



Residence Hall Agreement

TERMS OF OCCUPANCY: Student is responsible for all of the terms of this Agreement and as a member of the Residence Hall Association agrees to comply with all University rules, regulations, policies, procedures and community living standards including those printed in the Class Registration Schedule, the Residence Life Handbook, the University Catalog and any other University publication or electronic access site. All such rules and regulations are by this reference incorporated into this Agreement. The period of occupancy for this agreement and the academic year will begin on the first day of the fall semester as specified by the University and will end on the day after the last regularly scheduled final examination for the spring semester. Occupancy will not begin until the official opening day unless pre-approved arrangements are confirmed by the Department of Residence Life. Additional housing charges may be assessed to the student. As a campus resident, you are required to purchase a board plan for both the fall and spring semesters. Excluded from this provision are graduate students and those students living in the Cutler Apartment Complex and Wickersham. All board plans can be purchased with, and activated by, UAF Dining Services, Room 106 Eielson, or at the Lola Tilly Commons. For more information about the available board plan options, costs, program parameters, as well as the Agreement for Services, please visit www.uaf.edu/food/ or call (907) 474-6661.

NOTE: Occupancy dates are subject to changes in the academic calendar. Students wishing to remain in campus housing between semesters must apply, be accepted, and pay a fee. Each approved student will be consolidated into an open residence hall(s). Failure to complete registration (course selection and payment of fees) constitutes a breach of this Agreement. Persons breaching their Agreement will be assessed room costs as defined in the "REFUNDS/COSTS" section of this Agreement and be required to move out. At the opening of each semester and at times of unanticipated over-enrollment, the student may be assigned to overflow housing space. Overflow assignments will be charged at the standard rate.

ACADEMIC YEAR AGREEMENT: The term of this agreement is for the entire academic year or for the remainder of the academic year, if entered into after the beginning of the academic year. The academic year consists of fall and spring semesters and does not include summer sessions which are acted upon separately by the University. Any student who continues to be enrolled at the University of Alaska Fairbanks shall honor the terms of this Agreement for both the fall and spring semesters and shall be charged the full amount of the fall and spring housing fees. Students graduating in December (a not enrolling for spring semester) must provide notice of cancellation by Dec. 1 and must complete proper check-out (see "TERMINATION/FORFEITS" section).

This Agreement is not a lease. It creates no exclusive right on the part of the Student to occupy any portion of University property. The University may assign or reassign the Student to specific housing when, in the University's sole discretion, it deems such action necessary. The Student may not assign any rights or obligations created by this agreement. Eligibility: All students of UAF are eligible for campus housing but are not guaranteed housing until approved by the Department of Residence Life. To better manage occupancy, Residence Life may establish occupancy priorities and eligibility/credit hour requirements at any time deemed necessary.

UNIVERSITY AUTHORITY: The University reserves the right to:

- Change room assignments (consolidate) when vacancies occur and single occupants are residing in multiple capacity rooms or when less than four students are living in one Cutler apartment; the remaining resident(s) must accept another roommate and/or move to another room/apartment. Students already on the double-single waiting list may keep the room and assume the additional cost if space is available.
- Re-assign students from a room, floor, hall, or residence system if necessary for health, safety, financial, or disciplinary purposes or when premises are unsuitable for occupancy.
- Enter any unit in order to inspect the same, make essential, preventative, routine, or agreed upon repairs, decorations, alterations or improvements, supply necessary or agreed upon services, or exhibit the premises to landlords or contractors, or as is otherwise necessary in the operation and/or protection of the premises or persons therein.
- Enter any premises in the event of an apparent or actual emergency, if there is reason to believe that a University policy is being violated or when other community members' rights are being violated and entry cannot be gained by normal means.
- Close a residence and re-assign residents to available space in other residences or within a residence when sufficient vacancies occur and/or the need arises.

1) Refuse or terminate housing to any student who is delinquent in the payment of residential fees, who has demonstrated an unwillingness to abide by Board of Regents policy, University Regulations and Residence Life rules and procedures, who may impact the community and/or students personal safety, or who exhibits behavior which is incompatible with maintaining of order and propriety of the Residence life community.

If the Student chooses to vacate their assigned unit during the term of this Agreement, but remains enrolled at the University, or the Student fails to occupy their reserved space by the first day of classes, the Student will forfeit their deposit and will agree to pay for occupancy as outlined in the "REFUNDS/COSTS" section. After Aug. 1, students who have submitted applications are expected to live on campus and pay appropriate housing fees for their reserved space. **NOTE:** Notification of student status to other departments within the University does not cancel this Agreement. Damage/reservation deposits (currently \$225) will be held by the University and carried forward to subsequent academic years until the termination of this Agreement. At the time of termination, the deposit may be used to cover cancellation/termination charges plus costs for any loss or damage caused during occupancy and not otherwise paid or provided for by the Student. The same may be applied to pay for other obligations owed by the Student to the University. Any portion of such deposit not applied as provided herein will be mailed to the Student within 30 working days after proper check-out. Deposits will be forfeited for the following reasons: 1) failure to complete proper check-in by 9:00 am on the first day of classes; 2) termination of occupancy during the first sixty (60) days after the official fall opening; 3) canceling room reservations after Aug. 1; 4) failure to properly check out of a room or apartment. **NOTE:** All provisions of this Agreement apply to students with a confirmed room reservation for Spring semester except that the date of record will be changed from Aug. 1 to Dec. 1.

REFUNDS/COSTS: All room costs are subject to change if rates increase after student application, students with accepted agreements will be given the opportunity to withdraw their application without penalty (less application fee).

Students terminating their Agreements will be charged room rent based on the following schedule:

FAIL:

- Prior to Aug. 1: Refund deposit, 0% of the semester charge
Aug. 1 - Sept. 9: Forfeit deposit, 10% of the semester charge
Sept. 10 - Sept. 23: Forfeit deposit, 25% of the semester charge
Sept. 24 - Oct. 14: Forfeit deposit, 50% of the semester charge
Oct. 15 - Nov. 4: Forfeit deposit, 75% of the semester charge
After Nov. 4: Forfeit deposit, no refund or credit

SPRING:

- Prior to Dec. 1 (if new agreement in spring):
Refund deposit, 10% the semester charge
Prior to Dec. 1 (continuation of fall agreement):
Forfeit deposit, 10% of the semester charge
Dec. 1 - Jan. 26: Forfeit deposit, 10% of the semester charge
Jan. 27 - Feb. 7: Forfeit deposit, 25% of the semester charge
Feb. 8 - Mar. 2: Forfeit deposit, 50% of the semester charge
Mar. 3 - Mar. 23: Forfeit deposit, 75% of the semester charge
After Mar. 23: Forfeit deposit, no refund or credit

CHECK OUT: A student's occupancy in University housing is terminated by the University by official check-out (personally signing out) with a Residence Life Staff member. Students failing to complete an official check-out forfeit their deposit and will be assessed all appropriate cleaning, damage and check out fees or housing charges. The Student must provide written notice of cancellation as outlined in "TERMINATION/FORFEITS" section below. On or before the date of hall closing or termination, student must remove himself/herself and all personal property from the premises. The premises, including equipment, furniture and fixtures shall be clean and in as good order and condition as when received, reasonable wear and tear expected. Upon termination of the Agreement, the University shall have, and is hereby granted, full and free right to remove property of the Student or others from the Premises without being guilty of trespass, eviction or forcible entry and detainer, and without relinquishing any of the University's legal rights. Any and all property which may be removed from the Premises by the University pursuant to the authority of this Agreement or of law, to which the Student or others may be entitled, shall be handled or removed by the University at the risk, cost and expense of the Student.

WAIVER AND SEVERABILITY: No term or condition of this Agreement can be waived by the University except as authorized in writing by the Director of Residence Life or designee. Requests must be made in writing. Should any clause or portion of this Agreement be

held invalid, the other portions of this Agreement shall remain in full force and effect.

UNIVERSITY RULES AND PROCEDURES: These are printed below for your convenience, but are not to take the place of the Residence Life Handbook which should be referred to for more specific information on Residence Life rules and procedures:

- A room/apartment is to be occupied only by the Student(s) for whom it is reserved. Rooms/apartments may not be sublet or used by non-residents for any purpose.
- Prohibited items in residential rooms/apartments include corrosive, combustible, hazardous or other dangerous substances, firearms, ammunition, other weapons, and cooking and food storage appliances unless approved by the Department of Residence Life.
- All weapons must be stored at the UAF Police Department and cannot be kept in rooms or apartments. The University reserves the right to remove all prohibited items. Prohibited activities include, but are not limited to: possession or use of illegal drugs or substances, possession or use of alcoholic beverages by persons under Alaska's legal age, public display of offensive materials, relocation of University furniture from one room to another, keeping of pets, and cooking and smoking in unauthorized areas.
- Residents are responsible for damages beyond normal wear to localities and equipment. Each Student will be charged for damage, or other loss incurred, to their room, the building, furniture, and equipment that is a result of carelessness or misconduct. Damage within the student room, apartment, or the common areas located throughout building (unless individual responsibility is determined), will be attributed to all occupants of that room, apartment or all resident students served by the common areas. Student agrees to remove all stored personal property from University facilities upon termination of this Agreement. If the Student fails to remove said property, Student hereby authorizes the University to make disposition of such property in any manner in which the University sees fit, without further recourse from the Student.

f) Student shall not make any material alterations in the space without express written permission from the Department of Residence Life, shall not damage nor permit the damage of any part of the space, shall not do or permit the doing of anything that shall constitute a fire or health hazard, and shall not permit the accumulation of waste and refuse within the space. Violation of these term and conditions may be considered sufficient reason for monetary fines and disciplinary action, including, but not limited to, dismissal from the University residence halls (and possibly the University).

g) Students may occupy their rooms during Thanksgiving and "spring break" with no additional charge, however, Students who wish to remain on campus during the period between semesters must arrange for accommodations separately and pay an additional charge. No board program meals are provided during vacation periods.

h) Student hereby agrees to obey all applicable University, local, state, and federal laws and regulations which are now in effect or which may become effective during the term of this agreement.

INDEMNITY/LIABILITY: The University accepts no liability for:

- Damage or injury to persons or property or loss of property of Student unless the same is caused by the gross negligence or willful misconduct of the University.
- The loss, damage, or destruction to all personal belongings in the custody of, belonging to, or stored by the Student, regardless of cause. This includes losses that occur in the Students' room, storage room, and public area, in other areas of the hall or campus. The University strongly recommends that students secure insurance for personal property with a private insurance company. The University does not insure the student's private property.

TERMINATION/FORFEITS: Agreement may be terminated by the Student as follows:

- Prior to Aug. 1: The Student may cancel this Agreement at any time prior to Aug. 1 without penalty (less \$35 application fee) by filing a written notice to Residence Life.
- Graduation, Total Withdrawal or Marriage: The Student may cancel this Agreement for Spring semester without forfeiture of the deposit for reasons of graduation, total enrollment withdrawal or marriage by filing a written notice and appropriate documentation to Residence Life by Dec. 1.
- Hardship: The Student may request cancellation of this Agreement for hardship by filing a written request to Residence Life. Hardship requests will be reviewed by the Business Manager of Residence Life for approval or denial. If approved, you will be notified in writing. If denied, you will be notified in writing and held to the terms of this agreement for the remainder of the academic year.

January 2004

MAIL IN BUSINESS REPLY ENVELOPE

Conviction Disclosure Form

You are required to sign and return this form even if you answer NO to these questions.

Changes to Residence Life Application mandated by UA Board of Regents to be implemented for applications as of Sept. 12, 2004

Do you presently have felony charges pending against you or have you ever been convicted of a felony?

Yes* No

Do you presently have charges pending against you, or have you ever been convicted of a misdemeanor or felony sex offense crime, or an attempt to commit such a crime, as defined by Title 11 of Alaska Statutes?

The Alaska Statutes are viewable online at www.legis.state.ak.us/folhome.htm.

Yes* No

** If you answered yes to either of these questions, please explain on the back.*

Name _____

Student ID number _____

Social security number _____ - _____ - _____



MAIL IN BUSINESS REPLY ENVELOPE

Conviction disclosure explanation sheet

If you answered yes to either of the questions on the front, please provide information about the crime you have been convicted of, date of conviction, court convicted in and sentence received. If you need more space, please attach a separate sheet. The explanation sheet must have your signature and authorize the UAF Department of Residence Life to conduct a detailed criminal background check.

I authorize the UAF Department of Residence Life to conduct a detailed criminal background check of my past

Student Signature _____ Date _____

Removing Students from Student Housing: The university has experienced unnecessary and unjustifiable expense, disruption, and delay associated with efforts to remove disruptive students from university housing. This issue arises out of judicial application of forcible entry and detainer law, which law more properly applies to non-educational rental and lease contracts, to student housing contracts. In short, the application of this law requires the university to obtain a court order before removing a student from housing, whether or not the student has been expelled. The university has so far wasted \$22,000 of public funds, not to mention a probably greater expenditure of internal time, litigating with student housing residents who have succeeded in convincing the court that they cannot be removed from student housing without a court order. But the real cost will come if the law is not changed to remedy this issue.

A number of factors distinguish student housing situations from the usual landlord tenant arrangement.

