an accredited rehabilitation program designed for
12 professionals and consistent with regulations adopted under this chapter. When
13 making a decision under this section that is based on the existence of a physical or
14 mental impairment or disability, the board shall comply with federal law. The board
15 shall consider voluntary rehabilitation completed by a licensee as a mitigating
16 circumstance in determining the form of discipline to impose on a licensee. The board
17 shall consider a failure to complete a rehabilitation program by a licensee as an
18 aggravating circumstance in determining the form of discipline to impose on a
19 licensee.

20 (d) In this section, a "mental or physical impairment or disability" includes
21 addiction to drugs or alcohol.

22 * **Sec. 15.** AS 08.36 is amended by adding a new section to read:

23 **Sec. 08.36.316. Disciplinary and peer review procedures.** (a) The board
24 shall conduct disciplinary proceedings consistent with principles of substantive and
25 procedural due process and by using peer review, when applicable, as described in this
26 section.

27 (b) The board shall appoint one or more disciplinary committees and one or
28 more peer review committees to address disciplinary matters. The committees shall be
29 made up of dentists who are currently licensed in Alaska, who have at least five years
30 private practice experience, and who are unbiased.

31 (c) A person may file a written complaint with the board on a form provided

1 by the board and signed by the complainant for actions involving a person licensed
2 under this chapter. The complaint must contain a clear statement of the details of each
3 act of alleged misconduct, including the approximate place and time of the act.

4 (d) The department shall mail a copy of the complaint to the licensee within
5 30 days after receipt of the complaint and shall provide notice to the licensee of the
6 requirement to provide an answer within 30 days after receipt of the notice. Failure to
7 file a timely answer may be presumed to be an admission of guilt except that a
8 licensee may not be compelled to provide evidence of criminal wrongdoing.

9 (e) The department shall conduct a preliminary investigation and determine
10 whether to dismiss the complaint for insufficiency of evidence to support the
11 allegation. If the department determines that a complaint contains some factual basis,
12 the department shall present the complaint and supporting documentation to the board
13 president. The board president may return the complaint to the department for further
14 investigation or submit the complaint and supporting documentation to the board with
15 a recommendation for dismissal of the complaint, submission of the complaint to a
16 disciplinary committee, or submission of the complaint to mediation by a peer review
17 committee. The board president may not recommend mediation by a peer review
18 committee, nor may the board refer a matter for mediation by a peer review
19 committee, if the allegations in the complaint include fraud, sexual misconduct,
20 criminal activity, or prescription medication abuse.

21 (f) The peer review committee may decide to dismiss a complaint, subject to
22 the approval of the board, mediate the complaint, refer the matter to the disciplinary
23 committee, or refer the matter to the board. The peer review committee shall issue a
24 written report to the board that includes its recommendations. Mediation shall be
25 informally conducted without regard to the rules of evidence. If mediation is
26 successful, the complaint shall be closed subject to the terms of the mediation and the
27 approval of the board. The board shall approve a mediated agreement under this
28 subsection unless good cause is shown that the agreement is contrary to law or the
29 facts of the case. The peer review committee may oversee a resolution that the parties
30 agree on, including refunds, payment of damages, release of claims, fines, disciplinary
31 action, or other action that is just and equitable under the circumstances. The peer

1 review committee proceedings and records are confidential and are not subject to the
2 public records law under AS 40.25.100 - 40.25.220. The committee may request the
3 assistance of counsel through the department and the Department of Law.

4 (g) Within 30 days after service of the peer review committee findings and
5 decision, a party to the peer review may appeal the peer review committee's findings
6 and decision to the board if the decision includes a recommendation for disciplinary
7 action by the board. The appeal shall be limited to a decision by the board of whether
8 sufficient evidence supported the findings and decision of the peer review committee.
9 An appeal to the board under this subsection does not disqualify the board from
10 reviewing further decisions on the matter.

11 (h) The board shall appoint a disciplinary committee made up of three
12 currently licensed dentists who have each been engaged in the practice of dentistry in
13 the state for at least five years in the same field as the licensee. The disciplinary
14 committee shall review complaints referred to it by a peer review committee or by the
15 board. The disciplinary committee is not bound by a peer review committee's findings
16 in cases that have involved peer review and may fully reconsider the issues and
17 conduct an evidentiary hearing consistent with the court rules of evidence and civil
18 procedure. The parties may be represented by counsel at a proceeding of the
19 disciplinary committee. After a hearing, the disciplinary committee shall issue written
20 findings and a decision that dismisses the case, accepts the findings of a peer review
21 committee with or without modification and orders disciplinary action, remands the
22 matter back to a peer review committee, or orders disciplinary action. The department
23 shall provide necessary staff to support the disciplinary committee except that
24 disciplinary and enforcement recommendations shall be made only by a member of
25 the disciplinary committee, the peer review committee, or the board. Each member of
26 the disciplinary committee shall be present during the presentation of evidence in
27 order to participate in the decision on a matter. The disciplinary committee may
28 resolve a complaint through a stipulated agreement with the licensee in lieu of a
29 hearing at any stage in the proceedings.

30 (i) At the next regularly scheduled board meeting, the board shall conduct a
31 review of the disciplinary committee recommendations and shall either affirm the

1 decision or remand the matter to the disciplinary committee with instructions. A party
2 may appeal a board decision to the superior court within 30 days after the filing and
3 service of the board decision.

4 (j) Decisions made under this section shall be made by a quorum of the
5 committee membership.

6 (k) The department, with the assistance of the Department of Law, shall
7 investigate and present a complaint involving a dentist or dental hygienist and may
8 negotiate a settlement agreement with a licensee, subject to the approval of the
9 committee and the board. The department and the Department of Law may not have ex
10 parte contact with the board or a disciplinary or peer review committee member. The
11 disciplinary committee shall appoint an attorney to serve as administrative law judge
12 who shall rule on matters of law and procedure and who may issue subpoenas. The
13 committee shall serve as the sole fact finder and shall issue written findings, based on
14 clear and convincing evidence, and a recommendation of discipline or dismissal of the
15 complaint to the board, within 180 days following the conclusion of the hearing.

16 (l) A licensee may appeal a decision of the disciplinary committee to the full
17 board by filing a written notice of appeal on a form provided by the board within 30
18 days after receiving notice of a decision of the disciplinary committee. The board shall
19 review the evidence and the conclusions and recommendations. The board shall issue
20 a written decision within 90 days after receiving the notice of appeal and shall mail a
21 copy of the decision to the licensee. A board decision under this section is a final
22 administrative decision subject to appeal to the superior court. Documents pertaining
23 to an administrative appeal are confidential, and the heading shall be styled "in the
24 matter of" followed by the licensee's initials.

