

12224

HOUSE L&C

**Real Estate Errors and Omissions Program
Mandatory State Programs
Maximum Annual Premium and Current Group Program Premium
December 6, 2007**

<u>State</u>	<u>Maximum Annual Premium</u>	<u>Group Premium as of 1/1/2008</u>
Colorado	Not Applicable	\$243
Idaho	\$200	\$165
Iowa	Not Applicable	\$150
Kentucky	\$200	\$140
Louisiana	\$500	\$184
Mississippi	\$250	\$205
Nebraska	\$500	\$135 (WUG)
New Mexico	\$200	\$200
North Dakota	"reasonable" as determined by Real Estate Commission	\$140
Rhode Island	Not Applicable	\$160 (2-year premium)
South Dakota	Not Applicable	\$130
Tennessee	"reasonable" as determined by Real Estate Commission	\$256 (2-year premium)
Wyoming	\$300	\$150



Idaho Statutes

TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES
CHAPTER 20

IDAHO REAL ESTATE LICENSE LAW

54-2013. ERRORS AND OMISSIONS INSURANCE. (1) Each licensee who is actively licensed under this chapter shall, as a condition to licensing, carry and maintain errors and omissions insurance to cover all licensed activities under the provisions of this chapter.

(2) The commission shall make the insurance required under the provisions of this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with chapter 57, title 67, Idaho Code. The exact premium shall be set by the commission by motion.

(3) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee.

(4) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(5) The commission shall determine the terms and conditions of coverage required under the provisions of this section including, but not limited to, the minimum limits of coverage, the permissible deductible and the permissible exemptions.

(6) A licensee seeking to obtain or renew an active license shall certify to the commission that he is in compliance with the insurance requirements of this section. A licensee who elects not to participate in the insurance program administered by the commission shall obtain a certificate of coverage, signed by an authorized agent or employee of the insurance carrier, reflecting proof of insurance meeting the requirements established by the commission. Upon request by the commission the licensee shall produce the certificate for inspection.

(7) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, not to exceed two hundred dollars (\$200) per year, per licensee, the requirement of insurance coverage as provided in this section shall be void during the applicable contract period.

(8) The commission is also specifically empowered to charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission contract, which fee shall not exceed ten dollars (\$10.00) per licensee. This administrative fee shall be of an amount sufficient to raise that revenue required to administer the provisions of this section. The limit in subsection (7) of this section applies only to premium cost and not to any administrative fee charged.

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Available Reference: [Search Instructions](#).

Louisiana

Added by Acts 1983, No. 381, §§ 1. Acts 1989, No. 655, §§ 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, §§ 1.

* **§§1466. Errors and omissions insurance; mandatory for all licensees**

A. All active licensees licensed in accordance with the provisions of this Chapter are mandated to carry errors and omissions insurance to cover all activities contemplated under this Chapter.

B. The commission shall make the insurance mandated under this Section available to all licensees by contracting with an insurance provider having a current rating in A.M. Best of A or better for a group policy after competitive, sealed bidding and awarding such contract pursuant to requirements established by the commission. Such issuance and award shall be exempt from the provisions of Chapters 16 and 17 of Title 39 of the Louisiana Revised Statutes of 1950.

C. Any policy obtained by the commission must be available to all licensees with no right on the part of the insurance provider to cancel any licensee.

D. Licensees shall have the option of obtaining errors and omissions insurance independently, provided that the coverage contained in such policy complies with the minimum requirements established by the commission.

E. The commission shall determine the terms and conditions of coverage mandated under this Section, including but not limited to the minimum limits of coverage, the permissible deductible, and permissible exemptions.

F. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least thirty days prior to the annual renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed with the commission by the annual license renewal date by each active licensee who opts not to participate in the group insurance program administered by the commission.

G. Active licensees applying for inactive status and those licensees renewing their license while in an inactive status may do so without the required coverage mandated by this Section.

H. Should the commission be unable to obtain errors and omissions insurance coverage to insure all licensees who chose to participate in the group insurance program at a reasonable cost, not to exceed five hundred dollars for coverage, the insurance requirement mandated by this Section shall be void during the applicable contract year.

Acts 1988, No. 849, §§ 1, eff. Jan. 1, 1990; Acts 1989, No. 655, §§ 1, eff. Jan. 1, 1990; Acts 1995, No. 1207, §§ 1; Acts 1997, No. 845, §§ 1; Acts 2001, No. 924, §§ 1.

§§1467. Agency

A. Licensees shall provide the parties to a real estate transaction with an agency disclosure informational pamphlet, and where applicable, a dual agency disclosure form as mandated under R.S. 9:3897.

B. The commission may prescribe such agency disclosure forms or pamphlets as it deems necessary for the enforcement of this Section.

Acts 1991, No. 354, §§ 1, eff. Jan. 1, 1992; Acts 1997, No. 32, §§ 1.

§§1468. Psychologically impacted property

A. The fact or suspicion that a property might be or is psychologically impacted, such impact being the result of facts or suspicions, including but not limited to:

(1) That an occupant of real property is, or was at any time suspected to be, infected, or has been infected with Human Immuno-deficiency Virus or diagnosed with Acquired Immune Deficiency Syndrome, or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through the occupancy of a dwelling place; or

(2) That the property was, or was at any time suspected to have been, the site of a homicide, or other felony, or a suicide; is not a material fact or material defect regarding the condition of real estate that must be disclosed in a real estate transaction.

B. No cause of action shall arise against an owner of real estate his or her agent for the failure to disclose to the transferee that the transferred property was psychologically impacted as defined in Subsection A.

Acts 1991, No. 336, §§ 1.

North Dakota

43-23-18. Injunctions authorized to enforce law. If any person or entity has engaged in any act or practice that constitutes or will constitute a violation of this chapter, the commission may commence an action in the district court of the county in which the person or entity resides or in the district court of the county in which the act or practice occurred for an injunction to enforce compliance with this chapter or rules adopted by the commission. The commission is not required to give any bond for commencing this action. Upon a showing that the person or entity has engaged in any act or practice in violation of this chapter or rules adopted by the commission, the district court may enjoin the act or practice and may make any order necessary to conserve, protect, and disburse any funds involved.

* **43-23-19. Errors and omissions insurance required of salespersons and brokers - Rules.** The real estate commission shall adopt rules pursuant to chapter 28-32 requiring as a condition of licensure that, effective January 1, 2002, and thereafter, all real estate salespersons and brokers, except those who hold inactive licenses, carry errors and omissions insurance covering all activities contemplated under this chapter.

43-23-20. Group insurance coverage authorized - Independent errors and omissions coverage. The real estate commission may negotiate by bid with an insurance provider for a group policy under which coverage is available to all licensees with no right on the part of the insurer to cancel coverage provided to any licensee, except as provided by rules adopted by the commission. A licensee may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

43-23-21. Commission to determine conditions of errors and omissions coverage. The real estate commission shall determine the terms and conditions of errors and omissions coverage required by this chapter, including the minimum limits of coverage, the permissible deductible, and the permissible exceptions.

43-23-22. Notice of terms and conditions of errors and omissions - Certificate of coverage. Each licensee must be notified of the required terms and conditions of coverage at least thirty days before the annual license renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, must be filed annually with the real estate commission by each licensee who elects not to participate in the group insurance program administered by the real estate commission.

43-23-23. Errors and omissions coverage not required if premium limit unobtainable. If the real estate commission is unable to obtain errors and omissions insurance coverage at a reasonable premium, the errors and omissions insurance requirement of this section does not apply during the year for which coverage cannot be obtained.

Wyoming

(g) A broker may be compensated by more than one (1) party for services in a transaction, if those parties have consented in writing to the shared payment prior to seller and buyer entering into a contract to buy or sell.

(h) An agreement authorizing a broker who originally agreed in writing to act as an agent to a buyer or seller with respect to a particular real estate transaction to act instead as an intermediary to that party, shall provide that the party agreeing to the new relationship shall not be liable for any commission greater than the commission the party would have been liable to pay under the initial agreement. Any contract provision in violation of this subsection is void and unenforceable.

33-28-309. Disclosure type.

Any disclosure under W.S. 33-28-306 shall be in a font size of 12 point or greater.



ARTICLE 4 - ERRORS AND OMISSIONS INSURANCE

33-28-401. Errors and omissions insurance; rulemaking authority; commission duties; certificate of coverage; administrative fee.

(a) Beginning January 1, 2008, an applicant for a real estate license pursuant to W.S. 33-28-106, a licensee renewing a license or an inactive licensee activating a license pursuant to W.S. 33-28-118, shall submit proof of insurance coverage through the group plan provided pursuant to this section or through certification of optional coverage.

(b) The commission shall make errors and omissions insurance available to all licensees by contracting with an insurer for a group policy after competitive bidding. Any group policy obtained by the commission shall be available to all licensees and shall prevent the insurer from canceling any licensee. Licensees may obtain errors and omissions insurance independently if the coverage complies with the minimum requirements established by the commission.

(c) The commission shall promulgate rules and regulations necessary to specify the terms and conditions of coverage required under this section, including the minimum limits and terms of the coverage, the permissible deductible and permissible exemptions. Each licensee shall be notified of the required terms and conditions at least thirty (30) days prior to the license renewal date. Each licensee who elects not to participate in the group program administered by the commission shall file a certificate of coverage showing compliance with the required terms and conditions with the commission by the license renewal date.

(d) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who elect to participate in the group program, at a reasonable annual premium not to exceed three hundred dollars (\$300.00) per licensee, the errors and omissions insurance requirement of this section shall not apply during the year for which the commission cannot obtain the errors and omissions insurance coverage. The maximum premium amount shall be adjusted annually by the annual rate of inflation in this state for the preceding twelve (12) month period as calculated by the department of administration and information.

(e) The commission shall charge and collect an administrative fee in addition to the premium paid from each licensee who obtains errors and omissions insurance through the commission. This administrative fee shall be of an amount sufficient to cover the administration of this section and shall not exceed ten percent (10%) of the premium. The maximum premium specified in subsection (d) of this section applies only to premium cost and not to any administrative fee charged.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

Prior Finding

Alaska Statutes regulate the dollar amount of limits that can be made on Real Estate Surety Fund (RESF) claims, the notification process of claim awards, and the nature of the claim that can be filed. Specifically, the previous recommendation included these findings:

1. When RESF was originally established by statute in 1974, the individual claim limit was set at \$10,000 and the aggregate claim limit was restricted at \$50,000. At the time of the last audit, in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. Also, Alaska's claim and aggregate fund limits for the surety fund were low compared to other states, where the average individual claim limit was just over \$21,000 and the average aggregate limit was just under \$70,000. As a result, the recommendation suggested increasing RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.
2. Claims against RESF are administered under the state's Administrative Procedures Act (APA). Under APA, a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until an appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Professional, and Business Licensing (division) was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the Real Estate Commission (REC or commission) to disburse RESF claim awards after they have made a good faith effort to locate the respondent.
3. State law specifies that RESF can be used to reimburse an individual for a loss "*suffered in a real estate transaction as a result of fraud, misrepresentation, deceit.*" During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since mobile homes are considered personal property, rather than real property, the sale does not represent a "*real estate transaction.*" The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees. Despite the hearing officer

rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendation suggested amending statutes to specify mobile home transactions as subject to RESF claims.

Legislative Audit's Current Status

The current status of the recommendation is as follows:

1. This issue is partially resolved. The legislature increased the individual claim limits to \$15,000; however, the prior aggregate claim limit of \$50,000 remains unchanged. During our current review period, the \$15,000 individual limit did not hinder awards to claimants from the fund. Conversely, the \$50,000 aggregate limit restricted at least one award provided to claimants. In this instance, the hearing officer awarded \$10,850 more than the \$50,000 aggregate limit. REC could not disburse the entire award due to the statutory limit.
2. This issue is resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.
3. This issue is not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify any RESF claims for mobile home transactions.

Based on the current status of these issues, we recommend the legislature reconsider making some increase to RESF aggregate claim limits, as well as making mobile home transactions eligible under RESF claims.

Recommendation No. 2

The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

During 2007, a board member was appointed to the commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the commission. This board member was an associate broker for less than two years prior to his appointment.

Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the commission. This appointment could result in commission decisions not being supported by adequate professional experience. We recommend the director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

CS FOR HOUSE BILL NO. 357(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act requiring errors and omissions insurance for real estate licensees; renaming the**
 2 **real estate surety fund as the real estate recovery fund and relating to that fund, and**
 3 **redefining the procedures and criteria used by the Real Estate Commission to make an**
 4 **award from the fund to a person suffering a loss caused by certain misconduct of real**
 5 **estate licensees; requiring a real estate licensee to maintain an office in the state; and**
 6 **providing for an effective date."**

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

8 *** Section 1. AS 08.88.071(a) is amended to read:**

9 (a) The commission shall

10 (1) determine whether applicants meet requirements for licenses under
11 this chapter and issue licenses to those who qualify;

12 (2) prepare and grade examinations;

13 (3) after hearing, have the authority to suspend or revoke the license of

1 a licensee or impose other disciplinary sanctions authorized under AS 08.01.075 on a
2 licensee who

3 (A) with respect to a real estate transaction

4 (i) made a substantial misrepresentation;

5 (ii) made a false promise likely to influence, persuade,
6 or induce;

7 (iii) in the case of a real estate broker, pursued a
8 flagrant course of misrepresentation or made a false promise through
9 another real estate licensee;

10 (iv) has engaged in conduct that is fraudulent or
11 dishonest;

12 (v) violates AS 08.88.391;

13 (vi) violates AS 08.88.396;

14 (B) procures a license by deceiving the commission, or aids
15 another to do so;

16 (C) has engaged in conduct of which the commission did not
17 have knowledge at the time the licensee was licensed demonstrating the
18 licensee's unfitness to engage in the business for which the licensee is licensed;

19 (D) knowingly authorizes, directs, connives at or aids in
20 publishing, distributing, or circulating a material false statement or
21 misrepresentation concerning the licensee's business or concerning real estate
22 offered for sale, rent, or lease, or managed in the course of the licensee's
23 business in this or any other state or concerning the management of an
24 association in the course of a licensee's business in this or another state;

25 (E) if a real estate broker, wilfully violates AS 08.88.171(d) or
26 08.88.291;

27 (F) if an associate real estate broker, claims to be a real estate
28 broker, or, if a real estate salesperson, claims to be a real estate broker or
29 associate real estate broker;

30 (G) if a real estate broker, employs an unlicensed person to
31 perform activities for which a real estate license is required;

1 (H) if an employed real estate licensee of a real estate broker,
2 fails immediately to turn money or other property collected in a real estate
3 transaction over to the employing real estate broker; or

4 **(I) fails to carry and maintain errors and omissions**
5 **insurance with terms and conditions established by the commission under**
6 **AS 08.88.172:**

7 (4) prosecute, through the Department of Law, violations of the
8 provisions of this chapter or lawful regulations adopted under this chapter;

9 (5) release for publication in a newspaper of general circulation in the
10 locale of the offending person's principal office registered with the commission notice
11 of disciplinary action taken by the commission against a person licensed under this
12 chapter;

13 (6) issue a temporary permit to the personal representative of the estate
14 of a deceased real estate broker or to another person designated by the commission
15 with the approval of the personal representative of the estate in order to secure proper
16 administration in concluding the affairs of the decedent broker's real estate business;

17 (7) issue a temporary permit to the personal representative of a legally
18 incompetent real estate broker or to another person designated by the commission with
19 the approval of the personal representative of the broker in order to secure proper
20 administration in temporarily managing the real estate business of the broker;

21 (8) establish and periodically revise the form of the seller's property
22 disclosure statement required by AS 34.70.010;

23 (9) have the authority to levy civil fines as established in this chapter;

24 (10) revoke the license of a broker or associate broker who is
25 convicted of a felony or other crime committed while licensed under this chapter that,
26 in the judgment of the commission, affects the ability of that person to practice as a
27 broker or associate broker competently and safely or who is convicted of forgery,
28 theft, extortion, conspiracy to defraud creditors, or fraud; notwithstanding
29 AS 08.88.171, a person whose license is revoked under this paragraph is not qualified
30 for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the
31 person completed the sentence imposed for the conviction.

1 * Sec. 2. AS 08.88.071(b) is amended to read:

2 (b) When an award is made from the real estate recovery [SURETY] fund
3 under this chapter, the commission may suspend the license of the real estate licensee
4 whose actions formed the basis of the award. A suspension ordered under this
5 subsection shall be lifted if the licensee reaches an agreement with the commission on
6 terms and conditions for the repayment to the real estate recovery [SURETY] fund of
7 the money awarded to the claimant [AND THE COSTS OF HEARING THE CLAIM
8 UNDER AS 08.88.465] and if the licensee satisfies the requirements of AS 08.88.095.
9 The suspension shall be reimposed if the licensee violates the terms of a repayment
10 agreement entered into under this subsection.

11 * Sec. 3. AS 08.88.171(b) is amended to read:

12 (b) A natural person qualifies for an associate real estate broker license if the
13 person passes the brokers examination, applies for the license within six months after
14 passing the examination, submits satisfactory proof of successful completion of the
15 education requirements of AS 08.88.091, has had at least 24 months of active and
16 continuous experience as a real estate licensee within the 36 months immediately
17 preceding application for the license, furnishes satisfactory proof that errors and
18 omissions insurance required under AS 08.88.172 has been obtained, is not under
19 indictment for or seven years have elapsed since the person has completed a sentence
20 imposed upon conviction of a felony or other crime that, in the judgment of the
21 commission, affects the person's ability to practice as an associate real estate broker
22 competently and safely or upon conviction of forgery, theft, extortion, conspiracy to
23 defraud creditors, or fraud, and is employed by a licensed real estate broker as an
24 associate real estate broker. Unless the associate broker fails to satisfy the educational
25 requirements of AS 08.88.095 or renew the license, or the associate broker's license is
26 suspended or revoked, the associate broker's license continues in effect as long as the
27 associate broker is employed by a licensed real estate broker as an associate broker. If
28 the associate broker stops being employed by a licensed real estate broker, the
29 associate broker's license is suspended from the time the associate broker stops until
30 the associate broker satisfies the educational requirements of AS 08.88.098 and

31 (1) again is employed by a real estate broker as an associate broker; or

1 (2) becomes an owner of a real estate business or is employed as a real
2 estate broker by a foreign or domestic corporation, partnership, limited partnership, or
3 limited liability company, in which case the associate broker's license shall be returned
4 to the commission by the associate broker, and the commission shall issue the licensee
5 a broker's license.

6 * Sec. 4. AS 08.88.171(c) is amended to read:

7 (c) A natural person qualifies for a real estate salesperson license if the person
8 passes the real estate salesperson examination, applies for the license within six
9 months after passing the examination, submits satisfactory proof of successful
10 completion of the education requirements of AS 08.88.091, is at least 19 years of age,
11 furnishes satisfactory proof that errors and omissions insurance required under
12 AS 08.88.172 has been obtained, is not under indictment for a felony or other crime
13 that, in the judgment of the commission, affects the individual's ability to practice as a
14 real estate salesperson competently and safely or under indictment for forgery, theft,
15 extortion, conspiracy to defraud creditors, or fraud, or, if convicted of such an offense,
16 seven years have elapsed since the person completed the sentence imposed upon
17 conviction. Unless the salesperson fails to satisfy the educational requirements of
18 AS 08.88.095 or renew the license, or the real estate salesperson's license is suspended
19 or revoked, a real estate salesperson's license continues in effect.

20 * Sec. 5. AS 08.88 is amended by adding a new section to read:

21 **Sec. 08.88.172. Errors and omissions insurance.** (a) A person licensed as a
22 real estate broker, associate real estate broker, or real estate salesperson shall, as a
23 condition of licensing, carry and maintain errors and omissions insurance to cover all
24 activities for which licensing is required under AS 08.88.161.

25 (b) The department shall establish by regulation the terms and conditions of
26 the errors and omissions insurance required by this section, including

27 (1) coverage requirements;

28 (2) limits of coverage;

29 (3) deductible amounts;

30 (4) limitations on cancellation terms;

31 (5) the maximum amount that the department may charge for the

1 insurance; and

2 (6) the method for adjusting these amounts based on the Consumer
3 Price Index for all urban consumers for the Anchorage metropolitan area compiled by
4 the Bureau of Labor Statistics, United States Department of Labor.

5 (c) A licensee may obtain the errors and omissions insurance required by (a)
6 of this section by

7 (1) an insurance policy that may be made available to licensees by the
8 department or

9 (2) independently obtaining errors and omissions insurance that
10 complies with the requirements established under (b) of this section.

11 (d) The department shall obtain an errors and omissions insurance policy for
12 licensees that meets the minimum terms and conditions established under (b) of this
13 section using a competitive sealed bid process under AS 36.30 (State Procurement
14 Code). The department may charge a licensee a reasonable administration fee and a
15 premium for coverage.

16 (e) If the department is unable to obtain an errors and omissions insurance
17 policy to insure licensees, the requirement that a real estate licensee carry and
18 maintain errors and omissions insurance under AS 08.88.172 is void during the period
19 that the department is unable to obtain the insurance.

20 (f) A licensee seeking to obtain or renew a license shall certify to the
21 commission that errors and omissions insurance has been obtained. A licensee who
22 elects to independently obtain errors and omissions insurance shall provide a
23 certificate of coverage with the application to obtain or renew a license.

24 * Sec. 6. AS 08.88.173(b) is amended to read:

25 (b) If a loss covered by the fidelity bond required under this section is also
26 reimbursable from the real estate recovery [SURETY] fund, the owners' association
27 that suffered the loss may not recover under the bond until the association has
28 obtained a final judgment, final arbitration award, or a settlement agreement
29 and filed a claim for an award [REIMBURSEMENT] under AS 08.88.460 [AND
30 PROCEEDINGS RELATING TO THE CLAIM ARE CONCLUDED].

31 * Sec. 7. AS 08.88.281 is amended to read:

1 **Sec. 08.88.281. Real estate recovery [SURETY] fund.** Before issuing a
2 license to an applicant under this chapter, the commission shall ensure that the
3 applicant has complied with the provisions of AS 08.88.455 and is covered by the real
4 estate recovery [SURETY] fund established in AS 08.88.450.

5 * **Sec. 8.** AS 08.88.291(a) is amended to read:

6 (a) A person licensed as a real estate broker shall, by registering with the
7 commission, inform the commission of the person's principal office and of any branch
8 offices of the person's real estate business and include in the information the names of
9 the real estate licensees who are employed at each office. A real estate licensee may
10 do real estate business only through a principal office or from a branch office
11 registered by the broker by whom the licensee is employed. Failure of a real estate
12 broker to maintain a place of business in the state or to inform the commission of its
13 location and the names and addresses of all real estate licensees employed at each
14 location by the broker is grounds for the suspension or revocation of the broker's
15 license.

16 * **Sec. 9.** AS 08.88.291(d) is amended to read:

17 (d) The commission shall mail all notices pertaining to a license or recovery
18 [SURETY] fund action taken under this chapter or a regulation adopted under this
19 chapter to the current address or addresses of a licensee obtained under this section.
20 Proof of notice provided under this subsection satisfies due process notice
21 requirements.

22 * **Sec. 10.** AS 08.88.391(b) is amended to read:

23 (b) The failure of a licensee to disclose a conflict of interest as required under
24 this section does not give rise to a cause of action by a private person. However, the
25 commission may, under AS 08.88.071, impose a disciplinary sanction for violation of
26 this section [~~, AND A CLAIM MAY BE FILED BY A PRIVATE PERSON UNDER~~
27 AS 08.88.460 IF THE VIOLATION CONSTITUTED FRAUD,
28 MISREPRESENTATION, OR DECEIT AND THE PERSON SUFFERED A LOSS
29 AS A RESULT OF THE VIOLATION].

30 * **Sec. 11.** AS 08.88.450 is amended to read:

31 **Sec. 08.88.450. Real estate recovery [SURETY] fund.** (a) The real estate

1 recovery [SURETY] fund is established in the general fund to carry out the purposes
2 of AS 08.88.450 - 08.88.495. The fund is composed of payments made by real estate
3 licensees under AS 08.88.455, filing fees retained under AS 08.88.460, income earned
4 on investment of the money in the fund, and money deposited in the fund under (c) of
5 this section. Money in [APPROPRIATED TO] the fund does not lapse. The
6 commission may make payments from the fund for awards from the fund under
7 AS 08.88.450 - 08.88.495 [AMOUNTS IN THE FUND MAY BE APPROPRIATED
8 FOR CLAIMS AGAINST THE FUND], for hearing and legal expenses directly
9 related to fund operations and claims, and for real estate educational purposes.

10 (b) The Department of Commerce, Community, and Economic Development
11 shall provide the commission every three months with a statement of the activities of,
12 balances in, interest earned on, and interest returned to the real estate recovery
13 [SURETY] fund.

14 (c) If money from the real estate recovery [SURETY] fund is expended to
15 prepare, print, manufacture, sponsor, produce, or otherwise provide an item or a
16 service to a member of the public, to a real estate licensee, to a potential real estate
17 licensee, or to another person, any money paid by the person to the commission, either
18 directly or through an agent or contractor of the commission, to receive the item or
19 service shall be deposited in the fund. In this subsection, "an item or a service"
20 includes an information pamphlet, an examination preparation packet, an educational
21 course, the certification of a real estate education course, and the approval of a real
22 estate education instructor.

23 * **Sec. 12.** AS 08.88.455 is amended to read:

24 **Sec. 08.88.455. Payments by real estate licensees.** (a) A real estate licensee,
25 when applying for or renewing a real estate license, in lieu of obtaining a corporate
26 surety bond, shall pay to the commission, in addition to the license fee, a recovery
27 [SURETY] fund fee not to exceed \$125. After each two-year licensing cycle, if the
28 commission finds that the average balance in the recovery [SURETY] fund during the
29 two-year licensing cycle was less than \$250,000 or more than \$500,000, the
30 commission shall by regulation adjust the recovery [SURETY] fund fees so that the
31 average balance of the recovery [SURETY] fund during the next two-year licensing

1 cycle is anticipated to be an amount that is not less than \$250,000 or more than
2 \$500,000. In this subsection, "average balance" means the average balance after taking
3 into account anticipated expenditures for awards from [CLAIMS AGAINST] the
4 fund [, FOR HEARING] and legal expenses directly related to fund operations [AND
5 CLAIMS], and for real estate educational purposes.

6 (b) All fees collected under this section shall be paid at least once a month by
7 the department into the general fund. These payments shall be credited to the real
8 estate recovery [SURETY] fund.

