

ALASKA LEGISLATURE COMMITTEE FILES 2007-2008 SL&C 12650

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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State Capitol
Room 214**

REPRESENTATIVE JOHN COGHILL

SPONSOR STATEMENT

HB 383

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

It is necessary for the protection and health of patients that dentists have a certain number of hours of clinical practice prior to seeking a license and entering private practice. However, while these safeguards are prudent, the requirements have excluded many dedicated dentists who no longer practice dentistry because they are in command positions.

In order to capture the skill and expertise of many dedicated dentists who have served in the armed services for 20 years or more and have been promoted to command positions, this bill will add 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.

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State Capitol
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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

HB383(25-LS1434A)

Dana Owen

From: Karen Lidster
Sent: Wednesday, May 14, 2008 12:12 PM
To: Dana Owen
Subject: FW: HB-383 Exemption from dentist licensing exam

Here is the email I received from Mr. Towle. Now your file is complete!
I look forward to seeing you in January and working with you again.
karen

From: Jim Towle [mailto:JTowle@akdental.org]
Sent: Tuesday, April 08, 2008 5:20 PM
To: Karen Lidster
Cc: Dave Eichler
Subject: HB-383 Exemption from dentist licensing exam

Rep. Coghill & members of the Alaska Legislature

On behalf of the Alaska Dental Society, I'm pleased to confirm that the Society supports HB-383.

The Society recognizes that there are senior ranking dental officers in all branches of the armed services who are both excellent clinical practitioners and skilled administrators, who because of their command obligations are not in a position to meet the existing requirements and believe the exemption proposed in this legislation will allow Alaska to offer them a profession home upon their retirement from active service.

If I can be of further service to you in your efforts to pass this bill, please don't hesitate to let me know.

Respectfully yours,

Jim Towle

Executive Director

Alaska Dental Society -- Pursuing Policies that enhance the dental profession and the well-being of Alaskans

5/14/2008

HEB

413

SENATE COMMITTEE REPORT

DATE: 3/12/08

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/1/08

Labor and Commerce Committee considered HOUSE BILL NO. 413

HB 413 EXTENDING THE REAL ESTATE COMMISSION

"An Act extending the termination date for the Real Estate Commission; and providing for an effective date."

and recommends:

- be replaced with SCS or CS _____ (_____)
- adopt previous SCS or CS _____ (_____)
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

| | |
|--------------------------|--------------------------|
| SENATE BILL: | |
| <input type="checkbox"/> | Same Title |
| <input type="checkbox"/> | New Title |
| <hr/> | |
| HOUSE BILL: | |
| <input type="checkbox"/> | Same Title |
| <input type="checkbox"/> | Technical Title Change |
| <input type="checkbox"/> | New Title w/ SCR # _____ |

NEW FISCAL NOTE(S):

| Department | Date | Fiscal | Inst. | Zero | F# |
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PREVIOUS FISCAL NOTE(S):

| Department | Date | Fiscal | Inst. | Zero | F# |
|------------|---------|--------|-------|------|----|
| DCCED | 2/21/09 | ✓ | | | |
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APPROPRIATION - no fiscal note

| SIGNATURE AND INITIALS | NAME | DO PASS | DO NOT PASS | | |
|---------------------------|---------|---------|-------------|--|--|
| <i>V. Bundo</i> | Bundo | ✓ | | | |
| <i>B. Davis</i> | DAVIS | ✓ | | | |
| <i>[Signature]</i> | STEVENS | ✗ | | | |
| | | | | | |
| CHAIR: <i>[Signature]</i> | ELI'S | ✓ | | | |



ALASKA STATE LEGISLATURE

HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON

Chairman
State Capitol, Room 17
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(907) 465-2693 FAX 465-3835

Rep. Mark Neuman, V-Chair Rep. Carl Gatto
Rep. Jay Ramras Rep. Berta Gardner
Rep. Gabrielle LeDoux 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.

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

July 3, 2007

Audit Control Number

00-20251-07

**Division of Legislative Affairs
P.O. Box 113300, Juneau, Alaska 99801-3300**

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 legislative session.

The committee is responsible for providing the legislature with information on the government's operations. The programs and activities of state government now cost more than \$1 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 Statute 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 office in Juneau, Alaska, or at <http://www.lgaudit.state.ak.us>

SUBJECTS

Administrative
Economic
Environmental
Health
Social
Transportation

Senator William
Senator John
Senator Lynn
Senator Don
Senator Gene
Senator Charles

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ALASKA STATE LEGISLATURE

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Division of Legislative Audit



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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.

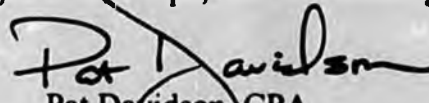

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| Objectives, Scope, and Methodology | 1 |
| Organization and Function | 3 |
| Report Conclusions..... | 7 |
| Findings and Recommendations..... | 9 |
| Analysis of Public Need | 13 |
| Agency Responses | |
| Office of the Governor, Boards and Commissions | 23 |
| Department of Commerce, Community, and Economic Development | 25 |
| Real Estate Commission | 27 |

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
Rita 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.

