

S B

438

# STATE OF ALASKA



POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3873

## HOUSE LABOR AND COMMERCE COMMITTEE

### MEMORANDUM

To: All Committee Members

From: Committee Staff

RE: CSSB 438 "Relating to the State Board of Architects, Engineers, and Land Surveyors."

As a result of "Sunset Review", legislation was drafted which would extend the the Board of Architects, Engineers, and Land Surveyors through 1988 and make changes in statutes which govern the board. The legislation, SB 438 was amended by the Senate Labor and Commerce Committee to include the following changes:

1. The term of a board member is reduced from six years to four years.
2. A public member is added and the requirement that a mining engineer be named to the board was deleted.
3. A requirement for proven continued competency was added to statute.

The House Labor and Commerce Committee substitute deletes the last two statute changes made in the Senate Labor and Commerce Committee substitute.

A PERFORMANCE REPORT  
ON THE  
BOARD OF REGISTRATION FOR  
ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983

Audit Control Number  
08-1114-54-83-R

Commissioner, Department of  
Commerce and Economic Development

Richard A. Lyon

Deputy Commissioners, Department of  
Commerce and Economic Development

Vincent O'Reilly  
Terry Elder

Members of the Board of Registration for  
Architects, Engineers, and Land Surveyors

President  
Member  
Member  
Member  
Member  
Member  
Member  
Member  
Member

Wallace I. Deboff  
Wayne K. Jenson  
Paul Stutzman  
Gordin Unwin  
Wallace Wellenstein  
Gordon S. Best  
Robert Boswell  
Odin Strandberg  
Vacant

# STATE OF ALASKA

AUDIT DIVISION  
POUCH W  
JUNEAU, ALASKA 99811

## THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE


April 15, 1983

Members of the  
Legislative Budget and Audit Committee:

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

A PERFORMANCE REPORT  
ON THE  
BOARD OF REGISTRATION FOR  
ARCHITECTS, ENGINEERS,  
AND LAND SURVEYORS

July 1, 1980 - April 15, 1983



Gerald L. Wilkerson, CPA  
Legislative Auditor  
Division of Legislative Audit

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## PURPOSE AND SCOPE OF THE REPORT

### PURPOSE

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors for the past three fiscal years. Our examination was conducted to determine if the Board has been operating in an efficient and effective manner.

Legislative intent requires consideration of this report during legislative oversight hearings to determine whether the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The law now specifies that this Board will terminate on June 30, 1984, and have one year from that date to conclude its affairs.

### SCOPE

The major areas of our examination were the licensing, examination, administration, complaint, and affirmative action functions of the Board. We reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Interviews with Board members.
3. Tests of files and documents of licensees.
4. Interviews with license examiners.
5. Complaints filed with the Division of Occupational Licensing, Human Rights Commission, Equal Employment Opportunity Office, Attorney General's Office, and the Ombudsman's Office.
6. Minutes of Board meetings and Division correspondence files.
7. Attorney General's opinions applicable to professional boards.

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## ORGANIZATION AND FUNCTION

The Board of Architects, Engineers, and Land Surveyors is a regulatory board with nine members consisting of two civil engineers, one land surveyor, one mining engineer, two engineers from other branches of the engineering profession, and three architects.

The Board sets the minimum standards to practice in Alaska by:

1. Examining and issuing licenses to qualified applicants.
2. Establishing, amending, or eliminating regulations controlling architect, engineer, and land surveyor practices.
3. Revoking, annulling, or suspending licenses in accordance with the Administrative Procedures Act when a person has violated architect, engineer, and land surveyor statutes or regulations.

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## REPORT CONCLUSION

### Policy Issues

This report contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this report but require legislative consideration. In debating these issues, the oversight committees should take into consideration the findings and recommendations presented in this report so the potential impact of policy changes can be evaluated.

### Report Conclusion

In our opinion, the Board of Registration for Architects, Engineers, and Land Surveyors should be reestablished. The regulation and licensing of qualified professionals is necessary to protect the public's health, safety, and welfare. The Board provides this service by establishing minimum educational and experience requirements that provide reasonable assurance that persons licensed are qualified. Also, assurance that those licensed act in a competent manner is provided by active investigation of complaints and revocation or suspension of licenses where appropriate.

However, the following findings describe areas where weaknesses or conflicts exist. We have made recommendations which, if implemented, will improve the efficiency and effectiveness of the Board.

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## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

Legislation should be introduced requiring continuing education for architects, engineers, and land surveyors.