25 (m) Evidence at any stage of a disciplinary proceeding shall be admitted under
26 the standards set out in the Alaska Rules of Evidence except that rebuttal testimony of
27 patients of the licensee may not be excluded. An expert shall be allowed to testify
28 before the board only if the expert is a licensed dentist in good standing and is actively
29 engaged in the clinical practice of dentistry. The conduct of the hearing shall adhere to
30 the extent practicable to the Alaska Rules of Civil Procedure.

31 (n) The attorney for the licensee is entitled to receive copies of all relevant

1 material, including names of witnesses and investigative records in the possession and
2 control of the department or the Department of Law. The department shall provide
3 copies to the licensee not later than 120 days before a disciplinary hearing. Failure to
4 timely disclose relevant evidence shall result in the exclusion of the nondisclosed
5 evidence.

6 (o) Disciplinary committees and peer review committees established under
7 this section are review organizations for the purposes of AS 18.23.005 - 18.23.070.

8 (p) An administrative law judge appointed to a disciplinary matter may enter
9 an order requiring the licensee to pay a portion of the reasonable costs of the
10 disciplinary hearing if the judge finds by clear and convincing evidence that the
11 licensee acted maliciously or outrageously toward a patient. A cost order may not
12 exceed 50 percent of actual costs. A licensee shall be entitled to a portion of the
13 licensee's reasonable defense costs and fees incurred as part of a disciplinary matter if
14 the administrative law judge determines that the department or the Department of Law
15 acted in bad faith or recklessly in pursuing the disciplinary matter. Not more than 50
16 percent of the licensee's reasonable costs and fees may be imposed.

17 (q) Investigative, peer review, and disciplinary records shall be confidential
18 and related disciplinary and peer review proceedings shall be closed to the public
19 except that a summary of the results of a disciplinary proceeding may be released to
20 the public after the board has issued a final decision in a matter. Information and
21 records obtained through disciplinary investigations and peer review and disciplinary
22 proceedings are not subject to disclosure under subpoena or court order.

23 * Sec. 16. AS 08.36.317 is amended to read:

24 **Sec. 08.36.317. Civil fine authority.** Notwithstanding AS 08.01.075(a), in a
25 disciplinary action, the board may impose a civil fine not to exceed \$250,000
26 [\$25,000] for each complaint resulting in a finding of a violation or violations of
27 this chapter or of a regulation adopted under this chapter.

28 * Sec. 17. AS 08.36.320(c) is amended to read:

29 (c) The board may summarily suspend the license of a licensee who refuses to
30 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
31 whose license is suspended under this section is entitled to a hearing conducted by the

1 board [OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010)] within seven
 2 days after the effective date of the order. If, after a hearing, the board upholds the
 3 suspension, the licensee may appeal the suspension to a court of competent
 4 jurisdiction.

5 * **Sec. 18.** AS 08.36.320 is amended by adding a new subsection to read:

6 (f) For purposes of implementing the board's power to summarily suspend a
 7 license under AS 08.01.075(c), the term "clear and immediate danger to the public
 8 health and safety" in AS 08.01.075(c), as applied to persons licensed under this
 9 chapter, means that the licensee's physical or mental condition or professional
 10 judgment is such that patients will likely suffer serious injury or death if the licensee is
 11 permitted to continue to practice dentistry. Proof of "clear and immediate danger to the
 12 public health and safety" shall be by clear and convincing evidence and shall be based
 13 on verifiable recent harm to patients when there was a substantial probability of death
 14 or serious personal injury to the patient.

15 * **Sec. 19.** AS 08.36 is amended by adding new sections to read:

16 **Sec. 08.36.325. Statute of limitations.** A disciplinary action may not be
 17 considered by the board or a committee of the board if the conduct giving rise to a
 18 complaint or accusation has occurred, or is discovered after reasonable inquiry, more
 19 than two years before the filing of a complaint or accusation except when the licensee
 20 has actively attempted to conceal the conduct.

21 **Sec. 08.36.330. Disciplinary action; board principles.** The board shall be
 22 ultimately responsible for approving and imposing all disciplinary actions. The
 23 governing principle of all disciplinary investigations and proceedings shall be direct,
 24 confidential, and candid peer review, with a focus on solving and correcting
 25 deficiencies, not on punishment or public humiliation. The board shall establish
 26 standards in regulation for the imposition of consistent discipline linked to each action
 27 giving rise to the discipline.

28 * **Sec. 20.** AS 08.36.365 is amended by adding new paragraphs to read:

29 (5) be judged by the dentist's peers who are licensed dentists in the
 30 state;

31 (6) be treated consistently and fairly, in light of the goal of upholding

L

1 the professional and personal dignity of the licensee and the profession in general;

2 (7) be afforded privacy and confidentiality; in light of the number of
3 unfounded patient allegations made and the harmful effects those allegations have on
4 the professional reputation of the licensee, and in order to promote true peer review,
5 investigations and disciplinary hearings shall be closed to the public and the records
6 shall be confidential.

7 * Sec. 21. AS 18.23.070(5) is amended to read:

8 (5) "review organization" means

9 (A) a hospital governing body or a committee whose
10 membership is limited to health care providers and administrative staff, except
11 where otherwise provided for by state or federal law, and that is established by
12 a hospital, by a clinic, by one or more state or local associations of health care
13 providers, by an organization of health care providers from a particular area or
14 medical institution, or by a professional standards review organization
15 established under 42 U.S.C. 1320c-1, to gather and review information relating
16 to the care and treatment of patients for the purposes of

17 (i) evaluating and improving the quality of health care
18 rendered in the area or medical institution;

19 (ii) reducing morbidity or mortality;

20 (iii) obtaining and disseminating statistics and
21 information relative to the treatment and prevention of diseases, illness,
22 and injuries;

23 (iv) developing and publishing guidelines showing the
24 norms of health care in the area or medical institution;

25 (v) developing and publishing guidelines designed to
26 keep the cost of health care within reasonable bounds;

27 (vi) reviewing the quality or cost of health care services
28 provided to enrollees of health maintenance organizations;

29 (vii) acting as a professional standards review
30 organization under 42 U.S.C. 1320c;