REPORT CONCLUSIONS

In our opinion the Real Estate Commission (REC) or Commission is not fully public
purpose and has demonstrated an ability to operate as a satisfactory means. The
and licensing of real estate professionals provides necessary public protection in the
and selling of residential and commercial properties. REC can be an effective
educate both the public and licensees in a professional, competent and
efficient manner. Additionally, more investigation of complaints and licensee records
when appropriate provide assurance that licensed professionals are competent and ethical.

In accordance with AS 02.05.010(c)(1) REC is scheduled to terminate on June 30, 2002.
AS 02.05.010, the Commission shall terminate after its termination date to
approximately conclude its terms. We recommend the Legislature extend REC's
termination date to June 30, 2010.

(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.

(Informational text block)

The division should investigate the commission's current activities

As of May 31, 2007, the commission had an opening deficit of \$147,311. The deficit is caused by revenues not covering all of the commission's expenditures for a two-year period. Alaska Statute 08.01.005(c) requires that the commission be set at a level of approximately the same as the regulatory costs.

Accordingly, we recommend that the legislature review the regulatory costs and determine how to ensure that the commission is sufficient to eliminate the deficit and meet annual operating costs of the commission.

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A ANALYSIS OF PUBLIC NEED

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) | | | | |
| | FY 04 | FY 05 | FY 06 | FY 07 |
| Revenues | <u>\$ 524,900</u> | <u>\$ 208,400</u> | <u>\$ 524,300</u> | <u>\$ 187,402</u> |
| 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 | <u>291,400</u> | <u>290,200</u> | <u>313,900</u> | <u>189,410</u> |
| 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)**

| | <u>FY 04</u> | <u>FY 05</u> | <u>FY 06</u> | <u>FY 07</u> |
|--|------------------|------------------|------------------|------------------|
| 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.

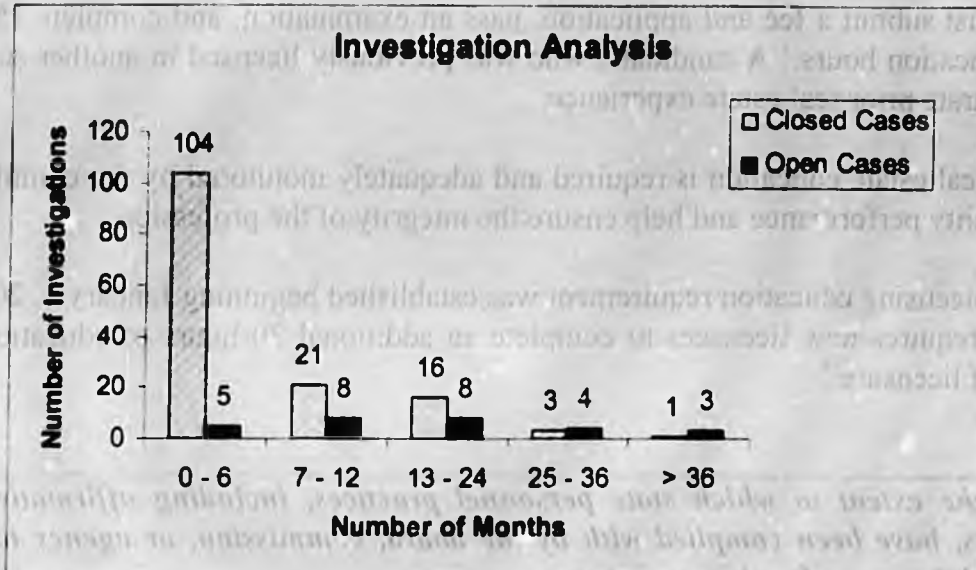
Approximately 40 percent of the investigations were generated from complaints made by the public, and 34 percent were generated from investigations opened by the division.

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

- Fraud/Misrepresentation (53)
- Licensing Applications Problems/Falsifications (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.

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

Commission objectives are identified in AS 08.88.071 and are defined in the Organization and Function section of the report. REC has effectively and efficiently obtained its objectives and purposes. Evidence suggests the commission establishes and meets its operational objectives annually.

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

RESF is an option the commission provides to the public in order to reclaim any funds that may have been lost due to a licensee performing activities that involve fraud, deceit, misrepresentation, or a conversion of trust funds. Currently, licensees contribute \$30 to the fund every two years for this service, and Alaska statute stipulates that this fee cannot exceed \$125.⁶

A RESF claimant has the choice to pursue any of the other following options in addition to, or as an alternative to RESF:

- Small claims suits through the Alaska Court System
- Civil suits through the Alaska Court System
- Surety bond insurance coverage through a private insurance carrier
- Errors and omissions (E&O) insurance coverage through a private insurance carrier

The Alaska Court System provides RESF claimants with the option to file small claims and civil suits. These options are a potential alternative to RESF. However, currently these options are judicial remedies for the public and licensees to protect against REC decisions that could be overturned by the Alaska Court System.

