

ALASKA LEGISLATION COMMITTEES, 2000-2001 00/2
11914 SENATE LABOR & COMMERCE

anchorage PRESS

ORDER	Press	Returns	Location	Address	Press Comments
1	20		Best of Coffee House	Minnesota & 32nd	leave on shelf
2	20		CRAZY CROISSANT	1406 31st - east of minnesota	Leave on table by door
3	30		PANCHO VILLA	31st & Spenard	wire rack
4	120		CAROUSEL BAR	3206 Spenard	table by window--276-9166
5	10		SOOS DRY CLEAN/POPEYES	3231 Spenard	wire rack
6	15		ANNA'S PLACE	3313 Spenard	wire rack - opens at 5 pm - retrieve in bundle
7	10		VINNIE'S DRUMS	36th near Spenard	on candy machine
8	80		P.J'S STRIP JOINT	3808 Spenard	loose on carpeted banister
9	30		CENTER BOWL	3717 Spenard	on candy machine near ball polisher
10	150		BROWN JUG*	Spenard & Minnesota	wire rack
11	10		CHEAPWHEELS RENT-A-CAR	3611 Spenard Rd	Drive around Brown Jug & east on Spenard
12	120		BROWN JUG**	3900 Spenard	wire rack if closed don't leave
13	15		EAGLE NEST HOTEL	4110 Spenard Rd	
14	20		HOUSE of HARLEY (showroom)	3901 Spenard	wire rack in front lobby near coffee
15	10		HOUSE of HARLEY (lower floor)	3901 Spenard	blue rack in parts department
16	70		GWENNIES**	4333 Spenard	outside in front wire rack
17	15		LAKESHORE MOTOR INN	3009 Lakeshore Dr	Behind Puffin Inn
18	30		TESORO	Spenard & Wisconsin	store news rack
19	20		HENRY'S SPENARD COFFEE	4619 SPENARD	wire rack
20	120		TASTE FREE: E**	3901 Raspberry	wire rack
21	40		Jewel Lake Bowl	8801 Jewel Lake	wire rack
22	25		UNCLE JOE'S PIZZA	4639 Jewel Lake Rd	wire rack/retrieve bundle & leave
23	45		BELLS NURSERY	7653 Cranberry	east on Strawberry, south on Cranberry

24	50	Jewel Lake Bow	8801 Jewel Lake	rack in entryway
25	50	LAUNDROMAT	9001 Jewel Lake	Leave on ledge
26	10	JEAN'S BEANS	9001 Jewel Lake	near door in hall
27	30	TEA GARDEN Chinese Food &	NW corner diamond & 3rd	wire rack
28	120	CARRS**	4000 W Di. & Jewel Lk.	inside Multitrack
29	10	HIDEAWAY CLUB	2828 W Dimond	drink ledge
30	10	FRED MYERS	2000 W Dimond	
31	35	BURLINGTON COAT FACTORY	1920 W Dimond	Red multi-box
32	20	PUBLIX SELF STORAGE	9000 Angela	near Burlington Coat
33	20	MIDNIGHT SUN BREWERY	7329 Arctic	On Counter
34	35	TEBORO	72nd & Arctic	store's new rack
35	25	SURREAL STUDIO CAFE	355 W Potter Dr	Across from Kawasaki Shop
36	10	SURREAL STUDIO	355 W Potter Dr	
37	25	JERRY'S BAKERY	640 W International	wire rack
38	45	GUIDO'S PIZZA	548 Inter Airport	wire rack
39	45	SPCA	549 Inter Airport	wire rack
40	20	COMPUTER STORE	639 Inter Airport	
41	45	Dimond Airport Parking	5401 Northwood Drive	off Airport Drive
42	10	FLIGHT DECK	Inter Airport & Arctic	front counter
43	50	ARCTIC SHELL	arctic & tudor	on counter
44	40	SHANGHI GRAND	560 W Tudor	red box
45	10	PRINDLES	4101 Arctic	MINI MALL
46	20	O INN	640 W 36th	up back stairs
47	15	ANNA RAE'S BAR	300 west 36th at C street	Time Frame mail-BE corner bookshelf
48	130	EUROPA BAKERY*	501 W 36th	2 wire racks
49	45	MOM & POPS	501 W 36th	plastic news rack
50	25	Chinese Kitchen	2904 Spenard	***New Drop***