- ✓ Students need to study. Other students who repeatedly play loud music, or allow their children (in the case of family student housing) to run unsupervised, can seriously interfere with a threshold requirement of a successful university, i.e. to maintain an effective learning environment.
- ✓ Students who live on campus do not have many good options for alternative housing. They are essentially a captive audience, and should not have to bear the insults to their study atmosphere that in other circumstances they could avoid by moving elsewhere.
- ✓ By statute, the President of the university or designee can "expel" students: "The power to suspend and expel a student for misconduct or other cause and to reinstate the student is vested solely in the president of the University of Alaska." AS 14.40.240. But, courts have taken the rather arbitrary view that a student housing contract overrides this power, by placing the power to evict a student from student housing solely with the courts. And, in some cases, the university chooses to remove students from housing, but would prefer that they be allowed to continue as students. But, as the law currently reads, the university may be forced to expel students just to get them to leave student housing.
- ✓ Distinct from the usual landlord/tenant relationship, the university's provision of student housing is only part, but an integral part, of a larger relationship with the student. Under the approach followed by the courts, a student could be expelled from school, but insist on remaining in student housing until a court order is obtained removing the student.
- ✓ Distinct from the usual landlord/tenant relationship, the university has two additional reasons to accept people into its student housing that a private/commercial entity would not: First, as a public entity, the university has less latitude in rejecting people who might be difficult residents. Second, society benefits when it takes in socially challenged residents in an effort help them become more productive citizens. The university should not be saddled with the expense and delay of going to court to remove from housing students who have proven themselves too disruptive.

One way to address this issue would be to amend AS 14.40.240 to define the power to suspend or expel a student to include the power to terminate a student housing contract and remove the occupants from housing without going through court proceedings under AS 09.45, as follows:

AS 14.40.240. Power of president to suspend and expel students. The power to suspend and expel a student for misconduct or other cause and to reinstate the student is vested solely in the president of the University of Alaska. The president may delegate the exercise of the power to the chancellor or other official on each campus of the university or to the administrative head or director of the community college or other campus or extended unit of the university. For the purposes of this section, the power to suspend or expel a student includes the power to restrict a student from entering or remaining on or in all or a portion of university premises, to terminate a student housing contract, or, notwithstanding AS 09.45, to forcibly remove a student from university provided housing, if the student refuses to leave peacefully.

Another approach that would work well in combination with the first would be to amend the statute upon which the courts' rulings are based. The legal history of student housing includes exclusion from operation of the Uniform Landlord Tenant Act. ULTA was designed to alleviate injustices inflicted on residential renters by unscrupulous private landlords. Because public service institutional entities such as hospitals, schools, nursing homes, church housing, and counseling operations were not among the offenders, and because the realities of operating such services are not compatible with the heightened protection designed for residential renters, these public service institutions were exempted from the ULTA. See AS 34.30.330(b) exempting from ULTA "residence at an institution, public or private, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services." But, according to the courts, this exemption does not apply to exempt these entities from having to obtain a court order to remove patrons from their premises.

The issue as it applies to the university is one that could apply equally to these other public service entities. For instance, a hospital should not be required to obtain a court order to remove a patient who no longer needs its services, or who is disrupting operations. And a church should not be required to seek a court order to remove a convent resident who takes to preaching a different faith. Thus, it would be reasonable to also propose an exemption to the forcible entry and detainer statute that eliminates any requirement of seeking a court order to recover possession of such institutional property from users.

Sec. 09.45.060 Prohibition of use of force for entry on realty.

(a) A person may not enter upon any land, tenement, or other real property except in cases where entry is given by law. In those cases the entry may not be made with force but only in a peaceable manner.

(b) Nothing in this section or chapter shall be read to require court action to recover possession of institutional property that is excepted from the provisions of the Uniform Residential Landlord and Tenant Act by AS 34.03.330(b)(1).

ALASKA STATE SENATE

Session:
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Senator Ralph Seekins
District D

Senate Bill 137 Sponsor Statement

“An Act providing that an institution providing accommodations exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060-09.45.160”

Currently the University of Alaska does not have the ability to evict problem students out of University residences. In order to remove a student from a University residence, the University must obtain a court order. Thousands of dollars of public funds and numerous hours have been spent litigating with students who have succeeded in convincing the court that they cannot be removed from student housing without a court order.

Alaska Statute 34.03.330(b) exempts certain types of institutions from the Uniform Residential Landlord and Tenant Act. The Landlord Tenant Act was designed to alleviate injustices inflicted on residential renters by unscrupulous private landlords. Public service institutional entities such as hospitals, schools, nursing homes, educational establishments, church housing, and counseling centers are not compatible with the heightened protections designed for residential renters under ULTA. AS 34.03.330(b)(1) recognizes this, and lists different types of organizations where the ULTA should not be applied.

A hospital should not be required to obtain a court order to remove a patient who no longer needs its services. A student expelled from school, should not be able to insist on remaining in student housing until a court order is obtained removing the former student. Counseling agencies dealing with individuals with problems shouldn't have to get a court order to evict or remove disruptive patients after their course of treatment has been completed.

SB 137 adds a new section to title nine under, actions relating to real property. It provides institutions listed under, AS 34.03.330, would no longer require a court action to recover possession of a residence.

3/10/05

Sponsor Statement



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Ralph Seekins
Current Version: SL 137
Contact: Joe Michel, 465-2327

Fact Sheet for: Senate Bill 137

Short Title: EVICTING INSTITUTIONAL PROPERTY USERS

Summary:

- Amends the Uniform Residential Landlord and Tenant Act.
- Allows an institution to evict a person from housing owned by the institution.

Benefits:

- Allows an institution to avoid the cost of going through court in order to evict someone from property owned by the institution.

Background:

- Current law requires institutions to obtain a court order before evicting a person living in institutional residences. For example, the University of Alaska spends thousands of dollars in court costs obtaining a court order so expelled students can be evicted. This is an unnecessary financial burden for the university and other institutions like hospitals, counseling centers and nursing homes. SB 137 adds a new section to the Uniform Residential Landlord and Tenant Act that lifts the requirement for institutions to obtain a court order to evict someone from the residence.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 137
 (S) Publish Date: 3/29/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act providing that an institution providing accommodations exempt from the provisions of the Uniform ..." RDU: CIVIL
 Sponsor: Senator Seekins Component: Commercial and Fair Business
 Requester: _____ 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						
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 adds a new subsection to AS 09.45.070 in order to provide that institutions that are exempt from the Landlord Tenant Act (as listed in AS 34.03.330(b)(1)) can evict tenants without resorting to court action under AS 09.45.070 -0.160 (Code of Civil Procedure - Actions Relating to Real Property). This statute currently requires court action before eviction can occur.

Passage of this legislation will have no fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director
 Division: Administrative Services Division
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General
 Agency: Department of Law

Phone: 465-3673
 Date/Time: 3/21/05 11:14 AM
 Date: 3/21/2005

SB

139

Alaska State Legislature

SENATOR
GENE THERRIAULT
Chair



SESSION ADDRESS
State Capitol
Juneau, Alaska 99801 1182
(907) 465-4797
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Legislative Budget and Audit Committee

SPONSOR STATEMENT CSSB 139 (L&C)

"An Act relating to the termination and oversight of boards, commissions, and agency programs; extending the termination date of the Board of Marital and Family Therapy; and providing for an effective date".

This legislation extends the sunset date of the Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010 per the audit recommendation contained in that report (page 9).

CSSB 139 (L&C) also incorporates recommendations contained in the audit of the *Alaska Sunset Process and Selected Investigative Issues*.

First, for boards that are terminated, this legislation clarifies the transfer of authority for regulatory and disciplinary powers to the department of Commerce, Community, and Economic Development (DCCED). While DCCED has assumed the responsibility for administering the regulated occupation after a board has terminated, the statutes do not clearly give DCCED the authority to do so. This change will address this uncertainty.

Second, CSSB 139 (L&C) changes the standard sunset period for occupational boards in AS 08.03.020 (c) and non occupational boards in AS 44.66.010 (c) from "not to exceed four years" to not to exceed eight years". Increasing the standard sunset period allows for better use of audit staff, committee time, and makes the sunset process less consuming for board/regulatory agencies.

Third, two criteria are added to statute that must be considered in the course of a sunset review by the auditors:

- The extent to which the board, commission, or agency has effectively attained its objectives and the efficiency with which it has operated.
- The extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

Expanding the criteria will assure that auditors will measure the efficiency and effectiveness of boards, commissions or agencies under review.

INTERIM ADDRESS

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

Finally, the Senate Labor and Commerce Committee approved one amendment offered by the Administration addressing what occurs when a board is terminated. Sec. 2 of the bill was amended with language that states "all statutory authority of the board is transferred to the department" and a new Sec. 4 was added that further defines the transition of board regulation when terminated.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: RULES By Request of LEG BUDGET & AUDIT
Current Version: CSSB 139 (L.&C)
Contact: Tom Maher, 465-3613

Fact Sheet for: Senate Bill 139

Short Title: EXTENSIONS OF OCCUPATIONAL BDS/AGENCIES

Summary:

- Extends the sunset date of the Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010.
- Adds the following to the criteria that must be considered in the sunset review of Agencies, Boards and Commissions:
 - The extent to which the agency, board or commission has effectively attained its objectives and the efficiency with which it has operated.
 - The extent to which the board, commission or agency duplicates the activities of another governmental agency or the private sector.
- Changes the standard sunset period for boards or commissions scheduled to terminate under AS 44.66 or AS 08.03 from four years to eight years.
- Provides for the transfer of authority for regulatory boards that are terminated.

Benefits:

- Extension of the Board of Marital and Family Therapy implements a recommendation of the Legislative Budget & Audit Committee and serves the public's interest by licensing only qualified individuals, setting out practice standards and enforcing laws uniformly and consistently.
- Expanding sunset criteria assures that auditors will measure the efficiency and effectiveness of boards, commissions or agencies under review.
- Increasing the standard sunset period allows for better use of audit staff and committee time, and makes the sunset process less time consuming for board/regulatory agencies.

Background:

- Sunset laws were first adopted in the United States in the 1970s as part of a national movement to increase the accountability of government and reduce bureaucracy. The sunset process is intended to provide for the routine re-determination of the need for some aspect of government, increasing the likelihood that government growth is productive and deliberate.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSSB 139(L&C)
 (S) Publish Date: 4/8/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Commerce
 Title Extensions of Occupational RDU Occupational Licensing (117)
Boards/Agencies Component Occupational Licensing
 Sponsor Rules by Request of Leg Budget & Audit
 Requirer Senate 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	0.0	3.7	6.7	6.7	6.7	6.7
Travel	0.0	0.6	0.6	0.6	0.6	0.6
Contractual	0.0	0.9	0.9	0.9	0.9	0.9
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	8.2	8.2	8.2	8.2	8.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1156)	0.0	8.2	8.2	8.2	8.2	8.2
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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	0.0	8.2	8.2	8.2	8.2	8.2
TOTAL	0.0	8.2	8.2	8.2	8.2	8.2

Estimate of any current year (FY2005) cost: 8.2
 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)

The bill extends the Board of Marital and Family Therapy to June 30, 2010. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget.

Additionally, the bill amends AS 08.03.020(a) to transfer regulations and disciplinary powers to the department to continue licensing in the event a board is not continued. The bill also provides extension for a board or commission up to eight years, instead of the current four. New funds are not required to implement these changes.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/29/05 3:35 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/29/2005
 Agency Commerce, Community, and Economic Development

Audit Report

**DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
ALASKA SUNSET PROCESS AND
SELECTED INVESTIGATIVE ISSUES**

September 28, 2004



Audit Control Number:
08-30031-05

Division of Legislative Audit
P.O. Box 113300, Juneau, Alaska 99811-3300

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

As a guide to all their work, the Division of Legislative Audit complies with generally accepted auditing standards established by the American Institute of Certified Public Accountants and with government auditing standards established by the U.S. General Accounting Office.

Audits are performed as mandated by Alaska Statutes or at the direction of the Legislative Budget and Audit Committee. Individual legislators or committees can submit requests for audits of specific programs or agencies to the committee for consideration. Copies of all completed audits are available from the Division of Legislative Audit's offices in Juneau, Anchorage, or at our web site <http://www.legaudit.state.ak.us/>

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November 22, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
ALASKA SUNSET PROCESS AND SELECTED INVESTIGATIVE ISSUES

September 28, 2004

Audit Control Number
08-30031-05

The purpose of this audit was to review Alaska's sunset process to assess the impact of sunset laws and to make recommendations for improvement. We also reviewed operations of the investigative unit within the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.

Government auditing standards require auditor to be "*free both in fact and appearance from personal, external or organizational impairments to independence.*" The recommendations made in this report would have an impact, albeit a minor impact, on the timing of work performed by the Division of Legislative Audit. Therefore, we must note the appearance of an organizational impairment to independence in this audit.

Except for the noncompliance with the independence standard identified in the prior paragraph, the audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

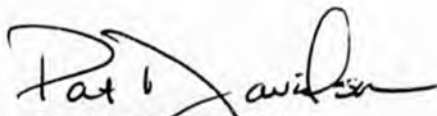

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a performance audit of Alaska's sunset process and the investigative unit in the Department of Commerce, Community, and Economic Development (DCCED), Division of Occupational Licensing.

Objectives

The objective of the audit was to review the efficiency and effectiveness of Alaska's sunset process. Specifically:

- Determine if the standard extension period of four years is an efficient use of state resources.
- Review the existing termination dates for the boards, commissions, and agencies under Alaska's sunset laws to determine if the termination dates are evenly distributed.
- Make recommendations for updating the sunset process based on national trends and best practices.
- Identify organizations and programs that have sunset dates, but are not part of the formal sunset review process.
- Identify regulated occupations that are not covered by the formal sunset review process.
- Summarize the legislation and operational changes that have resulted from Alaska's sunset process.
- Evaluate the efficiency of the Division of Occupational Licensing's investigative unit.