Private insurance companies offer surety bonds and E&O insurance. The annual premiums on these policies can range from \$500-\$5,000 for coverage equal to or more than the coverage provided by RESF. These premiums are more than 30 times the current costs of RESF's fee.

Currently, licensed realtors are not required by law to have professional liability insurance in addition to RESF. This is comparable to a survey of 11 western states, where seven of 11 states had surety funds and did not require professional liability insurance. Another two states did not have surety funds nor required professional liability insurance. The remaining two states did not have surety funds but did require professional liability insurance.

⁶ AS 08.88.455(a)

Although there are potential alternatives to RESF services, the fund is a reasonable activity of the commission. All licensees are required to contribute to RESF which in turn protects the public. RESF does not pose a significant financial burden on licensees, and the public and licensees have the option to pursue judicial remedies as a balance to RESF decisions.

(Should be allocated)

Although there are potential alternatives to RISE services, the final is a responsible activity of the commission. All decisions are referred to members of RISE, which in turn provide the public RISE does not have a significant financial burden on licensees, and the public and licensees have the option to purchase judicial services as a balance to RISE decisions.

(Intentionally left blank)

SARAH PALIN
GOVERNOR

GOVERNOR@GOV.STATE.AK.US



P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3800
FAX (907) 465-3832
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 1, 2007

RECEIVED

AUG 03 2007

LEGISLATIVE AUDIT

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

Dear Ms. Davidson:

I received your preliminary audit report regarding statutory professional requirements for associate brokers that serve on the Real Estate Commission. Recommendation No. 2: The director of Boards and Commissions, Governor's Office, should verify board members satisfy all statutory requirements prior to being appointed, is appropriate and may ensure that current Alaska statutory requirements are met.

I appreciate your bringing this to my attention; I concur with your recommendation. In the future, I will verify that potential board members satisfy all statutory requirements prior to being appointed.

Sincerely,

A handwritten signature in black ink, appearing to read "Ivy Frye".

Ivy Frye

Director of Boards and Commissions

cc: Mike Tibbles, Chief of Staff, Office of the Governor
Linda Perez, Director of Administrative Services, Office of the Governor

10001 R.O. BOX 11001
UNIVERSAL ALASKA OPTIC 11001
907-465-2000
R.O. BOX 11001
ANCHORAGE, ALASKA 99511

SARAH PALIN
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 1, 2007

RECEIVED
AUG 03 2007
LEGISLATIVE AUDIT

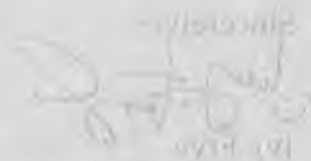
Ms. Patricia Davidson CPA
Legislative Auditor
Division of Legislative Audit
P.O. Box 11330
Juneau AK 99811-7300

(Intentionally left blank)

Ms. Patricia Davidson

I received your preliminary audit report regarding certain professional
requirements for associate auditors that were on the local audit commission
in Juneau. The audit of Board and Commission on Governmental
should verify board members satisfy all statutory requirements prior to being
appointed. It is appropriate and not unusual that certain Alaska state agencies
the first

I appreciate your bringing this to my attention. I will review
the information. In the future, I will verify that board members meet all
statutory requirements prior to being appointed.

Sincerely,

Linda Young

Director of Administration
Linda Young, Director of Administration, Office of the Governor
Mike Tabler, Chief of Staff, Office of the Governor



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Office of the Commissioner

Sarah Palin, Governor
Emil Notti, Commissioner

RECEIVED

July 20, 2007

JUL 30 2007

LEGISLATIVE AUDIT

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

Dear Ms. Davidson:

Thank you for the opportunity to respond to the Preliminary Audit on the Real Estate Commission Sunset Review dated July 3, 2007.

We concur with the audit findings and offer the following comments to the 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.

The department supports an increase to the aggregate claim limit allowed by the Real Estate Surety Fund.

The department remains neutral on the discussion of whether mobile homes are eligible for claims under the Real Estate Surety Fund. We understand and appreciate the audit findings that the intent of the fund is to compensate victims of fraud, misrepresentation, and deceit on the part of licensees; however, the Real Estate Commission has taken a position that mobile homes are considered personal property, rather than real property and therefore, does not represent a real estate transaction. This is a topic best addressed by the Legislature.

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.

The department fully supports this recommendation. We cannot agree more that professional members who have the responsibility and authority to govern a profession in Alaska hold the credentials established by statute which they are being tasked to govern.



The one individual on the Real Estate Commission identified by the audit as not meeting statutory requirements to serve as a Commission member continues to hold the professional position on the Commission. The individual's continued participation on the Real Estate Commission has a real potential to place Commission's voting decisions in jeopardy should a decision be challenged at any time.

