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JUDICIARY

APPENDIX E
(continued)

27% of the unified bars administer both admissions and discipline.

64% of the unified bars administer discipline.

The budget of 79% of the unified bars is approved by their governing board only, with 91% of the unified bars indicating that their funds are considered to be part of the bar's budget only. 100% of the unified bars fund their functions without supplemental appropriations.

58% of the unified bars administer MCLE regulation, with 91% of the unified bars providing CLE programs.

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

C. S. Christensen III
Deputy Administrative Director

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Anchorage, Alaska 99501-2005
(907) 264-8228; FAX (907) 264-8291
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October 19, 2006

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

Re: Preliminary Audit Report 41-20050-06
Board of Governors of Alaska Bar Association

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced Preliminary Audit Report. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the three recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the regulation and licensure of attorneys contributes to the protection of the public's welfare. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2014.

However, we continue to take issue with certain conclusions of the prior audit that are referenced in the Auditor's Comments beginning on page 11. That prior audit, *Board of Governors of the Alaska Bar Association, November 28, 2005* (Audit Control No. 41-20040-06), made conclusory observations about the current system of attorney discipline, and stated that such discipline could be a government function. Specifically, it suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

Pat Davidson
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Considerations not addressed by the prior audit lead us to conclude that these two options are flawed.

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objections in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two functions. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not adequate justification for this consolidation of government power.

As pointed out in the Preliminary Audit Report, modification of the existing disciplinary structure would be a policy-level decision, and a wide range of structures exist on which modifications could be modeled. If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model to follow would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of

Pat Davidson
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judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the ultimate arbiter of guilt or innocence.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'CSC', with a long horizontal flourish extending to the right.

C. S. Christensen III
Deputy Administrative Director

SAME

FILE

CONTINUES

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ALASKA BAR

A S S O C I A T I O N

October 11, 2006

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

Dear Ms. Davidson:

Thank you for the thorough sunset review follow-up of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2014.

There will be no fiscal note attached to any bill filed with the legislature to extend the sunset date of the Board of Governors, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 20 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees, and interest income. Ironically, a decision to sunset the Bar would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Board of Governors has forwarded an MCLE rule to the Alaska Supreme Court.

In the September 15, 2006 preliminary audit report, the legislative auditor correctly outlined the steps which the Board of Governors has taken in 2006 regarding MCLE.

Response to Preliminary Audit Report
October 11, 2006
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At the Board of Governors meeting on September 7, 2006, the Board voted to send the MCLE rule as published to the Alaska Supreme Court. Only the Supreme Court can adopt a rule providing for MCLE.

The MCLE rule, as published by the Board, would provide that active Bar members complete 12 hours of CLE a year, including 1 hour of ethics.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

The legislative auditor notes that the Alaska Bar Association has joined a consortium of other state and local bars aimed at replacing our database with a new member management system. This will include a module specifically for lawyer discipline data. This system will provide a means to have lawyer disciplinary information on the Bar's website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information. The Bar has managed its website without a full-time webmaster.

The Board agrees that having public discipline information available on our website is a desirable goal and we will continue to work to that end. We anticipate that the new discipline module, including online reporting of public discipline, will be operational in the summer of 2007.

Response to Recommendation No. 3. The Standing Policies of the Board of Governors have been amended to provide for a due date for the annual report.

At the Board of Governors meeting on September 7, 2006, the Board voted to amend their Standing Policies to set April 15 as a specific due date for completion of the annual report for the preceding year.

Concluding Comments: Lawyer self-regulation has been effective and efficient in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also

Response to Preliminary Audit Report

October 11, 2006

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believe that lawyer self-regulation is working very effectively and efficiently in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

The Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 26 indicated that they were not state government agencies.

As reported in our December 16, 2005 response, 13¹ jurisdictions, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13² generally indicated that they were considered creations of their supreme courts, but either not considered state government agencies or state employees; and, 22³ indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

We believe that there would be additional costs to both the court and the Bar Association if the attorney discipline system in Alaska was carried out by a government agency. Currently, the Bar Association has one bar counsel, two assistant bar counsel, one paralegal, two legal secretaries, and two other employees of the Bar who provide support to the discipline system in addition to their other Bar duties.

Currently these employees have the benefit of shared costs of office space, conference room, computer system, telephone system, copy machines, etc. with the rest of the Bar staff. In addition, the Bar's system administrator provides computer support to all Bar employees. If the discipline employees were split off from the Bar Association, they would lose the benefit of this shared functionality and they would have to purchase and maintain separate space and equipment.

¹ Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

² Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

³ California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Currently discipline hearings are heard by a members of a volunteer committee made up of attorneys and public members. If discipline were split off from the Bar Association, the state would need to staff this function with state hearing officers.

Currently bar counsel supervises the assistant bar counsel and discipline staff, as well as handling such other discipline matters as reinstatement, etc. He also handles over 700 calls a year giving informal ethics advice to members of the Bar. If a new state agency had less than three lawyers on staff, this valuable service would not be feasible and the current caseload would likely see a dramatic increase in processing time. The discipline section would also lose the assistance of the two staff persons who provide other support to the discipline section.

Meanwhile, the Board of Governors would still need to have its own bar counsel, so the Bar Association would still have the expense of a lawyer and legal secretary on its staff.

There would also be additional expense if there was a Disciplinary Board separate from the Board of Governors. Currently, the Board of Governors acts as the Disciplinary Board at its regularly scheduled board meetings. The budget for the Board travel is included in the Board of Governors budget, and is not included as part of the discipline budget, so Discipline Board meetings would be a new expense.

The cost to Bar members to support additional staff, separate offices and equipment and separate Boards would mean a significant increase in bar dues, the addition of a separate disciplinary assessment, or that these expenses come out of the state general fund.

We believe that the subjective benefit of splitting out the discipline function from the Bar is outweighed by the practical and economic realities.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its rule making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also

ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses. (\$191,000/month or \$764,000.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from \$1,146,000 - \$1,719,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature if an unexpected event occurs which would incur significant financial expense. Unlike private entities, the Bar cannot easily obtain business interruption insurance.

Recent experience with Gulf Coast bar associations in the wake of Hurricane Katrina indicates that a lack of preplanning for disasters will cripple a bar association at the very time it is under tremendous demand to provide emergency services to members and to assist members in aiding the public's need for legal assistance in the aftermath of a disaster. Also, the Board needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar is in the process of replacing its entire database, a multi-year project that will cost nearly \$200,000.

Every year, Bar members each pay ten dollars to the Lawyers' Fund For Client Protection. This fund serves as a safety net primarily for clients who have suffered monetary losses as a result of dishonest acts by their lawyers. This Fund currently has \$1,171,000 in it. These funds are designed to protect the public and cannot be used for general operating expenses.

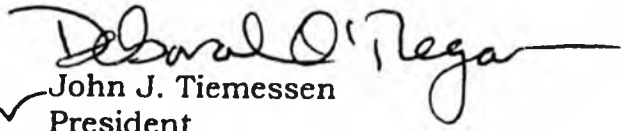
As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec. 7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

It has also been the policy of the Board to set Bar dues in an amount to accumulate a reserve, so that Bar dues do not have to be raised each year. The Board believes that the stability and predictability of Bar dues over a long period of time is desirable. In the past 22 years, Bar dues have only been raised twice. from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

Response to Preliminary Audit Report
October 11, 2006
Page 6

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association


for John J. Tiemessen
President



Alaska Division of Legislative Audit

Audit Digest #41-20040-06

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SUMMARY OF: A Sunset Review of the Alaska Court System, Board of Governors of the Alaska Bar Association, November 28, 2005.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Governors of the Alaska Bar Association (Board). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the Board should be reestablished. Currently, AS 08.03.010(c)(2) states that the Board will terminate on June 30, 2006. If the legislature does not extend the termination date, the Board will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Governors of the Alaska Bar Association should be extended. The Board, through the Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a discipline process designed to ensure that those licensed act in a competent and professional manner.

Alaska Statute 08.03.010(c)(2) requires that the Board of Governors of the Alaska Bar Association be terminated on June 30, 2006. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the legislature extend the Board's termination date to June 30, 2014.

FINDINGS AND RECOMMENDATIONS

The Council's prior sunset audit reported several administrative weaknesses. Two of those recommendations have been resolved. Those issues that have not been resolved are reiterated in this report.

Recommendation No. 1.

The Board should recommend to the Alaska Supreme Court that mandatory minimum continuing legal education (CLE) for attorneys be adopted.

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of

ethics.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Recommendation No. 2.

The Board should consider developing a database of disciplined lawyers in the association's website.

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

The Board should consider developing a database for the Bar's website of the discipline imposed against lawyers. It will enhance public notification and client protection through increased accessibility of discipline information.

Recommendation No. 3.

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the Legislature and the public on a timely basis.

The Board's annual reports for the three years 2002 through 2004 were not prepared timely¹. The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

AUDITOR'S COMMENT


The attorney discipline system of the Bar is a self-regulatory function. Self-regulation has always been viewed skeptically by the citizenry. A majority of the board members is elected by the membership. The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigation performed by Alaska Court System employees.
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court.

Footnotes

1 - We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

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November 28, 2005

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.

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION
SUNSET REVIEW
November 28, 2005

Audit Control Number
41-20040-06

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)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2006.

In our opinion, the termination date for this Board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2014.

The audit was conducted in accordance with generally accepted government auditing 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 section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (Board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the Board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the Board to terminate on June 30, 2006. If the legislature takes no action to extend the termination date, the Board will have one year from that date to conclude its operations

Objectives

There are three central, interrelated objectives of our report. They 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's interest.
3. To determine if the Board has exercised appropriate oversight of licensed members of the Alaska Bar Association (Bar).