Architects, engineers, and land surveyors must demonstrate a high degree of educational and practical competence before they can become registered in Alaska. However, renewal of certificates is not dependent upon evidence of a professional's continued competence.

In our questionnaire to registered professionals, 93% of the architects, 78% of the engineers, and 64% of the land surveyors responding reported that they had attended courses and/or seminars in the last two years. Most were concerned, however, that continuing education requirements would be too narrowly defined or too difficult to satisfy. To address these concerns, there must be active involvement by individuals and professional societies in the development of continuing education standards.

Architects, engineers, and land surveyors are acutely aware of the public's trust that they maintain their professional competency. Required continuing education is one means of fulfilling that trust. In addition, a program of continuing education will assist in avoiding professional obsolescence and keep practitioners aware of changes taking place in the profession.

### Recommendation No. 2

The Board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

We reviewed the Board's regulations to determine if they are anticompetitive and restrictive. Regulation 12 AAC 36.230(b) provides that an architect, engineer, or land surveyor may not knowingly solicit or submit proposals for professional services on the basis of competitive bidding. We find this regulation restrictive, anticompetitive, and absent of clear and statutory policy to restrain competition.

This point of view is supported by memorandum A66-191-79A from the Attorney General's Office dated October 29, 1980. That memo states in part:

There must exist clear statutory policy to restrain competition before a state regulatory agency may promulgate regulations to restrain competition if federal antitrust immunity is to occur. No direct

authorization for such an anticompetitive provision [12 AAC 36.230(b)] appears in the statutes. In such a situation, federal courts have specifically held such regulations to be violative of antitrust law.

This regulation is now being challenged by the United States' Department of Justice in the Anchorage Federal District Court (U.S. v. AK Board of Registration for Architects, Engineers, and Land Surveyors).

Recommendation No. 3

The Board should approve for examination only those applicants eligible to take the examination.

The Board has approved applicants for the fundamentals of engineering examination when they do not meet the eligibility requirements for the examination. 12 AAC 36.062 requires successful completion of at least 85% of an accredited engineering curriculum, or, if curriculum is unaccredited, a number of years in experience. At a November, 1982, Board meeting and a February, 1983, Board meeting, applicants were approved for examination who were in an unaccredited curriculum and did not have the requisite experience.

While we do not question the quality of the applicants approved for examination, we do believe that if the Board no longer believes that these requirements are necessary, they should propose regulation changes that would ensure that all applicants would be treated in a consistent and fair manner.

Recommendation No. 4

In order to ensure that the Board adequately represents the general public, the qualifications and conditions of Board membership should be reviewed and amended.

AS 08.48.011-.031 creates the State Board of Registration for Architects, Engineers, and Land Surveyors, specifies the qualifications and professions of the nine Board members, and establishes the members' terms of office. In order that the Board better represent the general public, these statutory provisions should be reevaluated. Some specific areas that should be reevaluated are:

- A. The Board is the only licensing board that has no lay representation. In general, lay members with no direct financial interest in the regulated professions can and should contribute to policy formulation and enforcement decisions. It should be recognized that the public is the ultimate interest group and we recommend, as we did in the 1979 audit, that at least two lay members be included on the Board.

- B. The term of Board members is currently set at 6 years with no limitation on the number of terms that can be served by one individual. This Board is the only licensing board that has a six year term for its members and only two other State licensing boards have an unlimited number of terms that can be served by their members. Such conditions might hamper the flow of new ideas since individuals could serve for an extended period of time. We recommend that a statutory change be considered to limit the number of terms a Board member can serve as well as reducing the years in a Board member's term.

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## ANALYSIS OF PUBLIC NEED

### Limited Analysis

The following analyses indicate both positive and negative factors as they relate to the public need as defined in the "sunset" law. These analyses are not intended to be comprehensive, but to address those areas we were able to cover during our examination.