Recommendation #3: The division should increase licensing fees to eliminate the commission's current operating deficit.

The department concurs with this recommendation and will be conducting a fee analysis to resolve this issue.

Again, we appreciate the opportunity to comment on your audit report findings.

Sincerely,


Emil Notti
Commissioner

Gene DuVal
529 5th Avenue, Suite 200
Fairbanks, Alaska 99701

July 31, 2007

Pat Davidson
Alaska State Legislature
Division of Legislative Audit
PO Box 113300
Juneau, Alaska 99811-3300

RECEIVED
AUG 02 2007
LEGISLATIVE AUDIT

Dear Ms. Davidson,

Thank you for your letter dated July 10, 2007, and for the copy of the legislative audit report regarding the Alaska Real Estate Commission. We appreciate your time and efforts to try to make this system better.

Regarding recommendation number one, I support increasing the surety fund limits, and other measures, to provide more complete, effective and efficient consumer protection to claimants.


Regarding mobile home transactions: the commission is on record that the sale of a mobile home without real estate is not a transaction for which a license is required. It is clearly stated in AS 08.88.900 (20) that a license is not required for sales of mobile homes. If a mobile home was included into being a licensed activity, then why not a cabin kit, or modular pieces that assemble into a home, or if you want to stretch it, building materials, or a motor home? But if a mobile home, a pre-manufactured home, or a modular home, is part of a transaction involving real estate, then a license is required. Real estate must be involved in some form.

Recommendation number two involves the office of the Boards and Commissions and should be also brought to their attention, which I am sure you have done. I support recommendation number two.

I also support recommendation number three: increasing licensing fees so the Alaska Real Estate Commission is not operating showing a large deficit.

Thank you for the time and thoughtfulness that was put into this audit. If I can be of further assistance, please call me.

Best wishes.


Gene DuVal
Chairman
Alaska Real Estate Commission

HJR

8



REPRESENTATIVE BILL THOMAS

ALASKA STATE LEGISLATURE DISTRICT 5

e-mail: Representative.Bill.Thomas@legis.state.ak.us webpage: www.akrebublicans.org/thomas/

State Capital

Juneau AK, 99801-1182

907-465-3732

888-461-3732

FAX 907-465-2652

Sponsor Statement for HJR 8 Opposing the enactment by the Washington State Legislature of a shipping container tax.

Alaska depends heavily on goods shipped through ports in Washington state, which has long been a gateway to this state. In 2003, Alaska was the Puget Sound's 5th largest trading partner. The close economic connection between Alaska and Washington is responsible for at least 103,500 jobs and over \$4 billion in labor earnings.

Currently there is a bill before the Washington State Senate (SB 5207) that proposes to create a Freight Congestion Relief Account and taxation structure. A fee will be imposed on shipping containers traveling to and from Washington at a rate of \$50 per twenty-foot equivalent unit. The marine terminal operator will be required to pay 90% of this fee to the state, keeping 10% as compensation for collecting the fee.

With shipping fees in Alaska already astronomical this additional tax could be devastating to the flow of goods to and from this state. HJR 8 brings this negative impact to the attention of the Washington State Legislature and asks that the Washington State Legislature find some other means to fund infrastructure improvements to the ports of Washington. HJR 8 also asks the Alaska Attorney General to research the legal issues involved with SB 5207 and prepare to file any viable injunctions or complaints that Alaska may be able to file should SB 5207 pass. I strongly urge your support of this resolution.

Kaci Schroeder

From: Rep. Bill Thomas
Sent: Wednesday, February 14, 2007 12:52 PM
To: Kaci Schroeder
Subject: FW:

-----Original Message-----

From: lmertz@kpunet.net [mailto:lmertz@kpunet.net]
Sent: Tuesday, February 13, 2007 8:13 AM
To: Rep. Bill Thomas
Cc: representative_kyle_johannsen@legis.state.ak.us
Subject:

I support your opposition to the Washington State tax on containers, but it is hardly a "nuisance tax" as quoted in the papers to Ketchikan. We get up to 4 barges a week, carrying hundreds of containers, up to 500 a week. That would be \$100,000 a week, because this tax is BOTH WAYS or \$5,200,000 a year!! This is a huge tax on Ketchikan and Alaska. It should be opposed and if necessary a suit filed against this under the Commerce Clause of the Constitution, as this is a tax on Interstate Commerce by Washington, which is not legal.

The quote may be out of context... please oppose this in every way you can.

Lance Mertz
Ketchikan, Alaska

OCEANBEAUTY SEAFOODS, INC.

**Representative Kyle Johansen
Alaska State House of Representatives
Chairman, House Transportation Committee
State Capitol
Juneau, Alaska 99801**

Dear Representative Johansen and Members of the House Transportation Committee:

Ocean Beauty Seafoods supports HJR8, the resolution opposing the proposed container fee bill in the Washington State legislature.