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

Scope and Methodology

The major areas of our review were the examination, admission/licensing, and discipline functions provided by the Bar, as well as Board proceedings. Our audit reviewed Board operations and activities of the Bar from January 2002 through June 30, 2005.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and bar association bylaws
- American Bar Association (ABA) Model Rules
- Board minutes
- Alaska Bar Association annual reports
- Attorney discipline files
- Attorney applications for examination and admission

- Websites of National Conference of Bar Examiners (NCBE), American Bar Association (ABA), and other states' bar admissions
- Publications such as:
 1. ABA 2005 State and Local Bar Membership Dues and Mandatory Fees Survey
 2. NCBE 2005 Comprehensive Guide to Bar Admissions
 3. New York State Bar Association Comparison of the Features of Mandatory Continuing Legal Education Rules in Effect as of July 2004

In addition, we conducted interviews of the Board president, staff, including the Executive Director, Board Counsel, director of continuing legal education, and Comptroller. We also made inquiries with other states' bar admission staff.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (Board). The Board consists of 12 members including nine attorneys elected by the active membership of the Alaska Bar Association and three nonattorney public members that are appointed by the governor and confirmed by the legislature in joint session.

The powers and duties of the Board are conferred by the Alaska Integrated Bar Act (AS 08.08), the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The purpose of the Board includes the following: to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice, to encourage continuing legal education for the membership, and to increase the public service and efficiency of the Alaska Bar Association (Bar).

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2005 budget of \$2,195,584. Funding is provided primarily by membership dues (\$550 per year), admission fees, lawyer referral fees, continuing legal education charges, administrative discipline fees, and interest income.

- Admission Function The Board is responsible for screening applicants for admission to the Bar. The Board certifies to the Supreme Court that all successful applicants are fit to practice law. The Board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.
- Discipline Function The Board is responsible for investigating grievances against all members of the Bar Association. The Board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions taken against the Bar's membership and provides an ethics course that is required for all applicants. The Board appoints hearing committees from each judicial district. The Board is also responsible for issuing reprimands when warranted, and for recommending that the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

The Board of Governors of the Alaska Bar Association (as of November 18, 2005)
Jonathon A. Katcher, President Third Judicial District
John Tiemessen, President-elect Second/Fourth Judicial District
Christopher R. Cooke, Vice- president Third Judicial District
Sidney K. Billingslea, Treasurer Third Judicial District
Michael J. Hurley, Secretary Public Member
Matthew W. Claman Third Judicial District
Peter R. Ellis First Judicial District
Joseph N. Faulhaber Public Member
William A. Granger Public Member
Allison Mendel Third Judicial District
Philip M. Pallenberg First Judicial District
Jason A. Weiner Second/Fourth Judicial District

- Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting providers of continuing legal education, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition the association provides grants through the Alaska Bar Foundation (ABF) from earnings of interest on lawyers trust account (IOLTA¹) program. IOLTA grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Alaska Bar Association's office is located in Anchorage and is currently staffed by 17 full-time and job-share employees.

The Board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the bar association and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

¹ An IOLTA account is a pooled, interest-bearing trust account for deposit of client funds that are so small, or will be held for so short a time, they would not earn net interest that would be payable to the client. A recent change to Rule 1.5 of Alaska Rules of Professional Conduct requires annual certification by all lawyers on the annual bar dues, whether the lawyer or the lawyer's firm is maintaining or not maintaining an IOLTA trust account.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (Board) should be extended. Since the first three attorneys were admitted to the practice of law in Alaska in 1884, membership has grown to its current level of 2,839 active members practicing in the State. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The Board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase from four to eight years the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommend that the legislature extend the termination date of the Board to June 30, 2014.

We have also made recommendations that, if implemented, will improve the effectiveness of the Board's goals and operations. See the Findings and Recommendations section of this report.

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FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, November 30, 2001*, (Audit Control No. 41-20008-02) there were two recommendations which have been resolved. These recommendations were to establish a screening and oversight procedures for attorneys wishing to participate in the lawyer referral services and improving adequate public notice of meetings.

In addition, the Supreme Court adopted a pilot 12 credit hour voluntary continuing legal education (CLE) program for three years in response to the recommendation for a mandatory continuing legal education during the 1998 sunset audit. We reviewed the results of the voluntary CLE pilot program which are addressed below as Recommendation No. 1.

Recommendation No. 1

The Board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Continuing legal education for attorneys is only voluntary rather than required. The Supreme Court adopted a voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Alaska Bar Association (Bar) to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of bar dues and eligibility to participate in the Lawyer Referral Service are authorized to those who comply with the bar rule.

The Board implemented a three-year voluntary CLE pilot project effective September 2, 1999 which ended in December 2002. Each member of the Bar was required to report at the end of each year the CLE hours earned during the preceding year on the prescribed CLE reporting form. The average participation rate during the pilot program years was 46%. The Board eliminated the voluntary CLE reporting requirement at the end of the pilot program. However to encourage completion and reporting of approved CLE, the Bar continued its reduced annual dues to those attorneys who certify completion of CLE on their annual dues statement. The reported average participation rate for CLE has dropped from 46% to 38% for the two years after the end of the pilot program.

Forty-one legal jurisdictions in the United States have a mandatory CLE education requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Many professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are all required to meet minimum continuing education standards.

The Board's major concern regarding mandatory CLE is an appearance of a conflict of interest. Currently, the Bar both accredits CLE providers and provides CLE. The American Law Institute-American Bar Association study released in 1998 recommended creating a distinct and separate department or organization, with separate staff, to regulate and sponsor CLE so as to avoid the appearance of conflict of interest.

The Board has recently established a joint task force on mandatory continuing legal education. The memberships include three members of the Board and a representative each from the Alaska Supreme Court and the Judicial Council.

Overall, we believe a mandatory minimum continuing legal education requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The Board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum continuing legal education.

Recommendation No. 2

The Board should consider developing a database of disciplined lawyers in the association's website.

While current procedures are adequate, the Board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on their website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the Board publishes the names of these attorneys in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the Board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The Board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It will enhance public notification and client protection through increased accessibility of discipline information.

Recommendation No. 3

The Board should adopt a due date for the annual report to ensure it is made available to the Supreme Court, the legislature and the public on a timely basis.

The Board's annual reports for the three years 2002 through 2004 were not prepared timely.² In fact, the 2004 report is still in draft format. AS 08.08.085 requires the Board to prepare an annual report and notify the legislature when it is available; however, it does not specify a due date. The annual report is normally made available to the legislature in the spring of the subsequent year. For the past three years, the executive director has placed a low priority on the preparation of the annual reports.

The Board's annual report contains information on matters relating to admission, discipline of members, modification or repeals of bylaws, and bar rules proposed to or adopted by the Supreme Court. The annual report may also be used to recommend changes to the Alaska Bar statutes. Information provided in the report will be more useful and relevant to public officials and the public when provided in a timely manner.

The adoption of a specific due date by the Board in its bylaws or standing policies should ensure the timely preparation of the Board's annual report.

² We considered completion of the annual report to be untimely if it was not completed within four months after the end of the calendar year.

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AUDITOR'S COMMENTS

The sunset process allows for an objective review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The independent conclusions of a review agency, such as this Division, provide certain assurances that entities such as the Board of Governors of the Alaska Bar Association (Board) are operating in the public interest. The overall conclusions of our review are that the Board is operating in the public interest and that there is a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nevertheless, an overall evaluation of the basic approach to these functions should be undertaken from time to time. Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the Board, and the legislature. The following comments are intended to assist in such consideration.

Self-regulation, whether by industries or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The Board is comprised of 12 members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We believe that the attorney discipline system in Alaska could be a government function. In at least 22 states, discipline is carried out by a state government agency. In 2000, Nebraska's Supreme Court moved the disciplinary function out from their bar association to the Supreme Court Counsel for Discipline.

The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement*, August 1993,³ recommended the following:

The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association [T]he disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not influenced by internal politics of the bar association [T]he disciplinary system should be free from even the appearance of conflicts of interest or impropriety.

³ The *Model Rules for Lawyer Disciplinary Enforcement*, August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

There should be no general fund net cost to either of these options. They would be paid by attorney licensing fees, the same as they currently are and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

A N A L Y S I S O F P U B L I C N E E D

The following analyses of the Board of Governors of the Alaska Bar Association (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.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the *Lawyers Fund for Client Protection (LFCP)*. This fund receives \$10 from each active member's annual dues. The fund is used to reimburse clients for losses⁴ caused by dishonest conduct⁵ of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of \$50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is \$200,000.
- Since 1976, the Bar has maintained a *Fee Arbitration* process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of \$5,000 or less, the process provides for a single arbitrator. Disputes over \$5,000 are heard by a three-member panel that consists of two attorneys and one public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

⁴ Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

⁵Alaska Bar Rule 45 defines "*dishonest conduct*" as wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.
- The Bar operates a *Lawyer Referral Service (LRS)* funded by enrollment fee from participating members. Members of the public can call an in-state toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer Referral Service statistics are shown in Appendix D.
- The Bar provides grants to support legal services for the economically disadvantaged and improve the administration of justice through the Alaska Bar Foundation (ABF) from earnings of the Interest on Lawyers Trust Account⁶ (IOLTA).
- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.
- The Bar also has a *Lawyer Assistance Committee (LAC)* that provides assistance and counseling to bar applicants and lawyers with drug and alcohol problems.

Determine 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.

The operations of the Board are funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees, convention fees, and interest income. In 2004, the Board amended Article VII Section 1 (a) of the bylaws to increase fees for additional substantive law section membership and associate⁷ members. The Board also amended Article III Section 1(a) of the bylaws to increase active members' dues to \$550, effective in the 2005 membership year.