9 * Sec. 13. AS 08.88.460(a) is amended to read:

10 (a) Subject to (e) of this section, a person seeking an award from the
11 recovery fund [REIMBURSEMENT] for a loss suffered in a real estate transaction as
12 a result of fraud, an intentional tort [MISREPRESENTATION], deceit, or the
13 conversion of trust funds or the conversion of community association accounts under
14 the control of a community association manager on the part of a person [LICENSEE]
15 licensed under this chapter shall

16 (1) obtain a final judgment from a court of competent jurisdiction,
17 a final arbitration award, or a settlement agreement with a licensee that involves
18 a person committing fraud, an intentional tort, deceit, the conversion of trust
19 funds, or the conversion of community association accounts;

20 (2) submit an affidavit describing the efforts made to collect the
21 final judgment, final arbitration award, or settlement agreement stating that the
22 person has used due diligence to collect the amount due, stating that the
23 judgment, arbitration award, or settlement agreement is uncollectable using
24 reasonable efforts, and that the conduct that is the subject of the judgment,
25 arbitration award, or settlement agreement involved an activity for which a
26 person must obtain a license under AS 08.88.161;

27 (3) make a claim to the commission for an award from the recovery
28 fund [REIMBURSEMENT] on a form furnished by the commission; in [. IN] order to
29 be eligible for an award [REIMBURSEMENT] by the commission, the claim form
30 must be filed within two years after the date of a judgment, arbitration award, or
31 settlement agreement that is [THE OCCURRENCE OF THE FRAUD,

1 MISREPRESENTATION, DECEIT, OR CONVERSION OF TRUST FUNDS OR
 2 THE CONVERSION OF COMMUNITY ASSOCIATION ACCOUNTS UNDER
 3 THE CONTROL OF A COMMUNITY ASSOCIATION MANAGER CLAIMED
 4 AS] the basis for the award from the recovery fund is no longer subject to appeal:
 5 the [REIMBURSEMENT. THE] form must [SHALL] be executed under penalty of
 6 unsworn falsification in the second degree and must include

7 (A) [THE FOLLOWING: (1)] the name and address of each
 8 real estate licensee involved;

9 (B) a copy of the final judgment, final arbitration award, or
 10 settlement agreement;

11 (C) a copy of the affidavit asserting due diligence but lack
 12 of success in collecting the entire amount due;

13 (D) [(2)] the amount of the final judgment, final arbitration
 14 award, or settlement agreement that remains unpaid [ALLEGED LOSS;

15 (3) THE DATE OR PERIOD OF TIME DURING WHICH THE
 16 ALLEGED LOSS OCCURRED;

17 (4) THE DATE UPON WHICH THE ALLEGED LOSS WAS
 18 DISCOVERED];

19 (E) [(5)] the name and address of the claimant; and

20 (F) [(6)] a general statement of facts relative to the claim.

21 * Sec. 14. AS 08.88 460(b) is amended to read:

22 (b) The commission shall send a [A] copy of a claim filed [WITH THE
 23 COMMISSION] under (a) of this section [SHALL BE SENT] to each real estate
 24 licensee named in (a)(3) of this section [ALLEGED TO HAVE COMMITTED THE
 25 MISCONDUCT RESULTING IN LOSSES, TO THE PRINCIPAL REAL ESTATE
 26 BROKER EMPLOYING A LICENSEE ALLEGED TO HAVE COMMITTED THE
 27 CONDUCT RESULTING IN LOSSES, AND TO ANY OTHER REAL ESTATE
 28 LICENSEE INVOLVED IN THE TRANSACTION AT LEAST 20 DAYS BEFORE
 29 ANY HEARING HELD ON THE CLAIM BY THE OFFICE OF
 30 ADMINISTRATIVE HEARINGS (AS 44.64.010)].

31 * Sec. 15. AS 08.88.460(d) is amended to read:

1 (d) A claimant under this section shall pay a filing fee of \$250 to the
2 commission at the time the claim is filed. The filing fee shall be refunded if the

3 (1) commission makes an award to the claimant from the real estate
4 recovery [SURETY] fund; or

5 (2) claimant withdraws the claim [CLAIM IS DISMISSED UNDER
6 (c) OF THIS SECTION; OR

7 (3) CLAIM IS WITHDRAWN BY THE CLAIMANT BEFORE THE
8 OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010) HOLDS A
9 HEARING ON THE CLAIM].

10 * Sec. 16. AS 08.88.465(a) is repealed and reenacted to read:

11 (a) If the commission receives a claim for an award from the recovery fund
12 that complies with the requirements of AS 08.88.450 - 08.88.495, the commission
13 shall make an award from the recovery fund in an amount not to exceed \$15,000. Not
14 more than \$15,000 may be paid for each transaction, regardless of the number of
15 persons injured or the number of parcels of real estate involved in the transaction.

16 * Sec. 17. AS 08.88.472(a) is amended to read:

17 (a) The commission may charge [TO] the real estate recovery [SURETY]
18 fund for [HEARING AND LEGAL] expenses related to fund operations [AND
19 CLAIMS]. The commission shall deposit into the real estate recovery [SURETY]
20 fund amounts recovered for these expenses from the licensee under AS 08.88.071(b)
21 or from other parties under AS 08.88.490.

22 * Sec. 18. AS 08.88.472(d) is amended to read:

23 (d) If the salary of an employee is entirely or partially paid for from money in
24 the real estate recovery [SURETY] fund, the employee may perform administrative
25 duties for the commission in addition to any duties the employee performs that are
26 related to the real estate recovery [SURETY] fund. AS 08.88.910 does not apply to
27 this subsection.

28 * Sec. 19. AS 08.88.475 is amended to read:

29 **Sec. 08.88.475. Maximum liability.** (a) The maximum liability of the real
30 estate recovery [SURETY] fund may not exceed \$50,000 for any one real estate
31 licensee.

1 (b) If the \$50,000 liability of the fund as provided in (a) of this section is
2 insufficient to pay in full the valid claims of all persons who have obtained a final
3 judgment, final arbitration award, or settlement agreement involving [FILED
4 CLAIMS AGAINST] an individual licensee and have filed claims for an award
5 from the recovery fund, the \$50,000 shall be distributed among the claimants in the
6 ratio that their individual claims bear to the aggregate of valid claims, or in another
7 manner that the commission considers equitable. Distribution shall be among the
8 persons entitled to share in the recovery without regard to the order in which their
9 claims were filed.

10 * Sec. 20. AS 08.88.480 is amended to read:

11 **Sec. 08.88.480. Order of claim payment.** If the money deposited in the real
12 estate recovery [SURETY] fund is insufficient at a given time to satisfy a legally
13 [DULY] authorized claim against the fund, the commission shall, when sufficient
14 money has been deposited in the fund and appropriated, satisfy unpaid claims in the
15 order that the claims were originally filed, plus accumulated interest at the rate of eight
16 percent a year.

17 * Sec. 21. AS 08.88.490 is amended to read:

18 **Sec. 08.88.490. Right to subrogation.** When the commission has paid to a
19 claimant from the real estate recovery [SURETY] fund the sum awarded by the
20 commission, the commission shall be subrogated to all of the rights of the claimant to
21 the amount paid, and the claimant shall assign all right, title, and interest in that
22 portion of the claim to the commission. Money collected by the commission on the
23 claim shall be deposited to the real estate recovery [SURETY] fund.

24 * Sec. 22. AS 08.88.495 is amended to read:

25 **Sec. 08.88.495. Disciplinary action [AGAINST BROKERS AND**
26 **SALESMEN].** Repayment in full of all obligations to the real estate recovery
27 [SURETY] fund does not nullify or modify the effect of disciplinary proceedings
28 brought under the provisions of this chapter.

29 * Sec. 23. AS 08.88.990 is amended by adding new paragraphs to read:

30 (13) "final arbitration award" means an arbitration award for which
31 there is no further right to appeal;

1 (14) "final judgment" means a judgment for which there is no further
2 right to appeal.

3 * Sec. 24. AS 08.88.460(c), 08.88.465(b), 08.88.465(c), 08.88.465(d), 08.88.465(e),
4 08.88.465(f), 08.88.470, 08.88.472(b), 08.88.472(c), and 08.88.474 are repealed.

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

7 TRANSITIONAL PROVISIONS: REGULATIONS. The commission may proceed to
8 adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62
9 (Administrative Procedure Act), but not before the effective date of the amendments made by
10 secs. 1 - 24 of this Act.

11 * Sec. 26. Section 25 of this Act takes effect immediately under AS 01.10.070(c).

12 * Sec. 27. Except as provided in sec. 26 of this Act, this Act takes effect March 1, 2010.

HB

379

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 379
 () Publish Date: _____

Identifier (file name): HB379-CED-OL-02-21-06 Dept. Affected: Commerce
 Title CPA Education Requirements RDU Corp, Bus & Prof Licensing (117)
 Component Corp, Bus & Prof Licensing
 Sponsor Hawker
 Requester House Labor and Commerce Component Number 2360

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time								
Part-time								
Temporary								

ANALYSIS: (Attach a separate page if necessary)

This legislation amends AS 08.04.120 Accountants educational and experience requirements by clarifying the educational hours and accounting experience needed for licensure.

The program is required to cover its costs with licensing fees under AS 08.01.065, and revenue generated by fees are anticipated to cover its full operating costs. New funds are not required to implement the provisions of this legislation.

Prepared by: Chris Wyatt, Administrative Officer
 Division: Corporations, Business, and Professional Licensing
 Approved by: Emil R. Notti, Commissioner
Commerce, Community, and Economic Development

Phone (907) 465-2572
 Date/Time 2/21/08 1:44 PM
 Date 2/21/2007

Representative Mike Hawker

Alaska State Legislature



House Bill 379

Sponsor Statement

Session:

State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
907 465-4979 fax

Interim:

716 W 4th Avenue
Anchorage, AK 99501
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Member:

*House Finance Committee
Legislative Budget
& Audit Committee*

House District 32:

*Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope*

"An Act relating to education requirements for licensure as a certified public accountant"

HB 379 corrects a problem that occurred as a result of the passage of House Bill 274 in 2006, which became effective on January 1, 2008. HB 274 updated Alaska's statutory framework regulating the professional practice of accounting. The bill was supported by the Alaska Society of Certified Public Accountants and the Alaska Board of Public Accountancy as a way to increase accountability in their own profession.

One of the changes made by House Bill 274 was to change the education requirements to obtain a CPA license. Prior to passage of the bill, there were two allowable educational tracks:

- (1) An accounting degree with two years of experience; or
- (2) any degree with three years of accounting experience.

House Bill 274 repealed (2), which inadvertently prohibited candidates who were already out of school and working towards meeting the experience requirement from receiving licensure, unless they went back to school to get an accounting degree. The change proposed by House Bill 379 would "grandfather in" people who received their baccalaureate degrees before January 1, 2008.

This change is supported by the Alaska Board of Public Accountancy.

1 the holder also has a current license, permit, or practice privilege issued under
2 this chapter.

3 * **Sec. 9.** AS 08.04. is amended by adding a new section to read:

4 **Sec. 08.04.105. License for individual to practice as a public accountant.**

5 (a) The board shall issue a license to engage in the practice of public accounting to an
6 individual who meets the requirements of AS 08.04.110 - 08.04.130. The license is
7 valid for the remainder of the biennial licensing period during which the initial license
8 was granted.

9 (b) The board may renew a license granted under this section if the licensee

10 (1) maintains all of the licensee's offices as required by AS 08.04.360 -
11 08.04.380;

12 (2) complies with the continuing education requirements of
13 AS 08.04.425 and the quality review requirements of AS 08.04.426; and

14 (3) complies with the requirements of this chapter.

15 * **Sec. 10.** AS 08.04.110 is amended to read:

16 **Sec. 08.04.110. Personal requirements.** An applicant for a [THE] certified
17 public accountant license [CERTIFICATE] shall be at least 19 years of age and of
18 good moral character.

★ 19 * **Sec. 11.** AS 08.04.120 is amended to read:

20 **Sec. 08.04.120. Educational and experience requirements.** (a) The education
21 and experience requirements for an applicant are [AS FOLLOWS:

22 (1)] a baccalaureate degree or its equivalent conferred by a college or
23 university acceptable to the board and additional semester hours of post-baccalaureate
24 study so that the total educational program includes at least 150 hours, with an
25 accounting concentration or equivalent as determined by the board by regulation to be
26 appropriate, and two years of accounting experience satisfactory to the board [; OR

27 (2) A BACCALAUREATE DEGREE OR ITS EQUIVALENT
28 CONFERRED BY A COLLEGE OR UNIVERSITY ACCEPTABLE TO THE
29 BOARD AND ADDITIONAL SEMESTER HOURS OF POST-BACCALAUREATE
30 STUDY SO THAT THE TOTAL EDUCATIONAL PROGRAM INCLUDES AT
31 LEAST 150 HOURS, AND THREE YEARS OF ACCOUNTING EXPERIENCE

1 SATISFACTORY TO THE BOARD].

2 (b) Notwithstanding (a) of this section, the board may grant a license
3 [CERTIFICATE] to an applicant who has not completed the 150-hour educational
4 program required by (a) of this section if the applicant has received a baccalaureate
5 degree, or its equivalent, before January 1, 2001, from a college or university
6 acceptable to the board, and if the applicant satisfies the other criteria established by
7 the board by regulation for receiving the license [CERTIFICATE].

8 * **Sec. 12.** AS 08.04.130 is amended to read:

9 **Sec. 08.04.130. Examination.** An applicant shall pass an examination in
10 accounting and reporting, in auditing, and in other related subjects that the board
11 determines appropriate. The examination shall be designated in advance by the board
12 as the examination for the license [CERTIFICATE] of certified public accountant.
13 The board shall use the Uniform Certified Public Accountant Examination of the
14 American Institute of Certified Public Accountants and the institute's advisory grading
15 service, if available. The board shall, by regulation, establish what constitutes a
16 passing grade on the examination for purposes of licensure under AS 08.04.105 -
17 08.04.240 [AS 08.04.100 - 08.04.240].

18 * **Sec. 13.** AS 08.04.180 is amended to read:

19 **Sec. 08.04.180. Prior applicants.** An applicant who, before April 26, 1960,
20 applied to take an examination for the certificate of certified public accountant, or held
21 a valid license as a public accountant, or was regularly enrolled in a college or
22 correspondence course in accounting, or a person whose registration under this chapter
23 is accepted by the board, shall receive a license [CERTIFICATE] when the applicant
24 has met either the requirements of this chapter, or the requirements that were effective
25 at the time the applicant's first application was filed, at the option of the applicant.