51	10	ALASKA LEATHER	arc'd. & bend	near door (There have been missed deliveries)
52	40	TOMMY'S BURGER STOP	1100 W 28th Place	wire rack
53	85	UCKAROO CLUB	2411 Spenard	wire rack
54	40	PIZZA OLYMPIA	2811 Spenard	blue wire rack
55	20	AMH (Alaska Mountaineering)	2633 Spenard	leave on shelf
56	140	CHILKOOT CHARLIES	2435 Spenard	wire rack
57	36	TERSORO 2 GO	2401 Spenard & Fremont	wire rack
58	40	BROWN JUG	2534 Spenard	Red box
59	120	LA MEX	2550 Spenard	wire rack
60	50	BOSCOE'S	2806 Spenard	wire rack
61	45	MAMMA O'S	Spenard	wire rack
62	45	THE ORGANIC OASIS	beside Liscio's	wood rack
63	120	JACKIE'S PLACE*	2636 Spenard facing away	wire rack
64	400	BEAR'S TOOTH**	1230 W 27th	Extra wire rack need (note that papers doubled)
65	120	MIDDLEWAY CAFE	No. Lit's Mail by REI	wire rack in mail

66	80	Hot Licks Ice cream	between Middleway & Kaladi bldg	Wire rack
67	120	KALADI BROS	No. Lts. East of Middle way	rack
68	120	TITLE WAVE	No. Lts. East of Middle way	rack entry way
69	10	ALASKA SUN HUT	1441 W Northern Light Suite J	table
70	45	CHEVERON	1465 W. Northern Lights Blvd.	In Rack next to counter
71	30	BIG CORNER SHELL	Minnesota & Northern Light	store rack
72	120	CARRS**	1650 W Northern Lights Aurora Village	new multi-rack
73		RECYCLE BEHIND CARRS		
74	15	MINNESOTA BILLARDS	3020 Minnesota at Benson	??????
75	30	Papa John's Pizza	3020 Minnesota at Benson	Wire Rack inside Store
76	45	GOLDEN CHINA	3020 Minnesota at Benson	on bench
77	50	Turnagn Arts Bldg	4105 Turnagn Blvd. Suite J	New Stop
78	25	Matanuska Maid	Northern Lights Blvd.	
79	25	Owick Tow	Spenard	
80	25	Shell	25th & Spenard	
81	25	Big Corner Car Wash		
82	25	Spenard Pawn		
83	25	Fly By Night		
84	25	Texaco	3304 Spenard	
85	25	MADD		
86	25	Bar BQ Pit	Dimond Boulevard	
87	25	Wons Auto	Potter Drive	
88	25	Big Boy Burgers	Spenard	
89	25	Cines	Gambell	

TOTAL: 4295

PRESTRESS

Order	Press	Returns	Location	Address	Press Comments
1			recycle back of Arts Bldg parking lot		
2	50		BROWN JUG	3561 E Tudor rd	inside on beer
3	35		BLUE FOX	3461 E Tudor rd	wire rack
4	100		THAI KITCHEN	3405 E Tudor rd	wire rack
5	20		COURTNEY'S GAS	2715 E TUDOR	hiddy corner from taco bell
6	100		GOLDEN DONUTS	2213 E TUDOR	wire rack
7	50		PARTY TIME LIQUOR	2440 E TUDOR	store rack-65 is for Rush orders
8	10		SUN AFFAIR	2440 E TUDOR	end table
9	15		CLEANING WORLD II	2440 E TUDOR	store rack
10	180		O'BRAIDY'S*	6901 E Tudor Rd	wire racks
11	100		KALADI COFFEE*	6901 E Tudor Rd	Loose on counter
12	25		EAST 40 BOWL	Muldoon-behind Arby's	multi rack
13	40		Last Frontier Bar	369 Muldoon Rd	ask inside
14	35		TESORO	545 Muldoon	store rack by order of Jen...J
15	30		Brown Jug	171 Muldoon Rd	old school red box
16	20		J.C. Reggan Ect	171 Muldoon Rd	wire stand
17	35		WHALEERS BAR & GRILLE	171 Muldoon Rd	on table-ask barkeep
18	60		Taco Del Mar	171 Muldoon Rd	silver rack
19	40		CABIN TAVERN	264 Muldoon	Loose on counter (Complained of missing delivery last week)
20	20		MULDOON PIZZA	450 Muldoon Rd	(WR!) Leave by door before 4 pm
21	15		RUN-A-RACK BILLIARDS	500 Muldoon Rd	wire rack near door
22	10		TANGLES	7701 DeHart Rd	window ledge
23	65		CARRS**	Muldoon & No. Light (7731 E. North Ln Lights Bldg)	multi rack