- I. The extent to which the board, commission or program has operated in the public interest.
  - A. The Board holds at least four regular meetings each year.
  - E. The Board holds written exams at least twice each year, except for certain national examinations that are held only once a year.
- II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personnel matters.
  - A. The Board approved engineer in training (EIT) applicants for the fundamentals of engineering examination when the applicants did not meet the eligibility requirements of 12 AAC 36.062 (see Recommendation No. 5).
- III. The extent to which the board, commission, or agency has recommended statutory changes which are generally of benefit to the public interest
  - A. The Board adopted regulations that clarified various vague statutory and regulatory requirements.
- IV. 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 which it has provided.
  - A. The Board has advertised certain proposed regulations changes in only one city. The Board does not actively solicit comments on its effectiveness.
- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

- A. Certain examinations and meetings have not been advertised in an adequate and timely manner.
- VI. 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 the Ombudsman have been processed and resolved.
- A. The Attorney General's Office has record of a case filed against the Board by the United States' Department of Justice concerning the Board's regulation banning competitive bidding. (12 AAC 36.230(b)). This case is pending in U.S. District Court (see Recommendation No. 4).
- VII. The extent to which a board or commission which regulates entry into an occupation or profession has presented qualified applicants to serve the public.
- A. We found no instances where the Board had licensed unqualified practitioners.
- B. Architects, engineers, and land surveyors are not required to demonstrate their continued competence through a continuing education program (see Recommendation No. 1).
- VIII. 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.
- A. Applications for licensure require information and photographs which the Division of Equal Employment Opportunity (EEO) believes may not be necessary to determine the qualifications of the applicant.
- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIX

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APPENDIX A

BOARD OF REGISTRATION FOR ARCHITECTS  
ENGINEERS, AND LAND SURVEYORS  
REVENUES COMPARED WITH EXPENDITURES  
For the Fiscal Year Ending June 30, 1982  
(UNAUDITED)  
(Note 1)

|                                   |                 |
|-----------------------------------|-----------------|
| Average Revenues (Note 2)         | \$108,052       |
| Less: Expenditures (Note 3)       | <u>99,967</u>   |
| Excess Revenues Over Expenditures | <u>\$ 8.085</u> |

Schedule 1  
Type of Revenues (See Note 2)

| <u>Revenues</u>                             | <u>Amount</u> | <u>Collection Time</u>   |
|---|---------------|--|
| Application for Examination Fee             |               |  |
| (A) NCARB Examination                       |               |  |
| (i) Qualifying Exam                         | \$50          | With application   |
| (ii) Section A                              | \$50          | With application   |
| (iii) Section B                             | \$75          | With application   |
| (B) NCEE Examination                        | \$50/exam     | With application   |
| Reexamination Fee                           | \$50/exam     | Upon reexam  |
| Comity Application Fee                      | \$50          | With application   |
| Corporate Authorization<br>Application Fee  | \$100         | With Application   |
| Individual Registration Fee                 | \$15/year     | Renewals paid<br>biennially; new<br>registrants pay<br>\$15/year for bal-<br>ance of biennial<br>period. |
| Corporate Authorization<br>Registration Fee | \$50/year     | Renewals paid<br>biennially; new<br>registrants pay<br>\$50/year for bal-<br>ance of biennial<br>period. |
| Amendment to Corporate<br>Authorization     | \$20          | With amendment   |
| Delinquent Renewal Fee                      | \$30          | With reinstatement   |
| Postponement of Examination Fee             | \$20          | With request for<br>postponement   |
| Late Fee Fine                               | \$10          | With late payment  |
| Improper Payment Fine                       | \$10          | When payment is<br>found to be<br>improper   |

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with Occupational Licensing personnel. The records were not audited by us and, accordingly, we do not express an opinion on the Board's Revenues Compared with Expenditures.

Note 2

The majority of the revenues collected are composed of license renewal fees. These fees are collected by most boards once every two or four years and causes revenue in one year to be much greater than the revenues collected in the next year. Therefore, we calculated and reported an average of the revenues collected in Fiscal Years 1981 and 1982 in order to obtain a more accurate representation of collected revenues.

Note 3

Expenditures include those made by Board members, such as travel and per diem and an allocated percentage (estimated) of total administrative expenses of the Division of Occupational Licensing. They do not include expenditures for efforts of other departments, such as the Department of Law, assisting the boards and the Division.

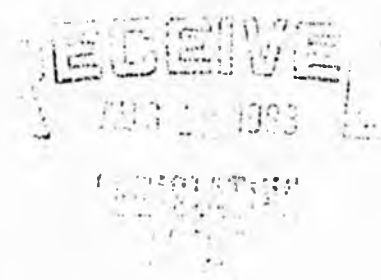
**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

POUCH D  
JUNEAU, ALASKA 99811  
PHONE: 465-2500

OFFICE OF THE COMMISSIONER

August 11, 1983

Mr. Gerald Wilkerson  
Legislative Auditor  
Legislative Audit Division  
Pouch W  
Juneau, Alaska 99811



Dear Mr. Wilkerson:

Thank you for the opportunity to comment on the preliminary findings of your audit of the Board of Registration for Architects, Engineers and Land Surveyors. The following comments address each recommendation individually:

Recommendation No. 1: Legislation should be introduced requiring continuing education for architects, engineers and land surveyors.