26 * **Sec. 14.** AS 08.04.195 is amended to read:

27 **Sec. 08.04.195. Reciprocity with ther states [JURISDICTIONS].** (a)
28 Notwithstanding AS 08.04.110 - 08.04.190 [AS 08.04.100 - 08.04.130], the board may
29 issue a license to engage in the practice of public accounting [CERTIFICATE] to
30 an applicant who holds a license [CERTIFICATE], or its equivalent, issued by another
31 state [JURISDICTION] if the applicant

HB

382

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT
DISTRICT 34

SPONSOR STATEMENT **HOUSE BILL 382**

"An Act relating to the sale by jewelers of jewelry containing gold."

House Bill 382 was introduced as a response to the recent news that five jewelry retail companies have signed a pledge (the Bristol Bay pledge) that opposes the proposed gold and copper mining operation at Pebble Mine. This is the first time, according to the *Los Angeles Times*, that jewelry retailers have joined in a campaign to halt a specific mine.

This proposed legislation is not by any means an endorsement of the Pebble project. This bill is an effort to support Alaska's gold mining industry as a whole. The Pebble project is currently in the exploration stage. The permitting process has not yet taken place. Before companies take a stand against any state regulated operation, I suggest that these companies let the permitting process take place first and then decide as to whether or not they want to source gold from any state mining operation.

Currently, retailers cannot tell where their gold has been mined, but next year, jewelers will take steps to establish a "chain of custody" from mine to store. Since jewelry retailers will be able to determine from which mines they will purchase gold and those that they may possibly boycott to appease environmental groups, the state, to promote our gold mining industry, needs to provide an impetus to ensure Alaska gold sales. House Bill 382 mandates that Alaskan jewelry retailers may not sell gold products unless the gold was mined within the state.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

February 14, 2008

SUBJECT: Bill relating to the sale of jewelry that contains gold
(Work Order No. 25-LS1494\A)

TO: Representative Mike Chenault
Attn: Tom Wright

FROM:  Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Equal protection issue. This bill appears to present an equal protection issue under the state and federal constitutions because it discriminates against persons who sell jewelry containing gold from other states. The reason this is a problem is that protecting or enhancing the gold mining industry in the state is not likely to be considered a legitimate governmental objective for discriminating against all other sales of gold jewelry.
2. Interstate commerce issue. This bill may present an interstate commerce issue under the federal constitution because it ultimately discriminates against persons who mine or sell gold mined in other states.
3. Takings issue. The bill may present an issue under the eminent domain provision of the state constitution because it effectively prohibits, without compensation, a jeweler from selling that part of the jeweler's current inventory of jewelry that contains pieces containing gold not mined in this state.

If I may be of further assistance, please advise.

TLB:med
08-097.med

Enclosure



Alaska Native Communities, Fishermen, Businesses, Conservation Groups Ask Jewelry Retailers to Help Protect Alaskan Fisheries from Mining

Full-Page Ads in National Jeweler Magazine Highlight Threat of Massive New Gold Mining District in the Bristol Bay Watershed of Southwest Alaska

Contacts:
 Bobby Andrew, Nunamta Aulukestai, 907-464-3317
 Brian Kraft, Bristol Bay Alliance, 907-227-8719
 Steve D'Esposito, EARTHWORKS, 202-255-2717

Read the press release as a pdf document.

- [Sign the Pledge](#)
- [The Bristol Bay Protection Pledge](#)
- [FAQ](#)
- [Bristol Bay Watershed](#)
- [Bristol Bay Salmon](#)
- [Pebble Mine Proposal](#)
- [Opposition to Pebble](#)

JAN 03, WASHINGTON, DC A diverse group of Alaska Native communities, fishermen, businesses, sportsmen and conservation groups today launched an ad campaign in *National Jeweler*, a leading industry news tabloid, inviting retailers to join efforts to protect Alaska's Bristol Bay watershed from mining. Bristol Bay and its drainages support the world's most productive commercial and sport salmon fisheries.

"We are asking jewelers to join our efforts to protect this world class treasure," said Brian Kraft, a Bristol Bay fishing lodge owner and founder of the Bristol Bay Alliance, which endorsed the ads. "Their customers will want to know that the jewelry they purchase does not come at the expense of the world's greatest salmon fishery and the communities that depend on it."

The Bristol Bay watershed currently faces threats from Northern Dynasty Minerals, a Canadian mining company that wants to develop a huge open-pit and underground gold-copper mine called "Pebble" at the headwaters of the Koktuli River and streams that feed Lake Iliamna, the largest freshwater lake in Alaska. And the Bureau of Land Management is proposing to open at least a million acres of federal public land in the region to mining.

Statistics from Trout Unlimited and the Universities of Montana and Alaska show that the harvest and processing of Bristol Bay fish generates nearly \$320 million a year and provides jobs for some 12,500 people. Sport fishermen spend nearly \$120 million a year to experience the prize fishing in this area, and each year, 65,000 people visit the area in various wildlife pursuits, mostly for fishing.

"The Bristol Bay salmon fishery is vital to the communities of this region for subsistence, and for the commercial fishing industry and sports anglers," said Bobby Andrew, spokesman for Nunamta Aulukestai, an association of eight Alaska native village corporations in Bristol Bay. "This type of massive industrialization at the heart of Bristol Bay will forever harm the abundant fish and wildlife resources that

sustain this region."

The full-page ad, which appears in the January issue of *National Jeweler* magazine, features a scenic photo of Iliamna River in Bristol Bay and invites retailers to take the Bristol Bay Protection Pledge – a commitment not to buy or use gold from the proposed Pebble Mine or any other major mine on public lands in the Bristol Bay watershed. The same ad will run in the magazine's February and March issues. *National Jeweler* is the retail jewelry industry's leading news tabloid. Renewable Resources Coalition, the Bristol Bay Alliance, Nunamta Aulukestai, and EARTHWORKS placed the ad.

More than 80 percent of gold produced in the U.S. is used to make jewelry, putting the jewelry industry in a unique position to influence irresponsible mining activities. Recent market research also affirms that consumers place ethical considerations into their purchasing decisions. Eighty-six percent of consumers have said they would switch brands to support the more socially responsible choice.

A majority of Alaskans already oppose the Pebble project, and more than 70 percent of Bristol Bay area residents want it stopped, according to recent polls commissioned by the Renewable Resources Coalition, an outdoorsmen's group based in Anchorage. The Alaska Inter-Tribal Council, a consortium of 231 federally-recognized tribes in Alaska, and many tribal governments of the region, have all passed resolutions against the project. Commercial salmon fishing businesses, premier Alaska hunting and fishing lodges, the Alaska Wilderness, Recreation and Tourism Association, and leading conservation groups have expressed opposition, as well as Alaska's largest newspaper (the Anchorage Daily News) and Alaska's senior U.S. Senator Ted Stevens.

"The jewelry industry has a real opportunity to show their customers that they are committed to responsibly sourcing the gold that they use," said Steve D'Esposito of EARTHWORKS. "The Bristol Bay Protection Pledge is an opportunity to make an on-the-ground commitment to the principles of responsible mining."

For a copy of the ad, pledge and additional background, go to www.protectbristolbay.org.

###

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The Bristol Bay Protection Pledge

To sign the pledge, or learn more about it, please contact us at pledge@protectbristolbay.org.

Read the pledge as a pdf document.

"Our company is concerned about environmental and social impacts of irresponsible mining. We are committed to sourcing gold and other metals extracted under the highest social, human rights and environmental standards. We are working to ensure that our products are not produced at the expense of communities, workers or the environment.

We recognize that Alaska's Bristol Bay Watershed is an ecosystem of national and international significance, supporting the world's largest wild salmon fishery -- which is vital to Alaska's economy, and the subsistence way of life of Alaska Native people in the region.

We are aware that much of the Bristol Bay Watershed has been recognized for its conservation value and has been formally designated the Bristol Bay Fishery Reserve, with restrictions against oil and gas leasing.

We understand that there are proposals to mine gold, copper and other metals within the Reserve that could jeopardize the salmon fishery and the businesses and communities it supports.

We are committed to sourcing our gold and other materials in ways that ensure the protection of natural resources such as the Bristol Bay Watershed. We would not want the jewelry we sell to our customers to jeopardize this important natural resource.

In recognition of the importance of conserving the Bristol Bay Watershed, and the tremendous salmon fishery that it supports, we support permanent protection of the Bristol Bay Fishery Reserve from the impacts of large-scale metal mining."

Signed
Name
Company
Date

To sign the pledge, or learn more about it, please contact us at pledge@protectbristolbay.org.

- [Sign the Pledge](#)
- [FAQ](#)
- [Pledge Press Release](#)
- [Bristol Bay Watershed](#)
- [Bristol Bay Salmon](#)
- [Pebble Mine Proposal](#)
- [Opposition to Pebble](#)



**An Opportunity for Market Leadership:
Sign the Bristol Bay Protection Pledge**

Jewelry Retailers:

As an industry leader, you have a real opportunity to demonstrate your company's commitment to the highest environmental and social standards.

Customers want to know that their gold jewelry was sourced responsibly – not from areas of critical ecological value.

You can demonstrate your company's commitment to these principles by signing the Bristol Bay Protection Pledge. To sign the pledge, or learn more about it, please contact us at pledge@protectbristolbay.org.

Alaska's Bristol Bay watershed supports a wealth of natural resources, including:

- The world's most productive wild salmon fishery - producing one third of the world's sockeye salmon.
- The Mulchatna caribou herd, one of Alaska's largest.
- A world-class native rainbow trout fishery, which supports a recreational industry of international significance.

These resources are now at risk from a proposal to develop the Pebble Mine - North America's largest open pit gold mine, and a 1,000 square mile mining district.

Please join the many civic, business, conservation and indigenous leaders who recognize the tremendous conservation value of this region and pledge protection of the Bristol Bay Watershed.

And assure your customers that their gold jewelry isn't a threat to the world's greatest salmon fishery or the communities that depend upon it.

The Bristol Bay Protection Pledge
FAQ
Pledge Press Release
Bristol Bay Watershed
Bristol Bay Salmon
Pebble Mine Proposal
Opposition to Pebble



This full page ad ran in the January 1st issue of National Jeweler. Click thumbnail to see larger version.

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2008 PRESS RELEASES

Jewelry Retailers Urge Protection for Alaska's Bristol Bay

New Report Highlights Concern Over Mining's Impacts in Bristol Bay and Globally

Washington, DC, February 12, 2008 - As shoppers rush to buy last-minute Valentine's gifts, five of the nation's leading jewelry retailers -- Tiffany & Co., Ben Bridge Jeweler, Helzberg Diamonds, Fortunoff, and Leber Jeweler, Inc. -- today pledged their support to permanently protect Alaska's Bristol Bay watershed from large-scale metal mining, including the massive proposed Pebble gold mine. The retailers, who had \$2.2 billion in sales in 2006, took this step at the invitation of local Alaskans, who seek to protect wild salmon, clean water, and traditional Alaskan ways of life from the damaging effects of industrial metal mines.

"I am pleased to stand with others in the jewelry industry today in announcing our support for protecting Alaska's Bristol Bay watershed from large-scale mining," said Jon Bridge, Co-CEO/General Counsel of Seattle-based Ben Bridge Jeweler. "As retail jewelers, we want to be able to tell our customers that the precious metals we use are mined responsibly -- that the materials used in the jewelry they purchase have been mined in environmentally friendly ways, respectful of the Bristol Bay salmon fishery and the communities that depend on it."

The controversial Pebble mine is highlighted in a new report released today by the No Dirty Gold consumer campaign led by EARTHWORKS and Oxfam America. The report, "Golden Rules: Making the Case for Responsible Mining," documents the toll of irresponsible mining on people, water, and wildlife at a time when soaring metals prices are driving new mining development globally. The report describes human rights violations and environmental concerns at metals mines in the United States and around the world. (To download a copy of the report, visit www.nodirtygold.org.)

The retailers are among a group of 28 jewelry retailers, representing 23 percent of US jewelry sales, who have endorsed the No Dirty Gold campaign's "Golden Rules" -- human rights and environmental criteria for mining. Today's announcement takes those commitments a step further.

"Some of the world's leading jewelers have recognized that the Bristol Bay watershed is a treasure worth protecting. We applaud their principled position and commitment to not source metals from areas of high conservation value," said Payal Sampat of EARTHWORKS.

The proposed Pebble mine is backed by the UK-based Anglo American, one of the world's largest metal mining companies, and Canadian firm Northern Dynasty Minerals. The Bristol Bay watershed, where the proposed mine would be located, supports the world's most productive wild salmon fishery -- which is critical to the state's economy and to the livelihood of many Alaska Native communities.

"We want to express a sincere thank you to these jewelry companies," said Bobby Andrew, a spokesperson for Nunamta Aulukestai (Caretakers of the Land), an association of eight Alaska Native corporations. "The proposed Pebble mine threatens the wild salmon fishery that has sustained the region's economy and our people for generations."

Last year, Nunamta Aulukestai and a diverse group of Alaska Native communities, commercial fishermen, businesses, and sportsmen publicly invited jewelry retailers to express support for the protection of Alaska's Bristol Bay watershed from large-scale mining. The invitation ran as a full-page ad in National Jeweler magazine. (For a copy of the ad and jeweler pledge, see www.protectbristolbay.org.)

Consumers today are more aware of the human and environmental costs of the goods and services they purchase than ever before. While other business sectors have responded to demand for cleaner, ethically produced goods and services -- such as sustainably harvested wood products and fair trade coffee -- the mining sector lags behind in terms of embracing an independent system for standards and verification. Some 100,000 consumers in more than 100 countries have signed on to the No Dirty Gold pledge, urging mining companies to provide alternatives to "dirty" gold.

"Consumers and jewelry retailers across the country have clearly signaled their desire for certified, more ethically produced metals," noted Raymond C. Offenheiser of Oxfam America. "The question is: when will mining companies step up to meet this obvious demand?"