24	25	OAKEN REG	Muldoon & No. Light	on beer near door
25	30	BONIFACE MALL	No. Light/Boniface	table north facing west door
26	30	Movie Gallery	5437 E NOR THERN LIGHTS	RED BOX OUTSIDE
27	65	BROWN JUG	5400 E N. Light	Rack Hidden Behind Counter
28	90	Arctic Builders Source	380 East 54th Avenue	561-2808
29	80	CARR'S**	5600 DeBar	Multi rack
30		receiving	Carr's parking lot	
31	100	BLOCKBUSTER VIDEO*	5600 DeBar	wire rack
32	10	FELICITY ESPRESSO	De Bar/Beaver	store wire rack
33	25	Burnto Heaven	326 Boniface Pkwy., Eagle River	NEW STOP
34	15	CARPENTIER'S LOUNGE	335 Boniface	bar near door
35	30	Three Amigos Restaurant	360 Boniface Pkwy	Needs Rack
36	25	BONIFACE BINGO	360 Boniface	wire rack
37	15	PUBLIX STORAGE-east of Costco	4255 E DeBar #508	wire rack
38	45	MINI STOP--Tesoro	1885 Bragaw	on counter
39	100	BROWN JUG	1885 Bragaw	wire rack
40	60	ALASKA REGIONAL HOSPITAL*	Debar & Airport Heights	BACK SIDE DOOR wire rack in entry
41	100	ALASKA REGIONAL HOSPITAL*	Debar & Airport Heights	VA SIDE DOOR wire rack in entry
42	55	VA HOSPITAL	Debar & Airport Heights	wire rack in entry-screens record hallway
43	15	ALASKA REGIONAL MEDICAL PL	Debar & Airport Heights	table by coffee
44	20	PERFECT CUPBOARD	Northway mall	Loose on counter--277-7744
46	25	Sam Goody	Northway Mall	Northway mall
46	20	Roscoe's Barbeque	Northway mall	Where Island Flavors used to be
47	45	BROWN JUG	Mt View Dr/Klewin	RED BOX OUTSIDE
48	55	SURF COIN-OP LAUNDRY & CLE	3833 Mt View Dr	wire rack or on counter
48	20	RALF'S SPORTS BAR	3515 Mt View Dr	wire stand leave bundled if closed
50	10	B ROBBLE'S	3000 Commercial Drive	on coffee table in waiting room
51	10	BIG O'S AUTOMOTIVE-left at work	2401 E 4th Ave	wire rack
52	35	PEGGY'S REST.	1150 E 5th Ave	inside entry
53	30	FAIRVIEW REC. CENTER	9th & Karluk	on top of info display rack
54	60	Noble's Diner	Mountain View	
55	15	Ground Up Customs	Muldoon	
56	25	QUICK TOW		
57	25	BIG BOY		
58		recycle drop at elementary school	at Ois at overwalk	
59	30	Color me Tan	Debar & Beaver	rack in waiting area
60	40	Imperial Garden	By NAPA	black rack