Scope and Methodology

Division of Legislative Audit conducts audits and issues audit reports in accordance with government audit standards. These standards require that the auditors be "*free both in fact and appearance from personal, external or organizational impairments to independence.*" During Alaska's sunset process the legislative committees of referral consider reports issued by the Division of Legislative Audit. Recommendations made in this report would have an impact, albeit a minor impact, on the timing of work performed by the Division of Legislative Audit. Therefore, we would not be considered to be free from the appearance of an organizational impairment to independence for recommendations made in this report.

Our review of the sunset process covers the 25-year period FY 78 through FY 04. The examination of the investigative unit focused on a five-year period FY 00 through FY 04.

Our evaluation involved review and analysis of the following documents:

Laws and regulations

- Relevant Alaska Statutes (AS), including AS 44.62, AS 44.66, AS 24.20, and AS 08.01 through AS 08.03
- Relevant section of the Alaska Administrative Code (AAC), including 12 ACC 02.010 through 02.990
- Sunset-related statutes for Delaware, Louisiana, Oklahoma, Tennessee, Maine, and Washington
- Occupational licensing-related statutes for Arizona, Colorado, Hawaii, Minnesota, Vermont, Virginia, Florida, and Washington

Reports, publications, and articles

- *Occupational Regulation* Minnesota Legislative Auditor, 1997
- *Sunset Review Process in Connecticut* 1998 report published by Connecticut's Legislative Program Review and Investigative Committee,
- *Sunset Laws: Limited lifespan for state agencies?* by Tony Licata,
- *Sunset, Sunrise, and Agency Audits* published in 2004 by the Council on Licensure, Enforcement and Regulation,
- *Sunrises without Sunsets – Can Sunset Laws Reduce Regulation?* by Vern McKinley published by the Cato Review of Business & Government,
- *Sunset – Still Effective After All These Years?* Talking points of Ken Levine, Assistant Director Texas Sunset Advisory Commission 2001,
- *Is the sun setting on the Texas sunset law?* by Dave McNeely published by the State Legislatures; 1994. and
- *A Short History of Sunsets* by Nadya Labi published by Legal affairs magazine January/February 2004.

Other documents

- Fifty-nine occupational licensing investigative case files,
- Occupational licensing investigative websites for Colorado, North Dakota, Montana, and Idaho,
- Annual reports for occupational licensing boards and nonoccupational regulatory agencies,

- Various newspaper articles and other publications from 1977 related to the passage of sunset legislation, and
- Legislative Audit sunset audits.

We also conducted interviews with the following individuals:

- Assistant attorney general assigned to occupational licensing investigative unit
- Occupational Licensing chief investigator
- Thirteen current occupational licensing investigators
- Two previous occupational licensing investigative supervisors
- DCCED staff programmer assigned to assist with the investigative case management system
- Previous Legislative Auditor
- Executive Director and staff of the Regulatory Commission of Alaska
- Executive Director of the Alcoholic Beverage Control Board
- Ombudsman
- Current and previous directors of the Division of Occupational Licensing
- Chief, Occupational Licensing
- Representatives from Alabama, Arizona, Arkansas, Colorado, Delaware, Kansas, Minnesota, Montana, and New Hampshire regarding sunset and/or sunrise programs
- Executive Administrator for the State Medical Board

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ORGANIZATION AND FUNCTION

Department of Commerce, Community, and Economic Development

Under the provisions of Title 44 of the Alaska Statutes, the Department of Commerce, Community, and Economic Development (DCCED) provides a wide range of services to private businesses, as well as aids in protecting the public through the regulation of certain industries. Development services provide general assistance and access to capital markets for businesses. Development services also coordinate numerous state loan programs and manage programs aimed at key economic sectors such as electric power generation, tourism, aerospace, mining, and fishing.

Division of Occupational Licensing

The Division of Occupational Licensing (OccLic) is organizationally located within DCCED. OccLic is responsible for issuing all business licenses and serves as the primary occupational licensing agency for the state. Additionally, OccLic regulates entry into professions and enforces performance standards to ensure Alaska consumers receive safe, competent services.

Occupational Licensing Boards

Licensing boards and commissions are responsible for establishing qualifications for entry into various professions. These entities have the authority to propose and adopt legislative amendments and regulations. The occupational licensing boards can also discipline licensed professionals for incompetent, unethical, or illegal behavior. All of the occupational licensing boards are subject to the sunset review process.

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BACKGROUND INFORMATION

History of sunset laws

Sunset laws began to be adopted by states in the 1970s as part of a national movement to increase the accountability of government and to reduce bureaucracy. Colorado was the first state to adopt sunset legislation in 1976. By the mid-1980s, a total of 36 states had adopted similar legislation.

Although sunset laws differ between states, their premise is the same. Each sunset state has a provision in law that requires periodic review to justify the continued existence of a particular law, administrative agency, or other governmental function. Termination of operations is automatic if the legislative body does not pass a bill to extend statutory authority. In theory, the sunset process provides routine re-determination of the need for some aspect of government – thereby making it more likely that growth of government is productive and deliberate. Sunset laws are one method that states have chosen to combat the problem of legal obsolescence (see Exhibit 1).

Professional literature indicates that states have had mixed levels of success with their sunset laws. Most articles, publications, and reports written about sunset conclude that it has not lived up to expectations. By 1990, six states had repealed their sunset laws and another six had suspended the process.¹

In 1998, Connecticut (one of six states that suspended their sunset law) performed a review of their sunset process. The report cited the following deficiencies that led other states to repeal or suspend their sunset laws:

- The process places excessive time demands on legislators and legislative staff;

¹Information taken from *Sunset, Sunrise, and Agency Audits* article published by the Council on Licensure, Enforcement and Regulation (CLEAR).

Exhibit 1

Legal Obsolescence

The term legal obsolescence is used to describe the reduced applicability and usefulness of a statute, regulation or agency. The Cato Review of Business & Government lists the following reasons for legal obsolescence:

- The problem or crisis that spawned the agency is short-term in nature, dissipated or ceased to be a problem
- Problems with particular solutions do not manifest themselves for decades, at which point interest groups that benefit from the status quo are well entrenched. For example, the Social Security system has proven itself unsound from an actuarial standpoint, largely due to the change in demographics since the 1930s.
- Regulations quickly become obsolete – fast paced technology or international competition quickly change the assumptions upon which the regulation is based.

Source: *Sunrises without Sunsets* by the Cato Review of Business and Government

- The process often requires legislators to choose between proposals that are modestly beneficial to all citizens but can be devastatingly negative to specific interest groups; and,
- Other forms of providing oversight have become more popular.

States differ when it comes to implementing sunset legislation

States differ on the scope of sunset legislation, the standard period for review, the criteria against which entities are evaluated, the types of entities subject to sunset, and the type/extent of legislative participation in the process.²

According to 2002 *The Book of the States*, there are 26 states with active sunset programs. Exhibit 2 summarizes the scope of sunset legislation for the 26 states. In terms of agencies reviewed, eight of the states, including Alaska, Texas, and Colorado, have comprehensive sunset programs. These states periodically conduct sunset reviews on administrative agencies, regulatory agencies, and/or provisions of law. Another nine states, only conduct sunset reviews on regulatory agencies. The other states have more selective/discretionary sunset laws; choosing what programs to review based on factors such as legislative interest, risk, and available resources. An additional 11 states have not enacted sunset legislation in the same sense as these 26 states but have included sunset clauses in selected programs or legislation.

<u>Exhibit 2</u>	
Scope of Sunset Legislation	Number of States with Active Sunset Programs
Comprehensive	8
Regulatory	9
Selective	8
Discretionary	<u>1</u>
Total	26

<u>Exhibit 3</u>	
Standard Period between Sunset Reviews	Number of States with Active Sunset Programs
4 years	4
6 years	3
10 years	8
12 years	1
Varies	2
Not Specified	<u>8</u>
Total	26

The standard period of time between sunset reviews varies between states from a low of four years to a high of 12. Exhibit 3 summarizes the standard extension period for the 26 states with active sunset programs. Alaska shares the shortest standard sunset period of four years with three other states. Eight of the states have periods of ten years and ten states do not have specific periods for the review or the period varies.

Most states have, embodied in their sunset legislation, criteria used to evaluate the merits of an agency or provision of law. Sunset criteria differ in number, focus, and detail but share similar characteristics. Most importantly, criteria are used to determine whether there is a continued public need for the entity being reviewed. Additionally, states typically have criteria for determining whether the agency being reviewed has effectively incorporated

² According to 2002 *The Book of the States Volume 34*, published by the Council of State Governments.

public participation, responded in a timely manner to complaints, efficiently accomplished its objectives, and complied with specific requirements such as affirmative action.

States also differ on the responsibility for sunset reviews. In some states, such as Alaska, the responsibility for conducting sunset reviews rests with a legislative agency. Others have staff within the executive branch perform the reviews. Many states use a self-evaluation report that agency management must complete and submit to the evaluation agency.

Legislative intent of Alaska's sunset law

The sponsoring legislator made the following comments regarding intent of the sunset law:

The legislature finds that the substantial increase in the number of state agencies, boards and commissions, and the proliferation of rules and regulations which each has adopted have contributed to a public disenchantment with the operation of state government.

The sunset law was intended to ensure that government growth in boards, commissions, and other agency programs was necessary and productive. This sentiment was widely supported during the 1977 legislative session. As a result, the legislation received broad-based support. However, there were concerns over the resulting workload for legislative and agency staff.

The sponsor of the sunset bill wanted to include a variety of executive branch departments, agencies, and programs under its provisions. Other legislators were concerned about including such programs because of the unknown workload implications. Ultimately, the sunset bill that passed made other agencies subject to the sunset process (AS 44.66.020) but listed none specifically. Rather, it allowed for a process by which programs could be added. To date, this option has not been used. Alaska's sunset program covers only specific state agencies, boards, and regulatory agencies.

Exhibit 4

Automatic Termination without Sunset

The following are five examples of commissions and programs that contain termination clauses in their enabling legislation but are not subject to the sunset legislative oversight process. Automatic termination, without sunset, occurs when a bill authorizing an entity/program has a section that repeals the enabling statutes as of a certain date. These programs typically go through a lobbying phase to encourage legislation to extend their life.

The difference between the following entities, and those subject to sunset, is the level of legislative review of the extension process. The sunset statutes mandate a hearing be held to take testimony from the public and other parties. Further, sunset statutes require no more than one board or commission can be mentioned in the title of a bill for the reorganization or extension. Conversely, entities with automatic termination can be extended without formal hearings and may be part of other legislation.

Commissions/programs with automatic termination include:

- Navigable Water Commission of Alaska
- Alaska Minerals Commission
- Alaska regional economic assistance program
- Reemployed retirees program
- State training and employment program

Alaska's experience with the sunset process

While the total numbers of entities subject to sunset have not changed dramatically (27 in 1977 compared to 30 in 2004), the organizations that make up the total have significantly changed. During this time period, seven occupational boards were added, seven were terminated, and two were merged into one board. Additionally, 16 nonoccupational boards and regulatory agencies were added, 11 were terminated, and two were merged into one.

Appendix B provides a summary of occupational boards that were subject to sunset as of June 30, 2004, those that were terminated since the law was passed; and, those that were added. Appendix C provides the same information for nonoccupational boards and regulatory agencies subject to sunset.

Since inception of the sunset law, entities have been subject to the sunset process over 150 times. The report conclusion section of this report addresses the extent to which sunset audit recommendations have been implemented.

Common misconceptions about the sunset process

The sunset process is not clearly understood by all public policy participants. Two of the most common "misconceptions" are listed below:

1. When an occupational board terminates, the licensing of the related professions also terminates: This is not true. When an occupational board terminates, licensing of the professions it regulates does not terminate. Statutes still require professions to be regulated but do not specifically address whether the responsibility for regulation transfers to the Department of Commerce, Community, and Economic Development (DCCED) – the state department typically responsible for regulating occupations. This creates uncertainty for licensees and a legal quagmire for DCCED, who is expected to take over regulation but may not have the legal authority to do so.
2. All boards, commissions, and councils are subject to sunset: This, also, is not true. With the exception of occupational licensing boards, there are no unique characteristics that identify an agency for sunset. Nonoccupational boards that are subject to sunset, as well as those not subject to sunset, share similar characteristics. For example, the Council of Domestic Violence and Sexual Assault and the Commission on Aging are subject to sunset, but the Advisory Board on Alcoholism and Drug Abuse and the Homeless Council are not.

Further, there is no unique characteristic that identifies the need for an occupation to be regulated by a board rather than DCCED. Currently, there are 14 occupational licensing programs administered by DCCED without the use of an occupational licensing board. (See Appendix D to this report for the listing)

Regulation of occupations divided between occupational licensing boards and DCCED

Occupations are regulated by either an occupational licensing board or directly by DCCED. Alaska statutes designate 21 occupational licensing boards and 14 occupations that DCCED directly regulates (Appendix B identifies the 21 occupational boards and Appendix D identifies the 14 occupations regulated directly by DCCED). Occupational boards are generally responsible for establishing regulations for its occupations, granting licensure, and taking disciplinary action. DCCED provides administrative support to occupational boards including general administrative assistance (purchasing and scheduling); communicating with licensees (license information, exam information); and, providing inspection, enforcement, and investigative resources.

Role of board members and experts in the occupational licensing investigative process

According to statutes and regulations, an occupational licensing board can be involved in an investigation at three different points in the investigative timeline. The board can:

- issue a summary suspension of a license;
- approve, deny, or modify a Memorandum of Agreement (MOA);³ and,
- act as an adjudicative authority after reviewing a Hearing Officer's decision.

Exhibit 5

Investigative Authority

Sec. 08.01.087. Investigative and enforcement powers of department.