The department is in substantial agreement with the intent of this recommendation. However, we feel that the emphasis of legislation should be put on continuing competency rather than on continuing education per se. It is appropriate for the State as a licensing agency to be concerned with continuing competency and with continuing education only to the extent that it is a vehicle for assuring competency and necessary public protection.

By focusing on continuing education exclusively, we are equating education and competency. The effectiveness in continuing education as a vehicle for assuring continuing competency is still open to debate. It would be premature to end that debate through legislation.

Additionally, both administrative costs and increased costs to the consumer must be considered.

Any additional costs that a professional incurs gets passed on to the consumer in the form of higher fees. The costs of services will increase to the extent that professionals are not presently taking continuing education courses. Yet, it is not known whether there will actually be an increase in public protection.

August 11, 1983

Similarly, continuing education programs can be very expensive to administer and would probably require that an additional staff person be hired. There are presently 4,000 active licensees under the Board of Registration for Architects, Engineers and Land Surveyors. Assuming that the continuing education regulations are straightforward enough to be completely administered by the licensing examiner, this means that at a minimum, the Division of Occupational Licensing will have to manage an additional 4,000 pieces of paper every two years.

In this connection, it should also be borne in mind that approximately 95% of the active files are presently stored in Archives. Continuing competency requirements would most likely generate a need for the files to be kept in the office to be managed properly. There would also be a significant increase in both telephone calls and written correspondence, especially during the phasing in of the new regulations.

If the board review were required as part of the new continuing education requirements, the workload would increase that much more dramatically. Between FY '80 and FY '82, the State has experienced an increase of over 100% in the number of new applications for licensure received. At the present, this board is understaffed.

Since it is not known whether continuing education leads to a greater public benefit through continuing competency, serious consideration should also be given to funding research to determine whether present and proposed regulation in this area is actually effective.

Recommendation No. 2: The board should repeal its anticompetitive and restrictive regulations prohibiting competitive bidding (12 AAC 36.230(b)).

The department concurs with this recommendation.

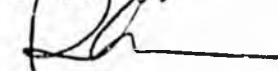
Recommendation No. 3: The board should approve for examination only those applicants eligible to take the examination.

The department concurs with this recommendation.

Recommendation No. 4: In order to ensure that the board adequately represents the general public, the qualifications and conditions of board membership should be reviewed and amended.

The department concurs with the recommendation and specifically with the suggestions contained therein for the addition of at least two public members and limitations on the terms of board members.

Sincerely,



Richard A. Lyon  
Commissioner

RAL/kkk/C32  
81183a

(1) at all times recognize his primary obligation to protect the safety, health, property, and welfare of the public in the performance of his professional duties; if his professional judgment is overruled under circumstances where the safety, health, and welfare of the public are endangered, he shall inform his employer or client of the possible consequence and notify such other proper authority of the situation as may be appropriate; and

(2) undertake to perform assignments only when he or his associates, consultants, or employees are qualified by education, training, experience, and licensing in the specific technical branches or fields involved;

(3) be completely objective and truthful in all professional reports, statements, or testimony and shall include all relevant and pertinent information in such reports, statements, or testimony when the result of an omission would, or reasonably could, lead to a fallacious conclusion; and

(4) not affix his signature or seal to any plan or document dealing with professional services in which he is not qualified by virtue of education, experience, and licensing; and

(5) issue no statements, criticisms, or arguments on architectural, engineering, or land surveying matters connected with public interests which are inspired or paid for by his interested party or parties unless he has prefaced his comment by explicitly identifying himself by disclosing the identities of the party or parties on whose behalf he is speaking, and by revealing the existence of any pecuniary interest. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)  
AS 08.48.111

**12 AAC 36.220. CONFLICT OF INTEREST.**

(a) Each architect, engineer, or land surveyor shall avoid conflicts of interest with his employer or client but, when unavoidable, the architect, engineer, or land surveyor shall promptly inform his employer or client of any business association, interests, or circumstances and identify any circumstances which could influence his judgment or the quality of his service to his employer or client.

(b) An architect, engineer, or land surveyor may not accept compensation, financial or otherwise, from more than one party for services on the same project or for services pertaining to the same project unless the circumstances are fully disclosed to and agreed to by all interested parties or their authorized agents.