TOTAL: 2425

PRESS

WEEKEND ROUTE

Order	Route	Press	Returns	Location	Address	Press Comments
2	Midtown	120		Now Sagaya		Need to do Friday a.m.
3	Midtown	60		Natural Pantry		
4	Midtown	40		Brown Jug Warehouse		
5	Midtown	400		Moose's Tooth		
5	Midtown	60		Sears Mall/ Carrs/ Wells Fargo		
7	Midtown	40		Blockbuster		
8	Midtown	40		Fireweed Brown Jug		
9	Spennard	20		Brown Jug Warehouse across from Koots		
11	Spennard	60		Middle Way Café		
12	Spennard	240		Title Wave		
13	South	20		Aurora Village Carrs + Brown Jug		
14	South	240		Airport (all racks)		
16	South	60		Huffman-Carrs		
19	Downtown	60		Glacier Brewhouse/Orso		
20	Downtown	120		Humpy's		
22	Downtown	480		City Market		Need to check Friday a.m.
TOTAL:		2060				

anchorage PRESS

COLLEGES

Order	Press	Returns	Location	Address	Press Comments
1	100		UAA: BLDG. K	park on west side	wire rack:lobby
2	55		UAA: CUDDY	park north side of BEB	Wire Rack: Entry
3	70		UAA: BUSINESS (BEB)	park north side of BEB	2nd Floor wire rack
4	70		UAA: BUSINESS -FIRST FLOOR WIRE RACK		
5	70		LOUNGE & SNACK BAR-WEST OF LIBRARY		
6	70		LOUNGE & SNACK BAR-EAST OF CAMPUS CNTR		
7	70		MAINTENANCE BUILDING		
8	100		UAA: BOOKSTORE	Seawolf Drive-park by loading	wire rack hallway
9	50		UAA: CAMPUS CENTER	Seawolf Drive-park by loading	TABLES on 2nd floor
10	40		UAA: CONSORTIUM LIB	take drive west of Admin. Bldg	Wire Rack: Near café area
11	80		UAA: ADMIN	Alumni Drive	wire rack
12			recycle back of Arts Bldg parking lot		
13	130		UAA: ARTS BLDG	Alumni Drive	Wire Rack: Entry
14	70		APU: GRANT HALL		wire rack
15	35		APU: ATWOOD HALL-BOOKSTORE		wire rack
16	50		UAA: DORM AREA LAUDNDRY	left on Sharon Gagnon Drive	by tall dorm-tables and wire rack
17	25		Sugar Shack Espresso	36th & Lake Otis	
18	25		Bad Ass Coffee	Arctic & Northern Lights	
TOTAL:	1110				



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator John Cowdery
Current Version: SB 173
Contact: Ryan Makinster, 465-3879

Fact Sheet for: Senate Bill 173

Short Title: NEWSPAPER PROPERTY SALES NOTICES

Summary:

- Modifies the definition of "newspaper of general circulation" for the purpose of placing a public notice about the sale of property to fulfill a civil or criminal court order.
- Removes the second class mailing permit requirement from the legal definition of "newspaper of general circulation."
- Allows free publications to carry public notices.

Benefits:

- Informs more residents by allowing free publications to carry public notices.

Background:

- Current Alaska law carries a narrow definition for "newspaper of general circulation." SB 173 amends the law by removing the second class mailing permit requirement to allow publications distributed free of charge to carry public notices. Publishing the notices in newspapers is required by law whenever a criminal or civil court orders the sale of property to meet a financial obligation.

SB

175

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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ALASKA STATE LEGISLATURE

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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.

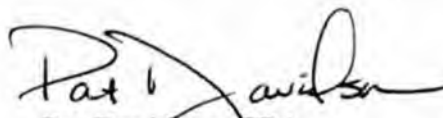

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	5
Background Information.....	7
Report Conclusions.....	13
Findings and Recommendations.....	21
Appendices:	
Appendix A – Alaska’s Sunset Criteria	31
Appendix B – Changes in Occupational Boards Subject to Sunset per AS 08.03.010.....	32
Appendix C – Changes in Nonoccupational Boards and Regulatory Agencies Subject to Sunset per AS 44.66.010.....	33
Appendix D – DCCED-Regulated Occupations without a Board	34
Appendix E – Schedule of Actual and Proposed Termination Dates	35
Agency Response:	
Department of Commerce, Community, and Economic Development	37

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?* b 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 redetermination 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.