Alaskans need to do everything in their power to make sure the Washington lawmakers are fully aware of the impact their "Tax on Alaska" would have on Alaskans and the Alaska economy. HJR8 is a big step in that direction.

Ocean Beauty moved more than 2111 TEU's between Seattle and Southeast Alaska in 2006. That equates to a fee of \$105,550 that our company alone would have had to pay. We simply cannot be competitive against farmed and foreign fish with that much increase in our transportation costs.

We urge you to pass HJR8 and send a loud message to the Washington state legislature that their bill, SB 5207 would have a major affect on the Alaskan economy, Alaska businesses, and Alaskan consumers.

Sincerely,

Mark Palmer

Mark Palmer

cc. Representative William Thomas

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone 907-586-6652

Fax 907-523-1168

Website: <http://www.seafa.org>



E-mail: seafa@gci.net

February 19, 2007

Representative Bill Thomas

Alaska State Legislature

State Capitol, Room 434

Juneau, AK 99801

RE: Support HJR 8

Southeast Alaska Fishermen's Alliance supports HJR 8 opposing the enactment by the Washington State Legislature of a bill proposing to impose a fee on the processing of shipping containers in the State of Washington.

We agree with the resolution that this will have a very negative effect on the State of Alaska and the seafood industry.

Sincerely,

Kathy Hansen

Kathy Hansen

Executive Director



Since 1935

Cordova District Fishermen United

P.O. Box 939 | Cordova AK 99574

Ph: (907) 424 3447 Fax: (907) 424 3430

Email: cdfu@ak.net

February 16, 2007

The Honorable Kurt Olson
Chairman, House Labor and Commerce Committee
House of Representatives
Alaska State Capitol
Juneau AK 99801

RE: HJR 8 A Resolution opposing the enactment by the Washington State Legislature of a bill proposing to impose a fee on the processing of shipping containers.

Dear Representative Olson and Members of the House Labor and Commerce Committee:

Cordova District Fishermen United (CDFU) support House Joint Resolution 8, opposing the proposed container fee bill (SB 5207) in the Washington State Legislature.

Most of the seafood harvested in Alaska and bound for the lower 48 states is shipped through State of Washington ports. If Senate Bill 5207 is implemented, this *Tax on Alaska* would raise costs all across the seafood industry. Those increased costs will reduce our industry's ability to remain competitive.

CDFU represents the fishermen of the Copper River / Prince William Sound fishery. Remote coastal fishing communities, like ours, that are reliant on the sea for transportation of goods will be forced to pay this fee twice.

We will have to pay more to import the essential goods of daily living, like food, fuel, and the supplies needed to maintain our homes and boats. In addition, the proposed fees on outbound containers, which ship the fish we have harvested, will cumulatively serve to erode profits, and damage our economy.

We urge the legislature to pass HJR 8. We must stop the state of Washington from taking an estimated \$300 million out of Alaska with these proposed container fees over the next two years; setting the stage for continued plundering by Washington in the future, and jeopardizing our own economy.

Yours Sincerely,

Catherine Crawford,
Executive Director

Cc. Representative Bill Thomas

DEWITT & DEWITT LLC

PO Box 34761
Juneau, AK 99803-4761

FEB 12 2007

February 10, 2007

The Honorable Bill Thomas
Alaska State Legislature
State Capitol Building
Juneau, Alaska 99801-1182

RE: HJR 8

Dear Representative Thomas.

On behalf of the Alaska Chapter of the National Federation of Independent Business (NFIB), I wish to express our support for House Joint Resolution 8. The Alaska Chapter of the National Federation of Independent Business has 2,500 members, making it the largest small-business advocacy group in the state.

HJR 8 correctly requests the Washington State Legislature not adopt an added fee on all cargo containers shipped to and from Washington ports as proposed by Senate Bill 5207. Such a fee would significantly increase the transportation costs of most goods coming to Alaska. The added cost of exports from Alaska going through Washington ports would competitively disadvantage our products in the marketplace.

We have additional concerns that the fee is instead a tax and may well be unconstitutional in that it impedes interstate commerce, import/export activity and the movement of containerized cargo as governed by federal law and international treaty.

NFIB appreciates your willingness to call this issue to the attention of Alaska's State Legislature and our Congressional Delegation. The negative effects of such an increase in transportation costs would have a significantly negative impact on both businesses and consumers in Alaska.