(a) The department may, upon its own motion, conduct investigations to

- (1) determine whether a person has violated a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010 ;

Individual board members are utilized by the investigative staff for technical assistance. However, board members that have reviewed evidence must recuse themselves in the event the full board is called upon to act in any of the three points mentioned previously.

The Department of Law has recommended that board members be prohibited from participating in the investigative process. This segregation is necessary, in order to maintain the boards' statutory role as impartial adjudicators.

When it is determined necessary by the Chief Investigator, the investigative unit will hire an expert. Experts are typically used when technical expertise is needed to help substantiate an alleged violation.

³ MOAs are agreements between the licensee and, either, DCCED (for occupations regulated without an occupational board) or a board. The terms of an MOA are negotiated by staff in the investigative unit and the respondent or the respondent's attorney. Occupational licensing boards can modify terms of an agreement and request that the respondent agree to the new terms, or the board can accept the terms by signing the agreement.

Process for investigating occupational licensing complaints

DCCED's Division of Occupational Licensing (OccLic) has an investigative unit whose purpose is to investigate allegations of illegal or incompetent activity by licensees. The unit also investigates allegations of unlicensed occupational activity. The unit is composed of a chief investigator, 12 investigator IIIs, one investigator I, and an administrative clerk.

Each investigator is assigned to a primary occupation and serves as backup for other occupations. When the unit is contacted about a complainant, contact is routed to the assigned investigator. The investigator assigned to the pertinent occupation interacts with the complainant to gain an understanding of the alleged offense and determines whether the violation falls within OccLic's jurisdiction. If the complaint appears to be within OccLic's jurisdiction to investigate, the investigator will request a complaint form be completed and returned.

When complaints are filed with OccLic, they are forwarded to the primary investigator. It is each investigator's responsibility to officially open the case by entering the pertinent information into the investigative case management system.

OccLic does not hold complaints in a backlog until resources become available. Most investigators have more assigned cases than they can actively investigate. Investigators keep an inventory of assigned cases and make their own determination – subject to general priority guidance – as to which of their assigned cases to investigate.

The investigative unit does not use standard procedures when conducting investigations (except for a standard policy of assigning case priority levels). Investigators draw upon their previous investigative experience when conducting and documenting investigations. The extent and format of documentation reflects each investigator's previous training and experience. There is no standard means of informing a subject of an investigation that the investigation is being conducted. Further, there is no standard means of informing complainants of delays in the investigative process.

In addition to investigating complaints, investigators have the responsibility of monitoring compliance with disciplinary actions and/or memorandums of agreement. Typically, memorandums of agreements consist of fines, continuing education classes, and/or drug testing. However, occupational licensing boards and DCCED have imposed other requirements such as periodic psychological examinations.

Exhibit 6

Director Caseload Reduction Directive

During FY 03, OccLic's director instituted a caseload reduction project to reduce the inventory of cases. Investigators were directed to close cases that were over a year old and did not pose a serious threat to public safety. During FY 03 and FY 04, a total of 78 cases were closed under this project.

REPORT CONCLUSIONS

We conducted a review of Alaska's sunset process to assess the impact of Alaska's sunset laws and to make recommendations for improvement taking into consideration national trends and best practices.⁴ We also reviewed the investigative unit within the Department of Commerce, Community, and Economic Development (DCCED), Division of Occupational Licensing.

Operational, regulatory, and statutory improvements associated with over 25 years of sunset experience have been institutionalized by entities subject to sunset. Because of improvements, sunset reviews on a standard four-year cycle are no longer an efficient use of state resources. Detail conclusions regarding the sunset process are discussed in Section I below.

DCCED's investigation unit has increased protection of the general public and members of licensed professions by increasing the number of disciplinary actions taken. However, the unit's case management procedures are in need of significant improvement. Detailed conclusions regarding operations of DCCED's investigative unit are discussed in Section II beginning on page 17.

SECTION I – ANALYSIS OF ALASKA'S SUNSET PROCESS

Alaska's sunset process has been successful at identifying and correcting significant deficiencies. Consequently, sunset laws have evolved from a means of enacting change to the mechanism for monitoring continued operations. Entity operations have matured and warrant less frequent oversight.

The sunset review period should be lengthened to eight years to more efficiently use state resources. Sunset evaluation criteria can be improved by specifically requiring an analysis of effectiveness and efficiency and including a review for duplication of effort. Both recommended changes are consistent with national trends in sunset law.

Sunset laws in other states have changed significantly

Sunset laws in other states have changed significantly since first enacted nationally in the mid-1970s. The focus of sunset reviews during the early years was on eliminating government agencies. Many states were successful at eliminating unneeded agencies;

⁴ The Government Accountability Office defines best practices as "the processes, practices, and systems identified in public and private organizations that performed exceptionally well and are widely recognized as improving an organization's performance and efficiency in specific areas." We used best practices entitled *Carrying Out a State Regulatory Program* published by the National State Auditors Association in 2004 to help evaluate operations of DCCED's investigative unit.

Exhibit 7

Sunrise Laws Gain Popularity as Means of Limiting Growth of Government

Nationally, legislation called "sunrise law" has been adopted by many states. Sunrise is defined as the process by which an occupation or profession wishing to receive registration or licensure must propose the components of the legislation, along with cost and benefit estimates of the legislation. Sunrise attempts to limit the growth of government by requiring certain aspects of regulation be considered as part of the legislative decision-making process. Currently, there are 11 states with active sunrise programs.

Sunrise laws differ from sunset in that sunrise attempts to limit growth of government by preventing an unwarranted government agency or program. Conversely, sunset attempts to terminate unnecessary government agencies or programs. Proponents of sunrise law argue that it is less costly and more effective to increase the scrutiny at an agency's birth rather than try to enact its termination.

As with sunset programs, states have set up their respective sunrise programs differently and have experienced varying levels of success. States differ on what occupations are covered by sunrise law and to what degree interested parties must provide information. Some states have formal sunrise procedures that require questionnaires for applicant groups and a summary review of the questionnaire by an objective agency – both the questionnaire and the review must be considered by the legislature during the decision-making process. Other states have more informal procedures, while others make the process optional. A report on occupational licensing issued by the state of Minnesota's legislative auditor (Report # 99-05b Feb 3, 1997) concluded that state legislatures with formal procedures appear to be better informed during the occupational licensing process.

In this same report, Minnesota's legislative auditor highlighted Florida and Washington as two states with successful sunrise programs. Florida's sunrise statute covers proposals to regulate previously unregulated occupations but does not include increases in the scope of practice of occupations already licensed. Washington's law covers unregulated occupations and scope of practice proposals for health care professions. Additionally, Washington's sunrise law stipulates that when regulation is deemed necessary the legislature should enact the least restrictive form of regulation (for instance registration or certification rather than license).

Both Washington and Florida have been successful at limiting licensure through their sunrise programs. No groups of professionals have been licensed in Florida since the law was passed in 1991. In Washington, only one health care profession has been licensed since the law was passed in 1983.

A well-designed sunrise program can provide complete information for better decision making, thereby limiting unnecessary growth of government. However, the improvement is not without a cost. Similar to the sunset program, administration of the program, review, and deliberation would be a costly process.

however, not to the extent envisioned. The most common outcome of sunset reviews has been administrative and structural changes.⁵

The commitment to improve government through sunset legislation led 36 states to adopt sunset laws between 1976 and 1981, but the use of sunset laws began to fade in the mid-1980s. By 1990, only two additional states had adopted sunset laws, six states had repealed their sunset laws, and another six had suspended their programs. Some discontinued the sunset process due to funding shortages, while other states discontinued their programs because they were ineffective. As of 2002, 26 states continue to have active sunset review programs.

For those states that continue to utilize the sunset process, attention has shifted away from determining whether there is a continued public need for an agency, program, or law. Instead, reviews are becoming more focused on efficiency and effectiveness. Recommendations tend to reflect needed operational and regulatory improvements.

States have found it difficult to terminate agencies or provisions of law under the sunset process. Once established, agencies/programs/laws tend to have a number of people with a strong vested interest in maintaining the status quo. Terminations often result in a marginal benefit to the public but can have significant, negative consequences for a specific group. Political forces make it difficult to objectively terminate. As a result of the difficulty in terminating a program, sunrise laws have gained popularity as a means of limiting the growth of government. Sunrise laws are explained in Exhibit 7 on the opposite page.

The sunset process has contributed to operational improvements

Sunset review recommendations have resulted in significant operational, regulatory, and statutory changes to boards and regulatory agencies covered by the sunset law. The changes have improved and enhanced operations of Alaska's boards and regulatory agencies. We reviewed the degree to which sunset audit recommendations made by our division, during the years 1993 through 2003, were implemented. We limited our review to recommendations that could be implemented by a board/regulatory agency (operational and regulatory types of recommended changes) or by the legislature (statutory changes).

During the 11-year time period (FY 93 to FY 04), Legislative Audit made 176 statutory, operational, or regulatory recommendations in sunset audits, that could be implemented by either a board/regulatory agency or the legislature. Seventy-three percent of recommendations for nonoccupational boards and regulatory agencies were implemented or partially implemented. For occupational boards, eighty-three percent of recommendations were implemented or partially implemented. Exhibit 8 on the next page summarizes the degree of implementation by type of recommendation.

⁵ Information taken from *Sunset, Sunrise, and Agency Audits* published by the Council on Licensure, Enforcement and Regulation (CLEAR) 2004.

In summary, operational procedures, regulations, and statutes have been improved as a direct result of the sunset process. Consequently, the boards and regulatory agencies subject to sunset, are less at risk of operating in a manner contrary to the public's best interest.

Standard sunset extension period of four years is not an efficient use of state resources

Since the 1977 initiation of Alaska's sunset law, government accountability has become a more central part of public policy. Occupational boards submit annual reports which include: licensing statistics, goals and objectives of the next year, investigative unit summaries, progress made on sunset audit recommendations, and recommendations for statutory or regulatory changes. The legislature has instituted an accountability program for state agencies that require reporting measures of accomplishments. These non-sunset mechanisms of oversight provide alternative ways for the legislature to review operations.

Resources devoted to the sunset process are not commensurate with the need for continued legislative oversight. As discussed earlier, improvements have been institutionalized by entities subject to sunset and alternative means of oversight were instituted. Monitoring of operations accomplished through the sunset process would become more efficient, if the standard period of review was lengthened. We recommend increasing the standard period for review to eight years.

This recommendation is supported by national trends. Alaska, along with three other states, has the shortest standard extension period of four years. Three states have a six-year standard and eight have a ten-year standard. The Background Information section of this report identifies the standard sunset review periods for other states with active programs.

Alaska's existing sunset criteria are similar to other states but could be improved

The sunset law includes nine criteria to be considered during the legislative oversight process. These nine criteria are used by Legislative Audit as evaluation criteria for every sunset audit. No changes to sunset criteria statutes have been made since first enacted in 1977. The nine criteria are listed in Appendix A of this report.

Exhibit 8

**Implementation of Audit Recommendations
1993 through 2003**

Nonoccupational Board/Regulatory Agency

Type of Recommendation	Yes	Partial	No	Total
Statutory	6	1	10	17
Operational	37	5	8	50
Regulatory	1		1	2
Total	44	6	19	69

Occupational Board

Type of Recommendation	Yes	Partial	No	Total
Statutory	27	3	10	40
Operational	53		8	61
Regulatory	5		1	6
Total	85	3	19	107

We compared Alaska's sunset criteria to five other states with similar comprehensive sunset programs.⁶ Sunset criteria used by Alaska are similar to the criteria used in other states. Our comparison also concluded that several states use criteria that Alaska does not have but may benefit from including in its laws. As discussed in Recommendation No. 1, the legislature should consider amending the sunset statutes to include the following criteria:

- *The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.* This criterion reflects the national trend towards focusing sunset reviews on efficiency and effectiveness. This focus is consistent with efforts by the legislature to make government more accountable.
- *The extent to which the entity duplicates the activities of other government agencies or of the private sector.* This criterion gives legislators a means of evaluating whether government is duplicating government or is providing a service already available through the public sector. This criterion could serve as a basis for recommending sunset of existing agencies in the event that duplication is unjustified.

Schedule for sunset reviews should be restructured to make workload more manageable

The 24th Alaska Legislature will be considering legislation that extends 12 boards and commissions set to terminate under the sunset statutes. Typically, four to seven boards and/or commissions are due to terminate each year. The spike in this number of entities set to terminate is a result of extensions made over the previous years. The resulting 2005 workload will require additional commitment of staff resources and committee time.

Legislative Audit will be considering the impact on legislative resources when making recommendations for extension. It is our intent to recommend extension dates that smooth the workload. Such action will make the impact more manageable for future legislatures (See Appendix E).

SECTION II – ANALYSIS OF DCCED'S INVESTIGATIVE UNIT OPERATIONS

DCCED's investigative unit has difficulty in efficiently addressing its caseload. Case management is hampered by poor supervision of open caseloads, a lack of standards for completing critical aspects of the investigative process, and a prioritization policy that does not ensure cases are consistently addressed in a fair and equitable manner.⁷ Most findings

⁶ As discussed in the Background Information section of this report, there are currently 26 states with active sunset programs. Eight of the 26 are comprehensive in scope, including Alaska. By comparing Alaska's sunset criteria to five other comprehensive sunset programs, our review covered 75 percent of states with similar sunset programs.

⁷ Individuals that file a complaint with the investigative unit most likely assume their complaint will be addressed in the order in which it was received. Investigators manage their own inventory of cases under broad guidance to first address cases concerning public safety. When it comes to cases with the same priority level, investigators are not required to investigate cases on a first-in first-out basis.

noted during our review can be attributed to the need for improving case management procedures.

