

**HB**

**93**

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### SPONSOR STATEMENT

#### HB 93

BY: Representative Tom Anderson

*"An Act relating to dentists and dental hygienists and the Board of Dental Examiners; establishing certain committees for the discipline and peer review of dentists; excluding the adjudicatory proceedings of the Board of Dental Examiners and its committees from the Administrative Procedure Act and from the jurisdiction of the office of administrative hearings; and providing for an effective date"*

The public is neither protected nor well served when the responsibility for discipline of licensed professionals is relegated to individuals with no training, experience or expertise in the profession they investigate. HB 93 brings the expertise, professional experience and judgment of respected dentists into the process of alleged wrongdoing.

HB 93 empowers the Board of Dental Examiners to review complaints, assess the level and degree of misconduct and impose remedial measures as well as appropriate disciplinary actions when warranted. The Dental Board will have the authority to revoke or suspend the license of those who endanger the public health.

The current lack of uniform standards in the dental practice including continuing education requirements also pose a health risk. HB 93 addresses this by giving the Board authority to enforce mandatory use of the most recent breakthroughs in dental medicine. This bill will improve dental care in the State of Alaska as well as give dental patients a peer-reviewed process to address their complaints.

I urge your support of this legislation.

# ALASKA STATE HOUSE OF REPRESENTATIVES

Labor & Commerce Committee, Chair

Judiciary Committee, Vice-Chair

Health, Education, Social Services

Administrative Regulation Review, Chair



State Capitol Building  
Room 432  
Juneau, AK 99801

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**Representative Tom Anderson**

## MEMORANDUM

Date: January 27, 2006

To: Rick Urion, Director of Occupational Licensing

From: Heath Hilyard, staff to Rep. Tom Anderson

Re: Changes to HB 93 - *"An Act relating to dentists and dental hygienists and the Board of Dental Examiners"*

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As a result of our ongoing discussions regarding HB 93 and confusion about the Division's position on this bill, I wanted to provide you the opportunity to outline, in detail, your thoughts and concerns expressed during the January 20<sup>th</sup> Labor and Commerce committee hearing.

Because I am coming to Rep. Anderson's office, and thus to this bill, well after extensive work on this bill during the 2005 interim, I am slowly becoming aware of the variety of concerns expressed by the Division during those discussions.

In order to prevent additional confusion, I would appreciate if you and your staff would provide a detailed list of items of concern that the sponsor could be prepared to address. While the Division may continue to express reservations about various aspects of this bill, it is our sincere desire to work with you to alleviate as many of those reservations as possible. We are prepared to consider amendments that would be responsive to the Division's observations.

This bill is scheduled to be heard in the House Judiciary Committee on Monday, February 6<sup>th</sup>, and it would be most helpful if you could provide your written response before that date. I appreciate your time and look forward to your reply. I can be reached at 465-5031 to answer any questions you may have regarding this request.

Thank you.