The No Dirty Gold campaign urges mining companies to find solutions and implement best practices that can be independently verified -- at both existing and new operations. According to the campaign's new report, mining practices in places like Ghana, Indonesia, Nevada, and other parts of the world continue to pollute air and water, damage farmland and forests, and, in some parts of the world, fuel

COMMUNITY VOICES

Custer National Forest, MT

"Rancher Not Informed about Mineral Leasing" is Jeanne Peterson's story about what it means when the federal government owns the minerals below private land -- mainly, that surface owners have little or no input into the leasing process or decisions that will greatly affect their lives and livelihoods.

TAKE ACTION

SUPPORT EARTHWORKS

CAMPAIGNS



AFFILIATES

Alaskans for Responsible Mining



Ethical Metalsmiths



PARTNERS



violent conflict. The report describes damaging practices at 17 metals mines around the world. These mines include:

- Grasberg mine in West Papua, owned by U.S.-based Freeport McMoRan, which has been linked to human rights abuses and extensive water pollution.
- Jerritt Canyon mine in Nevada, owned by Yukon-Nevada Gold Corporation, which is a leading source of airborne mercury pollution in the U.S.
- Bogoso/Prestea Mine in Ghana, owned by Canadian firm Golden Star Resources, which has contaminated drinking water and local fisheries with cyanide spills in violation of the industry's voluntary "Cyanide Code."

There are promising signs within the industry that some operations are responding to community concerns and consumer demands for more responsibly mined gold. For example, a number of firms have adopted a policy against dumping mine wastes in rivers, while others have publicly committed to disclosing payments made to foreign governments.

Fact sheets, report, and press-ready photos available at: www.nodirtygold.org. Photos of Bristol Bay at: http://media.earthworksaction.org/objects/view.acs?object_id=11083.

U.S. Jewelry Sales, 2006

Company	Sales (millions of US \$)
Wal-Mart*	2,800
Sterling*	2,652
Zale Corp*	1,202
QVC*	1,500
Tiffany*	1,326
JCPenney*	1,300
Sears	1,100
Finlay Fine Jewelry	920
Helzberg Diamonds*	525
Fred Meyer Jewelers*	495

Note: * indicates signatory to the No Dirty Gold campaign's "Golden Rules"

2006 U.S. Jewelry Sales of Retailers Supporting Bristol Bay Protection

Retailer	Sales in million \$	Rank in U.S. Sales
Tiffany	1,326	5
Helzberg	525	9
Ben Bridge	250	24
Fortunoff	160	30
Leber	n/a	n/a

Note: These retailers represent \$2.26 billion in US jewelry sales. Total US sales in 2006 were \$62 billion.

... # # # ...

FOR MORE INFORMATION

- Harlin Savage, Resource Media, (720) 564-0500 x11
- Maura Hart, Oxfam America (202) 496-1196
- Payal Sampat, EARTHWORKS (202) 247-1180

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Retailers

- What is Dirty Gold?
- Clean up Dirty Gold
- The Golden Rules
- About the Campaign
- Supporting Retailers
- Retailer Statements

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SEARCH



Retailers Who Support the Golden Rules

The following retailers have taken the first step towards more responsible sourcing of gold by declaring their support for the Golden Rules. These Rules represent social, environmental, and human rights criteria for more responsible gold production. The No Dirty Gold campaign encourages these retailers to now actively pursue "cleaner" sources of gold and to demonstrate that they are meeting their sourcing commitment.

- Ben Bridge Jeweler
- Birks & Mayors
- Boscov's
- Brilliant Earth
- Carter
- Commemorative Brands
- Cred Jewellery
- Fifi Bijoux
- Fortunoff
- Fred Meyer and Lillman Jewelers
- Hacker Jewelers
- Helzberg Diamonds
- Ingle & Rhode
- Intergold
- JCPenney
- Jostens
- Leber Jeweler
- Michaels Jewelers
- Piaget
- QVC
- Security Jewelers
- Signet Group
- Stephen Forner
- Tiffany & Co
- TurningPoint
- Van Cleef & Arpels
- Van Gundy
- Victoria Casati USA
- Wal-Mart
- Whitehall Jewellers
- Zale Corp

Refiners of precious metals are also realizing the value of responsible sourcing of metals. Hoover & Strong has signed on to the Golden Rules.

You can read some statements from the leading jewelers.

You can also read the resolution adopted by the Society of North American Goldsmiths (SNAGS) calling upon the mining industry to produce gold in an




<http://www.latimes.com/news/nationworld/la-fi-jewelry12feb12.0.2323889.story>
From the Los Angeles Times

JEWELRY

Retailers to hold mine to higher gold standards

Tiffany, Fortunoff and others oppose an Alaskan operation over environmental worries.

By Margot Roosevelt

Los Angeles Times Staff Writer

February 12, 2008

Environmentalists want you to buy organic roses, and human rights groups tout conflict-free diamonds.

Now, just in time for Valentine's Day, jewelry retailers are stepping up a campaign that aims to discourage the mining and sale of "dirty gold."

A group of prominent jewelers including Tiffany & Co., Helzberg Diamonds and Fortunoff will announce today that it opposes the massive gold and copper Pebble Mine planned for Alaska's Bristol Bay watershed, site of the world's largest sockeye salmon run.

The jewelers' "Bristol Bay Protection Pledge" marks a new front in the "No Dirty Gold" initiative waged by environmental and human rights groups against destructive mining practices.

It is the first time that retailers, which have hitherto limited themselves to supporting general rules for mining, have joined in a campaign to halt a specific mine.

An estimated 80% of the gold used in the U.S. is for jewelry. And gold mines -- typically huge open pit operations where tiny veins of metal are ground from millions of tons of rock -- produce an average of 76 tons of waste per ounce of gold.

The resulting air and water pollution have made metals mining the leading contributor of toxic emissions in the U.S., according to the Environmental Protection Agency.

"There are places where mining does not represent the best use of resources," Michael Kowalski, Tiffany's chairman and chief executive, said in an e-mail. "In Bristol Bay, we support . . . the salmon fishery as the best bet for sustainable, long-term benefit. For Tiffany & Co., and we believe for many of our fellow retail jewelers, this means we will look to other places to source gold."

Sean McGee, a spokesman for the Pebble Mine, said the jewelers had not contacted the mine's developers, a partnership of Vancouver, Canada-based Northern Dynasty Minerals Ltd. and London-based Anglo American.

"There is a lot of common ground between the Dirty Gold camp and the approach we are taking," he said. "We support high environmental standards for mining. If the fisheries can't be protected, we won't advance the project."

The campaign to clean up gold mines echoes the opposition to so-called blood diamonds, sold to finance conflicts in developing nations.

In the last few years, jewelers, working with nonprofit groups and the mining industry, set up a system to ensure diamonds as "conflict-free." Now the "ethical jewelry" movement is preparing to expand with a certification program for gold and silver.

"It's what's happening in the marketplace," said Stephen D'Esposito, president of Earthworks, a Washington-based advocacy group for mining reform. "Jewelers are highly sensitive to consumer concerns about the impact of the products they buy. It is a trend you see with food, coffee, wood, even sneakers."

At the moment, retailers cannot tell where their gold has been mined. But in the coming year, D'Esposito said, jewelers will take the first steps to establish a chain of custody from mine to store.

A set of standards is under negotiation between mining companies, jewelry retailers and environmental and human rights groups.

So far, 28 companies, including eight of the 10 largest jewelry retailers in the U.S. have endorsed the "No Dirty Gold" campaign's "Golden Rules." The measures seek to ensure that gold is mined without threatening fragile ecosystems, that waste is not dumped into waterways and that workers' rights are protected.

Signatories include Wal-Mart Stores Inc. and Sterling Jewelers Inc., which markets Kay Jewelers and Jared the Galleria brands.

Earthworks wants all 28 companies that signed the Golden Rules pledge -- and others -- to also sign the Bristol Bay pledge. So far, only five have done so (besides Tiffany, Helzberg and Fortunoff, they are Ben Bridge Jeweler and Leber Jeweler Inc.).

Wal-Mart, the nation's biggest jewelry retailer, is reviewing the measure.

"We are committed to sourcing gold and other metals produced under the highest social, human rights and environmental standards," spokeswoman Linda Blakley said.

Worldwide shortages and skyrocketing prices for gold and copper are fueling the push for Pebble Mine, which holds an estimated \$300 billion in gold, copper and molybdenum. Northern Dynasty executives say the mine will bring well-paying jobs to an impoverished area of rural Alaska.

If the mine, which lies on the edge of two national parks, gains the necessary permits from the state of Alaska, it would involve excavating as much as 12 billion tons of earth which, after extracting the ore, would fill 10 square miles of impoundments. Two dams would be built to hold the waste.

"These lands were selected by the state of Alaska for their mineral potential, an important part of the rural economy," McGee said.

But Dan Consenstein, head of the Renewable Resources Coalition, an Alaska-based group that opposes the project, said pollution from the mine would destroy the fishery, a globally significant resource and economic backbone of the area.

A coalition of native villages, sports fishing lodges and environmental groups has filed a ballot initiative to stop the mine, but the mining companies are battling it in court.

margot.roosevelt@latimes.com

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HB

383

ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 214

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 383

"An Act establishing an exemption from the dentist licensing exam for certain persons."

For the protection and health of patients, it is necessary that private dentists have a certain number of hours of clinical practice prior to seeking a license without examination. However, while these safeguards are prudent, the requirement has excluded many dedicated, quality dentists who no longer practice dentistry because they have been promoted to command positions.

In order to capture the skill and expertise of these dentists who have served in the armed services for 20 years or more and now serve in command positions, this bill adds an exception to the requirement of continuous active clinical practice averaging at least 20 hours a week.

This exception applies to those men and women in the armed services that have been promoted to full-time supervisory positions in an agency of, or the armed forces of, the United States.

These are professionals that have a great deal to offer and I believe it is in our best interest to amend the statute to allow their licensure in Alaska in order that they may continue their professional service here.

ALASKA STATE HOUSE OF REPRESENTATIVES



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REPRESENTATIVE JOHN COGHILL

SECTIONAL

HB 383

"An Act establishing an exemption from the dentist licensing exam for certain persons."

Section 1: AS 08.36.234 Licensure by credentials

(a) The board shall provide for the licensing without examination, except as provided in (2) of this subsection, of a dentist who

(D) has been engaged in either continuous active clinical practice averaging at least 20 hours a week or a full-time supervisory position in an agency of, or the armed forces of, the United States for each of the five years immediately preceding the application

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 383
 () Publish Date: _____

Identifier (file name): HB383-CED-OL-03-15-08 Dept. Affected: DCCED
 Title Dentist License Exam Exception RDU Corp, Bus & Prof Licensing (117)
 Component Corp, Bus & Prof Licensing
 Sponsor Coghill
 Requester House Military & Veterans' Affairs Component Number 2360

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	0.0	0.0

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

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation amends AS 08.36.234 by establishing an exemption from the dentist licensing exam for people acting in a fulltime supervisory position in an agency of, or the armed forces of, the United States.

This legislation has no fiscal impact on the operations of the division.

Prepared by: Chris Wyatt, Administrative Officer
 Division: Corporations, Business, and Professional Licensing
 Approved by: Emil R. Notti, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone (907) 465-2572
 Date/Time 3/14/08 3:14 PM
 Date 3/14/2008

HB

391

1
AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLY

TO: CSHB 391(), Draft Version "C"

1 Page 2, following line 9:

2 Insert a new subsection to read:

3 "(c) An employer or labor representative who participates in or administers a
4 fringe benefits program that is available for selection by an employee under (b) of this
5 section shall provide to the employee a written description of the fringe benefits
6 program within seven days after a request by the employee."
7

7

8 Reletter the following subsection accordingly.

9

10 Page 2, line 28, following "agreement:":

11 Insert "an employer or labor representative who administers a fringe benefits
12 program that is available for selection by an employee under this paragraph shall
13 provide the employee with a written description of the fringe benefits program within
14 seven days after a request by the employee:"

25-LS1493C
Wayne
2/26/08

CS FOR HOUSE BILL NO. 391()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVE KELLY

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing certain state contracts to require project labor agreements and**
 2 **requiring that project labor agreements negotiated under the Alaska Gasline**
 3 **Inducement Act, and certain project labor agreements negotiated under the State**
 4 **Procurement Code, include terms allowing each employee who is eligible to receive**
 5 **fringe benefits because of that project labor agreement to select the fringe benefits**
 6 **program to which the employer shall contribute the employee's fringe benefits."**

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

8 *** Section 1.** AS 36.30 is amended by adding a new section to read:

9 **Sec. 36.30.405. Project labor agreements.** (a) A construction contract on a
 10 project in which the state acts as a market participant may require that a contractor
 11 commit to negotiate, before construction, a project labor agreement to the maximum
 12 extent permitted by law.

13 (b) A project labor agreement under (a) of this section must, to the extent

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permitted by law, include a requirement that each employee eligible to earn fringe benefits because of the agreement may sign a declaration of benefits. The declaration must allow the employee to elect that, if an employer makes any contribution of fringe benefits on the employee's behalf in connection with the project, the employer shall make the contribution to a fringe benefits program selected by the employee from among fringe benefits programs participated in or administered by

- (1) the employer who makes the contribution;
- (2) another employer of the employee; or
- (3) the labor representative that negotiated the project labor agreement.

(c) In this section,

(1) "contractor" means a person who executes a contract with the state;

(2) "project labor agreement" means a comprehensive collective bargaining agreement between the contractor or the contractor's representative and the appropriate labor representatives to ensure expedited construction with labor stability for the project by qualified residents of the state;

(3) "state" has the meaning given to "agency" in AS 36.30.990.