Inability to reduce the inventory of open investigative cases has been an ongoing problem

A large inventory of open cases has been a continual problem for the investigative unit. The unit had 586 open cases at the end of FY 93, compared to 530 open cases at the end of FY 04. The unit's inventory of open cases dipped to a low of approximately 450 in 1999 but increased to over 600 at the end of each year between FY 01 and FY 03. The large inventory of open cases slows down the unit's ability to address new complaints in a timely fashion.

The investigative unit has been unable to address the case inventory (thereby improving the timeliness of the investigative process) even though their staff has doubled since FY 93.⁸ Staff increased during the 11-year period, yet the inventory of cases did not significantly decrease. Increase in staff positions did lead to an increase in disciplinary actions,⁹ the number of cases opened, and the number of cases closed.

Investigators are limited in their ability to actively work cases. The number of cases an investigator can actively work varies based on the nature of complaints, complexity of the investigations, and priority set on other cases in an investigator's assigned caseload. Most investigators have a much larger caseload than they can investigate. The longer a case is open, the more difficult it is for investigators to find respondents, witnesses, and other forms of evidence. Further, older cases are more likely to be closed due to lack of investigative resources and lack of evidence.

Poor case management noted during review of investigative case files

While the investigative unit does a good job of monitoring compliance with ongoing disciplinary actions, we observed several deficiencies in the processing and management of the investigative unit's caseload. The operational deficiencies involve:

- inconsistent assignment of case priority levels,
- inappropriate delays in entering a case in the investigative computerized tracking system,
- extended periods of investigative inactivity,
- inadequate documentation to justify closure action,
- investigator reassignment, and
- instances of keeping cases open after an investigation is completed.

⁸ In FY 93 there were seven full-time equivalent investigator positions. This number increased to a high of 16 positions in FY 03. In FY 04, the unit had one investigator IV position, 12 investigator III positions, and one investigator I position for a total of 14 investigator positions.

⁹ Disciplinary actions usually involve one or more of the following: license suspension, license revocation, memorandum of agreement, or fines.

Most findings can be attributed to poor case management procedures. Poor case management procedures include inadequate supervision of investigators' inventory of assigned cases and a general lack of standards for critical aspects of the investigative process. Without adequate supervision of investigators' caseloads, periods of inactivity go undetected and older cases go unaddressed. The organizational structure and reporting relationships of the investigative unit contributes to the Chief Investigator's inability to adequately supervise his staff's open caseload. This is discussed in further detail below.

Critical aspects of the investigative process include complaint intake and assignment, investigation and documentation, drafting of closure documents, and enforcement. The investigative unit lacks standards for most of these areas. Investigators claim that prescribed standards would not be effective, because each investigation is unique. We acknowledge the unique circumstances involved in each investigation, however, general standards could be effective in ensuring investigations conform to predetermined expectations with regards to documentation and timeliness. For example, we noted in several instances, a delay between the conclusion of an investigation and the drafting of closure documents. Standard timelines would be helpful to clarify management's expectation regarding a reasonable timeframe for completing and submitting closure documents.

Organization of the investigative unit impedes productivity and restricts improvements

The investigative unit's organization and workload assignment procedures make it difficult to address the operational deficiencies through policy and procedure changes. The unit's organizational structure would limit the impact of improved procedures.

The Chief Investigator has the difficult task of supervising 14 positions (13 investigators and one clerical staff) and fulfilling the position's other time-intensive responsibilities. The unit has no midlevel supervisors.

Under this organizational structure, the Chief Investigator prioritizes his workday, working on the tasks that must get done such as; drafting accusations, editing closure documents, assisting with negotiations, working with the Department of Law, and interacting with the press, board members, and the general public. Less time-sensitive supervisory duties such as monitoring the status of investigators' open cases, evaluating the quality of investigative work (including level of documentation), and providing training receive little of the Chief Investigator's attention.

In summary, organization of the investigative unit impedes the ability to make procedural improvements. Recommendation No. 2, in the Findings and Recommendation section, addresses the need to make organizational changes as the first step to implementing improvements.

Investigative staff positions do not reflect complexity of investigative tasks

Almost all of the investigator positions (12 out of 14) are Investigator IIIs, yet the complexity of investigative tasks range from simple to complex. Consequently, the investigative unit has upper-level investigative positions doing tasks that would be more efficiently performed by a lower-level position or a paralegal. Productivity would be efficiently maximized in an organizational structure where duties being performed were commensurate with the experience and education of the position performing the task. This is further discussed as a basis for restructuring the investigative unit in Recommendation No. 2.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending sunset statutes.

From our review of Alaska's more than 25 years of experience with the sunset review process, we have developed three overarching recommendations for improving the sunset statutes. The legislature should consider amending the sunset statutes to:

1. Lengthen the standard sunset extension period from four to eight years: The need for legislative oversight no longer warrants sunset reviews on a standard four-year cycle. Most boards and regulatory agencies have been through the sunset process several times and have implemented many of the recommended improvements. As a result, the risk that boards/regulatory agencies are acting in a manner inconsistent with the public's best interest has decreased substantially.

Alaska Statute 08.03.020 provides procedures governing termination, transition, and continuation of occupational boards. Subsection (c) states:

A board scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period under AS 08.03.010.

This statute does not preclude a longer extension period. However, because of this statute, it has been standard practice for the legislature to authorize an extension period of four years.

Alaska Statute 44.66.010 sets the maximum extension period for nonoccupational boards and regulatory agencies. Subsection (c) states:

A Commission scheduled for termination under this chapter may be continued or reestablished by the legislature for a period not to exceed four years.

We recommend amending AS 08.03.020(c) and AS 44.66.010(c), making the standard period for reestablishment no longer than eight years, while giving the legislature discretion to make extensions for a shorter/longer period. An eight-year period reflects our central findings that boards/regulatory agencies warrant less-frequent legislative oversight. Lengthening the standard extension period to eight years will free up legislative committee time for consideration of other priorities and make the sunset process less time consuming for board/regulatory agencies and legislative staff.

2. Expand sunset evaluation criteria: Sunset evaluation criteria in state law do not explicitly include an overall assessment of: (1) efficiency and/or effectiveness of an agency; or, (2) duplication of effort with other state entities or the private sector. Efficiency is mentioned in Alaska statutes only in terms of the boards' ability to process complaints. Past actions by the legislature indicate that this is an important area for evaluation.

Additionally, the degree to which an agency's activities are duplicated by other state agencies, or the private sector, is a valid basis for recommending termination. State law at AS 44.66.050(d) indicates that duplication should be considered but sunset evaluation criteria do not specifically address this performance area.

Adding these criteria will make the sunset process more effective and enhance legislative oversight. States with similar sunset programs have sunset criteria that addressed these areas.

We recommend the legislature consider amending the sunset criteria statutes, AS 44.66.050(c), by adding the following criteria:

- The extent to which the board, commission, or agency has effectively obtained its objectives and purposes and the efficiency with which it has operated.
- The extent to which an entity duplicates the activities of other government agencies or of the private sector.

While efficiency and effectiveness are often part of sunset reviews, inclusion in statutory evaluation criteria would make sure these factors were consistently considered during the sunset process. Likewise, addressing the possibility of duplication of services would assist the legislature in making government more efficient overall.

3. Clarify responsibility for regulation, in the event an occupational licensing board terminates. Statutes do not specifically define how the regulating responsibility for professions will shift to another state agency, in the event an occupational licensing board terminates under the sunset provisions. Traditionally, the Department of Commerce, Community and Economic Development (DCCED) has assumed the responsibility for administering the regulated occupation after a board has terminated. However, the statutes do not clearly give DCCED the authority to do so.

We recommend the legislature consider amending central licensing statutes to address this uncertainty.

Recommendation No. 2

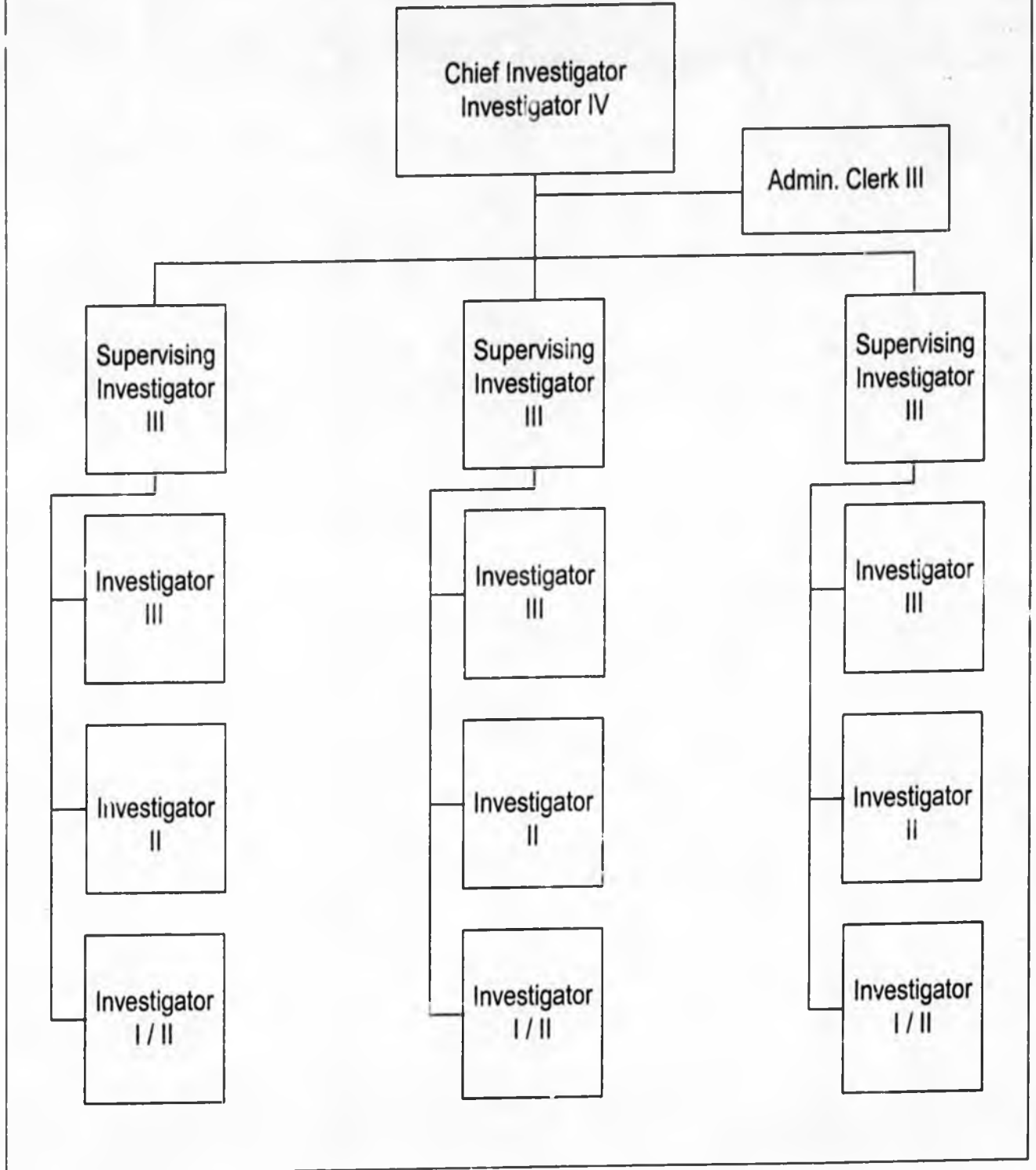
The director of the Division of Occupational Licensing (OccLic) should implement changes to address investigative inefficiencies and case management procedures.

Investigative inefficiencies and poor case management procedures have hampered the performance of the investigative unit, thereby reflecting poorly on occupational boards', and DCCED's, effectiveness at regulating their respective professions. Review of 59 investigative cases identified the following:

- The priority code for 12 of 59 cases (20% of tested cases) was not assigned in a manner consistent with the unit's policy and procedure.
- In 11 of 59 cases (19% of tested cases), the investigator started working the case at least 14 days before it was opened in the case management system. Delays range from 15 to 679 days.
- There were 37 periods of inactivity exceeding 90 days in 24 cases (41% of tested cases). This excludes the periods of inactivity that were outside the control of an investigator (waiting for documents, cases at the Attorney General's office, and cases awaiting hearing).
- In the six cases using an expert witness (10 % of tested cases), three cases were delayed over 100 days awaiting receipt of the expert's opinion.
- In the nine cases that involved the Attorney General's office (15% of tested cases), five cases experienced delays of over 239 days awaiting action by the Department of Law. Two of the five cases were delayed over 360 days.
- There were four of 40 closed cases that lacked adequate documentation in the investigative file to justify the closure action.
- There was one delay of 179 days between the respondent requesting a hearing and the investigative unit notifying the hearing officer.
- There were 14 instances in nine cases (15% of tested cases) that had the investigator reassigned. One of the cases was reassigned four times during the course of the investigation.
- Five of the 59 cases (8% of tested cases) were left open even though the investigation had concluded. Investigators stated that cases remained open as a means of monitoring.
- One case selected for testing could not be located by OccLic's investigative unit.

Exhibit 9

Occupational Licensing Investigative Unit
Suggested Organizational Chart



The duty to investigate occupational licensing complaints is statutorily assigned to DCCED. The efficiency to which complaints are investigated is one of the evaluation criteria used in the sunset legislative oversight process. AS 44.66.050(c) requires the determination as to whether a board or commission has demonstrated a public need for its continued existence by taking into consideration a number of factors, including the following, as specified in AS 44.66.050(c)(6):

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

The ineffective, organizational structure of the investigative unit and poor case management procedures contributed to the findings noted above. Recommendations addressing the findings are twofold: (1) restructure the investigative unit's staff positions and reporting relationships; and, (2) based on the restructured organization, implement a number of procedural improvements.