31 (viii) reviewing, ruling on, or advising on controversies,

1 disputes, or questions between a health insurance carrier or health
2 maintenance organization and one or more of its insured or enrollees;
3 between a professional licensing board, acting under its powers of
4 discipline or license revocation or suspension, and a health care
5 provider licensed by it when the matter is referred to a review
6 organization by the professional licensing board; between a health care
7 provider and the provider's patients concerning diagnosis, treatment, or
8 care, or a charge or fee; between a health care provider and a health
9 insurance carrier or health maintenance organization concerning a
10 charge or fee for health care services provided to an insured or enrollee;
11 or between a health care provider or the provider's patients and the
12 federal or a state or local government, or an agency of the federal or a
13 state or local government;

14 (ix) acting on the recommendation of a credential
15 review committee or a grievance committee;

16 (B) the State Medical Board established by AS 08.64.010;

17 (C) a committee established by the commissioner of health and
18 social services and approved by the State Medical Board to review public
19 health issues regarding morbidity or mortality; at least 75 percent of the
20 committee members must be health care providers;

21 (D) the Joint Commission on Accreditation of Healthcare
22 Organizations (JCAHO);

23 (E) the state Board of Dental Examiners established under
24 AS 08.36.010 and a disciplinary or peer review committee established by
25 the Board of Dental Examiners.

26 * Sec. 22. AS 44.64.030(a)(6) is amended to read:

27 (6) AS 08 (occupational licensing), other than AS 08.08, AS 08.32,
28 AS 08.36, and AS 08.62.046;

29 * Sec. 23. AS 44.62.330(a)(2) is repealed.

30 * Sec. 24. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. AS 08.36.316, added by sec. 15 of this Act, applies to complaints
2 filed on or after the effective date of this Act.

3 * **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 **TRANSITIONAL PROVISION; BOARD MEMBERS.** Notwithstanding
6 AS 08.36.010, as amended by secs. 6 and 7 of this Act, a member of the Board of Dental
7 Examiners who holds a position on the board on the day before the effective date of this Act
8 may continue to hold the position, subject to removal as provided by law, until the person's
9 term expires. Appointments occurring on or after the effective date of this Act are governed
10 by AS 08.36.010, as amended by secs. 6 and 7 of this Act, whether the appointment is for a
11 new term or to fill the unexpired portion of a term.

12 * **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

HB 93

BY: Representative Tom Anderson

"An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date"

The public is neither protected nor well served when the responsibility for discipline of licensed professionals is relegated to individuals with no training, experience or expertise in the profession they investigate. HB 93 brings the expertise, professional experience and judgment of respected dentists into the process of alleged wrongdoing.

HB 93 empowers the Board of Dental Examiners to review complaints, assess the level and degree of misconduct and impose remedial measures as well as appropriate disciplinary actions when warranted. The Dental Board will have the authority to revoke or suspend the license of those who endanger the public health.

The current lack of uniform standards in the dental practice including continuing education requirements also pose a health risk. HB 93 addresses this by giving the Board authority to enforce mandatory use of the most recent breakthroughs in dental medicine. This bill will improve dental care in the State of Alaska as well as give dental patients a peer-reviewed process to address their complaints.

I urge your support of this legislation.

ALASKA STATE HOUSE OF REPRESENTATIVES

Labor & Commerce Committee, Chair

Administrative Regulation Review, Chair

Judiciary Committee, Vice-Chair

Health, Education and Social Services



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Representative Tom Anderson

Section 1: Purpose of the Legislation

Section 2: Amends 08.01.080 by providing authorization for the department to promulgate regulations to maintain confidentiality of information in accordance with the AS 08.01.087.

Section 3: Amends AS 08.01.087 to provide for confidentiality of information involving a dental hygienist, dentist, patient or complainant if the information pertains to the health, discipline, or rehabilitation of the licensee or other person.

Section 4: Amends AS 08.32.160 governing discipline of dental hygienists to allow for alternate forms of licensee discipline as defined by the Board, and adds caveats that disciplinary action can be taken if a licensee "continued to practice after becoming unfit due to...

(B) addiction or dependence on alcohol or other drugs that **threatens or compromises patient care, has the potential to compromise patient care, or** impairs the licensee's ability to practice safely;

(C) physical or mental disability **that threatens or compromises patient care, has the potential to compromise patient care, or impairs the licensee's ability to practice safely;**

Section 5: Repeals and reenacts AS 08.32.171 which establishes criteria for summary suspension of a license "...upon proof of clear and convincing evidence that a licensee poses an immediate threat of harm to patient care in the absence of a physical or mental examination."

Section 6: Amends AS 08.36.010(a) to require that a candidate for the Board of Dental Examiners be an actively licensed dentist or dental hygienist who has been practicing for at least five years immediately preceding the appointment.

Section 7: Amends AS 08.36.025 to clarify that a Board member that is the subject of an accusation or complaint filed in accordance with the provisions of 8.36, is suspended until the decision of the Board takes effect.

Section 8: Amends AS 08.36.030 establishing that the president and vice-president of the Board must be licensed dentists, and that the vice-president succeeds the president "if the president is absent or incapable of performing the duties of the president."

Section 9: Amends AS 08.36.040 allowing the board to conduct business telephonically except in the case of disciplinary hearings.

Section 10: Amends AS 08.36.070, modifying the General Powers of the Board by amending (a):
(4) Authorizing the board to establish peer review and confidentiality procedures
(9) indicating that only the name of licensee and type of discipline along with the statute or regulation violated be published annually, with a copy delivered to the licensee by email or fax if possible.
And adding duties 13-15 as follows:
(13) maintain confidentiality over patient, complainant, and licensee information that contains personal health information or is otherwise required to be kept

Section 11: AS 08.36.080 repealed and reenacted.

Section 12: AS 08.36.315 repealed and reenacted.

Section 13: Amends AS 08.36.315 by adding subsections that place specifications and restrictions on the basis for which disciplinary actions may be undertaken.

Section 14: Establishes procedures for disciplinary and peer review processes.

Section 15: Allows the Board of Dental Examiners to fine a dentist up to \$250,000 for each complaint that results in a finding of violation or violations of the statute governing the practice of dentistry.

Section 16: adds a new section to AS 08.36.320 regarding summary suspension of a license, which defines the phrase "clear and immediate danger to the health and safety."

Section 17: Adds new sections to AS 08 36 to establish a statute of limitations of two years and establishing principles for Board disciplinary action.