* Sec. 2. AS 43.90.130(17) is amended to read:

(17) commit to negotiate, before construction, a project labor agreement to the maximum extent permitted by law; **a project labor agreement under this paragraph must, to the extent permitted by law, include a requirement that each employee who is eligible to receive fringe benefits because of the agreement may sign a declaration of benefits; the declaration must allow the employee to elect that, if an employer makes any contribution of fringe benefits on the employee's behalf in connection with the project, the employer shall make the contribution to a fringe benefits program selected by the employee from among fringe benefits programs participated in or administered by (A) the employer who makes the contribution, (B) another employer of the employee, or (C) the labor representative that negotiated the project labor agreement;** in this paragraph, "project labor agreement" means a comprehensive collective bargaining agreement between the licensee or its agent and the appropriate labor representatives to ensure expedited construction with labor stability for the project by qualified

1 residents of the state;

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

4 APPLICABILITY. (a) AS 36.30.405, added by sec. 1 of this Act, applies to
5 construction contracts under AS 36.30 for which the deadline to submit responsive proposals
6 to the state occurs 10 days or more after the effective date of this Act.

7 (b) AS 43.90.130(17), amended by sec. 2 of this Act, applies to construction contracts
8 under AS 43.90 for which the application period closes 10 days or more after the effective
9 date of this Act.

Good Morning, my name is Jim Gilbert and I am the President of Udelhoven Oilfield System Services. My company employs about 450 Alaskan workers.

I am here to testify in support of HB 391.

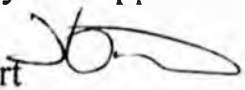
Project Labor Agreements limit competition by forcing non-union employers to pay benefits twice: once to the union and once to their existing company plan. This double payment causes non-union contractors to have a bloated labor cost and therefore, to be non-competitive in the bidding process. AGIA mandates that a project labor agreement be negotiated at the same time that it mandates that the project owner use Alaska contractors to the maximum extent possible.

These two mandates contradict each other.

In addition to the double payments – standard project labor agreements state that non-union employers who contribute fringe benefits into local, regional, or national trust funds are bound to all lawful terms and conditions of such trust agreements and all amendments thereto. This means that a non-union contractor is bound to cover future unfunded vested liabilities of a union pension plan. Several months ago, a non-union contractor in Fairbanks was given a bill for close to \$100,000 for his portion of the unfunded vested liability of a local union pension plan. The threat of such future liability is another barrier to competition.

HB 391 goes a long way in addressing some of the unfair, discriminatory terms of a project labor agreement.

I encourage your support of the bill.


James Gilbert
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Chair Maguire, members of the state affairs committee, thank you for the opportunity to testify on SB 276. My name is Vince Beltrami and I'm president of the Alaska State AFL-CIO.

I applaud Senator's Bunde and Green for seeking to look out for the best interests of all employees who may work under the term of a project labor agreement.

And I am not opposed to this bill, but would like to clarify a few things and hope you would consider some specific amendments or recommendations to help move the bill along.

First of all, the notion that PLAs discriminate against non-union workers is a fallacy. Most non-union workers who have gone to work under the terms of a PLA have realized the superior benefits offered by a joint labor-management trust fund. In fact many of the workers that realize the benefits of a PLA stay on with the unions after the project is completed, once they realize how good the benefits are under the terms of a collective bargaining agreement.

Rep. Mike Kelly in his press release on the identical companion bill in the house identified three primary fringe benefits that would discriminate against non-union employees working under a PLA: health or medical, training, and pension plans.

Contrary to claims bandied about by some non-union employers and by Rep. Kelly's press release - fringe benefit plans offered under PLAs do not discriminate against non-union employees.

I'd like to address each one in order

MEDICAL: Health plans are typically superior and employees become participants as soon as minimum qualifying requirements are met. In a typical labor-management sponsored health plan an employee puts in around 300 qualifying hours, usually not more than a month and a half on a 7-10 schedule, and no different than what a long time union member must do to qualify.

Additionally, unlike typical non-union plans, participants build up an hour bank that can cover them with the finest medical plans for up to a year after the project is finished. I know of no non-union employer plan that offers comparable health benefits. Typically coverage under non-union plans ceases immediately upon termination of the employee.

TRAINING: Training contributions make participants eligible to avail themselves of any skill improvement training available to union members as well. If contributions are made on behalf of any employee, that employee is entitled to training such as OSHA training, Hazwopper, CPR, 1st aid, skill specific upgrade

training and dozens of other classes. I don't know of any comparable training programs in the non-union sector.

The only question that often arises and which is probably the impetus for the introduction of this bill comes in the context of PENSION CONTRIBUTIONS. I know you are all familiar with defined benefit plans. Universally, DB plans require 5 years of vesting for participants to earn a benefit not 10 years like it used to be when the TAPS line was constructed, and the fact is that a gas pipeline project may not last long enough for a new participant to vest, though that is uncertain at this point.

Accordingly, organized labor fully expects for the licensee or whomever is negotiating the terms of a PLA to bring up alternatives to defined benefits in negotiations, and of course many of the unions offer both defined benefit as well as defined contribution plans. And I fully expect that the unions will agree to some sort of hybrid arrangements that allow fully vested union members to continue with their existing pension plans and an option that would allow for something such as what has been suggested in this bill.

The slippery slope however is in oversimplification of this element by a simple "declaration of benefits" by the employee. The unions will fully agree to allow our benefit plans to be opened up and examined by all parties. The same MUST be true of non-union employers who come to work on the project and who have some type of fringe benefit plans that they want to have considered.

Our experience has been that some non-union plans have comparable excellent benefit plans, but that many do not. Examples of fraudulent or less than acceptable fringe benefit plans that are difficult for employees to navigate and often times leave them without the benefits employees thought they were getting, have been found time and again in davis-bacon compliance reviews both in our state and across the country.

So as it pertains to the choices provided under the "declaration of benefits", it is imperative that the benefit options meet the level of scrutiny that the union sponsored plans are subject to and that are comparable to the union plans. Not to include that type of provision would be a disservice to those employees and contrary to what it seems the bill seeks to accomplish.

The only other concern I have and another slippery part of the slope to consider is the precedent this type of bill would set. I have not seen where any other legislative body sets out to legislate things that are ordinarily mandatory subjects of collective bargaining. Will the legislature go on to negotiate more terms of other collective bargaining agreements?

But if this passes legal muster, and I'm not certain it does, and the legislature seeks to inject itself into the collective bargaining processes of other bargaining

the state and its entities engage in, it would seem a subrogation of those duties currently assigned to others and a proclamation that the legislature is ready, willing, and able to fill up the already compacted schedule a 90 day session presents.

That said, I am glad to see legislators looking out for the best interests of Alaskan employees. I do it everyday, and not just for union members. Our concern and involvement over things like minimum wage, unemployment compensation, and other issues demonstrates that organized labor works hard on issues that DO benefit working Alaskans other than our union members.

This bill seeks to do something similar and I urge you to just make sure it protects employees that are not union members to the same level as the union members who will go to work under the terms of a project labor agreement.

So again, please consider amending sections 36.30.405 (b)1, 2, and 3 to assure that employees will get those same level of benefits as those provided to your typical union member. Section 36.30.405 (b) 3 needs to be modified technically, as it is not the labor representative that administers the plan. The "union" plans are actually Trust Funds subject to ERISA and operated jointly between union employers and union representatives, contrary to the contentions of some of the non-union employers like Brian Miller of Arctic Lights Electric who claimed in this letter that unions received legal cash payoffs. That scenario is patently false and would be a violation of the law and of the Employee Retirement Income Security Act.

It is apparent there are several technical issues that must be addressed, and that the bill is flawed in its present form and to pass it as such would be a disservice to the very employees you seek to protect.

So please consider amending the bill with the suggestions I have offered before moving it on to the next committee.

Thank you

25-LS1493C
Wayne
2/26/08

CS FOR HOUSE BILL NO. 391()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE KELLY

A BILL

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4 **Procurement Code, include terms allowing each employee who is eligible to receive**
5 **fringe benefits because of that project labor agreement to select the fringe benefits**
6 **program to which the employer shall contribute the employee's fringe benefits."**

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

8 *** Section 1. AS 36.30 is amended by adding a new section to read:**

9 **Sec. 36.30.405. Project labor agreements.** (a) A construction contract on a
10 project in which the state acts as a market participant may require that a contractor
11 commit to negotiate, before construction, a project labor agreement to the maximum
12 extent permitted by law.

13 (b) A project labor agreement under (a) of this section must, to the extent

1 permitted by law, include a requirement that each employee eligible to earn fringe
2 benefits because of the agreement may sign a declaration of benefits. The declaration
3 must allow the employee to elect that, if an employer makes any contribution of fringe
4 benefits on the employee's behalf in connection with the project, the employer shall
5 make the contribution to a fringe benefits program selected by the employee from
6 among fringe benefits programs participated in or administered by

7 (1) the employer who makes the contribution;

8 (2) another employer of the employee; or

9 (3) the labor representative that negotiated the project labor agreement.

10 (c) In this section,

11 (1) "contractor" means a person who executes a contract with the state;

12 (2) "project labor agreement" means a comprehensive collective
13 bargaining agreement between the contractor or the contractor's representative and the
14 appropriate labor representatives to ensure expedited construction with labor stability
15 for the project by qualified residents of the state;

16 (3) "state" has the meaning given to "agency" in AS 36.30.990.

17 * Sec. 2. AS 43.90.130(17) is amended to read:

18 (17) commit to negotiate before construction, a project labor
19 agreement to the maximum extent permitted by law; a project labor agreement
20 under this paragraph must, to the extent permitted by law, include a requirement
21 that each employee who is eligible to receive fringe benefits because of the
22 agreement may sign a declaration of benefits; the declaration must allow the
23 employee to elect that, if an employer makes any contribution of fringe benefits
24 on the employee's behalf in connection with the project, the employer shall make
25 the contribution to a fringe benefits program selected by the employee from
26 among fringe benefits programs participated in or administered by (A) the
27 employer who makes the contribution, (B) another employer of the employee, or
28 (C) the labor representative that negotiated the project labor agreement; in this
29 paragraph, "project labor agreement" means a comprehensive collective bargaining
30 agreement between the licensee or its agent and the appropriate labor representatives
31 to ensure expedited construction with labor stability for the project by qualified

1 residents of the state;

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

4 APPLICABILITY. (a) AS 36.30.405, added by sec. 1 of this Act, applies to
5 construction contracts under AS 36.30 for which the deadline to submit responsive proposals
6 to the state occurs 10 days or more after the effective date of this Act.

7 (b) AS 43.90.130(17), amended by sec. 2 of this Act, applies to construction contracts
8 under AS 43.90 for which the application period closes 10 days or more after the effective
9 date of this Act.

Alaska State Legislature

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Member

House Finance Committee
Legislative Budget & Audit

Representative Mike Kelly

House District 7

Sponsor Statement – HB 391

HB 391 protects non-union workers on a job mandated to have a Project Labor Agreement by the State of Alaska. Collective bargaining project labor agreements require contractors to make fringe benefit payments into union health and pension plans on behalf of project workers. When non-union companies are employed on such a project, their workers are forced to make union health, training and pension contributions into plans different from the plans their employer offers. These contributions may provide little or no benefit to them, because they may not be employed long enough to meet the required vesting thresholds of the union plan. There may be an additional significant down side in that, for the duration of the project, no contributions will likely be made into the employee's regular pension plan.

It is discriminatory to ask Alaska workers to forfeit the benefits they have earned. It is fiscally irresponsible to force workers to make contributions to a pension plan that will never be returned to them.

House Bill 391 says if the State of Alaska mandates that a project be covered by a collective bargaining project labor agreement, then it is appropriate for the state to ensure that the project labor agreement contains adequate safeguards to protect non-union workers so they will indeed benefit from the pension contributions that they make.

This bill states that any collective bargaining project labor agreement mandated by the State of Alaska must permit employees who are not covered by a local collective bargaining agreement to execute a "Benefits Election Declaration." The Benefits Election Declaration would allow the employee the option to have fringe benefit payments and/or contributions made on his or her behalf to either the employer's existing fringe benefit programs or to the applicable union trust fund.

Please join me in supporting all workers in Alaska by allowing them to keep the money/benefits they have earned. It's a matter of fairness and equity.

Alaska State Legislature

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Member

House Finance Committee
Legislative Budget & Audit

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: February 21, 2008

TO: Representative Mike Kelly

FROM: Derek Miller

RE: Sectional Analysis for HB 391 (L&C)
(Version No. 25-LS1493\A)

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. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Explicitly authorizes construction contracts initiated by the state in its role as a market participant to include a requirement that the contractor commit to a project labor agreement and requires the project labor agreement to include an option for employees to sign a declaration of benefits.

Section 2. Adds language that project labor agreements as part of the application requirements set out in obtaining a license under the Alaska Gasline Inducement Act, are required to include an option for employees to sign a declaration of benefits.

Section 3. Provides applicability standards for project labor agreements after the effective date of this act.

February 21, 2008

Representative Mike Kelly
State Capitol, Room 513
Juneau, AK 99801

FAXED
2/21/08
465-3853

Re: HB 391 & SB 276

Dear Representative Kelly:

I am writing to thank you for sponsoring HB 391 which affords equal pay for non-union employees working on construction projects mandated to have a Project Labor Agreement (PLA) by the State of Alaska. As a founding member of Associated Builders and Contractors, Inc., and President of Klebs Mechanical Inc., I offer my support of this important house bill.

Klebs Mechanical Inc. will not participate in any construction projects where a Project Labor Agreement is required. Project Labor Agreements only serve special interest groups. They also reduce competition by reducing or eliminating the number of non-union (Merit) contractors who would normally participate in the bidding process of particular construction projects. This, in turn, increases the cost of construction which is bad for any tax paying person because it amounts to less building for our tax dollars.

Project Labor Agreements are bad for our employees because the unions receive all of the fringe benefit payments. Our employees should receive every penny that they earn and not be limited by a vesting schedule set up by a union.