The 2005 budgeted revenue is \$2,195,584. The Bar has a cumulative revenue surplus of \$2,722,989 as of the end of calendar year 2004. (See Appendix A) The maintenance of a substantial revenue surplus is not consistent with the other professions regulated by the state, under the jurisdiction of the Department of Commerce, Community, and Economic Development, Division of Corporations, Business and Professional Licensing. Those

⁶ A recent change to Rule 1.5 of Alaska Rules of Professional Conduct (ARPC) requires annual certification by all lawyers on the annual bar dues statement whether or not the lawyer or the lawyer's firm is maintaining an IOLTA trust account.

⁷ A member of the public may join the Bar's section membership as an associate member. Associate members are nonvoting members and may not serve on the section's executive committee.

professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation.

In August 2004, the Board formed the Bar Services and Funding Committee (BSFC) "to study and propose new ways to utilize bar dues and a portion of the unappropriated capital to advance the profession of law in Alaska and to benefit the members of the Bar and the practice of law in general."

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

The Board has not recommended any statutory changes during this audit period. However, the Board has been active in the process of evaluating and revising the Alaska Bar Rules, Bylaws, and Rules of Professional Conduct that govern the Bar policies and procedures. The Board also had addressed the two recommendations presented in their prior sunset review. See Findings and Recommendations Section.

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

The Bar membership is involved in its operations. This operation may include service on one of the eight standing committees or five Alaska Bar Rules committees. It may include participation in one of the 24 sections or group of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation (ALSC). Also, special committees are established from time to time by the President with the advice and consent of the Board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag*, which is distributed to all members of the Bar and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the Board.

The Board advertises board meetings in four Alaska newspapers, the *Alaska Bar Rag*, and the Alaska Public Online Notice System. Adequate time is allotted, and members of the general public are encouraged to make comments at all meetings.

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

In addition to the three public members who serve on the Board, nonattorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State. The membership of the Joint Task Force on Mandatory Continuing Legal Education established in May 2005 includes a public member of the Board.

As mentioned above, the Bar publicly advertises meetings of the Board. Time is allotted at all board meetings for public comments.

Determine 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 Bar is an instrumentality of the State but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. No complaints or investigations specifically involving the actions and activities of the Board were filed with the Office of the Ombudsman during our audit period.

The Board has a lawyer discipline process for investigation of complaints alleging attorney misconduct. Sanctions are imposed on those found in violation of the Rules of Professional Conduct. All public disciplinary action is subject to Supreme Court review. This process was developed through a cooperative effort of the Alaska Supreme Court, the Board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

An average of 215 complaints is received annually. Analyses of the complaints filed during the audit period shows that all grievances were reviewed, but relatively few were pursued beyond the initial investigation. Over 80 percent of the grievances received were not accepted for investigation due to lack of merit. Closure of grievances cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Over 600 complaints were filed during 2002, 2003, and 2004; these resulted in 135 cases being opened and the remaining complaints were not accepted. The investigations resulted in 50 cases⁸ with sanctions against a total of 16 attorneys. Six attorneys were disbarred, six were suspended, two were publicly reprimanded, and two were publicly censured. Discipline statistics are shown in Appendix B.

⁸ A single attorney may have multiple cases filed against them.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the Board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the Board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

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

The Board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination
- Passing the Multi-state Professional Responsibility Examination (MPRE)
- Passing character investigation to determine if the applicant is of good moral character
- Attendance⁹ of a mandatory three hour ethics presentation by the Board.

The Board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C.

The Bar offers continuing legal education for its membership and maintains an educational library. The Board established a three-year voluntary continuing legal education (CLE) project which required completion of a minimum of twelve hours of CLE, including one hour in ethics each calendar year. The Board compiled statistics of member participation and reported the information to the Supreme Court each year. The project expired in 2002 and the Board continued the voluntary CLE program. However, as discussed in Recommendation No. 1, the voluntary CLE average participation of 46 percent during the pilot period (September 19, 1999 – December 31, 2002) has declined during the subsequent two years (2003 through 2004) to 38 percent. Forty-one states, excluding Alaska, currently have mandatory CLE requirements which range from eight to twenty-seven credit hours per year.

As of 2004, lawyers located outside of Anchorage may participate in CLE through audio-video presentations available in three Alaska communities – Fairbanks, Juneau, and Kenai. Other communities may request a group video replay.

⁹ This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

Determine 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.

Please refer to the Findings and Recommendations and the Auditor Comments sections of this report.

Determine 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.

The Board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the Board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the Board deny an applicant a license based on personal attributes.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the association bylaws sets out the purposes of the Bar which include:

1. To cultivate and advance the science of jurisprudence
2. To promote reform in the law and in judicial procedure
3. To facilitate the administration of justice
4. To encourage legal education for the membership
5. To increase the public service and efficiency of the bar

To achieve these purposes the Bar has established and maintains various committees as well as performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in the communities of Anchorage, Fairbanks, Juneau, Kenai, Mat-SU, and other communities where the Board president sees the need to appoint a subcommittee.

The Board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council. The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. As council members, they survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation

is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders office.

The Bar's continuing legal education committee consisting of 15 members assists the continuing legal education director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers, about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 100 live, 6 satellite, 49 conventions, and 2 video conference CLE presentations for 1,096, 1,066, and 973 attorney participants from calendar year 2002 through 2004, respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The Board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

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APPENDICES

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APPENDIX A

Board of Governors of the Alaska Bar Association Revenues Compared with Expenditures Calendar Years 2002 through 2004

<u>Revenues</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Dues	\$ 1,362,173	\$ 1,374,536	\$ 1,389,704
Admission Fees	156,055	186,905	146,175
Continuing Legal Education	111,740	132,830	102,121
Lawyer Referral Fees	59,462	46,520	51,816
Annual Meeting	97,071	94,042	117,189
Earnings on Investments	148,113	119,661	100,962
Other	<u>66,638</u>	<u>44,348</u>	<u>98,234</u>
<u>Total Revenues</u>	<u>2,001,252</u>	<u>1,998,842</u>	<u>2,006,201</u>
 EXPENSES			
Admissions	163,646	171,525	170,888
Board of Governors	37,540	40,728	33,637
Discipline	637,541	576,469	603,493
Fee Arbitration	53,548	54,614	57,685
Lawyer Referral	45,682	44,878	47,995
Continuing Legal Education	420,517	421,767	312,481
Administration	378,678	392,549	422,902
Annual meeting	105,371	99,018	105,871
Other	<u>190,311</u>	<u>160,916</u>	<u>267,308</u>
<u>Total Expenses</u>	<u>2,032,834</u>	<u>1,962,464</u>	<u>2,022,260</u>
 <u>Excess (deficit) of</u>			
<u>Revenues over Expenses</u>	\$ (31,582)	\$ 36,378	\$ (16,059)
<u>Net Assets at</u>			
<u>Beginning of Year</u>	<u>2,734,252</u>	<u>2,702,670</u>	<u>2,739,048</u>
 <u>Cumulative Surplus/(Deficit)</u>	 <u>\$ 2,702,670</u>	 <u>\$ 2,739,048</u>	 <u>\$ 2,722,989¹⁰</u>

Source: Alaska Bar Association Audited Financial Statements for 2002 through 2004

¹⁰ The cumulative surplus as of December 31, 2004 is comprised of the following Net Assets accounts: Designated by the Board of Governors for Working Capital - \$675,000; Asset Acquisition - \$120,665 and Undesignated - \$1,927,324.

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APPENDIX B

Board of Governors of the Alaska Bar Association
Discipline Statistics
Calendar Years 2002 through 2005¹¹
(unaudited)

<u>Disposition of Closed Disciplinary Cases</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Disbarment by Supreme Court	5	17	0	2
Suspension by Supreme Court	6	1	10	2
Public Censure by Supreme Court	0	1	1	0
Public Reprimand by Disciplinary Board	0	2	0	0
Private Reprimand by Disciplinary Board	0	0	1	0
Private Admonition by Discipline Counsel	0	0	2	0
Dismissed	13	26	36	5
Closed After Mediation	<u>0</u>	<u>1</u>	<u>1</u>	<u>0</u>
Total Closed Cases	<u>24</u>	<u>48</u>	<u>51</u>	<u>9</u>
 <u>Status of Open Cases at Year End</u>				
Attorney on Probation	1	1	1	1
Pending Supreme Court	0	6	5	2
Pending Disciplinary Board	17	2	2	1
Pending Hearing Committee	7	1	0	0
Pending Stipulation	0	2	0	9
Pending Approval to File Formal Hearing	0	0	5	5
Pending Written Private Admonition	0	0	1	0
Abeyance due to Court Case	2	2	2	2
Pending Bar Counsel Investigation/Decision	67	62	32	33
Pending Complainant Reply	4	3	1	1
Pending Respondent Response	7	3	14	14
Pending Mediation	<u>1</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total Open Cases	<u>106</u>	<u>83</u>	<u>63</u>	<u>68</u>

Note: These numbers reflect individual complaints filed and not the number of attorneys under investigation. An individual attorney may have more than one case established against them.

Source: Data for 2002 – 2004 was obtained from the Board's annual reports. 2005 was compiled by the Alaska Bar Association's staff.

¹¹ The amounts reported for 2005 includes activity from January 1 through June 30, 2005.

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APPENDIX C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics
 (unaudited)

Examination Statistics

Examination Dates	Number Taking	Number Passing	Percent Passing
	<u>Exam</u>	<u>Exam</u>	
February 2002	35	20	57%
July 2002	60	31	52%
February 2003	53	27	51%
July 2003	86	51	59%
February 2004	56	37	66%
July 2004	61	43	70%
February 2005	<u>62</u>	<u>44</u>	<u>71%</u>
Total	<u>413</u>	<u>253</u>	<u>61%</u>

Admission Statistics

Calendar Year	Admission By <u>Examination</u>	Admission By <u>Reciprocity</u>	Total <u>Admissions</u>
2002	50	22	72
2003	77	16	93
2004	81	31	112
2005 ¹²	<u>19</u>	<u>17</u>	<u>36</u>
Total	<u>227</u>	<u>86</u>	<u>313</u>

Source: Records provided by the Bar's staff.