Section 18: Adds provisions to the "Rights of Dentists" AS 08.36.365.

Section 19: Adds the Board of Dental examiners to the list of review organizations.

Section 20: Removes dentists and hygienists from the jurisdiction of the office of Administrative Hearings.

Section 21: Removes the Board of Dental Examiners from the provisions of the Administrative Procedures Act.

Section 22: Repeals Sec 10 & 11, ch. 163, SLA 2004 placing certain disciplinary actions relating to dentists and hygienists under the authority of the Office of Administrative Hearings (AS 44.64.010).

Section 23: Clarifies that the peer review process applies to complaints filed on or after the effective date of the Act.

Section 24: Transitional provisions for the Board of Dental Examiners

Section 25: Contingent retroactivity of sections 5 and 22 [is this needed now?]

Section 26: Effective Date

SLA 2004, ch. 163

* Sec. 10. AS 08.32.171(c) is amended to read:

(c) The board may summarily suspend the license of a licensee who refuses to submit to a physical or mental examination under AS 08.36.070(b)(1). A person whose license is suspended under this section is entitled to a hearing **conducted** by the **office of administrative hearings (AS 44.64.010)** [BOARD] within seven days after the effective date of the order. If, after a hearing, the board upholds the suspension, the licensee may appeal the suspension to a court of competent jurisdiction.

* Sec. 11. AS 08.36.320(c) is amended to read:

(c) The board may summarily suspend the license of a licensee who refuses to submit to a physical or mental examination under AS 08.36.070(b)(1). A person whose license is suspended under this section is entitled to a hearing **conducted** by the **office of administrative hearings (AS 44.64.010)** [BOARD] within seven days after the effective date of the order. If, after a hearing, the board upholds the suspension, the licensee may appeal the suspension to a court of competent jurisdiction.

Fact Sheet for HB-93
Dental Disciplinary and Accountability Bill
By the House Labor and Commerce Committee

Why needed:

- ① The public is neither protected nor well served when the responsibility for discipline of licensed professionals is relegated to lay bureaucrats with no training, experience or expertise in the profession they investigate. Alaska is best served and its citizens protected when competent and respected members of the dental profession, appointed by the governor, are in a position to assess and evaluate the actions of members of their profession. Presently the Board of Dental Examiners does exercise its responsibility to the public. The current system relegates investigation and critical decision making to non-dentists who lack the necessary scientific background and professional education to effectively assess the conduct of those dentists accused of inappropriate or ineffective treatment or conduct. The current system relies upon draconian forms of punishment that are not uniformly arrived at or imposed. This legislation is designed to bring the expertise and professional experience and judgment of respected dentists into the process of investigating alleged wrong doing. It empowers the Board of Dental Examiners to review what occurred, assess the level and degree of misconduct and impose remedial measures as well as appropriate disciplinary actions when warranted. The Dental Board retains the authority to revoke or suspend the license of those who endanger the health and well being of the public. The bill expands the board's role to improving the overall quality of care, in addition to dispensing punitive sanctions.
- ② The current lack of uniform standards, including no statute of limitations, no regulations setting forth guidelines for sanctions for various offenses have created a haphazard approach to dental discipline that is not serving the public. Consistency and fairness based upon professionally recognized and enforced standards is needed to ensure public and professional confidence in the system.
- ③ This bill strives to enhance not only the process by which dentistry is governed and held accountable, but to improve the quality of dentistry in Alaska.

Supported by:

Alaska Dental Society,

Opposed by:

No opposition to this bill has been presented to the Alaska Dental Society at the time this has been prepared. It is conceivable the Division of Occupational Licensing may oppose some portions of the bill since it elevates peer review by dentists and reduces the role of state workers who presently act in this capacity. This can be seen as institutional opposition and the natural tendency to preserve the status quo inherent in all bureaucracies.

ALASKA STATE HOUSE OF REPRESENTATIVES

Labor & Commerce Committee, Chair
Administrative Regulation Review, Chair
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CHANGES MADE TO HB 93 BY CS HB 93 (L&C)

1) Page 1, line 11

Add and dental hygiene after "dentistry"

- **REASON:** This change is meant to explicitly include dental hygienists in HB 93. They were included by implication but it was felt that they should be listed specifically to remove any doubt.

2) Page 1, Line 13

Add and dental hygienists after "dentists"

- **REASON:** This change is meant to explicitly include dental hygienists in HB 93. They were included by implication but it was felt that they should be listed specifically to remove any doubt.

3) Page 3 Lines 7-9

Add: threatens or compromises patient care, has the potential to compromise patient care, or
after "disability"

- **REASON:** It was felt that this language should be added so that dentists and dental hygienists who are disabled but are still able to practice wouldn't be discriminated against.

4) Page 5, Lines 18-20

Adds: a copy of the summary published under this paragraph shall be delivered to the named licensee: if possible, the delivery shall be by electronic mail or facsimile:

- **REASON:** We wanted to be sure that licensees were made aware of the disciplinary actions personally. Electronic means were thought to be able to reach the most licensees at the lowest cost.