(c) An architect, engineer, or land surveyor may not solicit or accept financial or other valuable consideration from suppliers for specifying their products.

(d) An architect, engineer, or land surveyor may not solicit or accept gratuities from other parties dealing with his client or employer in connection with the work for which he is responsible. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

**12 AAC 36.225. PUBLIC SERVICE.** When in public service as a member, advisor, or employee of a government body, an architect, engineer, or land surveyor may not participate in considerations or actions with respect to services provided by him or his organization. An architect, engineer, or land surveyor, in his capacity as an elected, retained, or employed public official, may not review or approve work that he has performed, whether it was under his direction or on behalf of another employer or client. (Eff. 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)(5)

**12 AAC 36.230. SOLICITATION OF EMPLOYMENT.** (a) An architect, engineer or land surveyor may not pay, solicit nor offer, directly or indirectly, any bribe or commission for professional employment with the exception of his payment of the usual commission for securing salaried positions through licensed employment agencies.

(b) Deleted 11/18/83.

(c) An architect, engineer or land surveyor may not falsify or permit misrepresentation of his or her associates' academic or professional qualifications. He may not misrepresent or exaggerate his degree of responsibility in or for the subject matter of prior assignments.

(d) Brochures or other presentations incident

to an architect's, engineer's or land surveyor's solicitation of employment may not misrepresent pertinent facts concerning employers, employees, associates, joint ventures, or his or their past accomplishments with the intent and purpose of enhancing his qualifications and his work. (Eff. 5/23/74, Reg. 50)

Authority: AS 08.48.101  
AS 08.48.111

### ARTICLE 3. GENERAL PROVISIONS

#### Section 250. Definitions

12 AAC 36.250. DEFINITIONS. For the purposes of this chapter and AS 08.48, unless the context requires otherwise

Editor's Note: As of Register 88, Jan. 1984, 12 AAC 36.230(b) was deleted by the regulations attorney under AS 44.62.125 (b)(6) and in accordance with a Stipulation and proposed Final Judgment filed on November 18, 1983 by the Board of Architects, Engineers and Land Surveyors and the United States Department of Justice in the United States District Court for the District of Alaska in United States v. Alaska Board of Registration for Architects, Engineers and Land Surveyors, Civil Action No. A82-423 CIV. This Stipulation and proposed Judgment were filed because 12 AAC 36.230(b) was in violation of section 1 of the Sherman Antitrust Act [15 U.S.C. § 1 (1977)]. The proposed Final Judgment which may become final on or soon after January 16, 1984 will, also prohibit further enforcement of any ban or board policy against competitive bidding.

12 AAC 36.235. ADVERTISING. An architect, engineer, or land surveyor may not advertise his or her services in a deceptive or untruthful manner. (Eff. 9/30/78, Reg. 67; am 5/30/82, Reg. 82)

Authority: AS 08.48.101(a)(5)

12 AAC 36.240. IMPROPER CONDUCT. (a) An architect, engineer, or land surveyor may not knowingly associate with or permit the use of his name or firm name in a business venture by any person or firm which he knows or has reason to believe is engaging in business or professional practices in a fraudulent or dishonest manner.

(b) If an architect, engineer, or land surveyor has knowledge or reason to believe that another person or firm may be in violation of the provisions of AS 08.48, or any of these rules of professional conduct, he or she shall present that information to the board in writing and shall cooperate with the board in furnishing such further information or assistance as may be required. (Eff. 5/23/74, Reg. 50; am 9/30/78, Reg. 67)

Authority: AS 08.48.101(a)

APRIL 3, 1984

TO: JOHN

FROM: KEN

RE: CSSB 438 "RELATING TO THE STATE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS"

THE HOUSE LABOR AND COMMERCE COMMITTEE FIRST HEARD LEGISLATION PERTAINING TO THE BOARD OF ARCHITECTS, ENGINEERS, AND LAND SURVEYORS ON MARCH 16th. A NUMBER OF BOARD MEMBERS AND REPRESENTATIVES OF THE INDUSTRY AND THE DIVISION OF LICENSING TESTIFIED. FOLLOWING THE HEARING THE COMMITTEE DRAFTED SUBSTITUTE LEGISLATION WHICH ADDRESSES MANY OF THE CONCERNS BROUGHT OUT IN THE HEARING. AN ANALYSIS HAS BEEN PREPARED BY STAFF WHICH OUTLINES THE DIFFERENCES IN THE SENATE BILL AND THE HOUSE LABOR AND COMMERCE COMMITTEE SUBSTITUTE.