Sincerely Yours,



Dennis L. DeWitt
State Director
National Federation of Independent Business

cc: House Transportation Committee
House Labor & Commerce Committee

ALASKA STATE CHAMBER OF COMMERCE

Resolution 2007-001

A resolution of the Alaska State Chamber of Commerce opposing a bill to impose a fee on the processing of shipping containers in the State of Washington

WHEREAS, Washington State has been the primary gateway to Alaska before the first gold rush, more than 100 years ago; and

WHEREAS, Alaskans today depend on ships and barges leaving Washington State to move most necessities of daily life, and

WHEREAS many isolated Alaskan coastal communities without road access depend entirely on marine cargo shipped from Washington State for life sustenance; and

WHEREAS 97 percent by weight and 60 percent of the value of all goods shipped to Alaska are shipped via water from Washington State; and

WHEREAS most seafood harvested in Alaska and bound for market is shipped from Alaska to and through ports in Washington State; and

WHEREAS, the most recent data available from 2003, reports that the economic trade connection with Alaska and Puget Sound created at least 103,500 jobs and over \$4,000,000,000 in labor earnings. Aside from the aerospace industry, Alaska was Puget Sound's fifth largest trading partner; and

WHEREAS, Senate Bill 5207, a bill pending before the Washington State Legislature, imposes a fee of \$50 for each twenty-foot equivalent unit (TEU) on every cargo container traveling between Washington State and Alaska; and

WHEREAS, most cargo containers are at least two twenty-foot equivalent units and would be subject to a fee of \$100 each time the container leaves Washington State and each time the container returns to that state, regardless of whether the container is empty, partially loaded, or full; and

WHEREAS Senate Bill 5207 would be detrimental to the trading relationship between Alaska and Washington State; and

WHEREAS, because of Alaska's unique dependence on ports in Washington State, enactment of Senate Bill 5207 would damage Alaska's economy and cripple many isolated communities in Alaska by raising the cost of living significantly; so

NOW, THEREFORE, BE IT RESOLVED that the Alaska State Chamber of Commerce respectfully requests that the Washington State Legislature recognize the significant negative impact Senate Bill 5207 would have on the State of Alaska and the trading relationship between Washington State and Alaska; and

BE IT FURTHER RESOLVED that the Alaska State Chamber of Commerce opposes Senate Bill 5207, strongly urges the Washington State Legislature to consider alternative revenue sources for resolving Washington's freight mobility issues.

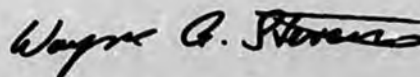
Signed this 13th day of February 2007

ALASKA STATE CHAMBER OF COMMERCE



Joe Marushack
Chair

ATTEST:



Wayne A. Stevens
President/CEO

COPIES of this resolution sent to:

Senator Mary Haugen, Chair, Senate Transportation Committee
The Honorable Chris Gregoire, Governor of Washington State
The Honorable Brad Owen, Lieutenant Governor of Washington State
Senator Rosa Franklin - President Pro Tempore
The Honorable Frank Chopp, Speaker of the Washington House of Representatives
Don Brunell, President/CEO, Association of Washington Business
The Honorable Sarah Palin, Governor of Alaska
The Honorable Ted Stevens, U.S. Senator
The Honorable Lisa Murkowski, U.S. Senator,
The Honorable Don Young, U.S. Representative

From: Geoff Bullock [mailto:lobby@gci.net]
Sent: Thursday, February 15, 2007 7:26 AM
To: Ian Fisk
Subject: Here is another one from the Seattle PI

Thursday, February 15, 2007

Senate gets earful on container tax
Proposal would drive cargo from region, critics say

By KRISTEN MILLARES BOLT
P-I REPORTER

Sen. Mary Margaret Haugen, D-Camano Island, wanted to start a serious conversation about how to fund transportation projects to allow freight to flow more smoothly through the state of Washington.

Related Content

[Read the container fee bill](#)

[Read the Alaska resolution opposing the bill](#)

[Listen to the live streaming of today's Alaska hearing at 2:30 p.m.](#)

[Read a study on economic ties between Alaska and Washington](#)

[Read a similar container fee proposal introduced in California last year](#)

[Read California Governor Arnold Schwarzenegger's letter, vetoing his state's proposal last year](#)

So Haugen, who chairs the Transportation Committee, introduced a bill that would levy a \$50 fee on every 20 feet of containers passing through Washington ports.

The money generated from the fee would be earmarked for a passel of freight mobility projects dependent on state funding, such as the \$25 million crowning of Stampede Pass, the \$25 million gap in funding for the second phase of state Route 519 and connecting state Route 167 to state Route 509.

Haugen got what she wanted: a vigorous debate.

Senate hearings brought an earful from ports, labor, shippers, retailers and railroads, who all opposed the proposal as an unfair and trade-suppressing tax that would drive cargo, jobs and money from the region.

But Haugen may have stirred up more controversy than she bargained for, as angry hearings begin today in Alaska on a resolution opposing the bill because it would raise consumer prices there.

Still, what she hasn't found, amid all that talk, is an alternative way to fund the projects, some of which are already slated for public/private partnership.

"They come and tell us they have all these freight mobility problems, and when we ask if there is some alternative, they say no," Haugen said. "How does one take them seriously?"

In an attempt to answer some of the critics' charges that the measure, Senate Bill 5207, would push cargo north to Canada and south to California, Haugen said an amended bill would trim the fee from \$50 per TEU (20-foot equivalent unit, the standard measure of container volume) to between \$25 and \$30 per TEU.