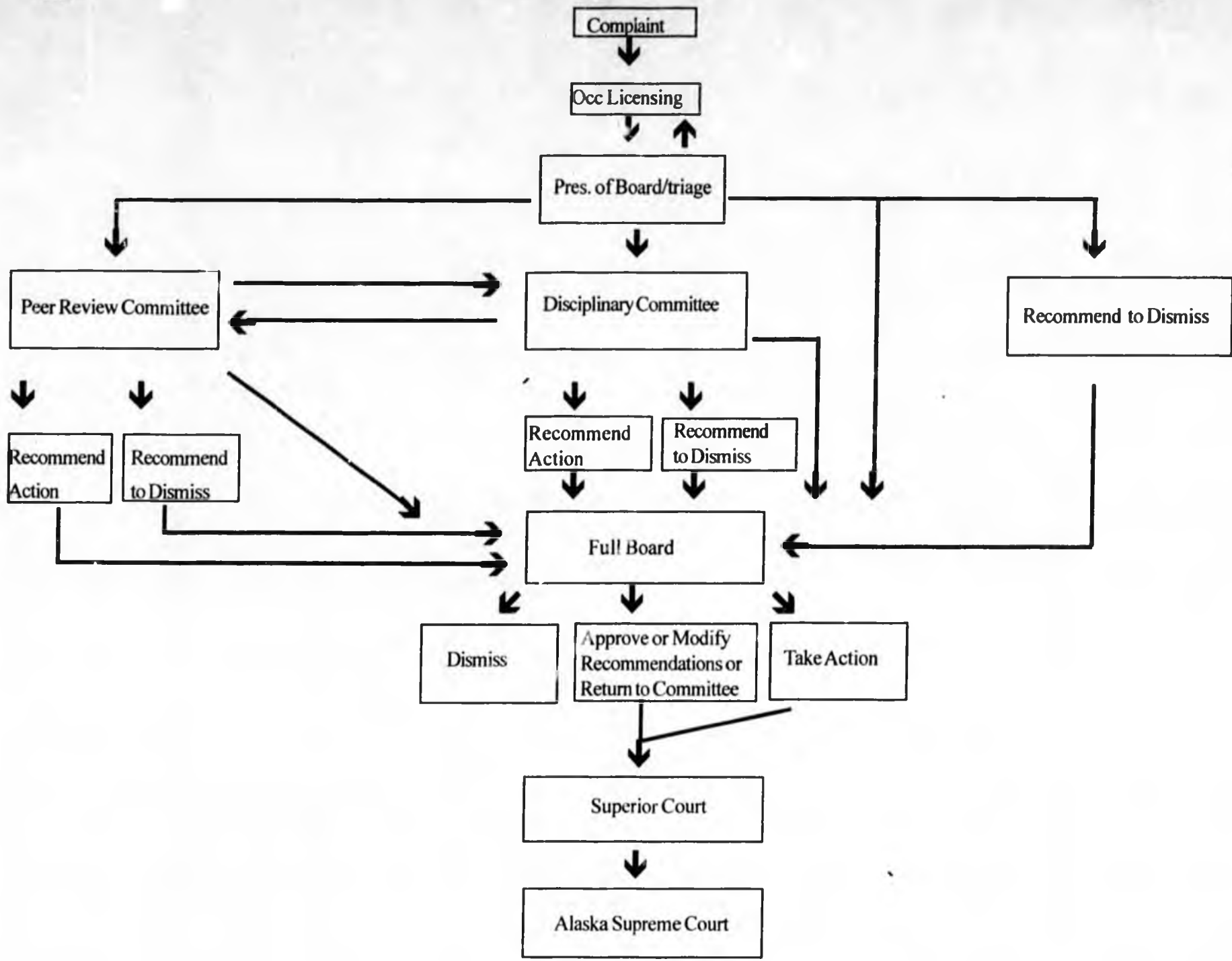
5) Page 10, line 1

Amend: "a mediator who is approved by the board [*either a dentist or an attorney licensed to practice in the state*]

- **REASON:** This language was changed so that dental hygienists could be included as mediators. It was felt, by both dentists and dental hygienists, that certain issues pertaining to the two groups would be best understood and handled by members of their own profession (i.e. Dentists mediating dentists, hygienists mediating hygienists in certain cases)

Changes to HB 93

- 1) Page 3 line 21 remove "for compensation"
- 2) Page 4 line 4 add "the clinical practice"
- 3) Page 12 line 20 add "the clinical practice"
- 4) Page 5 line 6 remove "conduct" replace with "direct"
- 5) Page 6 line 18 remove "employ or contract for" add "utilize the Department for"
- 6) Page 6 line 20 remove "establish and"
- 7) Page 6 line 20-22 move under (b) line 23 as (b) (3)
- 8) Page 11 line 14 remove "actions" replace with "recommendations" remove "taken" and replace with "made"
- 9) Page 11 lines 19-20 remove "The committee may...legal council"
- 10) Update the effective date under Section 25
- 11) See attached change



Dental Complaint Flow Chart

Complaint would be submitted to

Occupational Licensing, which would send complaint and their recommendation to

President of the Board for triage. The president can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and send to full board;
- forward to Peer Review Committee for recommendation;
- forward to Disciplinary Committee for recommendation; or
- forward to full board for action.

Peer Review Committee can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and refer to full board;
- determine complaint should be directed to Disciplinary Committee and forward;
- determine complaint should be directed to full board and forward; or
- recommend resolution and send to full board for approval.

Disciplinary Committee can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and refer to full board;
- determine complaint should be directed to Peer Review Committee and forward;
- determine complaint should be directed to full board and forward; or
- recommend discipline and forward to full board for approval.

Full board will:

- Return to Occ. Licensing for further investigation;
- review recommendations to dismiss (from president or committees) and confirm or it can:
 - send to Peer Review Committee;
 - send to Disciplinary Committee;
 - take action that will close case; or
- Review recommended resolutions from Peer Review Committee and;
 - approve and close case;
 - return for further action, or
 - determine complaint needs to be reviewed by Disciplinary Committee;
 - amend resolution of committee and close case
- Review recommendations from Disciplinary Committee and
 - Approve and close case
 - Return for further action
 - Amend recommendation and close case

HB

102

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 102
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Foreign Medical School Graduates RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Stoltze
 Requester House Labor and Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 102 grants the State Medical Board authority to use discretion in licensing foreign medical graduates. New funds are not required to implement the provisions of this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 2/2/05 5:40 PM
 Approved by: Edgar Blatchford Date 2/2/2005
 Agency: Commerce, Community & Economic Development

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

February 2, 2005

Honorable Tom Anderson
State of Alaska House of Representatives
Chair, House Labor and Commerce Committee
State Capitol, Room 408
Juneau AK 99801

Re: HB 102 – Licensure of Foreign Medical Students

Dear Representative Anderson and House Labor and Commerce Committee Members:

The Alaska State Medical Association (ASMA), represents physicians throughout Alaska, and is primarily concerned with the health care for Alaska's patients.

ASMA urges you to support HB 102 and provide another tool to help us attract well trained doctors in sufficient numbers in order to provide the timely and quality care all Alaskans deserve.

Alaska has a chronic shortage of physician as evidenced by:

1. According to the American Medical Association, in 2002 only 6 states had fewer physicians per capita than Alaska (AM News 1/19/04).
2. Molly Southworth, MD, in her July 2004 Masters of Public Health thesis, stated that Alaska has from 17% to 30% fewer physicians than the U.S. average; ("Alaska's Physician Workforce: An Overview, a Summary of Training Backgrounds, and the Impact of the WWAMI Program," July 2004, Molly B. Southworth, MD pp. 26-33.); and
3. In the Fall of 2002, Providence Health Systems did a physician workforce analysis for Anchorage, which showed specialty physician shortages of 43 general internists, 12 radiologists, 14 pathologists, 5 neurologists, 20 general surgeons, 29 ENTs, and 50 psychiatrists, for example. (2002 Anchorage Physician Workforce, Providence Health System Alaska, pp. 17-18.)