1. Restructure the organization of the investigative unit

We recommend OccLic's director take action to reorganize the investigative unit. The Chief of Investigations cannot, both, effectively supervise 14 staff positions and carry out his other required duties. Without correcting this problem, the impact of any changes to policies and procedures will be limited.

OccLic's director should consider the addition of midlevel supervisors and the reclassification of several Investigator III positions to create a more hierarchical organizational structure. The organizational chart in Exhibit 9, on the opposite page, demonstrates how the investigative unit could be reorganized.

Such reorganization will alleviate much of the Chief Investigator's routine, daily supervisory responsibilities. It will allow for the successful implementation of procedural improvements such as detailed assessment and assignment of cases that maximizes the use of staff resources. These improvements are necessary to address the findings noted during our review of investigative case files.

Further, a hierarchical organizational structure is more capable of effectively dealing with turnover of investigator positions. Midlevel supervisors will be in a position to facilitate training and mentoring of new staff positions. Large scale turnover is imminent since many of the current investigators are at or nearing retirement age. The new structure should help mitigate the cost and disruption caused by staff turnover.

2. Change case assessment and assignment procedures

Once an improved hierarchical organizational structure is in place, the unit would benefit from a case assessment process whereby cases are assigned to investigative positions, based on expected complexity of the case and availability of investigative resources. Under this type of system, less-complex cases would be assigned to less-experienced entry-level investigators and more-complex cases would be assigned to more-experienced upper-level investigators. The assessment and assignment process would also consider the assignment of higher priority cases (those that could pose a public harm) to investigators with resources available to immediately address the case.

Most cases (70% of those opened during the past five fiscal years) are considered lower-level priority cases – priority three or four. Currently, lower-level cases are more prone to extended periods of inactivity and generally take longer to get through the investigative process. Assessing and assigning cases based on complexity and priority would help ensure that all cases move through the investigative process in a more timely fashion.

Assigning cases based on complexity does a much better job of matching the skills and experience of investigators to the tasks they are asked to perform. Less-complex tasks are performed by less-costly investigative positions, which is a more efficient use of state resources. Further, because cases are assigned based on available resources, the investigative process should endure fewer periods of inactivity, making the overall process more efficient and effective.

3. Implement improvements to case management procedures

Reorganization of the investigative staff positions, and implementation of a new case assessment and assignment process, are essential to the successful implementation of procedural improvements. We also recommend the following improvements to address investigative findings:

- a) ***Improve the monitoring of open investigations:*** Midlevel supervisors should conduct routine evaluations of investigator caseloads including the development of action plans to address effective closure of older cases.
- b) ***Timelines for completion should be made a part of contracts for expert services:*** To address the problem of untimely submission of expert analyses, mutually agreed upon timelines for completing the project should be made a part of contracts with experts.
- c) ***Develop and enforce standards for case file documentation:*** Standards are needed to ensure that case files provide comprehensive support for investigative outcomes.

Documentation should include all contacts made related to the investigation. Ensuring cases are well documented will help alleviate the inefficiencies associated with reassigning cases. Further, improved documentation will facilitate case file review.

- d) ***Develop and enforce expected timelines for completing aspects of the investigation:*** Timelines are necessary to clarify management expectations for opening cases, investigating cases, drafting closure documents, and if necessary, presenting closing documents for board consideration. Further, using standards for completion as a performance measure will help gauge productivity.

4. Implement other changes to increase efficiency and effectiveness

Other improvements should also be implemented to improve the investigative function including the following:

- a) ***Improve website to better filter complaints:*** Industry best practices¹⁰ recommend websites that encourage valid complaints and discourage invalid complaints. DCCED's current Occupational Licensing website does not provide enough information about the division's jurisdiction by occupation to effectively filter out nonjurisdictional complaints. Investigators often spend time communicating information to potential complainants that could, more economically, be communicated through the agency's website. We also recommend providing a detailed description of the investigative process and answers to frequently asked questions via the website to further reduce the need for investigators to communicate this information, thereby freeing up more time to focus on investigating open cases.
- b) ***Extend work schedule:*** Industry best practices allow for investigators to meet with people outside the standard business day. Prior to FY 04, several investigators worked four days a week coming in early and/or staying late. According to investigators, this schedule provided them with time before and/or after the standard work day for scheduling interviews. We recommend, reestablishing some form of a flexible schedule to provide for interaction with the public before/after the standard business day.
- c) ***Establish preset schedules for inspections:*** Industry best practices also identify a predetermined schedule for conducting inspections. Currently, the timing and frequency of inspections are left up to investigators. The investigative unit would benefit from a management approved schedule for conducting inspections that reflects a strategic use of available resources.

¹⁰ We compared industry best practices for carrying out a state regulatory program published by the National State Auditors Association in 2004 to DCCED's investigative unit operations.

We recognize the organizational changes suggested may be difficult to accomplish within the context of Alaska's personnel system and collective bargaining structure. As stated however, such a restructuring is central to the effectiveness of other recommended changes.

Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

Our review of case files found that consultation with board members was poorly documented and the degree they are involved in the investigative process was unclear. While most investigators seek out board member guidance in a significant number of cases, the unit does not have clear guidance on how to utilize board members in a manner that is consistent with legal guidance.

Most investigators routinely consult members of various occupational licensing boards for technical assistance including advice on case closures. Further, for all professions regulated by the State Medical Board, it is standard practice for case closures to be reviewed by a designated board member. We question whether the use of board members, in this type of advisory capacity, is consistent with legal guidance.

Statutes assign the responsibility for investigating occupational licensing complaints to DCCED. Most occupational licensing boards are subject to the state's Administrative Procedures Act (APA). Under APA, licensing boards are the ultimate arbitrator of administrative hearings, held in conjunction with sanctions against licensees, and are required to be impartial in that capacity. As such, the Department of Law has directed that board members not become involved with the investigative process – lest it compromise the impartiality of their adjudicative function.

Using board members to direct investigative activities of a case is an inadequate separation of duties. The risk of improperly using board members is heightened by the lack of an approved policy guiding the investigators. We recommend a standard policy and procedure be drafted and approved by the Attorney General's office to ensure the boards do not jeopardize their position in occupational licensing legal proceedings.

APPENDICES

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APPENDIX A

Alaska's Sunset Criteria

Alaska's criteria for reviewing boards and commissions, subject to sunset, are defined by AS 44.66.050(c) as noted below:

- (1) the extent to which the board, commission, or program has operated in the public interest;
- (2) the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters;
- (3) the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest;
- (4) the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided;
- (5) the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions;
- (6) the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved;
- (7) the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public;
- (8) the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest; and
- (9) the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

APPENDIX B

Changes in Occupational Boards Subject to Sunset per AS 08.03.010

Terminated Boards	July 1, 1980 through June 30, 2004
<ul style="list-style-type: none"> Big Game Commercial Services Collection Agency Electrical Examiners Guide Licensing and Control Mechanical Examiners Nursing Home Administrators Welding Examiners 	

Added Boards	July 1, 1977 through June 30, 2004
<ul style="list-style-type: none"> * Big Game Commercial Services Certified Direct-Entry Midwives Certified Real Estate Appraisers Marital and Family Therapy * Mechanical Examiners Professional Counselors Social Work Examiners 	

Occupational Boards Subject to Sunset	As of June 30, 2004
<ul style="list-style-type: none"> Barbers and Hairdressers Certified Direct-Entry Midwives Certified Real Estate Appraisers Chiropractic Examiners Dental Examiners Dispensing Opticians Governors of the Alaska Bar Association Marine Pilots Marital and Family Therapy Medical Nursing Optometry, Examiners in 	<ul style="list-style-type: none"> Pharmacy Physical Therapy and Occupational Therapy Professional Counselors Psychologists and Psychological Associate Examiners Public Accountancy Real Estate Commission Registration for Architects, Engineers, and Land Surveyors Social Work Examiners Veterinary Examiners

* Board has also been terminated.

APPENDIX C

Changes in Nonoccupational Boards and Regulatory Agencies Subject to Sunset per AS 44.66.010

Terminated, Merged, or Renamed	July 1, 1980 through June 30, 2004
<p><u>Terminated:</u> Alaska Code Revision Commission Alaska Council on Science and Technology Alaska Renewable Resources Corporation Alaska State Fire Commission Alaska Tourism Marketing Council Alaska Transportation Commission Alaska Women's Commission Citizen's Foster Care Review Board Hazardous Substance Spill Technology Review Rural Development Council Tourism Coordinating Committee</p>	<p><u>Merged:</u> Alaska Public Utilities Commission <i>merged with the Alaska Pipeline Commission and renamed</i> Regulatory Commission of Alaska</p> <p><u>Renamed:</u> Older Alaskan Commission <i>renamed to</i> Alaska Commission on the Aging Citizens Review Panel for Permanency Planning <i>renamed to</i> Citizen's Foster Care Review Board</p>

Added	July 1, 1977 through June 30, 2004
<p>* Alaska Code Revision Commission * Alaska Council on Science and Technology * Alaska Renewable Resources Corporation Alaska Seismic Hazards Safety Commission * Alaska State Fire Commission * Alaska Tourism Marketing Council * Alaska Women's Commission Board of Storage Tank Assistance Citizen's Review Panel for Permanency Planning</p>	<p>Council on Domestic Violence and Sexual Assault * Hazardous Substance Spill Technology Review Older Alaskans Commission * Rural Development Council Special Education Service Agency Statewide Suicide Prevention Council * Tourism Coordinating Committee</p>

Nonoccupational Boards and Regulatory Agencies Subject to Sunset – As of June 30, 2004	
<p>Alaska Commission on Aging Alaska Seismic Hazards Safety Commission Alcoholic Beverage Control Board Board of Storage Tank Assistance Council on Domestic Violence and Sexual Assault</p>	<p>Regulatory Commission of Alaska Special Education Service Agency State Board of Parole Statewide Suicide Prevention Council</p>

* Agency has also been terminated.

APPENDIX D

DCCED-Regulated Occupations without a Board

<u>Name of Occupation</u>	<u>Statutory Reference</u>
Regulation of acupuncturists	AS 08.06
Regulation of audiologist and speech-language pathologists	AS 08.11
Regulation of big game guides and transporters	AS 08.54
Regulation of collection agencies	AS 08.24
Regulation of concert promoters	AS 08.92
Regulation of construction contractors	AS 08.18
Regulation of dietitians and nutritionists	AS 08.38
Regulation of electrical and mechanical administrators	AS 08.40
Regulation of agencies that perform euthanasia services (animals)	AS 08.02.050
Regulation of professional geologists	AS 08.02.011
Regulation of hearing aid dealers	AS 08.55
Regulation of morticians	AS 08.42
Regulation of the practice of naturopathy	AS 08.45
Regulation of nursing home administrators	AS 08.70

APPENDIX E

Schedule of Actual and Proposed Termination Dates

June 30, 2006

Board of Governors of the Alaska Bar Association
Board of Chiropractic Examiners
Board of Examiners in Optometry
State Physical Therapy and Occupational Therapy Board
Council on Domestic Violence and Sexual Assault

June 30, 2007

Board of Certified Direct-Entry Midwives
Board of Marine Pilots
State Medical Board
Alcoholic Beverage Control Board
Regulatory Commission of Alaska
Board of Storage Tank Assistance

June 30, 2008

Board of Parole
Real Estate Commission
Alaska Commission on Aging

June 30, 2009

Board of Public Accountancy *
State Board of Registration for Architects, Engineers, and Land Surveyors *
Board of Veterinary Examiners *
Statewide Suicide Prevention Council *

June 30, 2010

Board of Pharmacy *
Board of Social Work Examiners *
Board of Marital and Family Therapy *
Board of Professional Counselors *
Board of Psychologist and Psychological Associate Examiners *
Board of Certified Real Estate Appraisers *

June 30, 2011

Board of Nursing
Board of Dental Examiners *
Board of Barbers and Hairdressers *

June 30, 2013

Special Education Service Agency

Recommended for Termination

Board of Dispensing Opticians
Alaska Seismic Hazards Safety Commission

* These are proposed sunset dates.

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OFFICE OF THE COMMISSIONER

Frank H. Murkowski, Governor

December 30, 2004

Pat Davidson
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811

RECEIVED
DEC 30 2004
LEGISLATIVE AUDIT

RE: Sunset Process and Selected Investigative Issues

Dear Ms. Davidson:

Thank you for the opportunity to review and comment on the findings in your recent audit of the Sunset Process and the Investigative Unit for the Division of Occupational Licensing. Both of these audits were overdue and we greatly appreciate your initiative and thoughtful efforts. Our comments are as follows:

Recommendation No. 1

The legislature should consider amending sunset statutes.

The Department sees merit in many of your suggestions for statute changes and will work with you during the next legislative session to gain the desired results.

Recommendation No. 2

The Director of the Division of Occupational Licensing should implement changes to address investigative inefficiencies and case management procedures.

The Department basically agrees with your specific recommendations as follows:

1. Restructure the organization of the investigative unit
2. Change case assessment and assignment procedures
3. implement improvements to case management procedures
4. Implement other changes to increase efficiency and effectiveness

We agree that various actions are necessary if we are to achieve our ultimate goal of a timely, efficient and fair investigative process. However, any changes will not come easily or quickly.