¹² Admissions through June 30, 2005.

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APPENDIX D

Board of Governors of the Alaska Bar Association
Attorney Referrals
January 2002 through June 30, 2005
(unaudited)

<u>Practice Categories</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>
Administrative	331	382	396	181
Admiralty	16	19	17	7
Adoption	27	34	34	17
Alaska Native Law	11	0	0	0
Arts	9	0	0	1
Bankruptcy	122	108	110	61
Commercial	185	148	123	120
Construction	36	14	37	25
Consumer	464	326	356	191
Criminal: Felony	144	130	127	133
Criminal: Misdemeanor	260	162	143	83
Discrimination	56	66	13	0
Divorce/Dissolution/Custody	1,153	869	907	472
Eminent Domain	2	0	0	2
Environmental	2	0	0	3
Foreign Language	3	0	2	0
Guardian/Conservator	29	14	33	15
Immigration	41	25	70	0
Insurance	89	87	88	44
Labor Relations	464	395	488	291
Landlord/Tenant	215	161	182	107
Malpractice	271	212	276	137
Negligence	856	791	794	427
Public Interest	5	8	4	2
Real Estate	230	206	281	149
Social Security Insurance Cases	18	28	82	20
Tax	34	8	0	0
Traffic	24	8	4	10
Trust/Will/Estate	171	167	187	101
Workers' Compensation	<u>305</u>	<u>217</u>	<u>228</u>	<u>129</u>
Total	<u>5,573</u>	<u>4,585</u>	<u>4,982</u>	<u>2,728</u>

Source: Alaska Bar Association 2002 -2003 Annual Reports
and 2004 draft annual report. The 2005 information was provided by the Alaska Bar Association comptroller.

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ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

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Deputy Administrative Director

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December 20, 2005

Cristino F. Fermin, CPA
In-Charge Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Re: Preliminary Audit Response
Board of Governors of Alaska Bar Association

Dear Mr. Fermin:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced audit. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the three recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2014.

However, we take issue with the auditor's comments beginning on page 4. Those comments go beyond the scope of the audit by making conclusory observations about the merits of self-regulation by the Bar, and suggesting that attorney discipline in Alaska could be a government function. Specifically, it is suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objection in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1934). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two functions. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not adequate justification for this consolidation of government power.

If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the ultimate arbiter of guilt.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent

Cristino F. Fermin, CPA
December 20, 2005
Page 3

in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

C. S. Christensen III
Deputy Administrative Director

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December 16, 2005

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

Dear Ms. Davidson:

Thank you for the prompt and thorough audit and the opportunity to respond to your preliminary assessment of the Alaska Bar Association.

Let me first express the Board's appreciation for the auditor's work. Like any governing body, the Board relies on periodic review to insure that it performs its responsibilities. We are pleased that the audit found that the Board addresses public interest in an effective and economical manner through its licensing, complaint investigation and discipline process. The Board works very hard to maintain the highest level of professionalism in the Bar while remaining within our budget.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2014.

Because you have prepared this audit so promptly, no bill has been filed with the legislature. However, when that occurs, there will be no fiscal note attached, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 19 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees and interest income.

Response to Recommendation No. 1: The Alaska Bar Association is currently addressing the issue of a Mandatory CLE requirement.

At the May 2005 meeting of the Board of Governors, the Board voted to establish a Joint Task Force on MCLE. Members of the Task Force now include a justice from the Alaska Supreme Court, an Alaska Court System attorney, the Executive Director of the Alaska Judicial Council, four members of the Board of Governors, and a representative from the Bar's CLE Committee. The Task Force will report to the Board at its January 2006 meeting. There is sentiment on the Board in favor of MCLE. The Board will most likely publish a proposed MCLE rule in the March 2006 *Alaska Bar Rag*. Publication is the first step before a rule could be recommended to the Alaska Supreme Court for adoption. Only the Supreme Court could adopt a rule providing for MCLE.

The MCLE rule, as discussed by the Board, would provide that active Bar members complete 12 hours of CLE a year, including 1 hour of ethics.

The Board believes that its present CLE program is effective and has significant participation by Bar members, particularly for a non-mandatory state. More than half of our members attend Alaska Bar CLE programs and many others attend programs offered by other providers. Many more Bar members rent or purchase videotapes of Bar Association programs for self-study.

The implementation of MCLE will result in an increase in administration costs. A cost analysis of adding MCLE which was done in January 2005 showed that MCLE would have significant administrative and financial impact on the Bar Association - nearly \$180,000.

The Bar would be responsible for the administration of MCLE, which would include verification of the CLE credits of nearly 3,000 members, as well as the approval of courses presented by other CLE providers. MCLE would require at least one, and probably two, additional Bar staff. Even if the verification of CLE credits by attorneys is done on the honor system, with random audits (much like Alaska CPAs), the Bar would need to hire at least one additional staff person. This would be due to the time necessary to answer questions about course eligibility, conduct random audits, and deal with non-compliance, which would involve warning letters, extensions of time in which to comply, suspensions of Bar licenses for non-compliance, and reinstatements.

Also, the additional staff would be necessary to separate the two CLE functions of the Bar, being a CLE provider and a MCLE regulator. This separation is necessary to avoid the appearance of a conflict of interest, as noted in the

audit, and was recommended in the 1998 ALI-ABA study mentioned in the audit.

Moreover, the Bar would need to offer more CLE programs than the 30-40 live programs currently offered annually. In addition, programs must be offered to reach lawyers in small rural communities so that they are not unfairly penalized by travel expenses to meet a MCLE requirement.

Nevertheless, it is probable that the Board will approve a MCLE rule and recommend its adoption to the Alaska Supreme Court.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information.

The Bar's website has been continually evolving. The first priority has been to get basic information on-line, such as how to apply for admission to the Bar, information on CLE seminars, lists of committees and Sections, and basic discipline information.

The Bar has managed its website without a full-time webmaster. Currently, the CLE Coordinator has primary responsibility for updating and posting information to the website. More complicated matters are contracted out to a private company.

Because of the lack of a full-time staff person who can devote time to the development of the website content, and the expense of contract programming, adding information to the website has largely been a matter of resources and priorities.

The Board agrees that having public discipline information available on our website is a desirable goal and we will work to that end.

Response to Recommendation No. 3. We agree that the Annual Report should be published in a timely manner, and we will modify the Standing Policies of the Board of Governors to reflect this.

The Board of Governors will take steps to amend the Standing Policies of the Board of Governors to set a deadline for the submission of the Annual Report.

The staff got behind on annual reports due to turnover in the position of Executive Assistant. This Assistant not only contributed to the completion of the annual report, but when there were vacancies in this position, the Executive Director had to personally take over some of the responsibilities of this position, which detracted from other duties.

Another factor contributing to the lateness was the subsequent decision by staff to redesign the annual report and other forms to make them more readable and easier to update. The annual report redesign "got behind" the redesign of the bar dues notice, the committee solicitation form, the Section solicitation form, and the development of the application forms for special accommodations requests for the Bar Exam.

The 2004 Annual Report has been published, and the Bar is now up to date with annual reports and will be timely starting with the 2005 report. At the January Board of Governors meeting, there will be a proposed amendment to the Standing Policies of the Board of Governors to adopt a specific due date for the annual report.

Concluding Comments: Lawyer self-regulation has been effective in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

The Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 13¹, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13² generally indicated that they were considered creations of their supreme courts, but either not considered state government

¹ Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

² Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

agencies or state employees; and, 22³ indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its rule making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses. (\$190,753/month or \$763,011.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from \$1,144,518 - \$1,716,777.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature if an unexpected event occurs which would incur significant financial expense. Also, the Board needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar will be replacing its entire database in the next year, a project that will cost \$200,000 or more.

It has also been the policy of the Board to set Bar dues in an amount to accumulate a reserve, so that Bar dues do not have to be raised each year. The Board believes that the stability and predictability of bar dues over a long period of time is desirable. In the past twenty years, bar dues have only been raised twice: from \$310 to \$450 in 1994; and, from \$450 to \$550 in 2005.

³ California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Response to Legislative Audit
December 16, 2005
Page 6

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association

Jonathon A. Katcher
President

Westlaw.

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▽

ALASKA STATUTES

Title 8. Business and Professions.

Chapter 03. Termination, Continuation and Reestablishment of Regulatory Boards.

Sec. 08.03.010 Termination dates for regulatory boards.

- (a) [Repealed, § 4 ch 14 SLA 1987.]
- (b) [Repealed, § 4 ch 14 SLA 1987.]
- (c) The following boards have the termination date provided by this subsection:
- (1) Board of Public Accountancy (AS 08.04.010) -- June 30, 2009;
 - (2) Board of Governors of the Alaska Bar Association (AS 08.08.040) -- June 30, 2007;
 - (3) State Board of Registration for Architects, Engineers, and Land Surveyors (AS 08.48.011) -- June 30, 2009;
 - (4) Board of Barbers and Hairdressers (AS 08.13.010) -- June 30, 2011;
 - (5) Board of Chiropractic Examiners (AS 08.20.010) -- June 30, 2014;
 - (6) Board of Social Work Examiners (AS 08.95.010) -- June 30, 2010;
 - (7) Board of Dental Examiners (AS 08.36.010) -- June 30, 2011;
 - (8) Board of Certified Direct-Entry Midwives (AS 08.65.010) -- June 30, 2007;
 - (9) Board of Dispensing Opticians (AS 08.71.010) -- June 30, 2004;
 - (10) Board of Marine Pilots (AS 08.62.010) -- June 30, 2007;
 - (11) Board of Marital and Family Therapy (AS 08.63.010) -- June 30, 2010;
 - (12) State Medical Board (AS 08.64.010) -- June 30, 2007;

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- (13) Board of Nursing (AS 08.68.010) -- June 30, 2011;
- (14) Board of Examiners in Optometry (AS 08.72.010) -- June 30, 2014;
- (15) Board of Pharmacy (AS 08.80.010) -- June 30, 2010;
- (16) State Physical Therapy and Occupational Therapy Board (AS 08.84.010) -- June 30, 2014;
- (17) Board of Professional Counselors (AS 08.29.010) -- June 30, 2010;
- (18) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010) -- June 30, 2010;
- (19) Real Estate Commission (AS 08.88.011) -- June 30, 2008;
- (20) Board of Certified Real Estate Appraisers (AS 08.87.010) -- June 30, 2010;
- (21) Board of Veterinary Examiners (AS 08.98.010) -- June 30, 2009;
- (22) Big Game Commercial Services Board (AS 08.54.591) -- June 30, 2008.
- (d) [Repealed, § 3 ch 74 SLA 1979.]
- (e) [Repealed, § 3 ch 74 SLA 1979.]