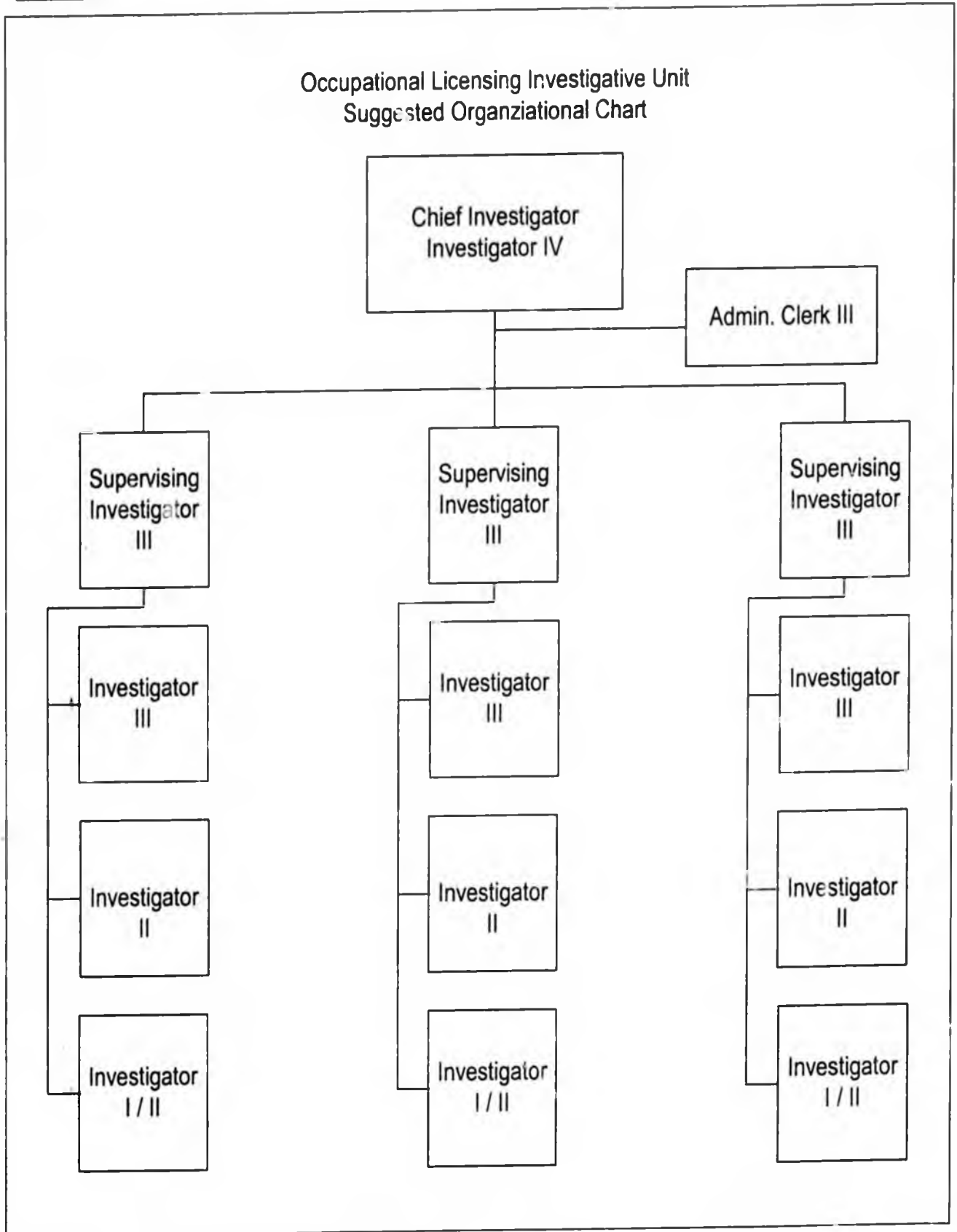
Recommendation No. 2

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



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</p> <p>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.