Also, it has been reported that the number of general internists in Anchorage has dropped from 33 in 2002 to 17 today. Primarily, this is due to the aging of our physician workforce.

Currently, the State Medical Board has no discretion in determining credentials for licensure of foreign medical school graduates in Alaska, other than completion of a 2 year U. S. graduate medical education program (residency). However, there are graduates of foreign medical schools that are well trained, licensed to practice medicine in other states, and are certified in an area of specialty practice by the American Board of Specialty Boards. But, those with less than a two-year residency can not currently be licensed in Alaska.

5

HB 102 provides the State Medical Board the discretion, to adopt by regulation, other proof of competency that would warrant licensure in Alaska. Those requirements may include current licensure and active practice in another state for at least 3 years; or current board certification in a specialty practice area.

ASMA supports giving the State Medical Board more discretion in licensing qualified foreign medical school graduates and urges your support as well.

Regards,

A handwritten signature in black ink, appearing to be the initials 'J' and 'J' intertwined.

By: James Jordan, Executive Director
For: The Alaska State Medical Association

cc: Representative Bill Stoltze

I would like to call the House Labor & Commerce Committee to order.

Let the record reflect the time is _____ P.M. and the date is
Friday February 4, 2005.

Let the record also reflect there is a quorum. Members present are:

- Rep. Pete Kott, Vice Chairman
- Rep. Norman Rokeberg
- Rep. Gabrielle LeDoux
- Rep. Bob Lynn
- Rep. David Guttenberg

And myself, Rep. Tom Anderson, Chairman

- and Rep. Harry Crawford are excused today

Today's Schedule:

- 1. HB 102 – Foreign Medical School Graduates
(Rep. Stoltze)**
- 2. HB 109 – Screening Newborns for Hearing Ability
(Rep. Ramras)**

Monday's Schedule:

- 1. HB 123 – Occupations: Fees & Extension of Boards
(Rep. Anderson)**

ALASKA STATE LEGISLATURE

Vice Chair:
House Finance Committee

Chair:
House Finance Subcommittees for,
Department of Public Safety
Department of Law



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

House Bill 102

Foreign Medical School Graduates

"An act relating to the licensure of foreign medical graduates; and providing for an effective date."

There is a chronic shortage of physicians in Alaska. This shortage is acute, even in Anchorage, and in the specialty fields of general internal medicine, psychiatry, and general surgery, to name a few.

An option to help ease this shortage is to provide the State Medical Board discretion in defining the training and qualifications required of licensure for foreign medical school graduates. Currently, the State Medical Board has no discretion. An increase in qualified, well trained physicians would help Alaskans receive the care they need when they need it.

HB 102 provides the State Medical Board with the authority to adopt regulations that provide for alternatives to the current inflexible licensing requirements.

The provisions of HB 102:

- Provide the mechanism for the State Medical Board to adopt competency requirements for foreign medical school graduates.
- In lieu of the two year U.S. residency training requirement, the State Medical Board is allowed to adopt alternative requirements such as licensure in another state with a history of active practice for at least 3 years or being board certified in a certain specialty area of practice.

I ask for your consideration and support of HB 102 to help alleviate the shortage of physicians in Alaska.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMERA • PETERS CREEK

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

January 25, 2005

Honorable Bill Stoltze
State Capitol Room 501
Juneau Alaska, 99801

Transmitted by Fax:
907-465-4928

Re: HB 102 – Licensure of Foreign Medical Graduates

Dear Representative Stoltze:

The Alaska State Medical Association (ASMA) represents physicians throughout Alaska, and is primarily concerned with the health care for Alaska's patients.

Alaska has a chronic shortage of physicians with a continuing need to recruit more. Alaska has one of the lowest numbers of physicians per capita in the country, coupled with an aged physician workforce. With no medical school, only 10 WWAMI medical students graduating each year, and only one residency program (a family practice residency), Alaska has been and will probably always be a net importer of physicians.

Currently, the State Medical Board has no discretion in determining credentials for licensure of foreign medical graduates in Alaska, other than completion of a 2 year, U. S. graduate medical education program. However, there are physicians who are graduates of foreign medical schools that are well trained, licensed to practice medicine in other states, and are certified in an area specialty practice by the American Board of Specialty Boards. Such graduates have exhibited appropriate training and skills to effectively and safely practice medicine in the U. S. However, those with less than a two-year U.S. residency can not currently be licensed in Alaska.

HB 102 provides the State Medical Board with the discretion, to adopt by regulation, other proof of competency that would warrant a license to practice in Alaska. Those requirements may include current licensure and active practice in another state for at least 3 years or current board certification in a specialty practice area.

ASMA supports HB 102 in order to give the State Medical Board more discretion in licensing qualified foreign medical school graduates. This is another tool that is needed to help attract well trained physicians in sufficient numbers to provide timely and appropriate care.

Sincerely,



By: Paul Worrell, MD President
For: The Alaska State Medical Association

HB

108

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 108
 (H) Publish Date: 2/11/2005

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
 Title Adding exemptions to the regulation RDU Division of Water
of water and sewer utilities Component Facility Construction
 Sponsor House Labor & Commerce
 Requester House Community & Regional Affairs Component No. 637

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would have no effect on DEC programs or resources.

Prepared by: Dan Easton Phone 465-5135
 Division: Water Date/Time 2/9/05 8:04 AM
 Approved by: Kurt Fredriksson, Acting Commissioner Date 2/9/2005
 Agency: Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 108
 (H) Publish Date: 2/11/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Water & Sewer Utilities RDU Regulatory Commission of Alaska (399)
of Political Subdivisions Component Regulatory Commission of Alaska
 Sponsor Labor & Commerce
 Requester House Community & Regional Affairs Component No. 2417

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1141)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)
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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						
1141 RCA Receipts	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)
TOTAL	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)	(345.0)

Estimate of any current year (FY2005) cost: 345.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

This legislation would remove the Municipality of Anchorage J/b/a AWWU (water and sewer utilities) from RCA oversight. AWWU is expected to pay approximately \$345,000 in RCC in FY2005. This removal from RCA oversight would result in the loss of funds for the equivalent of three positions.

The RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers it regulates.