(§ 2 ch 149 SLA 1977; am §§ 1, 3 ch 74 SLA 1979; am §§ 1, 3 ch 36 SLA 1980; am §§ 1, 3 ch 37 SLA 1980; am §§ 1, 3 ch 38 SLA 1980; am §§ 1, 3 ch 39 SLA 1980; am §§ 1, 3 ch 40 SLA 1980; am §§ 1, 3 ch 41 SLA 1980; am §§ 1, 3 ch 42 SLA 1980; am §§ 1, 2 ch 43 SLA 1980; am §§ 1, 3 ch 67 SLA 1980; am §§ 10, 11 ch 71 SLA 1980; am §§ 6, 7 ch 72 SLA 1980; am §§ 2, 15 ch 82 SLA 1980; am §§ 1, 3 ch 87 SLA 1980; am §§ 7, 8 ch 143 SLA 1980; am §§ 1, 2 ch 153 SLA 1980; am §§ 2, 5 ch 159 SLA 1980; am §§ 41, 42 ch 167 SLA 1980; am §§ 1, 13 ch 52 SLA 1981; am §§ 1, 2 ch 53 SLA 1981; am § 1 ch 28 SLA 1982; am § 1 ch 60 SLA 1982; am § 1 ch 96 SLA 1982; am § 1 ch 8 SLA 1983; am § 1 ch 9 SLA 1983; am § 1 ch 13 SLA 1983; am § 1 ch 29 SLA 1983; am § 2 ch 48 SLA 1983; am §§ 12, 13 ch 6 SLA 1984; am § 1 ch 29 SLA 1984; am § 1 ch 49 SLA 1984; am § 1 ch 50 SLA 1984; am § 1 ch 63 SLA 1984; am § 1 ch 4 SLA 1985; am § 1 ch 28 SLA 1985; am § 1 ch 85 SLA 1985; am § 1 ch 36 SLA 1986; am § 1 ch 39 SLA 1986; am § 1 ch 46 SLA 1986; am § 2 ch 71 SLA 1986; am § 1 ch 96 SLA 1986; am § 1 ch 99 SLA 1986; am § 1 ch 137 SLA 1986; am § 1 ch 145 SLA 1986; am § 1 ch 146 SLA 1986; am § 4 ch 14 SLA 1987; am § 1 ch 55 SLA 1987; am § 1 ch 60 SLA 1987; am § 4 ch 74 SLA 1987; am § 1 ch 79 SLA 1987; am § 2 ch 87 SLA 1987; am § 48 ch 94 SLA 1987; am § 3 ch 2 FSSLA 1987; am § 1 ch 50 SLA 1988; am § 1 ch 51 SLA 1988; am § 1 ch

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57 SLA 1988; am § 1 ch 61 SLA 1988; am § 1 ch 62 SLA 1988; am § 3 ch 98 SLA 1988; am § 1 ch 124 SLA 1988; am § 5 ch 126 SI A 1988; am § 2 ch 132 SLA 1988; am § 1 ch 160 SLA 1988; am § 1 ch 20 SLA 1989; am § 2 ch 37 SLA 1989; am § 2 ch 40 SLA 1989; am § 1 ch 45 SLA 1989; am § 1 ch 48 SLA 1989; am § 1 ch 2 SLA 1990; am § 1 ch 3 SLA 1990; am § 1 ch 25 SLA 1990; am § 3 ch 177 SLA 1990; am § 1 ch 62 SLA 1991; am § 2 ch 89 SLA 1991; am § 1 ch 19 SLA 1992; am § 1 ch 20 SLA 1992; am § 1 ch 21 SLA 1992; am § 1 ch 22 SLA 1992; am § 1 ch 23 SLA 1992; am §§ 4, 5 ch 129 SLA 1992; am § 3 ch 130 SLA 1992; am § 21 ch 6 SLA 1993; am § 1 ch 20 SLA 1993; am § 1 ch 21 SLA 1993; am § 1 ch 22 SLA 1993; am § 1 ch 23 SLA 1993; am § 1 ch 24 SLA 1993; am § 1 ch 25 SLA 1993; am § 1 ch 23 SLA 1994; am § 1 ch 25 SLA 1994; am § 1 ch 27 SLA 1994; am § 1 ch 48 SLA 1994; am § 1 ch 88 SLA 1994; am § 1 ch 93 SLA 1994; am § 1 ch 95 SLA 1994; am § 1 ch 97 SLA 1994; am § 37 ch 101 SLA 1994; am § 1 ch 74 SLA 1995; am § 12 ch 91 SLA 1995; am §§ 1, 3 -- 7 ch 93 SLA 1995; am § 16 ch 33 SLA 1996, am § 1 ch 92 SLA 1996; am § 1 ch 93 SLA 1996; am § 1 ch 94 SLA 1996; am § 1 ch 34 SLA 1997; am § 1 ch 36 SLA 1997; am § 1 ch 47 SLA 1997; am § 1 ch 66 SLA 1997; am § 1 ch 5 SLA 1998; am § 1 ch 13 SLA 1998; am § 1 ch 46 SLA 1998; am § 1 ch 52 SLA 1998; am § 4 ch 75 SLA 1998; am § 4 ch 118 SLA 1998; am § 1 ch 1 SLA 1999; am § 1 ch 9 SLA 1999; am § 1 ch 52 SLA 1999; am § 1 ch 2 SLA 2001; am § 1 ch 5 SLA 2001; am § 1 ch 7 SLA 2001; am § 1 ch 24 SLA 2001; am § 1 ch 46 SLA 2001; am § 1 ch 47 SLA 2001; am § 1 ch 12 SLA 2002; am § 1 ch 16 SLA 2002; am § 1 ch 39 SLA 2002; am § 2 ch 58 SLA 2002; am § 1 ch 101 SLA 2002; am § 1 ch 2 SLA 2003; am § 1 ch 10 SLA 2003; am § 1 ch 16 SLA 2003; am § 1 ch 20 SLA 2003; am § 1 ch 106 SLA 2004; am § 1 ch 10 SLA 2005; am § 1 ch 11 SLA 2005; am §§ 1 -- 6 ch 36 SLA 2005; am § 1 ch 38 SLA 2005; am § 1 ch 47 SLA 2005; am § 1 ch 58 SLA 2005; am § 2 ch 84 SLA 2005; am § 1 ch 22 SLA 2006; am § 1 ch 23 SLA 2006; am § 1 ch 24 SLA 2006; am § 1 ch 101 SLA 2006)

HISTORICAL NOTES

Revisor's notes. -- Subsection (c) reorganized in 1991 to place the paragraphs in alphabetical order by occupation. Former paragraphs (c)(6) and (14) each enacted as (c)(23). Renumbered in 1992 to maintain the alphabetical organization, at which time the existing paragraphs were renumbered accordingly. Reorganized again in 1996 to reflect the repeal of former paragraph (c)(5) and to maintain alphabetical organization. Paragraph (c)(17) was enacted as (c)(21). Renumbered in 1998, at which time former (c)(17)-(20) were renumbered as (c)(18)-(21), respectively.

REFERENCES

Cross references. -- For termination dates of other boards, councils, or commissions, see AS 44.66.010(a); for transitional provisions relating to the 1998 enactment of paragraph (c)(17), see § 7, ch. 75, SLA 1998 in 1998 Temporary and Special Acts.

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HISTORICAL NOTES

Effect of amendment. -- The 1994 amendments substituted "1998" for "1993" in paragraph (c)(2), "1997" for "1993" in paragraphs (c)(4), (c)(10), and (c)(24), "1994" for "1993" in former paragraph (c)(5), "1998" for "1994" in paragraphs (c)(6) and (c)(7), and "1999" for "1993" in paragraph (c)(20), and repealed former paragraph (c)(15), relating to the Board of Mechanical Examiners.

The 1995 amendments substituted "1999" for "1994" in paragraph (c)(13), "2005" for "1995" in paragraphs (9), (14), and (22), "1999" for "1994" in paragraph (13), "2003" for "1995" in paragraphs (16) and (17), and "2004" for "1995" in paragraph (23), and repealed former paragraph (c)(18), relating to the Board of Nursing Home Administrators.

The first 1996 amendment, effective May 23, 1996, repealed former paragraph (c)(5).

The second 1996 amendment, effective June 21, 1996, substituted "June 30, 2002" for "June 30, 1996" in paragraph (c)(9).

The third 1996 amendment, effective June 21, 1996, substituted "June 30, 2002" for "June 30, 1996" in paragraph (c)(5).

The fourth 1996 amendment, effective June 21, 1996, substituted "2002" for "1996" in paragraph (c)(14).

The first 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(4).

The second 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(3).

The third 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(16).