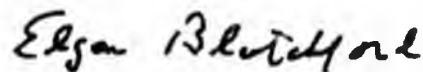
Recommendation No. 3

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 COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS
SUNSET REVIEW

October 2, 2003



Audit Control Number:

08-20022-03

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.

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ALASKA STATE LEGISLATURE

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October 2, 2003

Members of the Legislative Budget
and Audit Committee:

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

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

October 2, 2003

Audit Control Number
08-20022-03

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

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

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

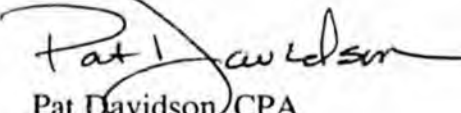

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

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

OBJECTIVES, SCOPE, AND METHODOLOGY

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

Objectives

Central, interrelated objectives of our report are:

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

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

Scope and Methodology

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

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

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

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

ORGANIZATION AND FUNCTION

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

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

1. Registering dispensing optician apprentices.
2. Licensing opticians through examination or credentials.
3. Establishing, amending, or eliminating regulations that affect the standards of professional opticianry practice.
4. Taking disciplinary actions in accordance with the Administrative Procedures Act when a person has violated dispensing opticians' statutes or regulations.

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

James D. Rothmeyer, Optician, Chair

Larry E. Harper, Optician

David G. Matthews, Optician

Roberta (Bobbie) Rawcliffe, Public Member

Cindy S. Tidd, Optician

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

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

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

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

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

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

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

REPORT CONCLUSIONS

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

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

Practical examination eliminated

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

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

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

Legislature Concerned about Fees, Costs, and Examination Requirements

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

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

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

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

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

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

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

The department and board took action to reduce the cumulative deficit by increasing biennial licensing fees for both dispensing opticians and optician apprentices.² For the renewal period starting July 2003, fees for dispensing opticians and optician apprentices increased by \$210 (55%) and \$500 (300%), respectively. The FY 03 license renewal fees for opticians were \$590, up from the previous level of \$380. Prospectively, at this time BDO is facing renewal fees ranging from \$800-\$1,000 for the upcoming renewal cycle in June 2005 to eliminate the deficit and cover annual board operating costs.

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

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

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

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

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

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

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

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

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

Termination date for the board should not be extended

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

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

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

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

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

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

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

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

By not passing any extension legislation, BDO would go into a wrap-up phase. In the one-year wrap-up period, we recommend that the board formally recognize the U.S. Department of Labor (USDC¹) apprentice program in regulation – as a means for individuals to continue training to be opticians – under the supervision of practicing opticians.

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

AUDITOR'S COMMENTS

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

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

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

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

Key distinction between apprentices and assistants involve standards of supervision

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

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

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

⁸ See regulations at 12 AAC 30.125.

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

(3) ensure correct performance of assigned tasks.

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

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

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

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

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

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

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

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

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

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

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

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FINDINGS AND RECOMMENDATIONS

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

Recommendation No. 1

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

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

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

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

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

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

¹⁰See regulations at 12 AAC 30.075.

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

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

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

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

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

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

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

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

Recommendation No. 2

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

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

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

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

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

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

A ANALYSIS OF PUBLIC NEED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Office of the Commissioner

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November 17, 2003

RECEIVED

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LEGISLATIVE AUDIT

Pat Davidson, Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Re: BOARD OF DISPENSING OPTICIANS – PRELIMINARY AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to comment on your preliminary audit report of the Board of Dispensing Opticians.

The department concurs with the findings in your report. Specifically, we share your concerns with viability of the board and support the recommendation that the board not be extended.

The department recommends the legislature amend the law to provide for mandatory registration of Dispensing Opticians, through a registration program administered by the department. We recommend the registration be for the Dispensing Optician level only and that apprentices not be registered.

FINDINGS AND RECOMMENDATIONS

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

Recommendation No. 1

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

The department concurs with the concerns raised in items 1-3 referenced under this recommendation. If the legislature decides to extend the termination of the board, the Board should be requested to assist with developing and proposing conceptual language

for legislation. However, we believe the legislature has the staff and expertise to draft legislation.