At Klebs Mechanical Inc. we support HB 391 and SB 276. These important bills allow Merit Shop Contractors, who may wish to overlook the fact that PLA's are a non-competitive way to spend our tax dollars, a way to at least give their employees all of the money that they have earned.

Thank you again for sponsoring this important bill, and please let me know if I can assist you in any way in passing this legislation.

Sincerely,


Gary Klebs
President

GK/ms

HB

413



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman
State Capitol, Room 17
Juneau, AK 99801-1182
(907) 465-2693 FAX 465-3835

Rep. Mark Neuman, V-Chair
Rep. Jay Ramras
Rep. Gabrielle LeDoux

Rep. Carl Gatto
Rep. Berta Gardner
Rep. Bob Buch

HB 413

Extending the Real Estate Commission

Sponsor Statement

HB 413 was introduced at the request of the Department of Commerce and Community Development and the Legislative Budget and Audit Committee.

Per the recommendation of the Legislative Auditor, this bill extends the sunset date of the Real Estate Commission to 2016.

As stated in the July 2007 audit, "The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. The Real Estate Commission carries out its responsibilities to educate both the public and licensees in a professional, competent, and efficient manner."

We would appreciate your positive consideration of this legislation.

FISCAL NOTE

**STATE OF ALASKA
2008 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 413
 () Publish Date: _____

Identifier (file name): HB413-CED-OL-02-21-08 Dept. Affected: DCCED
 Title Extending the Real Estate Commission RDU Corp. Bus & Prof Licensing (117)
 Component Corp. Bus & Prof Licensing
 Sponsor Labor & Commerce
 Requester House Labor & Commerce Component Number 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	Appropriation Required	Information					
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Personal Services		258.5	258.5	258.5	258.5	258.5	258.5
Travel		25.4	25.4	25.4	25.4	25.4	25.4
Contractual		163.5	163.5	163.5	163.5	163.5	163.5
Supplies		9.2	9.2	9.2	9.2	9.2	9.2
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	456.6	456.6	456.6	456.6	456.6	456.6

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

CHANGE IN REVENUES (1156)	0.0	0.0	913.2	0.0	913.2	0.0	913.2
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1156 Receipt Supported Services		456.6	456.6	456.6	456.6	456.6	456.6
TOTAL	0.0	456.6	456.6	456.6	456.6	456.6	456.6

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

This legislation extends the Real Estate Commission to June 30, 2016.

In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2009 funding is included in the Operating Budget request. Revenues are collected on a two year cycle. Operating expenditures are calculated by averaging the last full biennium renewal. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2009 budget.

Prepared by: Chris Wyatt, Administrative Officer
 Division: Corporations, Business, and Professional Licensing
 Approved by: Emil R. Notti, Commissioner
 Agency: Commerce, Community, and Economic Development

Phone (907) 465-2572
 Date/Time 2/21/08 3:36 PM
 Date 2/21/2008

HB413
HLC
2007-08

Audit Report

**DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC
DEVELOPMENT
REAL ESTATE COMMISSION
SUNSET REVIEW**

July 3, 2007

Audit Control Number:

08-20051-07



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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

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

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

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

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July 10, 2007

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Real Estate Commission and the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT REAL ESTATE COMMISSION SUNSET REVIEW

July 3, 2007

Audit Control Number

08-20051-07

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(a) 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, AS 08.03.010(c)(19) states the commission will terminate on June 30, 2008, and will have one year from that date to conclude its administrative operations.

In our opinion, the termination date for the Real Estate Commission should be extended. The licensing of qualified realtors benefits the public's safety and welfare. We recommend the legislature extend the termination date of the Real Estate Commission to June 30, 2016.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

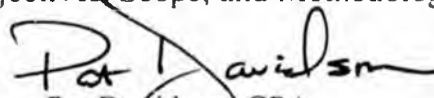

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (AS), we have reviewed the activities of the Real Estate Commission (REC or commission). Under AS 44.66.050(a), the legislative committee of reference shall consider this report during the legislative oversight process in determining if REC should be reestablished. Currently, AS 08.03.010(c)(19) requires REC to terminate on June 30, 2008. If the legislature takes no action to extend the termination date, the commission will have one year from that date to conclude its operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the commission should be extended.
2. To determine if the commission is operating in the public interest.
3. To determine if the commission has exercised appropriate regulatory oversight of real estate licensees.

Scope

Our audit reviews the operation and activities of the commission for the period July 1, 2003 through June 30, 2007. Alaska Statute 44.66.050(c) sets out the criteria we used to determine if there is a demonstrated public need for the commission.

Methodology

To accomplish the audit objectives, the following documents were reviewed:

- Applicable statutes and regulations
- Commission annual reports, meeting minutes, newsletters, and publications
- Licensing staff's correspondence files
- Attorney General opinions
- Newspaper articles
- Commission member résumés

- Current legislation (bills and testimony)
- Licensing files, exam files, investigation files, surety fund claim files
- REC and surety fund financial information
- Civil judgments from the Alaska Court System

We reviewed information from the following databases:

- REC licensing database
- Division of Corporations, Business, and Professional Licensing (DCBPL) investigations database
- State Accounting System (AKSAS)

We interviewed the following individuals:

- Staff of the DCBPL, Department of Commerce, Community, and Economic Development (DCCED)
- Chairperson of REC
- Staff of the Division of Insurance, DCCED
- Chief Administrative Law Judge, Office of Administrative Hearings, Department of Administration
- Private insurance companies that provide errors and omissions (E&O) insurance and surety bonds
- Realtor licensing staff and websites of 11 western states
- Director of Boards and Commissions, Office of the Governor

We also requested complaints from the Commission for Human Rights, the Office of Victim's Rights, the Attorney General, Division of Corporations, Business, and Professional Licensing, the Ombudsman, and the Office of the Governor's Boards and Commission. However, no relevant complaints had been filed.

ORGANIZATION AND FUNCTION

Commission Membership

Alaska Statute 08.88.011 establishes the Real Estate Commission (REC or commission). REC consists of five real estate brokers or associate brokers and two public members.

By statute, the five professional members must be licensed in Alaska for at least three years prior to appointment. The statute further specifies the five members should be from each of the four Judicial Districts, and one from the state at large. However, if no licensed real estate broker or associate broker is eligible or available from the Second Judicial District for appointment, then two licensed brokers or associate brokers shall be appointed from the state at large. Currently, the commission has two REC members from the state at large because of the unavailability of a candidate from the Second Judicial District.

Exhibit 1

Members of the Real Estate Commission As of June 30, 2007

Professional Members

Gene DuVal, 4th Judicial District, Chair
David Somers, Broker at Large, Vice Chair
Brad Cole, 3rd Judicial District
Roger Stone, 1st Judicial District
F a Wilson, Broker at Large

Public Members

Tim Worthen – Public Member
Floyd Lee Sherman – Public Member

The two public members cannot be engaged in the real estate profession, have a legal contract with a real estate licensee other than as a consumer or have a direct financial interest in the real estate profession.

Statutory Duties of the Commission

Under Alaska Statute 08.88.071, REC must perform the following duties:

1. Determine whether applicants met requirements for licenses under this chapter and issue licenses to those who qualify.
2. Prepare and grade examinations.
3. After a hearing, REC has the authority to suspend or revoke the license of a licensee – or impose other disciplinary sanctions authorized under AS 08.01.075 on a licensee – who violates real estate statutes and regulations.
4. Prosecute, through the Department of Law, violations of the provisions of this chapter or lawful regulations adopted under this chapter.

5. Release for publication in a newspaper of general circulation, in the locale of the offending person's principal office registered with the commission, a notice of disciplinary action taken by the commission against a person licensed under this chapter.
6. Issue a temporary permit to the personal representative of the estate of a deceased or legally incompetent real estate broker or to another person designated by the commission with the approval of the personal representative of the estate, in order to secure proper administration in concluding the affairs of the decedent broker's real estate business or temporarily managing the real estate business of the broker, respectively.
7. Establish and periodically revise the form of the seller's property disclosure statement required by AS 34.70.010.
8. Have the authority to levy civil fines as established in this chapter.
9. Revoke the license of a broker or associate broker who is convicted of forgery, theft, extortion, conspiracy to defraud creditors, or a felony involving moral turpitude committed while licensed under this chapter. Notwithstanding AS 08.88.171, a person whose license is revoked under this paragraph is not qualified for a license under AS 08.88.171(a) or (b) until seven years have elapsed since the person completed the sentence imposed for the conviction.

Commission License Requirements

REC licenses real estate salespersons, associate brokers, and brokers. In order to obtain initial licensure, a real estate salesperson must pass an examination, be at least 19 years old, must not be under indictment for any felony involving moral turpitude, or if convicted for an offense, the person must have completed the imposed sentence, and be employed by a licensed real estate broker. The salesperson must also complete 20 hours of pre-licensing education.

Real estate brokers and associate brokers must pass an examination and have a minimum of 24 months of active and continuous experience as a real estate licensee. A broker differs from an associate broker in that a broker must be an owner of a real estate business or must be employed as a broker by a corporation or partnership. Brokers and associate brokers must complete 15 hours of pre-licensing education.

All initial licensees must also complete 20 hours of post-licensing education within the first year of receiving their license.

Real estate licensees are renewed biennially. The next biennial renewal date is January 31, 2008. In order to renew their license, real estate licensees must complete a renewal application, remit a license fee, and complete 20 hours of education.

Real Estate Surety Fund

The Real Estate Surety Fund (RESF or fund) operates under Article 4 of AS 08.88. REC administers the fund and sets the surety fee paid by all licensees. The fund was established in 1974, serving as a substitute for the previously required corporate surety bonds, to fund the education of licensees and the public.

By law, the fund is to be used for reimbursement of losses suffered as a result of fraud, misrepresentation, deceit, or the conversion of trust funds on the part of any real estate licensee. Claims for reimbursement require a \$250 filing fee and claim payments are limited to \$15,000 per transaction, up to a maximum of \$50,000 per licensee. The statutes grant REC the following authority when considering a claim for payment from RESF:

1. Take and hear evidence pertaining to the claim.
2. Administer oaths and affirmations.
3. Compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the claim.
4. Engage the services of an investigator, accountant, or other expert necessary to process the claim.

However, the commission currently exercises its option under AS 08.88.472(c) to contract the above legal services under AS 36.30 (State Procurement Code). Currently, REC contracts with the Office of Administrative Hearings for these services.

Duties of the Department of Commerce, Community, and Economic Development – Division of Corporations, Business, and Professional Licensing (division)

The division provides administrative and investigative assistance to REC. This includes budgetary services and administrative functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of meetings.

On its own initiative, the division may conduct an investigation if it appears an individual has engaged, or is about to engage, in a prohibited professional practice. The division can bring an action in Superior Court to enjoin the act, examine the books and records of an individual, and issue subpoenas for the attendance of witnesses and documents.

In order to facilitate the management of RESF and its fee setting process, the division is also required by statute to provide the commission, every three months, with a financial statement that includes the following information regarding RESF:

- The activities of the fund
- The balances of the fund
- Interest earned
- Interest returned to the fund

REPORT CONCLUSIONS

In our opinion, the Real Estate Commission (REC or commission) is serving a public purpose and has demonstrated an ability to operate in a satisfactory manner. The regulation and licensing of real estate professionals provides necessary public protection in the buying and selling of residential and commercial properties. REC carries out its responsibilities to educate both the public and licensees in a professional, competent, and efficient manner. Additionally, active investigation of complaints and licensure actions, when appropriate, provides assurance that licensed professionals are competent and ethical.

In accordance with AS 08.03.010(c)(19), REC is scheduled to terminate on June 30, 2008. Under AS 08.03.020, the commission has one year after its termination date to administratively conclude its affairs. We recommend the legislature extend REC's termination date to June 30, 2016.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The legislature should consider amending the statutes related to the Real Estate Surety Fund to provide more complete, effective, and efficient consumer protection to claimants.

Prior Finding

Alaska Statutes regulate the dollar amount of limits that can be made on Real Estate Surety Fund (RESF) claims, the notification process of claim awards, and the nature of the claim that can be filed. Specifically, the previous recommendation included these findings:

1. When RESF was originally established by statute in 1974, the individual claim limit was set at \$10,000 and the aggregate claim limit was restricted at \$50,000. At the time of the last audit, in 2003, these claim limits remained at the original amounts. The audit found that each of the last five successful claim payments had alleged losses exceeding the \$10,000 limit. Also, Alaska's claim and aggregate fund limits for the surety fund were low compared to other states, where the average individual claim limit was just over \$21,000 and the average aggregate limit was just under \$70,000. As a result, the recommendation suggested increasing RESF claim limits to \$20,000 for individual claims and \$100,000 for aggregate claims per licensee.
2. Claims against RESF are administered under the state's Administrative Procedures Act (APA). Under APA, a respondent has the right to appeal a RESF decision, a claim payment is not paid from the fund until an appeal is filed and considered, or the respondent waives their appeal rights. The last audit found that this procedure resulted in a situation where a successful claimant was waiting over nine months to receive their claim payment because the Division of Corporations, Professional, and Business Licensing (division) was not able to locate or notify the respondent of their rights to appeal. Thus, the recommendation suggested permitting the Real Estate Commission (REC or commission) to disburse RESF claim awards after they have made a good faith effort to locate the respondent.
3. State law specifies that RESF can be used to reimburse an individual for a loss "*suffered in a real estate transaction as a result of fraud, misrepresentation, deceit.*" During the last audit, two instances were identified where respondents attempted to have claims dismissed because the transaction involved purchasing a mobile home. The respondents argued that since mobile homes are considered personal property, rather than real property, the sale does not represent a "*real estate transaction.*" The hearing officer disallowed these arguments because the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees. Despite the hearing officer

rulings, these administrative hearing decisions do not have any value in establishing recognized precedence. Consequently, the recommendation suggested amending statutes to specify mobile home transactions as subject to RESF claims.