The fourth 1997 amendment, effective July 1, 1997, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(1).

The first 1998 amendment, effective March 21, 1998, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(21).

The second 1998 amendment, effective April 17, 1998, substituted "June 30, 2001" for "June 30, 1997" in paragraph (c)(7).

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The third 1998 amendment, effective August 20, 1998, substituted "June 30, 2004" for "June 30, 1998" in paragraph (c)(20).

The fourth 1998 amendment, effective August 27, 1998, substituted "June 30, 2002" for "June 30, 1998" in paragraph (c)(2).

The fifth 1998 amendment, effective June 5, 1998, added paragraph (17) of subsection (c) and redesignated the subsequent paragraphs accordingly.

The sixth 1998 amendment, effective January 1, 1999, deleted "Clinical" preceding "Social Work" in paragraph (c)(6).

The first 1999 amendment, effective June 16, 1999, substituted "2003" for "1999" in paragraph (c)(10).

The second 1999 amendment effective, April 24, 1999, substituted "2003" for "1998" in paragraph (c)(8).

The third 1999 amendment, effective June 4, 1999, substituted "2005" for "1999" in paragraph (c)(15).

The 2001 amendments, in subsection (c) substituted "2005" for "2001" in paragraphs (1), (3), (4), (7), and (21), and "2006" for "2001" in paragraph (16).

The first 2002 amendment, effective July 24, 2002, extended the termination date of the Board of Professional Counselors from June 30, 2002 to June 30, 2005.

The second 2002 amendment, effective August 1, 2002, extended the termination date of the Board of Examiners in Optometry from June 30, 2002 to June 30, 2006.

The third 2002 amendment, effective September 4, 2002, extended the termination date of the Board of Chiropractic Examiners from June 30, 2002 to June 30, 2006.

The fourth 2002 amendment, effective June 20, 2002, extended the termination date of the Board of Dispensing Opticians from June 30, 2002 to June 30, 2004.

The fifth 2002 amendment, effective September 26, 2002, extended the termination date of the Board of Governors of the Alaska Bar Association from June 30, 2002 to June 30, 2006.

The first 2003 amendment, effective March 28, 2003, extended the termination date of the Board of Nursing from June 30, 2003 to June 30, 2011.

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The second 2003 amendment, effective April 17, 2003, extended the termination date of the Board of Marine Pilots from June 30, 2003 to June 30, 2007.

The third 2003 amendment, effective August 3, 2003, extended the termination date of the Board of Certified Direct-Entry Midwives from June 30, 2003 to June 30, 2007.

The fourth 2003 amendment, effective August 12, 2003, extended the termination date of the State Medical Board from June 30, 2003 to June 30, 2007.

The 2004 amendment, effective June 30, 2004, substituted "2008" for "2004" in paragraph (c)(19).

The first 2005 amendment, effective May 4, 2005, extended the termination date of the Board of Public Accountancy from June 30, 2005 to June 30, 2009.

The second 2005 amendment, effective June 3, 2005, extended the termination date of the Board of Barbers and Hairdressers from June 30, 2005 to June 30, 2011; extended the termination date of the Board of Social Work Examiners from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Pharmacy from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Professional Counselors from June 30, 2005 to June 30, 2010; extended the termination date of the Board of Psychologist and Psychological Associate Examiners from June 30, 2005 to June 30, 2010; and extended the termination date of the Board of Veterinary Examiners from June 30, 2005 to June 30, 2009.

The third 2005 amendment, effective June 25, 2005, extended the termination date of the Board of Marital and Family Therapy from June 30, 2005 to June 30, 2010.

The fourth 2005 amendment, effective July 1, 2005, extended the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors from June 30, 2005 to June 30, 2009.

The fifth 2005 amendment, effective August 1, 2005, extended the termination date of the Board of Certified Real Estate Appraisers from June 30, 2004 to June 30, 2010.

The sixth 2005 amendment, effective September 22, 2005, extended the termination date of the Board of Dental Examiners from June 30, 2005 to June 30, 2011.

The seventh 2005 amendment, effective December 5, 2005, added paragraph (c)(22).

The first 2006 amendment, effective May 5, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(5).

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The second 2006 amendment, effective May 7, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(16).

The third 2006 amendment, effective May 7, 2006, substituted "June 30, 2014" for "June 30, 2006" in paragraph (c)(14).

The fourth 2006 amendment, effective August 5, 2006, substituted "June 30, 2007" for "June 30, 2006" in paragraph (c)(2).

A. S. 08.03.010, **AK ST § 08.03.010**

Current through all 2006 Legislation, Annotations current through Opinions
Decided as of July 1, 2006.

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HB

25

REPRESENTATIVE PAUL SEATON

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ALASKA STATE LEGISLATURE

House District 35

HB 25

Sponsor Statement

House Bill 25 encourages recreational use of private lands by protecting landowners who allow free public access to their lands.

HB 25 stipulates that a private landowner does not owe to a person using his or her property for recreational purposes, (1) a duty to keep the land safe for use, (2) a duty to warn of unsafe conditions, or (3) a duty to curtail the use of their land for recreational purposes. A landowner receives no protection under the bill if they either charge for access or are guilty of intentional, reckless or grossly negligent conduct.

Current state law does not directly address recreational use of private lands. Alaska's Recreational Activities statute, AS.09.65.290, passed by the legislature in 2003, mainly addresses commercial operators. Some landowners are protected by Alaska's unimproved land statute, AS.09.65.200, but it is difficult to determine what lands qualify in more developed areas. Lands near any sort of structure, or that have been altered slightly from their natural state, such as a hayfield, may not be covered under that statute.

Parties interested in allowing public access of their lands are unable to assess their risks. The courts likewise have few means of interpreting legislative intent regarding the relationship between landowner and recreational land user. HB 25 eliminates these ambiguities by granting immunity for the recreational use of private lands in the same manner adopted by most other states.

HB 25 promotes recreation throughout Alaska by clarifying the rights and responsibilities of landowners, encouraging them to allow the public free recreational use of their lands.

FISCAL NOTE

STATE OF ALASKA
2007 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB025-DOA-RM-01-18-07
 () Publish Date: _____

Revision Date/Time (Note if correction): 1/17/2007 Dept. Affected: Administration
 Title An act relating to landowners' immunity RDU Risk Management
for allowing recreational activity Component Risk Management
 Sponsor Representative Seaton, Wilson
 Requester House Resources Component No. 71

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Risk Management is not affected by this legislation.

"Land" and "landowner" as specifically defined within this proposed legislation is limited to private not public ownership - therefore there is no application to state lands and agency operations covered by the Risk Management self insurance program.

Prepared by: J. Brad Thompson, Director Phone 465-5723
 Division Risk Management Date/Time 1/18/07 10:00 AM
 Approved by: Kevin Brooks, Deputy Commissioner Date 1/22/2007
 Agency Department of Administration

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

January 18, 2007

SUBJECT: Sectional summary (HB 25 (Work Order No. 25-LS0174A))

TO: Representative Paul Seaton
Attn: Katie Shows

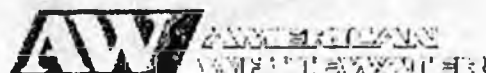
FROM: Dennis C. Bailey *DCB*
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. Since you have not asked particular questions about the bill, the summary is intentionally brief.

Section 1. Limits the duties owed by a landowner who allows recreational activity, without charge, on the landowner's land unless the landowner acts intentionally or recklessly, or is grossly negligent. Also, provides that recreational land use may not form the basis for a claim of adverse possession or similar claim.

If I may be of further assistance, please advise.

DCB:med
07-027.med



- Information
 - Join/Donate
 - Community
 - River Tools
 - Multimedia
 - AW Shopping
 - Search
-
- About AW
 - News
 - Stewardship
 - Safety
 - Events
 - Contact

Liability And Recreational Use Statutes

posted December 11, 2000 by Jason Robertson

American Whitewater has prepared this table with substantial help from the International Mountain Biking Association (IMBA) and the American Association for Horsemanship Safety (AAHS) as a tool for understanding the differences between state recreational use statutes on a national basis. This table is a valuable tool; however it is not the final word on liability law in America. Exercise your own good judgement when using the material and verify the status of your state statutes independently with an attorney before relying on this data.

What are Recreational Use Statutes and how do they work?

Clarification of terms used in this table.

Credits and Appreciation.

STATE	YEAR PASSED	DUTY TO DUTY		LIABILITY FOR MISCONDUCT PROTECTION		
		KEEP SAFE	TO WARN	ASSURANCE OF SAFETY	WILFUL/WANTON	LOST IF FEE CHARGED
Alabama						
Alabama Code §35-15-1	1965, 1981	No	No	No	Yes	No, if use of land is non-commercial
Alaska						
Alaska Stat. §09.65.200	1980	Not Specified	Not Specified	Not Specified	Yes	Yes
Arizona						
Arizona Rev. Stat. Ann. §33-1551	1983	Not Specified	Not Specified	Not Specified	Yes	Yes
Arkansas						
Arkansas Stat.	1965,	No	No	No	Yes	Yes, but fees