Though the language of the amended bill has not been made public yet, Haugen said its implementation, should it pass, would be tied to that of a similar bill expected from the California Legislature by Feb. 23.

There, state Sen. Alan Lowenthal will introduce a container fee bill similar to one passed by the Legislature last year, which would have levied a fine of \$30 per TEU on containers passing through the ports of L.A. and Long Beach. After intense lobbying by the retail, manufacturing and shipping industries, it was vetoed by Gov. Arnold Schwarzenegger.

"I don't think a \$25 or \$30 container fee is going to put them out of business, or divert that much cargo if California also passes a similar container fee," Haugen said.

That ignores two things: Canadian ports and the reality of Seattle's small market, said Port of Seattle government affairs manager Terry Finn.

"Seventy to 80 percent of the cargo going to the ports of L.A./Long Beach will end up within 500 miles of those docks," Finn said.

"In Seattle, 70 percent of our cargo gets on a train to places like Chicago, so all that freight is discretionary and could be sent elsewhere."

At a conference in January at the Port of Tacoma, Gov. Chris Gregoire said Haugen "wasn't serious" about the bill, which she called "a shot across the bow to get everyone to pay attention."

As introduced, placing a \$50 fee per TEU, the bill would have generated \$287 million from 2007 to 2009, \$433 million from 2009 to 2011, and \$468 million from 2011 to 2013.

But Haugen says she is serious, and so far, she hasn't heard anything from the industry that would change her mind on the state's transportation priorities over the next year. Without those funds, she said, freight mobility projects just won't happen.

Revised to \$30 per square foot, the bill would generate \$172 million from 2007 to 2009.

"If my colleagues don't want to vote for this, fine -- but don't ask me for any money for freight projects," Haugen said. "I will shift everything we have to safety projects like 520."

The controversy over Haugen's proposal has spread beyond the state along shipping routes through Washington and up to Alaska.

In the state capital of Juneau, a group of incensed representatives -- spurred by industry and concerns for their constituents -- have drafted a resolution opposing the bill and asking Washington to come up with another way to fund freight mobility.

"The problem we've got is that we are so dependent on Washington," said Alaska state Rep. Ralph Samuels, co-sponsor of the resolution, which receives a hearing today at 2:30 p.m. "All the goods we have come on ships, so this bill would drive the cost of day-to-day life up."

Seventy percent of waterborne trade to Alaska from the lower 48 States flows through the Port of Tacoma, unloading at the ports of Anchorage, Kodiak and Dutch Harbor.

Virtually all of the rest of Alaska-bound goods flows through the Seattle port, which serves numerous smaller ports in Alaska.

With fuel prices already at \$6 per gallon in rural Alaska and the price of groceries sky-high, the Alaskan consumer shouldn't have to bear any more costs, Samuels said. And what's more, he said, the bill worsens the deteriorated relationship between Washington and Alaska.

"We are taking it as a poke in the eye," Samuels said.

The goods that stock shelves in Alaska create jobs in the Puget Sound region: more than 100,000 of them in 2003, or 3 percent of the region's total, according to a 2004 report by the Seattle and Tacoma chambers of commerce.

Nearly 90 percent of the freight shipped to Alaska by Totem Ocean Trailer Express Inc., a privately owned Alaska corporation that operates a terminal in Tacoma, is loaded into containers in the Puget Sound region.

"We believe the additional cost for TOTE would be \$11 million per year, which would be transferred to the consumer in Alaska," said TOTE President and Chief Operating Officer Bill Deaver. "The bill puts an onerous burden on the citizens in the state of Alaska."

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SENATE BILL REPORT

SB 5207

As of January 25, 2007

Title: An act relating to creating the freight congestion relief account to improve freight corridors with funding from the imposition of a fee on the processing of shipping containers.

Brief Description: Creating and funding the freight congestion relief account for the purpose of improving freight rail systems and state highways used as freight corridors through imposing a fee on the processing of shipping containers.

Sponsors: Senators Haugen, Murray and Spanel.

Brief History:

Committee Activity: Transportation: 1/24/07.

SENATE COMMITTEE ON TRANSPORTATION

Staff: David Ward (786-7341)

Background: The state has identified various and significant transportation projects that support enhanced freight mobility and capacity. Although the state has provided some funding for these projects, the level of funding is insufficient to provide the level of investment necessary to alleviate congestion levels that impact freight mobility and capacity.

Summary of Bill: A fee is imposed on the processing of shipping containers in the ports of Washington State. The fee must be imposed at the rate of \$50 per twenty-foot equivalent unit (TEU) and is payable by the marine terminal operator processing the container. Marine terminal operators may retain 10 percent of the fee to offset costs associated with the proper reporting of the number of TEUs processed. The remainder of the fee must be remitted to the Department of Revenue (DOR).