Legislative Audit's Current Status

The current status of the recommendation is as follows:

1. This issue is partially resolved. The legislature increased the individual claim limits to \$15,000; however, the prior aggregate claim limit of \$50,000 remains unchanged. During our current review period, the \$15,000 individual limit did not hinder awards to claimants from the fund. Conversely, the \$50,000 aggregate limit restricted at least one award provided to claimants. In this instance, the hearing officer awarded \$10,850 more than the \$50,000 aggregate limit. REC could not disburse the entire award due to the statutory limit.
2. This issue is resolved. The legislature modified statutes to allow proof of notice to satisfy due process requirements for RESF actions.
3. This issue is not resolved. The RESF statutes have not been modified to permit mobile home transactions as being subject to RESF claims. During our period of review, we did not identify any RESF claims for mobile home transactions.

Based on the current status of these issues, we recommend the legislature reconsider making some increase to RESF aggregate claim limits, as well as making mobile home transactions eligible under RESF claims.

Recommendation No. 2

The director of Boards and Commissions, Office of the Governor, should verify board members satisfy all statutory requirements prior to being appointed.

During 2007, a board member was appointed to the commission without meeting the professional experience requirements outlined in statute. Alaska Statute 08.88.041(a) requires brokers and associate brokers to be licensed in Alaska for at least three years before being appointed to the commission. This board member was an associate broker for less than two years prior to his appointment.

Boards and Commissions' staff overlooked this board member's lack of professional experience when appointing the member to the commission. This appointment could result in commission decisions not being supported by adequate professional experience. We recommend the director of Boards and Commissions verify that potential board members satisfy all statutory requirements prior to being appointed.

Recommendation No. 3

The division should increase licensing fees to eliminate the commission's current operating deficit.

As of May 31, 2007 the commission had an operating deficit of \$147,211. The deficit is caused by revenues not covering all of the commission's expenditures for a two-year licensing period. Alaska Statute 08.01.065(c) requires fees, for an occupation, be set at a level to approximate the related regulatory costs.

Accordingly, we recommend the division review the regulatory costs and licensing fees to ensure fees collected are sufficient to eliminate the deficit and meet annual operating costs of the commission.

(Intentionally left blank)

A ANALYSIS OF PUBLIC NEED D

The following analyses of commission 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 Real Estate Commission (REC or commission) has provided the public with qualified realtors through the regulation and licensing of qualified salespeople, associate brokers, and brokers. As of June 30, 2007 the commission licensed 2,581 real estate professionals.

The commission also managed the Real Estate Surety Fund (RESF) claims for any members of the public with complaints against licensees. Exhibit 2 summarizes RESF activity during FY 07 through May 31, 2007.

Exhibit 2

**Real Estate Surety Fund Claims
As of May 31, 2007**

Year	Number of Claims Filed	Amount of Claims Paid
FY 04	8	\$ 43,658
FY 05	10	63,946
FY 06	15	1,986
FY 07	11	20,659

During our review period, RESF claims were processed in accordance with statute. Additionally, at the beginning of FY 05, the Office of Administrative Hearings was created.¹ The creation of this office allowed RESF cases to be heard and resolved in a more efficient manner.

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.

State law requires "that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation."² The division, with input from the commission, sets fees based on a two-year cycle, with the majority of the revenue collected in even-numbered fiscal years. The Schedule of License Revenue and Expenditures for the Real Estate Commission (Exhibit 3 on the next page), summarizes the operating costs and revenues for REC for the period FY 04 through May 31, 2007.

¹ AS 44.64.010, effective July 26, 2004.

² AS 08.01.065(c)

Exhibit 3, below, shows a large deficit towards the end of FY 07. Revenues generated over the sunset period have not been sufficient to fund commission costs for the same period. The division should increase licensing fees to eliminate the commission's continuing, operating deficit. See Recommendation No. 3.

Exhibit 3				
Real Estate Commission				
Schedule of License Revenue and Expenditures				
As of May 31, 2007				
(Unaudited)				
	<u>FY 04</u>	<u>FY 05</u>	<u>FY 06</u>	<u>FY 07</u>
Revenues	\$ 524,900	\$ 208,400	\$ 524,300	\$ 187,402
Direct Expenditures				
Personal Services	160,800	162,600	182,700	160,377
Travel	17,700	19,200	25,300	18,136
Contractual	111,300	102,900	103,400	7,394
Supplies	<u>1,600</u>	<u>5,500</u>	<u>2,500</u>	<u>3,503</u>
Total Direct Expenditures	291,400	290,200	313,900	189,410
Administrative Indirect Costs	<u>115,300</u>	<u>115,800</u>	<u>112,100</u>	<u>163,303</u>
Total Expenditures	<u>406,700</u>	<u>406,000</u>	<u>426,000</u>	<u>352,713</u>
Annual surplus or deficit	<u>118,200</u>	<u>(197,600)</u>	<u>98,300</u>	<u>(165,311)</u>
Cumulative Surplus (Deficit)	<u>\$ 117,400</u>	<u>\$ (80,200)</u>	<u>\$ 18,100</u>	<u>\$ (147,211)</u>

REC also operates RESF whose funds are accounted for separately from the commission. The Real Estate Surety Fund Schedule of Revenues and Expenditures (Exhibit 4), on the next page, summarizes revenues and operating costs for the period FY 04 through May 31, 2007. Alaska statutes require that the annual balance of the fund be at least \$250,000, but not more than \$500,000. As illustrated in Exhibit 4, RESF's balance is in compliance with statutory requirements.

Exhibit 4

**Real Estate Surety Fund
Schedule of Revenues and Expenditures
As of May 31, 2007
(Unaudited)**

	FY 04	FY 05	FY 06	FY 07
Revenues				
License Fees, Claim Filing Fees, and Claim Reimbursements	\$ 83,056	\$ 20,321	\$ 72,035	\$ 29,598
Interest Earned	<u>3,982</u>	<u>12,218</u>	<u>12,045</u>	<u>17,761</u>
Total Revenues	<u>87,038</u>	<u>32,539</u>	<u>84,080</u>	<u>47,359</u>
Expenditures				
Personal Services	55,905	44,992	69,747	19,598
Travel	-	182	931	-
Contractual	8,890	10,865	1,772	-
Commodities	2,552	2,432	-	-
Equipment	3,114	-	-	-
Claim Expenditures:				
Hearing and Legal	4,226	11,488	13,866	2,952
Claim settlements	<u>43,658</u>	<u>63,946</u>	<u>1,986</u>	<u>20,659</u>
Total Expenditures	<u>118,345</u>	<u>133,905</u>	<u>88,302</u>	<u>43,209</u>
Net Change in Fund Balance	<u>(31,307)</u>	<u>(101,366)</u>	<u>(4,222)</u>	<u>4,150</u>
Fund Balance, beginning of year	<u>467,204</u>	<u>435,897</u>	<u>334,531</u>	<u>330,309</u>
Fund Balance, end of year	<u>\$435,897</u>	<u>\$334,531</u>	<u>\$330,309</u>	<u>\$334,459</u>

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

During the past four years, REC has supported numerous statutory changes that are of benefit to the public interest. The commission supported creation of new post-licensing requirements for all licensees and modifications of licensing requirements for brokers and associate brokers. The commission also supported the creation of a new section defining licensee relationships and duties, as well as a clarification on disclosing conflicts of interest. REC also supported an increase in RESF individual claim limits from \$10,000 to \$15,000.

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.

Draft regulations developed by REC were properly advertised to the public for a reasonable amount of time. Public notices of commission meetings were published on the commission's website and the online public notice system. The commission accepted public comment at the meetings.

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

The public received notice of all REC meetings and proposed regulation changes. A public comment period had been set aside in the agenda for each commission meeting.

Interested parties can attend meetings in person, or by teleconference. In addition to accepting public comment at the meetings, REC frequently discussed correspondence from various licensees, agencies, and other interested parties.

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.

Complaints Regarding REC Activity

During the period of our review: no complaints were filed with the Department of Commerce, Community, and Economic Development; Offices of Victim's Rights; Ombudsman; and Attorney General; or the Office of the Governor's Boards and Commissions concerning REC or their staff.

Department Investigations

For the period July 2003 to April 2007, the division opened 173 cases. Another 43 complaints were filed but were not investigated further due to lack of jurisdiction or incomplete information.

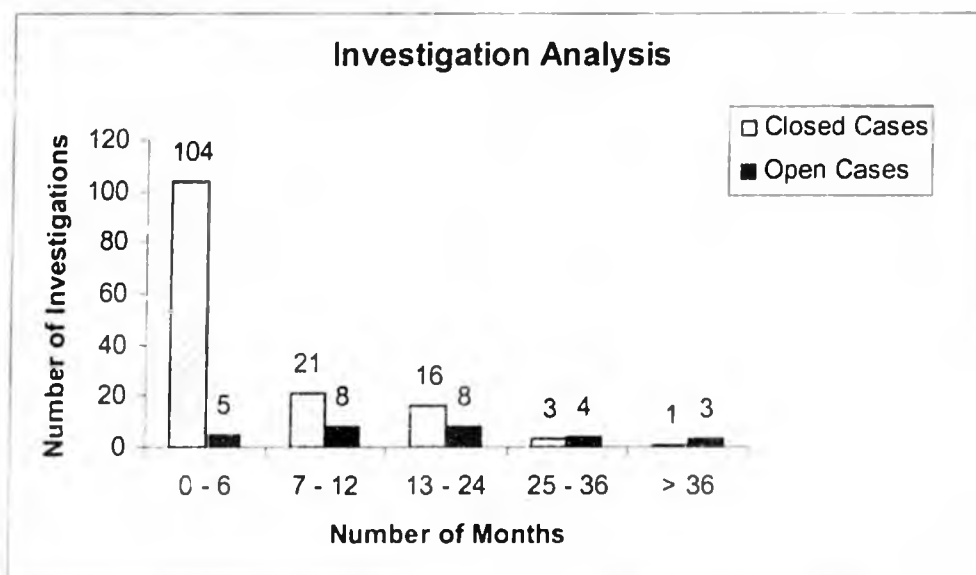
Approximately 40 percent of the investigations were generated from complaints made by the public, and 34 percent were generated from investigations opened by the division.

The types of investigations filed included, but were not limited to:

- Fraud/Misrepresentation (53)
- Licensing Applications Problems/Faisifications (30)
- Unlicensed Practice Activity (19)
- Violating Professional Ethics (15)
- Supervision (14)

As of our review date, 145 out of 173 investigations had been closed and 28 remained open. The cases are graphically depicted below:

Exhibit 5



Review of the nature and extent of complaints and investigations filed, involving REC licenses, shows that the division (in conjunction with the commission) has proceeded in an effective and efficient manner to resolve complaints and investigations.

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 application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lenient. The new licenses issued by the commission during FY 04 through FY 07 are summarized in Exhibit 6, on the following page:

Exhibit 6**Real Estate Commission Licensees
As of June 30, 2007**

License Type	FY 04	FY 05	FY 06	FY 07	Total New Licensees	Total Number of Licensees
Salesperson	302	390	405	295	1,392	1,665
Associate Broker	26	22	57	34	139	428
Broker	<u>4</u>	<u>10</u>	<u>7</u>	<u>14</u>	<u>35</u>	<u>488</u>
Total	332	422	469	343	1,566	2,581

Each applicant is required to satisfy the requirements for licensing. To obtain a license, the candidate must submit a fee and application, pass an examination, and complete 15-20 pre-licensing education hours.³ A candidate, who was previously licensed in another state, must also demonstrate prior real estate experience.

Continuing real estate education is required and adequately monitored by the commission to maintain quality performance and help ensure the integrity of the profession.

A new post-licensing education requirement was established beginning January 1, 2006. This new statute requires new licensees to complete an additional 20 hours of education within 12 months of licensure.⁴

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.

No evidence indicated a lack of compliance with state personnel practices, including affirmative action, in qualifying applicants or hiring staff. Each time the commission has denied an applicant's certification, the decision has been based on statutory requirements – not on the personal attributes of the applicants.

³ Salespeople are required to obtain 20 hours of pre-licensing education [AS 08.88.091(b)], and associate brokers and brokers are required to obtain 15 hours of pre-licensing education [AS 08.88.091(c)]. Also, see pre-licensing education discussion on the following page.

⁴ AS 08.88.095(a)

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.

Pre-licensing Education

Currently, new salesperson licensees must complete 20 hours of pre-licensing education and new associate brokers and brokers must complete 15 hours of pre-licensing education. Additionally, all new initial licensees must complete 20 hours of post-licensing education within 12 months of licensure.⁵

During the 2007 legislative session, the legislature passed new requirements that would increase pre-licensing education hours for new salespeople to 40 hours and post-licensing education hours for all license types to 30 hours, effective February 1, 2008. The pre-licensing hours for associate brokers and brokers would remain unchanged.

Pre-licensing education requirements for all 50 states, District of Columbia, and Guam, compared to the proposed increase in pre-licensing education for salespeople in Alaska, shows that the increase is reasonable considering the national average.

Additionally, the national average for brokers pre-licensing education is 100 hours, while Alaska's requirement is 15 hours. However, increases in pre-licensing education hours for associate brokers and brokers were not considered by REC or the legislature.

Real Estate Surety Fund

As discussed in the Findings and Recommendations section, the legislature should consider amending statutes to increase the aggregate limit on RESF claims in order to enhance public protection. See Recommendation No. 1.

Adherence to AS 08.88.041 for Board Members

As discussed in the Findings and Recommendations section, a board member was appointed to REC this year without meeting the professional experience requirements established in statute. The Office of the Governor should verify potential board members meet statutory requirements prior to appointment. See Recommendation No. 2.

⁵ AS 08.88.095(a) is required for all license types.