Des. Put land law

Y Y

Y Y

Ann. §18-11-301	1983, 1991					from land leased to public agency allowed
California						
California Govt. Code §2-2-3-2-846	1963, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Colorado						
Colorado Rev. Stat. §33-41-101	1963, 1970	Not Specified	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
Connecticut						
Connecticut Gen. Stat. §52-557(f)	1971, 1990	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Delaware						
Delaware Code Ann. §7-VI-5901	1953	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Florida						
Florida State. Ann. §XXVIII-375.251	1963	No	No	No	Yes	Yes
Georgia						
Georgia Code Ann. §51-3-20	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Hawaii						
Hawaii Rev. Stat. §3-28-520-1	1969	No	No	No	Yes	Yes, but fees from land leased to

						public agency allowed
Idaho						
<u>Idaho Code §36-16</u>	1976, 1988	No	No	No	Not Specified	Yes
Illinois						
<u>Illinois Ann. Stat. §745-65-1</u>	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Indiana						
<u>Indiana Code Ann. §14-22-10</u>	1969, 1995, 1998	No, for recreation trails; not specified for other locations.	Not Specified	No	Yes	Yes
Iowa						
<u>Iowa Code Ann. §XI-2-461(C)</u>	1967	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Kansas						
<u>Kansas Stat. Ann. §58-3201</u>	1965, 1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Kentucky						
<u>Kentucky Rev. Stat. Ann. §XXXVI-411-190</u>	1968, 2000	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Louisiana						
<u>Louisiana Rev. Stat. Ann. §9-III-V-2-2791 & 2795</u>	1964, 1989	No	No	No	Yes	Yes

Maine

Maine Rev. Stat. Ann. §14-1-7-159(A)	1979, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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Maryland

Maryland Nat. Res. Code Ann. §5-1101	1957, 1998	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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Massachusetts

Massachusetts Gen. Law Ann. §I-21-17(C)	1972	Not Specified	Not Specified	Not Specified	Yes	Yes, but voluntary payments are allowed
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Michigan

Michigan Comp. Laws Ann. §324.73301	1994	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
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Minnesota

Minnesota Stat. Ann. §604(A)20	1961, 1994	No	No	No	Yes	Yes but fees from land leased to public agency allowed
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Mississippi

Mississippi Code Ann. §89-2-1	1978, 1986	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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Missouri

Missouri §XXXVI-537.345	1983	No	No	No	Yes	Yes
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Montana

Montana Rev. Code Ann. §70-	1965, 1995	No	Not Specified	No	Yes	Yes
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16-301						
Nebraska						
Nebraska Rev. Stat. §37-730	1965, 1998	No	No	No	Yes	Yes, except can charge group rates & not lose immunity
Nevada						
Nevada Rev. Stat. §41.510	1963, 1995	No	No	No	Yes	Yes
New Hampshire						
New Hampshire Rev. Stat. Ann. §XVIII-212-34	1961, 1982	No	No	No	Yes	Yes, but may charge a fee for "U-Pick" crops & not lose immunity
New Jersey						
New Jersey Stat. Ann. §13-1(B)B-15-133	1968, 1984	No	No	No	Yes	Yes
New Mexico						
New Mexico Stat. Ann. §17-4-7; §66-3-1013; §16-3-9	1973	No	Not Specified	No	Yes	Yes, but fees from land leased to public agency allowed
New York						
New York Gen. Oblig. Law §9-103	1963	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
North Carolina						
North Carolina Gen. Stat. §113(A)-6-95	1987 Trails Act, 1993	Not Specified	Not Specified	Not Specified	Not Specified	Only applies to trails & not other uses of land
North Dakota						
North Dakota Cent. Code §53-	1965, 1993	No	No	No	Yes	Yes, but fees from land

08-1						leased to public agency allowed
Ohio						
Ohio Rev. Code Ann. §XV-33-18	1963, 1995	No	Not Specified	No	Not Specified	Yes
Oklahoma						
Oklahoma Stat. Ann. Title §76-10	1965, 1994	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Oregon						
Oregon Rev. Stat. §105.672	1971, 1995	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Pennsylvania						
Pennsylvania Stat. Ann. §68-11-477	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
Rhode Island						
Rhode Island Gen. Law §32-6-1	1978	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
South Carolina						
South Carolina Code Ann. §27-3-10	1962	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
South Dakota						
South Dakota Comp. Laws Ann. §20-9-11	1966, 1990	No	No	No	Yes	Yes, but nonmonetary gifts up to \$100 allowed

Tennessee

Tennessee Code Ann. §11-10- 101	1988	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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Texas

Texas Stat. & Codes §4- 75.001	1965, 1999	No	Not specified	No	Yes	No. Revenue from charges may not exceed 2x prop. taxes
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Utah

Utah Code Ann. §57-14-1	1971, 1997	No	No	No	Yes	Yes, but fees from land leased to public agency allowed
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Vermont

Vermont Stat. Ann. §10-020- 441 & §12-5791	1967, 1993	No	Not Specified	No	Yes	Yes
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Virginia

Virginia Code §29.1-509	1950	No	No	No	Yes	Yes, but may charge fees to maintain the land & not lose immunity
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Washington

Washington Rev. Code Ann. §4-24.200	1967, 1997	Not Specified	Not Specified	Not Specified	Yes	Yes, but may charge for cutting firewood & not lose immunity
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West Virginia

West Virginia Code §19-25-1 Also see West Virginia's Whitewater Responsibility	1965	No	No	No	Yes	Yes
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Act §20-3b-1 to 5						
Wisconsin						
Wisconsin Stat. Ann. §895.52	1963, 1995	No	No	No	Not Specified	No, so long as total revenues don't exceed \$2000 annually
Wyoming						
Wyoming Stat. Ann. §34-19-101	1965	No	No	No	Yes	Yes, but fees from land leased to public agency allowed

CLARIFICATION OF TERMS:

YEAR PASSED: When was the recreational use statute passed or modified?

DUTY TO KEEP SAFE: Does the owner owe a duty of care to keep their premises safe for entry and use by others for recreational purposes?

DUTY TO WARN: Does the owner owe any duty to warn visitors of hazardous conditions, structures, or activities on their property to persons entering for recreational purposes?

ASSURANCE OF SAFETY: Does the owner who gives permission to another for recreational activities on their property thereby extend any assurance that the premises are safe?

LIABILITY FOR MISCONDUCT WILFUL/WANTON: Does the statute limit the landowner's liability for wilful or malicious failure to guard or warn against known dangerous conditions, uses, structures, or activities?

PROTECTION LOST IF FEE CHARGED: Does the statute limit the landowner's liability for injuries suffered in any case where access permission is granted for commercial enterprise or profit? In other words, does the landowner lose their protection under the statute if they charge an access fee?

CREDITS:

American Whitewater collected the majority of this data via private research, correspondence, and assistance from the following sources:

Letters of Support –HB 25

Organizations

Alaska Trails
State Farm Insurance council, Lessmeier & Winters
Kachemak Heritage Land Trust
Alaska Outdoor Council (write-up in Outdoor Alaska publication)
Pratt Museum

Letters/Resolutions addressing HB 415*

Alaska State Chamber
National Rifle Association of America
Kenai Peninsula Borough (Resolution)
City of Homer (Resolution)
Coalition for Homer Open Space and Trails
Homer Soil and Water Conservation District

Individuals **HB 25**

Kathy S. Corp	Homer
Valarie Connor	Homer
Bill Smith	Homer
Elaine Martin	Wasillia
Mossy Kilcher	Homer
<u>Letters addressing HB 415*</u>	
James & Dianne Mahaffey	Anchorage
Kelley Griffin (Matsu Sled Dog Council)	Wasilla
Wayne Clark	Gustavus
Kathryn Kennedy	Ninilchik
Carol Grace (Snowmands Snowmachine Club)	Homer
Dave & Molly Brann (Kachemak Ski Club)	Homer

Additional letters from the following are available upon request from the sponsor:

Milli Martin	Homer
Lois Bettini	Homer
Kevin & Jeanne Walker	Homer
Roberta Highland	Homer
Al Poindexter	Homer
David Scheer	Homer
Lindsay Winkler	Homer
Wayne Watson	Homer
Heather Beggs	Homer
Bruce Hess	Homer
Tamara Schmidt	Homer
Barb Seaman	Homer
Kenneth Jones	Homer
Jeanne Parker	Homer

*Note: Identical legislation was introduced last session under bill number HB 415. These letters of support speak to HB 415 but address the same topic/bill as HB 25.

January 24, 2007

Representative Paul Seaton
Capitol Building, Room 102
Juneau, AK 99801

Dear Representative Seaton:

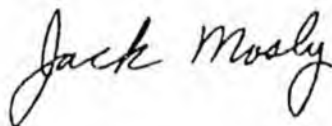
I would like you to know we continue to support your efforts to encourage recreational use of private lands by protecting landowners who allow free public access to their lands as we did last year with HB 415. We applaud your efforts in 2007 with House Bill 25, "An Act relating to landowners' immunity for allowing use of land for recreational activity..." We support your efforts to protect private property owners from lawsuits that could result from the informal recreational use of trails and property when no fees are collected by the landowner.

Liability from recreational activities has been a long-term concern by the private landowners within Alaska. Since Alaska Trails was formed in 2003, we have addressed trail issues statewide. We recognize the liability concern as the number one reason why private landowners are hesitant to grant public access across their lands. HB 25 addresses that concern and we support its passage. In addition, we believe that amending AS 34.17.055 so that easements granted "to the public" also receive liability immunity is an important step in preserving and protecting public trail access.

Thank you for your efforts to reduce this landowner concern and to increase recreational opportunities, especially trail access, across Alaska.

Please do not hesitate to contact us if we can provide additional support for HB25.

Sincerely,



Jack Mosby
Past President

LESSMEIER & WINTERS

LAWYERS - LLC

VINTAGE BUSINESS PARK
3000 VINTAGE BOULEVARD
SUITE 100
JUNEAU, ALASKA 99801

MICHAEL L. LESSMEIER
GREGORY W. LESSMEIER
SHELDON E. WINTERS

TELEPHONE: (907) 796-4999
FACSIMILE: (907) 796-4998
E-MAIL: l-w@gci.net

VIA HAND DELIVERY
Representative Paul Seaton
Alaska State Legislature
State Capitol, Room 102
Juneau, Alaska 99801-1182

January 22, 2007

Re: HB 25

Dear Representative Seaton:

I am pleased to voice State Farm's support for House Bill 25 relating to landowners' immunity for recreational activity. If there is any information we can provide, please let me know.