Prepared by: Kate Giard, Chair Phone 907.263.2110
 Division Regulatory Commission of Alaska Date/Time 2/9/05 1:00 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/9/2005
 Agency Commerce, Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: HB 108
 (H) Publish Date: 2/18/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title Water & Sewer Utilities of Political RDU CIVIL
Subdivisions Component Regulatory Affairs & Public Advocacy
 Sponsor Labor & Commerce
 Requester House Community & Regional Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1141 RCA Receipts	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)
TOTAL	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)	(93.0)

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	-1	-1	-1	-1	-1	-1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill would effectively remove the Municipality of Anchorage d/b/a AWWU (water and sewer utilities) from oversight by the Regulatory Commission of Alaska (RCA). This removal would result in significant loss of funding for both the RCA and Law's Regulatory Affairs & Public Advocacy Section (RAPA). Both RCA and RAPA are funded wholly through the RCA's Regulatory Cost Charge (RCC) mechanism and other direct charges assessed against the regulated utilities and pipeline carriers. Loss of these funds would necessitate elimination of one professional level analyst position from the section or a one-third reduction to the section's utilities expert/witness consulting budget.

Prepared by: Robert Meiners, Dep. Director Phone 465-5427
 Division Administrative Services Date/Time 2/16/05 8:35 AM
 Approved by: Robert Meiners for Scott Nordstrand, Acting Attorney General Date 2/16/2005
 Agency Department of Law

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT FOR HB 108 BY: Representative Tom Anderson

TITLE: "An Act relating to the regulation of water and sewer utilities of political subdivisions that are not in competition with other water and sewer utilities."

House Bill 108 would exempt Anchorage Waste Water Utility from regulation by the Regulatory Commission of Alaska (RCA). Except for the City of Pelican, no other municipal owned water/wastewater utility is regulated by the RCA. (Pelican requested regulation of its water utility by the RCA).

The Municipality of Anchorage believes the current RCA regulation processes are cumbersome, slow, expensive, and non-responsive to local needs. Ratepayers are required to pay for the expensive RCA regulatory process as a surcharge on every bill, whether or not their utility has a case pending. For example, from 1993 until 2003 AWWU never had a rate increase from the RCA or the APUC, yet ratepayers have paid a regulatory assessment to the RCA as part of every bill. In 2004 AWWU ratepayers are projected to pay about \$500,000 to the RCA to cover the costs of regulation. The greatest costs appear in the form of regulatory delay in obtaining approval of a requested change.

The MOA is directly accountable to ratepayers served by the utilities - they are voters. The Municipality has experience successfully regulating enterprise activities. The Port of Anchorage, Solid Waste Services and Merrill Field are all financially sound and provide first class customer service. Municipal public hearings are held on any proposed rate increase and the public is very involved in the hearing process.

HB 108 changes existing law by adding lines 5 thru 8 on Page 2. This language states that a water or sewer utility owned by a political subdivision not directly competing with another water or sewer utility is exempt from RCA regulation.

I would ask for your support on HB 108.

Bill Introduction for House Bill 108

House bill 515 changes existing law by adding lines 5 thru 8 on Page 2 exempting Anchorage Waste Water Utility (AWWU) from regulation by the Regulatory Commission of Alaska (RCA). This language states that a water or sewer utility owned by a political subdivision not directly competing with another water or sewer utility is exempt from RCA regulation.

This issue has been before the Committee before in the form of HB 515 last year that passed out in March 2004 – and passed the House on April 29th with bi-partisan support. The bill got stopped in the Senate and so we are revisiting the issue here.

Local control is the issue here, there is no evidence showing state oversight is better for the consumers in Anchorage than local management. I have worked with AWWU, the Mayor's Office, the Assembly, and with other Anchorage Legislators to develop a plan for an oversight authority for the utility to maintain the level of consumer protection while encouraging and fostering stronger local governance of locally owned and operated water utility. We plan to see the details for this authority soon, but this bill's continued movement through the process is expected.

On the teleconference line is Mr. Mark Premo, General Manager of AWWU, who can answer any specific or technical or historical questions you may have on this bill.

I would ask for your support on House Bill 108.



Municipality of Anchorage

P.O. Box 190650 • Anchorage, Alaska 99519-0650 • Telephone: (907) 343-4431 • Fax: (907) 343-4430 <http://www.muni.org>

Mayor Mark Begich

Office of the Mayor

March 14, 2005

**Representative Tom Anderson
State Capitol, Room 432
Juneau, Alaska 99801-1182**

Subject: AWWU Authority

Dear Representative Anderson:

It is my intent to work with the Anchorage Assembly to create an Authority to manage the Anchorage Water and Wastewater Utility (AWWU). I have worked with the AWWU Advisory Commission over the last year to develop this proposal. The effort led to the Advisory Commission holding five public meetings in just the last six weeks. Both the Advisory Commission and I are in agreement with the proposed Authority concept.

In support of HB 108, and discussions regarding this Authority structure, I offer the following concepts which I and the AWWU Advisory Commission support.

- **The proposed structure will provide for strong consumer protection by focusing expert resources on financial and system integrity and customer interests.**
- **The Authority proposal is for a seven member board with staggered five-year terms. Board members would be recommended by the Mayor and appointed by the Assembly. The board will be made up of members with qualifications in engineering, finance, public health, business, law, and consumer advocacy.**
- **The ratemaking process will follow industry standard practices, as expressed by the America Water Works Association (AWWA) and the Water Environment Federation (WEF). All rate adjustments will be recommended by the Board to the Assembly for approval. Both the Board and the Assembly will hold public hearings on rate adjustments.**

Community, Security, Prosperity

Representative Anderson
Page 2

A work session is scheduled with the Anchorage Assembly on April 8th to discuss this Authority concept. It is my intent to introduce an ordinance in mid-April to establish the Authority. This will allow for complete analysis and discussion by the Assembly and the public.

As the process for the creation of an AWWU Authority moves forward, I will keep you informed.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mark Begica".