Recommendation No. 2

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

The department recently increased the Dispensing Optician biennial license fee from \$380 to \$590. Although we concur that the board needs to be self-sufficient, we are concerned that as the fees continue to increase fewer licensees will chose to renew, thus creating a larger deficit. Licensing programs that show a significant deficit have been allowed to recoup the deficit over two biennial periods; this approach has provided incremental increase in fees and gives the profession time to reduce its operating costs where applicable. The department has attempted to apply this process consistently to all licensing programs, and will continue to work with professions in reducing their operating costs while also reducing their deficit. We believe by eliminating the board and creating a registration system administered by the department, reduction in operating costs can be realized.

We appreciate the thoroughness of your review and the opportunity to comment.

Sincerely,



Edgar Blatchford
Commissioner

Cc: Rick Urion, Director
Division of Occupational Licensing

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LEGISLATIVE AUDIT

November 10, 2002

Pat Davidson, Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Audit Control Number 08-20022-03
Board of Dispensing Opticians Sunset Review
October 2, 2003

Dear Pat Davidson:

I received your Preliminary Audit Report and wish to thank you for an opportunity to respond.

Response to the recommendations in your October 29, 2003 letter follow:

- Recommendation No. 1 - "The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing." Item #1, #2 and #3 were addressed in my response, dated September 26, 2003, to the "management letter #1", dated September 18, 2003 from audit manager Mr. Jim Griffin. The legislative bill we propose (which was attached) would clarify these areas. This bill will be presented in the 2004 legislature.
- Recommendation No. 2 - "The Division of Occupational Licensing, in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit." The Schedule of License Revenues and Board Expenditures included in your report is information on FY2003 that had not been provided to the Board. I formally request a more detailed breakdown of FY2003 expenses and revenues. As to the recommendation, I refer to my response in my September 26, 2003 letter stating I do not believe there will need to be a substantial increase in licensing fees in 2005 because of cost cutting changes we are implementing and the passing of our 2004 legislative bill.

There are some short and long term consequences of de-licensing that should be considered:

- Short Term Consequences
 1. Licensed Opticians (spectacles). There is little likelihood that any portion of the present deficit, \$22,000, will be paid by individuals being de-licensed, or sunsetted. Economic revenue and activity from registration of apprentices will disappear as "entry"

into an occupation that has such a decreased level of economic opportunity with the prospect of wages being decreased by one half will no longer be attractive.

2. Licensed Opticians (contact lenses). This area will be addressed by another board member.

- Long Term Consequences

There are relative few licensed opticians in the State, approximately 100. These opticians and their families have enjoyed the opportunity to work for a "living wage". You mentioned the state of Texas voluntary registration program as a viable alternative for Alaska. I have enclosed a wage comparison report that shows Texas median wages for opticians to be 56% of what Alaska, a licensed state is. De-licensing will mean no longer having "portable credentials" that distinguishes an educated and trained professional from anyone off the street. It will devalue the occupation and effectively close the door on what has been an alternative occupation and trade for someone unable to obtain a college education.

- Comments

On page #7 footnote #3 your report states " The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively." This an opinion, not a fact, and it is an opinion not supported by this Board or the professional optical community. To rely on the written ABO exam alone for competency can be likened to relying on a written DMV test for competency to operate a motor vehicle. There is much more involved in the fitting and dispensing of spectacles and contact lenses than the current entry level written test from ABO or NCLE alone can evaluate.

- Conclusion

The State of Alaska has a skilled, educated and trained workforce providing professional services in the fitting and dispensing of spectacles and contacts. What is proposed by this Legislative Budget Audit is to dismantle this profession by de-licensing. I feel it is in the best interest of the public to maintain licensure of Dispensing Opticians. Thank you for your consideration.

Other board members may be responding to this preliminary audit report. My hard copy response will contain a copy of my response to "letter No. 1, dated September 26, 2003, for your reference. Thank you for your time and consideration.

Sincerely,



James Rothmeyer, Chair
Board of Dispensing Opticians.