The Freight Congestion Relief Account is created in the State Treasury. All receipts received by DOR from the imposition of TEU processing fees must be deposited in the account. The account is subject to appropriation, retains 100 percent of the interest income generated by the account, and may only be used to provide freight-related congestion relief through the improvement of freight rail infrastructure and state highways that function as freight corridors.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: There should be a user fee to fund these critical investments and the return on investment should offset the costs. The system that comprises our state's freight infrastructure needs additional investment and, if possible, should include a component that would allow funding for projects adjacent to the state system that can demonstrably show significant ways to improve, link to, or offload pressure on state freight corridors.

CON: Seventy percent of containerized freight moving through Washington's ports is discretionary. Imposition of a fee on the processing of shipping containers will therefore divert container freight movement away from the state's marine ports. Critical family wage jobs will also be lost and a negative ripple effect will be felt throughout the state economy. Such a fee would also impair state export trade and Washington is a highly trade-dependent state. There are additional concerns that the fee is instead a tax and may well be unconstitutional in that it impedes interstate commerce, import/export activity and the movement of containerized cargo as governed by federal law and international treaty.

Persons Testifying: PRO: Larry Pursley, Washington Trucking Association; Doug Levy, Cities of Everett, Kent, Federal Way, Renton and Puyallup.

CON: Mark Johnson, Washington Retail Association; Rich Berkowitz, Transportation Institute; Randy Ray, Pacific Seafood Processors; Jim Wilcox, Wilcox Farms/Washington Food Industry; Pat Jones, Washington Public Ports Association; Tim Farrell, Port of Tacoma; Terry Finn, Port of Seattle; Gordon Baxter, Masters, Mates and Pilots and Inland Boatmen's Union; Larry McKillip, United Transportation Union; Mike Elliot, Brotherhood of Locomotive Engineers; Karol Kingery, Marine Engineers Beneficial Association; Bill Stauffacher, Burlington Northern Sante Fe Railroad; Tom Parker, Union Pacific Railroad; Scott Hazelgrove, Pacific Merchant Shipping Association; Rick Wickman, Columbia River Steamship Operators.

SENATE BILL 5207

State of Washington 60th Legislature 2007 Regular Session

By Senators Haugen, Murray and Spanel

Read first time 01/12/2007. Referred to Committee on Transportation.

1 AN ACT Relating to creating the freight congestion relief account
2 to improve freight corridors with funding from the imposition of a fee
3 on the processing of shipping containers; reenacting and amending RCW
4 43.84.092; adding a new chapter to Title 47 RCW; and prescribing
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** The legislature finds and declares there is
8 a need to mitigate the enormous burden imposed on the state
9 transportation system by the overland movement of cargo shipped to and
10 from Washington state ports. Accordingly, it is the intent of the
11 legislature to alleviate this burden by imposing a fee on the
12 processing of shipping containers through those ports and use the funds
13 derived therefrom to provide congestion relief through the improvement
14 of freight rail systems and state highways that function as freight
15 corridors.

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Department" means the department of revenue.

1 (2) "Marine terminal operator" means a person engaged in the state
2 of Washington in the business of furnishing use of a wharf, dock,
3 warehouse, or other terminal services and facilities including, but not
4 limited to, all activities of a labor, service, or transportation
5 nature where cargo is documented, handled, moved, or loaded/unloaded
6 from vessels involved in waterborne commerce.

7 (3) "Twenty-foot equivalent unit" means a measure of containerized
8 cargo capacity equal to one standard twenty foot (length) by eight foot
9 (width) by eight foot and six inches (height) container.

10 NEW SECTION. **Sec. 3.** (1) A fee is imposed on the processing of
11 shipping containers in the ports of Washington state.

12 (2) The fee must be imposed at the rate of fifty dollars per
13 twenty-foot equivalent unit and is payable by the marine terminal
14 operator processing the container. Every marine terminal operator
15 engaged in processing twenty-foot equivalent units may retain ten
16 percent of the fifty-dollar fee collected. The moneys retained may be
17 used for costs associated with the proper collection and reporting of
18 twenty-foot equivalent units processed. The retained amount must be
19 reported as gross income under the service and other activities tax
20 classification on the excise tax return.

21 (3) The twenty-foot equivalent unit fee collected by marine
22 terminal operators, less the ten percent amount retained by the marine
23 terminal operator as provided in subsection (2) of this section, must
24 be paid to the department in accordance with RCW 82.32.045.

25 (4) The department must incorporate into the agency's regular audit
26 cycle a reconciliation of the number of twenty-foot equivalent units
27 processed and the amount of revenue collected by the marine terminal
28 operators processing twenty-foot equivalent units. The department must
29 collect from marine terminal operators processing twenty-foot
30 equivalent units the following information, which shall be required to
31 be reported on the appropriate business excise tax return form, as
32 determined by the department:

33 (a) All fees required to be collected under this section during the
34 previous month;

35 (b) A list of all freight containers processed by the marine
36 terminal operator during the previous month; and