Through the director of the division, changes have been implemented over the past two years specific to structure and management with the investigations unit. The director will evaluate the success of these changes and make additional changes and modifications as necessary to continue to evolve the effectiveness of the investigation unit. These changes may include reinstating the investigators' flexible schedule under close management supervision to assure accurate and timely work accomplishments.

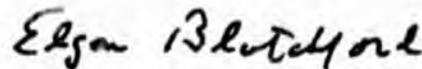
Recommendation No. 3

The director of the Division of Occupational Licensing should consider drafting a policy to guide investigators' use of board members during the investigative process.

The Department agrees there should be a policy regarding board members involvement in the investigative process, but we are unsure of what that policy should be. Several boards have asked about being exempt from the Administrative Procedures Act (APA) so that they could be more involved in the investigations. These board members are willing to give up their duties as adjudicators to better use their expertise in resolving complaints against others in their professions. They feel that their involvement would help eliminate unnecessary investigations, shorten the time required for closure and decrease the costs associated with investigations. While the APA has removed board members from the investigative process because of the potential problems with impartiality, it is a rather small percentage of the cases where board members actually become the adjudicators. This may be more of a "turf" battle than a legal issue. The division will make additional efforts in an attempt to resolve these conflicting issues and develop sound policy concerning board member involvement in investigative actions.

Again we appreciate the opportunity to comment and we especially appreciate your assistance in improving our services to the public.

Sincerely,



Edgar Blatchford
Commissioner

cc: Rick Urion, Director
Division of Occupational Licensing

Audit Report

**DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF MARITAL AND FAMILY THERAPY
SUNSET REVIEW**

November 1, 2004



Audit Control Number:

08-20032-05

Division of Legislative Audit

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

The Legislative Budget and Audit Committee is a permanent interim committee of the Alaska Legislature. The committee is made up of five senators and five representatives, with one alternate from the Senate and two from the House. The chairmanship of the committee alternates between the two chambers every legislature.

The committee is responsible for providing the legislature with audits of state government agencies. The programs and activities of state government now cost more than \$6 billion a year. As legislators and administrators try increasingly to allocate state revenues effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by the Division of Legislative Audit helps provide that information.

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ALASKA STATE LEGISLATURE

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November 15, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF MARITAL AND FAMILY THERAPY

November 1, 2004

Audit Control Number

08-20032-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(11), the Board of Marital and Family Therapy is scheduled to terminate on June 30, 2005.

We recommend that the legislature consolidate the Board of Marital and Family Therapy with the Board of Professional Counselors and establish the new board's termination date to June 30, 2009. If the legislature chooses to keep the Board of Marital and Family Therapy intact, we recommend the board be extended to June 30, 2010.

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

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

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Marital and Family Therapy (BMFT). As required by state law, the legislative committees of reference are to consider this report when determining whether to extend the termination date for BMFT. Currently under AS 08.03.010(c)(11), the board will terminate on June 30, 2005. If the legislature does not extend the termination date for the board, BMFT will have one year to conclude its administrative operations.

Objectives

The four central, interrelated objectives of our report are:

1. To determine if the termination date of BMFT should be extended.
2. To determine if BMFT is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed marital and family therapists.
4. To analyze possible cost savings and other factors in order to determine if there is merit in the consolidation of BMFT with three other behavioral-health related boards.

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

Scope and Methodology

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

Our audit reviewed the operations and activities of the Board of Marital and Family Therapy for the period spanning FY 01 through FY 04. The major areas of our review were licensing, examination, investigations, and board proceedings. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Tests of files and documentation of licensees.
3. Minutes of board meetings and Division of Occupational Licensing correspondence files.

4. Annual reports issued by the Board of Marital and Family Therapy.
5. Case files involving complaint investigations related to professionals licensed by, and applicants seeking licensure from BMFT.
6. Direct and indirect costs charged to the board in recent years, in order to assess the possibility of achieving significant cost savings through a merger of behavioral health related licensing boards.

We interviewed various staff of the Division of Occupational Licensing, including both licensing staff and investigators.

We conducted a survey of occupational licensees of the four behavioral health boards. Survey responses varied from 50 to 62 percent, specifically:

<u>Behavioral Health Boards</u>	<u>Licensees</u>	<u>Responses</u>	<u>Percent Response</u>
Board of Marital and Family Therapy	94	58	62%
Board of Professional Counselors	300	150	50%
Board of Psychologists and Psychological Associates	205	128	62%
Board of Social Work Examiners	347	187	54%

ORGANIZATION AND FUNCTION

The Board of Marital and Family Therapy was established under the provisions of Title 8, Chapter 63 of the Alaska Statutes. The board consists of five members appointed by the Governor and subject to legislative confirmation. Three members must be licensed marital and family therapists. The statutes require that two members of the general public also sit on the board.

The board regulates licensed marital and family therapists in the State. It sets education, training, and work experience standards necessary for an individual to be licensed as a marital and family therapist or a marital and family associate.

Alaska statute defines the practice of marital and family therapy as the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. This covers all disorders, whether cognitive, affective, or behavioral, within the context of human relationships, particularly the marital and family system.

The board's duties include:

1. Examining and issuing licenses to qualified applicants,
2. Developing written guidelines to ensure licensing requirements are not unreasonably burdensome and the issuance of licenses is not unreasonably withheld or delayed,
3. Holding hearings in order to impose disciplinary sanctions on persons who violate the statutes or regulations related to the licensure of marital and family therapists,
4. Adopt regulations necessary to enforce the statutes relating to the Board of Marital and Family Therapy, and
5. Adopt a code of ethical practice for marital and family therapy.

A marital and family therapy applicant may be licensed by passing an examination given by the board, or by what is termed "credentials." In order to be licensed by credentials, an applicant must provide proof of licensure by another authority, such as a state, that has equal or more stringent licensing requirements than the State of Alaska.

In order to become licensed by examination, an applicant must have an advance degree in marital and family therapy or allied mental health field from a regionally accredited

Board of Marital and Family Therapy

(as of June 30, 2004)

Therapist

Larry Holman, Chair
Vivian Finlay
Bill Platte

Public Member

Ann Swift
Vacant

educational institution approved by the board for which the person completed substantially equivalent course work¹ in the following: (1) marital and family therapy, (2) marital and family studies, (3) human development, (4) professional studies or professional ethics and law, (5) research, and (6) supervised clinical practice; meet specific experience requirements;² and pass a written examination. The examination is a national examination developed jointly by the Association of Marital and Family Therapy Regulatory Board and Professional Examination Service. The test is administered by the Division of Occupational Licensing.

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

The Department of Commerce, Community, and Economic Development, OccLic, provides administrative and investigative assistance to the Board of Marital and Family Therapy. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.087 empowers the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. OccLic may:

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

¹ AS 08.63.100(b) permits the substitution of post-degree courses or practice, as approved by the board, by a person whose master or doctorate degree in marital and family therapy or allied health field whose course of study did not include all the course or clinical practice requirements of AS 08.63.100(a)(3)(B).

² The following practical experience is required in addition to obtaining a degree in accordance with the requirements of AS 08.63.100(a)(3)(B):

- Practiced marital and family therapy within three years of the person's application, including 1,500 hours of direct clinical contact with couples and families.
- Has been supervised in the clinical contact for at least 200 hours, including 100 hours of individual supervision and 100 hours of group supervision approved by the board.
- Has received training related to domestic violence.

BACKGROUND INFORMATION

In 2002, while considering the bill (HB 343) that would extend the termination date of the Board of Professional Counselors, the House Labor and Commerce Committee developed a letter of intent. The letter stated:

It is the intent of the House Labor and Commerce Committee that the operations and regulatory oversight responsibilities of the following professional licensing boards be combined into one board:

- 1. Board of Professional Counselors*
- 2. Board of Marital and Family Therapy*
- 3. Board of Psychologist and Psychological Associate Examiners*
- 4. Board of Social Work Examiners*

To help ensure an effective transition, the four boards are to work cooperatively to develop an appropriate proposed statute for this new combined board.

Such a proposed statute should be designed to accomplish the intent of the committee to combine the operations of the boards while meeting the individual regulatory and oversight responsibilities of each current separate licensing board. If the boards involved would like to propose alternative combinations of how to combine the four boards, they are encouraged to also draft alternative proposed statutes.

Jointly, the chair of each board is to report on their progress in both January 2003 and 2004.

This intent, generated by the 22nd Legislature was modified by a letter, co-signed by the chairs of the House and Senate Labor and Commerce Committees of the 23rd Legislature. The letter discharged the boards from planning and reporting on their progress as required in the original statement of intent.

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REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for the Board of Marital and Family Therapy (BMFT), we also analyzed the operating costs and other factors related to the operations of the board. Various nonfinancial factors were considered in order to assess the advisability of consolidating BMFT with other behavioral health boards, along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

BMFT should be consolidated with the Board of Professional Counselors

In our opinion, BMFT should not be reestablished by the legislature. Rather, we recommend the licensing of qualified professionals be continued through consolidation with the Board of Professional Counselors (BPC). Our recommendation is based upon the following factors:

1. Number of BMFT licensees has significantly declined. The number of professionals licensed by the board is steadily declining. Currently, there is less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Scope of practice and educational requirements are similar for therapists and counselors. As defined in state law, the areas of practice for the professionals regulated by the two boards are similar. Both professionals are defined as engaging in diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature. Both are charged with making diagnoses to treat such disorders whether cognitive, affective, or behavioral.

Educational requirements for licensing as a marital and family therapist or as professional counselor are similar. BMFT licensees are required to have more specialized systemic training for group and family counseling.

4. Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. *"The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective."*

Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

5. BMFT is in a chronic deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18 of this report). In order to reduce the deficit and be in compliance with state law,³ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for the two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of the respondents responding to our survey either disagreed or strongly disagreed with the statement that their "*licensing fees were reasonable.*"

6. Combination of these two professions under a single board is the most common regulatory model. Professions covered by boards listed in the 2002 legislative intent are regulated by other states through different groupings of oversight boards. The number of boards used in regulating the professions varies from one to four. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.

The new consolidated board should be established for four years.

In our opinion, the termination date for the consolidated board covering marital and family therapists, along with professional counselors, should be established for June 30, 2009. Both boards have been actively working in the public's interest by promoting the competence of individuals who hold themselves out to the public as marital and family therapists or professional counselors.

BMFT has testified in favor of statutory changes and adopted regulatory changes that made therapists more accountable to their clients and the general public. The board has also substantially curtailed its operating costs, in an attempt to minimize its current negative balance position.

³ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each profession be set at a level that will cover the operating costs of regulating the relevant profession.

Alaska Statute 08.03.010(c)(11) requires BMFT to be terminated on June 30, 2005. If the legislature takes no action, under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature combine BMFT with BPC and the consolidated board's termination date be set at June 30, 2009.

If the legislature elects not to combine the board, we recommend the Board of Marital and Family Therapy be extended to June 30, 2010.

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FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Board of Marital and Family Therapy (BMFT) and Board of Professional Counselors (BPC) should be combined into a single oversight and licensing board.

BMFT and BPC should be combined into a single regulatory board. We make this recommendation based on our review of the cost analysis, the comparison with licensing requirements in other states, and survey results from licensees of various behavioral health boards. Our recommendation is based on the following factors and analysis:

1. Number of BMFT licensees has significantly declined since its inception. The number of professionals licensed by the board is steadily declining. There is, currently, less than half the number of licensees than the board had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BMFT licensees hold licenses with other boards. Almost 15 percent of BMFT licensees hold dual licenses under another behavioral health licensing board. Most of these are as licensed counselors under BPC.
3. Practice, as defined in law, is similar between therapists and counselors. As defined in state law, the areas of practice for both boards are similar. The practice of marital and family therapy is defined as:

the diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature for marital and family therapy. [emphasis added]. The therapist must be able to "diagnosis and treat such disorders whether cognitive, affective, or behavioral, within the context of human relationships, particularly marital and family systems [emphasis added]."⁴

The practice of professional counseling is defined in state law as:

*the application of principles, methods, or procedures of the counseling profession to diagnose or treat, other than through the use of projective testing or individually administered intelligence tests, mental and emotional disorders that are referenced in the standard diagnostic nomenclature for individual, group, and organizational therapy. [emphasis added]*⁵

⁴ Definition of practice of marital family practice is from AS 08.63.900(5).

⁵ Definition of practice of professional counseling is from AS 08.29.490(1).

- As with marital and family therapist, professional counselors are to "*diagnosis and treat such disorders, whether cognitive, affective, or behavioral, within the context of human relationships and systems.*[emphasis added]."

Both professions are charged with the diagnosis and treatment of mental and emotional disorders, whether the disorders can be categorized as cognitive, affective, or behavioral.

- Educational requirements for the two licenses are similar. Degree requirements for licensing as BMFT therapists and licensing as BPC counselors are virtually identical. BMFT requires applicants to have more specialized systemic training for group and family counseling; however, this distinction does not appear to be overly critical to the basis of practice between these two professions.
- BMFT is in a chronic-deficit position. The board has operated in a cumulative deficit position for the past four years (See schedule on page 18). In order to reduce the deficit and be in compliance with state law,⁶ fees would have to be increased by more than \$300 per licensee.

Such an increase would put licensing fees above \$1,000 for every two-year renewal period. Like many other boards, BMFT licensees believe their current licensing fees are too high. Over 90 percent of therapists responding to our survey either disagreed or strongly disagreed with the statement that their "*licensing fees were reasonable.*"

Our analysis of costs did not indicate there would be any significant reduction in board operating costs. In recent years both boards have carefully controlled expenses, especially those associated with holding board meetings – the cost most susceptible to savings through consolidation. Nevertheless, we believe that merging the two boards will have a positive effect on keeping down the cost pressure on therapist licensing fees – which hold out some prospect for possibly being reduced in the future.