Sincerely,



Sheldon E. Winters
Lobbyist for State Farm



Kachemak Heritage Land Trust

315 Klondike Avenue • Juneau, AK 99603 • ph: 907-235-5263 • fax: 907-235-1503 • www.kachemaklandtrust.org

January 23, 2007

Representative Paul Seaton
Capitol Building, Room 102
Juneau, Alaska 99801

Dear Representative Seaton,

Thank you for taking the lead to sponsor and push House Bill 25 through the legislative process during this session. I write today to express strong support for the passage of this bill on behalf of the board of directors, staff and over 400 supporters of Kachemak Heritage Land Trust.

As you know, Kachemak Heritage Land Trust has worked on trails issues, and access for the public in general, for many years. Without a doubt, the potential for liability to private landowners allowing access to the public presents one of the few problems to creating viable trail networks for our community. Most landowners support trail development and use and would almost certainly allow the public to cross their lands if the liability in doing so were lessened.

The passage of House Bill 25 will make a significant difference in the development of a comprehensive network of public trails, enhancing recreational opportunities for both residents and visitors. This action will result in improved public health, increased economic vitality and a land-use planning tool that can be counted on as the Kenai Peninsula – and other rapidly-developing areas of Alaska -- develop more residential areas.

Thanks very much for your time and attention. We will make our membership aware of this upcoming bill and will ask that they contact you and Senator Stevens to express their support.

Sincerely,

Barbara Seaman
Executive Director

highway. With support from the AOC Representative Bill Stoltze and Senator Charlie Huggins sponsored legislation to create the **Knik River Public Use Area** after some people proposed banning ATVs and airboats from the area. The Department of Natural Resources will now initiate a public process to determine just how the area is regulated. Watch for more details here, or in AOC Email Alerts.

Rep. Stoltze introduced legislation that would **allow the Mat-Su Borough to take state land** from the Hatcher Pass Public Use Area. AOC opposed this legislation because the Mat-Su Borough has failed to allow reasonable access to public lands. AOC opposes giving the Borough more land until they allow public access to the public land they have now. After it became clear that the Borough had failed to gain support of Mat-Su residents in their quest to take lands out of the public use area, Rep. Stoltze withdrew his legislation, effectively killing the land transfer for another year.

Long-time AOC supporter Senator Ralph Seekins introduced SB 170 last year in an effort to combine an **increase in hunting and trapping fees with several changes to Fish and Game statutes (Title 16)**. AOC testified on the bill last summer when the Senate Resources Committee held hearings around the state. Senator Seekins brought the bill up again this year, with support from AOC, but ran out of time. AOC's proposed changes to the fish and game statutes were addressed in the Spring 2006 newsletter. AOC will continue to work with legislators during the next session to secure needed funding from license holders for active game management.

For some time now Senator Seekins has been trying to open up state land in the **Dalton Highway corridor** from the Yukon River north. Current law bans off-road vehicles from operation for 5-miles on either side of the road. Seekins sponsored SB 85, which would repeal the ban and start a planning process within DNR to implement rules for ORV use in the corridor. BLM has also begun preliminary plans for developing a comprehensive off-highway vehicle plan in partnership with the state. The bill passed the Senate but fell short in the House. AOC supported SB 85 just as we support most legislation to allow access to state land as long as regulations are in place to maintain the high quality of the wildlife habitat. We hope Senator Seekins will re-introduce this legislation to allow more Alaskans to enjoy the outdoors.

Over the past couple of years legislators have introduced various versions of a bill that would create a **wildlife viewing fee**. Again this year there were bills in both the House and Senate. Senator Con Bunde sponsored SB 166, which would require that anyone between 16 and 60 pay a \$5 fee to view Alaska's wildlife. The fee would be waived for anyone who already holds a hunting, trapping or fishing license. SB 166 died in the Senate Resources Committee. Look for some version of this idea to surface again next year.

Rep. Paul Seaton, of Homer, introduced HB 415, which would have held **landowners immune from liability** if they allowed access to their lands free of charge. There are cases where public recreational lands are separated by sections of private land. The private land holders don't oppose people crossing their land, but fear the potential for liability. Seaton tried to waive that liability if the land owners warn of any dangerous conditions. The bill passed the House, but never got a vote in the Senate. Chances are that a bill similar to HB 415 will be re-introduced next year.

Two management bills that didn't make it were HB 464 and HB 472. HB 464 was introduced by AOC member and outdoorsman Rep. Eric Croft and would have prohibited a hunter from taking the horns or antlers unless they **salvaged at least 50% of the meat** from the kill. The House Resources Committee held a couple of good hearings on this bill late in the session. Rather than supporting a reduction in the amount of meat currently required by law for salvage, which is essentially *all* the edible meat, AOC used the hearings to again advocate for stronger enforcement of game laws. HB 464 died in the House Judiciary Committee. HB 472 was introduced by our good friend Rep. Bill Stoltze and would have put the **Susitna Drainage Salmon Management Plan**, currently in policy, into statute. ADF&G opposed this legislation stating that they oppose putting regulations into statute because policy language is too specific to be appropriate for statutory language. AOC supported this bill because we believe that the present commercial fisheries interest domination of the Alaska Board of Fisheries has been detrimental to the sustainability of some salmon runs in the past. Unfortunately, the bill was referred to the House Special Committee on Fisheries where it met a quick death at the hands of legislators from commercial fishing districts.

AOC actively supported new members to the **Boards of Fisheries (BOF) and Game (BOG)**. Governor Murkowski appointed **Jeremiah Campbell** to the BOF, first to fill the remainder of an unexpired term, and then for a new 3-year term. Mr. Campbell has experience in both commercial and sport fishing, and we were impressed with his knowledge of, and concern for, in-river fisheries. Mr. Campbell's votes on the board regarding salmon returns to the Copper River and upper Susitna drainage showed his concern for sustainable salmon runs. AOC worked with Kenai River Sportfishing Association in supporting Mr. Campbell's confirmation. We are especially appreciative of the efforts of Cook Inlet Sportfishing Caucus member, Bob Penney, during this exercise.

AOC also supported the confirmation of long-time AOC supporter **Bonnie Williams** of Fairbanks to the BOF. Bonnie has served with distinction on the Fairbanks North Star Borough Assembly. Bonnie has been an avid personal use fisher for 55 years in Alaska and has a strong personal dedication to maintaining the integrity of Alaska's wildlife regulatory development process, which considers the opinions and experience of all individuals who use and enjoy fish and game. In her testimony during confirmation hearings before the Legislature, Bonnie affirmed her commitment to ensuring healthy, strong fisheries that sustain and meet the needs of subsistence, sport/personal use, and commercial fishing in Alaska.

AOC appreciated Governor Murkowski's reappointment of **Cliff Judkins** of Wasilla to a second term on the Board of Game. The Governor also added two new BOG members, **Dick Burley** of Fairbanks and **Paul Johnson** of Unalakleet. They were confirmed by the legislature with AOC's full support. Mr. Burley previously served on the Board of Game a few years back and did a very admirable job as chairman, maintaining a balanced and objective approach. His service was very beneficial to AOC's membership and we now look forward to another term for Mr. Burley on the BOG.

Members of the Boards of Fisheries Game have one of the toughest jobs in the state. AOC recognizes the personal commitment every one of these Alaskans makes when they accept an appointment. We thank them all. ■

Pratt Museum



January 22, 2007

Representative Paul Seaton
State Capitol, Room 102
Juneau, AK 99802

345 W. Sterling Highway
Suite 102B
Homer, AK 99603

Dear Representative Seaton,

The Pratt Museum enthusiastically supports House Bill 25, encouraging recreational use of private lands by protecting landowners who allow free public access to their lands. As a land owner of urban green space in Homer, the Pratt maintains a forest ecology trail with public access. We are also currently working with our neighbors, both public entities and private land owners, to develop trail connectivity in Homer. Legislation such as HB 25 will be particularly important in realizing greater community plans for trails in and around Homer.

The Pratt Museum is dedicated to the process of education by exploring the natural environment and human experience relative to the Kachemak Bay region of Alaska and its place in the world. The Museum seeks to inspire self-reflection and dialogue in its community and visitors through exhibitions, programs, and collections in the arts, sciences and humanities.

HB25 will help us assess our risks in allowing public access to our land as well as our risks in participating in a greater trail system for Homer bordering and impacting our property. As one of the few nonprofit organizations owning a sizeable amount of land in the city center, we are committed to preserving urban green space and providing public access and educational interpretation of that green space. Passage of HB25 would encourage us to continue this effort which allows public free recreational use of our land.

Thank you for all your hard work on HB25. Please let me know if the Pratt can be of further assistance in the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Beggs". The signature is fluid and cursive.

Heather Beggs
Museum Director



Katie Shows

From: Kathy Corp [kcorp@alaska.net]
Sent: Wednesday, January 24, 2007 9:19 AM
To: Katie Shows
Subject: HB 25, with address included

Good morning!

HB 25, limiting the liability of property owners for injuries sustained by recreational vehicle users, is a good thing.

I own close to half the lots in a subdivision which was originally my father's homestead. The land is easily accessible, and pretty good snowmachine riding. It is not at all uncommon to have uninvited snowmachine riders on the property.

As far as I'm concerned, these folks are welcome. They seem to be mostly teenagers, with occasional family groups. It is pleasant to see and hear them out there having good clean fun.

But I have to admit that the liability issue has always been a niggling worry. Thus far, I've always bit my lip a little, and assumed that the type of people engaging in active, outdoor recreation are not the type of people given to suing innocent property owners.

I would very much like to see HB 25 become law.

Thanks ...

Kathy S. Corp
40935 Ruth Way
Copper Center, AK. 99603
(907) 235-2335 (days)
(907) 235-0605 (home)