Mark Begica
Mayor

cc: Patricia Curl, Chair AWWU Advisory Commission



Municipality of Anchorage

P.O. Box 196650 • Anchorage, Alaska 99519-6650 • Telephone: (907) 843-4481 • Fax: (907) 843-4499 <http://www.muni.org>


Mayor Mark Begich

Office of the Mayor

MEMORANDUM

DATE: February 3, 2004

TO: The Honorable Tom Anderson, Chair
House Labor & Commerce Committee

FROM: Anchorage Mayor Mark Begich 

SUBJECT: Self-regulation of Anchorage Water and Wastewater Utilities

The Municipality of Anchorage and the Anchorage Assembly have designated "Regulating Anchorage's Own Water/wastewater Utilities" as a top municipal legislative priority for 2004. This would require an exemption from regulation by the Regulatory Commission of Alaska (RCA), something that every other municipally owned utility in Alaska, except one, already enjoys.* Anchorage as the largest, most highly sophisticated city in the state, is fully capable of soundly regulating its own municipally owned utilities. Self-regulating Anchorage's water utility would save rate-payers money and enhance local control.

AWWU has provided its customers excellent service, low, stable rates and sound finances, as well as continuity of management. Over the years, the mayor and assembly have made sound decisions in their oversight of municipally owned utilities. Municipal public hearings are held on any proposed rate increase. Municipal regulation will continue to balance consumer protection with the financial soundness of the public utility. It will allow the utilities to continue to operate on a sound business basis. The process will be accountable to local people, more responsive, timely and economical than current RCA regulation.

Anchorage has extensive experience regulating other municipally owned enterprises. The Port of Anchorage, Merrill Field and Solid Waster Services are all financially sound and provide first class customer service. Actually, Anchorage has self-regulated its public utilities for more years than have state regulators.

RCA regulation is slow, expensive and partially duplicates the review process that the municipal administration and assembly already apply. AWWU ratepayers pay in excess of \$500,000 per year to the RCA to cover the cost of regulation. The greater cost is in the form of regulatory lag, the delay in obtaining approval of a requested rate change.

* The City of Pelican requested continued RCA regulation of its water utility when it was sold.

Community, Security, Prosperity

The Municipality in 1991 petitioned the APUC (predecessor to the RCA) to exempt AWWU and the electric utility from regulation. The Commission denied the request for self-regulation of the electric utility. By a 2-2 vote, the commission split on the question of exempting AWWU. The opinion by the commissioners who opposed self-regulation cited competition by the electric utility with other electric utilities as the reason why AWWU should remain regulated by the state.

To accomplish the exemption from RCA regulation a new section is needed in AS 42.05.711:

"A water/wastewater utility owned by and serving a first class or home rule municipality is exempt from regulation by the Commission, other than AS 42.05.221 - 42.05.281 and 42.05.385."

This section was amended as recently as the year 2000 by SB 324 to protect Ketchikan's public utilities, which have been self-regulated for 50 years, from the risk of regulatory takeover by the RCA in light of possible telephone competition.

**2005 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES**

Legislation

ISSUE/PROJECT NAME: Regulate our own utilities to save taxpayers money
ISSUE/IMPROVEMENT TYPE: Economic Development Legislation
PRIORITY: 1

ISSUE/PROJECT DESCRIPTION:

We support state legislation that would include the Municipality of Anchorage water and wastewater utilities (AWWU) in the existing exemption from regulation by the Regulatory Commission of Alaska (RCA) that state law already provides to other municipally owned utilities.

AWWU is the only municipally owned water and wastewater utility in Alaska subjected to state regulation, with the sole exception of the City of Pelican. [Unlike AWWU, Pelican requested to be regulated by the RCA.] Anchorage ratepayers pay higher rates for state regulation, but these regulatory charges are not imposed on utilities owned by other municipalities. Currently Anchorage ratepayers pay about \$550,000 per year.

Municipal regulation of AWWU will continue to balance consumer protection with the financial soundness of the utilities. It will be:

Directly accountable to local people
More responsive
More timely
More economical
Simpler

Utility customers are also municipal voters. They will hold the Mayor and Assembly members fully accountable for their actions overseeing municipally owned utilities like AWWU.

The Municipality has extensive experience regulating other municipally owned enterprises. They are all financially sound and also provide first class customer service. For example, the Solid Waste Services Collection Utility has been regulated by the Municipality for many years. Its customers enjoy among the lowest refuse collection rates in the country. The rates for residential and commercial refuse collection have not increased in the past thirteen years. This exemption could be accomplished by amending AS 42.05.711 to add a new section to read:

"A water/wastewater utility serving a municipality with a population of more than 200,000 is exempt from regulation by the Commission, other than AS 42.05.221 - 42.05.281 and 42.05.385."

Legislative District (s):

House: 16-32

Senate: I-P

CONTACT PERSON: Robert Lohr, Management Systems Officer, 343-4467

MUNICIPALITY OF ANCHORAGE

*Gina Anderson 1
Rene Romero - 5 years Alaska*

**2004 STATE LEGISLATIVE PROGRAM
MUNICIPAL PRIORITY ISSUES
LEGISLATION**

ISSUE/PROJECT NAME: Regulating our own utilities
ISSUE/IMPROVEMENT TYPE: Legislation- Utility
STATE GRANT REQUEST: None
LOCAL MATCH: N/A
PRIORITY: 1

ISSUE/PROJECT DESCRIPTION:

We support state legislation that would include the Municipality of Anchorage utilities in the existing exemption from regulation by the Regulatory Commission of Alaska (RCA) already provided to other municipally owned utilities.

Anchorage utilities are the only municipal utilities in Alaska subjected to state regulation. The sole exception is the City of Pelican's water utility, where Pelican requested to be regulated by the RCA. Anchorage ratepayers pay higher rates for this state "service" but these regulatory charges are not imposed on any other municipal utility, except Pelican. Currently Anchorage ratepayers pay \$930,000 per year.

Municipal regulation would continue to balance consumer protection with the financial soundness of the utilities. It would be:

Directly accountable to local people
More responsive
More timely
More economical
Simpler

The Municipality has extensive experience regulating other municipally owned enterprises. They are all financially sound and also provide first class customer service. For example, the Solid Waste Services Collection Utility has been regulated by the Municipality for many years. Its customers enjoy among the lowest refuse collection rates in the country. The rates for residential and commercial refuse collection have not increased in the past thirteen years.

Voters in the Municipality would hold the Mayor and Assembly members, those elected officials who would set and approve utility rates, fully accountable – and they do vote.

During the recent California energy crisis the utilities regulated by the state public utilities commission got in trouble, with the largest gas and electric utility having to file bankruptcy. On the other hand, municipally owned utilities fared very well.

POLITICAL SUBDIVISIONS:

Community Council: Anchorage
Assembly Section: 9
Legislative District(s):
House: 16-32
Senate: I-P

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