- Survey results show mixed reactions to consolidating boards. We conducted a survey of licensees for all the behavioral health boards. One of the questions addressed the issue of combining the boards. "*The State is considering consolidating some of the mental health boards. (Psychologists and Psychological Associate Examiners, Marital and Family Therapy, Professional Counselors, and Social Work Examiners). Choose the combination of state oversight boards that you think would be most effective.*"

Nine (16%) of the marital and family therapy licensees responding either did not answer or indicated that the boards should be kept separate. Forty-nine (84%) indicated some combination of the boards would be effective. A combination of all four boards was chosen most often.

⁶ As discussed further in the Analysis of Public Need section, AS 08.01.065(c) requires the license fees for each occupation be set at a level that will cover the operating costs of regulating the relevant occupation.

The survey results from professional counselors were different. Forty-seven (31%) of the professional counselors responding either did not answer or indicated that the boards should be kept separate. One hundred and three (69%) indicated some combination of the boards would be effective, with the combination of marital and family therapy and professional counselors chosen most often.

7. Combination of these two professions under a single board is the most common regulatory model. For the professions covered by the boards listed in the 2002 legislative intent letter, or behavioral health boards, other states tend to group the oversight boards differently. States regulate the professions with between one and four boards. In the 33 states that utilize either two or three regulatory boards – 28 group the oversight of professional counselors and marital/family therapists together.
8. Related, but not same, professions on a board enhances public representation. A consolidated board would provide for more members on a regulatory board that are not members of the profession involved. Members of the related professions would essentially be quasi-public members. This helps to better accomplish a common policy objective of regulatory boards – members of the general public should be on boards to provide a nonprofessional perspective on regulation.

Public members are put on boards to provide representation of broader, consumer-oriented interests. This is to offset, to some extent, the possibility of professionals acting more in their commercial interests, at the expense of the public interest, in carrying the regulatory responsibilities of a given board. Although it is difficult to specify how such a board's actions would necessarily differ from that of the currently structured board, there is the prospect of bringing a wider public perspective to regulation of these professions.

When BPC was first established, there was discussion by some legislators about possibly placing the licensing and regulation of professional counselors under the already existing BMFT. After legislative committee discussions and questioning, it was decided to create a separate Board of Professional Counselors – in part because of concern that the one-time “start-up” costs involved in regulation should be borne entirely by counselors, rather than being made part of the costs paid by BMFT therapists. BPC is beyond this start-up phase, and in our view, given the factors discussed in the Reports Conclusions section and those listed above, we recommend the legislature consolidate the regulation of the two professions under one licensing board.

A consolidation of the BPC and BMFT will not consolidate the licensure of either profession. However, at some future time because of the similarity of education and practice a combined board may want to consider a single counseling license with an endorsement to practice a specialty – such as marital and family therapy.

Recommendation No. 2

The Division of Occupational Licensing, in conjunction with the Board of Marital and Family Therapy, should increase licensing fees to eliminate the board's current and projected operating deficit.

At the end of FY 04, BMFT had an operating deficit of more than \$75,000. Based on expenditures and revenues to date, we project that it is likely BMFT will, again, be in a deficit at the end of FY 05. The major contributing factor to the deficit is that in the past board costs have exceeded license renewal fee revenues, without the board and Division of Occupational Licensing (OccLic) putting in place the necessary licensing and other fee adjustments. State law, at AS 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs related to that occupation.

BMFT has reduced its direct operating costs to less than \$10,000 in FY 04 compared to more than the \$20,000 incurred for both FY 03 and FY 02. Additionally, during this same period, the amount of indirect costs charged to the board has remained steady, because of the decrease in the number of BMFT licensees and an increase in the total number of licensees covered by OccLic.

A projection prepared by OccLic in FY 03, based on an estimated renewal of 80 licensees, indicated that renewal fees would have to be doubled to \$1,550 for BMFT being compliant with the self-financing requirements of state law. Since that estimate, BMFT has made progress in reducing its continuing deficit. However, without an increase to fees for BMFT licensees, the deficit will remain and it is likely the board will not be able to eliminate its deficit until FY 07 or beyond.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

BMFT is made up of five members – two representatives from the general public and three licensed professionals. One public member seat was open for all of FY 03. The Office of the Governor made appointments of two new public members in August 2004, but one of the licensed professional seats is vacant; and, the term of another licensed member will expire in December 2004. In past years, the extended absence of public members on the board has hampered it from conducting business with appropriate public input and perspective.

Public members are an important, but often overlooked, part of occupational licensing boards. Technical expertise is provided by professional members while public members provide a consumer perspective. Consumer protection is the basis for regulation in the first place. While public board members are often initially inexperienced in the profession being regulated, they are on the board to represent the consumer and interests of the general

citizenry. Contributing to board decisions, such representation provides balance to a board to prevent undue bias toward the profession being regulated.

Accordingly, we recommend that BMFT and the Governor's office work to fill appointments to all seats on the board, with particular emphasis on public member seats, designed to represent the state's citizenry.

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ANALYSIS OF PUBLIC NEED

The following analysis of BMFT activities relates to the public need factors defined in the "sunset" review law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

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

BMFT has operated in the public interest by licensing only qualified individuals. The board has established licensing requirements and minimal practice standards that licensed Marital and Family Therapist are to adhere to in the course of practice.

BMFT has established regulations governing its duties and licensure requirements, enforced the laws for issuing licenses in a uniform and consistent manner, held meetings, and administered examinations in accordance with statutory requirements.

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

State law⁷ requires that BMFT consist of three board-licensed therapists and two members of the public. For most of the last three years, one or both public member seats on the board have been vacant. Currently, one licensed professional seat is vacant and the term of another licensee seat will expire in December 2004. In the past, vacancies on the board have created difficulties in maintaining a quorum which would permit the board to operate. See Recommendation No. 3 for further discussion of this issue.

Under AS 08.01.065(c), the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing (OccLic), must "establish fee levels... so that the total amount of fees collected for an occupation approximately equals the actual regulatory costs of the occupation." Licensing fees for BMFT were originally set at \$300 for a Therapist and \$200 for an Associate License. The licensing fees were subsequently increased to \$775 where they currently remain. Since inception, the collected board fees have not been sufficient to cover all of BMFT's expenditures. The number of licensees has steadily declined over recent years, resulting in a significant deficit having to be covered by fewer and fewer licensees.

⁷ AS 08.63.010(b)

OccLic evaluates the fee level to be set by analyzing costs and revenues on a biennial roll-forward or cumulative basis. As reflected by the summary schedule below, BMFT renews licenses in odd-numbered fiscal years – resulting in the highest revenues.

State of Alaska Board of Marital and Family Therapy FY 02 - FY 04 Schedule of Revenues and Expenditures (Unaudited)			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>5,500</u>	\$ <u>67,700</u>	\$ <u>1,600</u>
Direct Expenditures			
Personal Services	6,700	14,600	11,700
Travel	600	4,500	4,500
Contractual	900	1,900	11,400
Supplies	<u>-0-</u>	<u>100</u>	<u>-0-</u>
Total Direct Expenditures	8,200	21,100	27,600
Indirect Expenditures	<u>4,900</u>	<u>5,500</u>	<u>4,900</u>
Total Expenditures	13,100	26,600	32,500
Net Income (Loss)	<u>(7,600)</u>	<u>41,100</u>	<u>(30,900)</u>
Beginning Cumulative Surplus (Deficit)	(68,000)	(109,100)	(78,200)
Ending Cumulative Surplus (Deficit)	\$ <u>(75,600)</u>	\$ <u>(68,000)</u>	\$ <u>(109,100)</u>

BMFT has been able to reduce its deficit substantially at the end of FY 04, compared to the total at FY 02, the end of the previous two-year licensing cycle. While progress is being made, it is clear that current licensing fees are not set appropriately for BMFT to be self-sufficient in the near term.

Another fee increase poses a dilemma, possibly encouraging licensees to switch licensure as BPC counselors, or perhaps leave the profession altogether – which in turn would exacerbate the deficit problem. See Recommendation No. 2 for further discussion of these issues.

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

BMFT testified in favor of two pieces of legislation, one passed in 2002 and the other passed in 2003, having a big impact on professional practice. In 2002, the legislature adopted a statute that broadened the definition of a mental health professional as it related to the state's policy and procedures for individuals with mental health problems. The legislation changed state law to include licensed clinical social workers, marital and family therapists, and professional counselors recognized as mental health professionals. By including these professions under the definition of mental health professional, practitioners now could take a legal role in the state's mental health system to protect youths and adults who are experiencing acute psychiatric crises.

The legislation allowed therapists to: (1) provide mental health treatment for prisoners; (2) evaluate children and minors in custody of the state to determine appropriate placement in residential treatment centers; and, (3) conduct civil psychiatric commitment evaluations. Additionally, therapists were included in the list of individuals who are required to report incidents of harm to vulnerable adults.

In 2003, the legislature adopted a change to state law that allowed marital and family therapists to breach their duty of confidentiality to their clients in cases where:

1. Threats have been made by a client. Therapists can now communicate with either a potential victim or law enforcement officers where a threat of imminent serious physical harm to an identified victim has been made by a client; or,
2. Client has discussed actions that could be a basis for professional sanction. Therapists can now disclose communications about an act that they have reasonable cause to "*suspect constitutes unlawful or unethical conduct that would be grounds for imposition of disciplinary sanctions by a person licensed to provide health or mental health services.*" Such disclosure is to be made only to the relevant licensing board and the disclosure must be made in good faith by the therapist.

The 2003 legislation also added "*sexual misconduct with a client during the course of therapy, either within or outside the treatment setting, or within two years of therapy or counseling contact...*" as grounds for disciplinary sanction by board against a license holder.

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

The location, date, and time of upcoming BMFT meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News* with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside adequate time for BMFT to take public comment. Minutes from the meetings reflect public participation throughout various meetings.

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

BMFT changed its regulations, repealing licensing by transition, amending and adding new subsections to licensing by examination, simplifying the renewal process, and amending the code of ethics for practitioners. The board initiated regulations to put into place definitions regarding what constituted "sexual misconduct," in the context of new state law, which gave the board authority to sanction licensees for such actions.

BMFT developed and finalized a new state ethics test to be administered by OccLic; and, starting with FY 01 the board switched to a computerized form of testing administered by Prometric Tompson Learning Center, utilizing the National Licensure Examination for Marriage and Family Therapy.

Proposed regulations are often circulated through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing. We verified the public received adequate notice of the location, date, and time of board meetings where regulatory changes were considered. This notice was provided through advertisements in the state's major newspaper, the board's internet website, and the state's online public notice internet website. The State also offers a subscription service whereby the State will email the subscriber requested public notices. BMFT's meeting agendas provided time for the board to take public comment.

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

From July 2001 through May 2004, OccLic's investigative unit opened up four investigation cases related to BMFT licensees or applicants. Two involved complaints of ethics violations (one made by another BMFT licensee and one generated by OccLic). One involved a dispute

over continuing professional education with license renewal, while the fourth complaint was generated by an inquiry from another state.

We reviewed three of the four complaint files. All investigations were conducted in a timely manner and, where applicable, resulted in reasonable licensing actions. We conclude the complaint investigation process for BMFT-related complaints was carried out in an effective and efficient manner.

No BMFT complaints or investigations were carried out by the Office of Victim's Rights or the state Office of the Ombudsman.

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

The board has only licensed applicants that have applied for licensure by credentials or by examination. Requirements to be licensed under BMFT are stringent and eliminate those that do not have the educational background and adequate work experience.

Continuing education is required, and appropriately monitored, by BMFT to promote a high level of quality performance and to help ensure the integrity of the profession. Each applicant is required to satisfy requirements for licensing. BMFT meeting minutes reflect that the board considers each applicant and verifies the licensing requirements are satisfied prior to issuing a license. Activity related to issued licenses for the last three fiscal years are presented below:

Licenses Issued	Newly Issued			Total At
	FY 02	FY 03	FY04	June 30, 2004
Marital and Family Therapist	1	2	3	93
Marital and Family Associate	0	0	0	1

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

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

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

As discussed in the Report Conclusions and Recommendation No. 1, we recommend that the legislature consider combining the Board of Marital and Family Therapy and the Board of Professional Counselors. There is minimal difference in the definition of what constitutes each profession's practice as set out in AS 08.29.490 (Professional Counselors) and AS 08.63.900 (Marital and Family Therapist). Both boards would benefit from such a combination.

As discussed in Recommendation No. 2, OccLic, in conjunction with BMFT, should increase licensing fees to eliminate the board's current and projected operating deficits.

If BMFT is not consolidated with BPC, as discussed in Recommendation No. 3, the Office of the Governor should take steps to expedite appointments to the board.

FRANK H. MURKOWSKI
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LEGISLATIVE AUDIT

December 23, 2004

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

Dear Ms. Davidson:

This letter is in response to your agency's November 1, 2004 Preliminary Report regarding a sunset review of the Board of Marital and Family Therapy.

Recommendation No. 3

The Office of the Governor should take steps to make the necessary appointments to keep the Board of Marital and Family Therapy at full membership.

The Office of the Governor concurs with this recommendation. However, the Governor's Office strives to have geographical as well as gender and ethnic diversity on state boards. This is made difficult by the limited number of marital and family therapists residing in the state and then only in the larger communities. In addition, it is very difficult to find members of the general public who are willing to serve on the occupational licensing boards.

Sincerely,

A handwritten signature in cursive script that reads "Linda J. Perez".

Linda J. Perez
Administrative Director

cc: Jim Griffin, Audit Manager
Laraine Derr, Director Boards & Commissions