**Fact Sheet for HB-93**  
**Dental Disciplinary and Accountability Bill**  
By the House Labor and Commerce Committee

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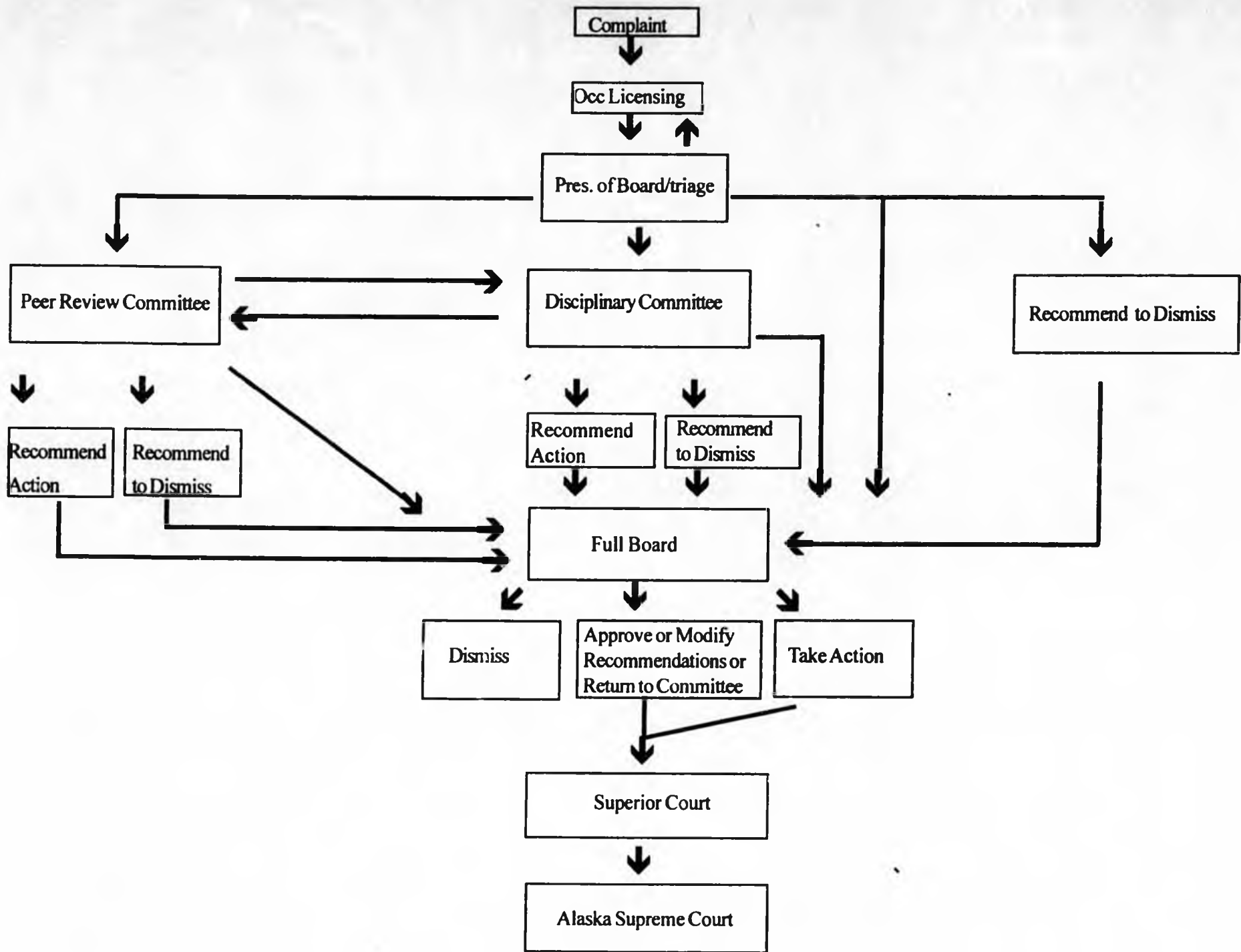
**Why needed:**

- ① The public is neither protected nor well served when the responsibility for discipline of licensed professionals is relegated to lay bureaucrats with no training, experience or expertise in the profession they investigate. Alaska is best served and its citizens protected when competent and respected members of the dental profession, appointed by the governor, are in a position to assess and evaluate the actions of members of their profession. Presently the Board of Dental Examiners does exercise its responsibility to the public. The current system relegates investigation and critical decision making to non-dentists who lack the necessary scientific background and professional education to effectively assess the conduct of those dentists accused of inappropriate or ineffective treatment or conduct. The current system relies upon draconian forms of punishment that are not uniformly arrived at or imposed. This legislation is designed to bring the expertise and professional experience and judgment of respected dentists into the process of investigating alleged wrong doing. It empowers the Board of Dental Examiners to review what occurred, assess the level and degree of misconduct and impose remedial measures as well as appropriate disciplinary actions when warranted. The Dental Board retains the authority to revoke or suspend the license of those who endanger the health and well being of the public. The bill expands the board's role to improving the overall quality of care, in addition to dispensing punitive sanctions.
- ② The current lack of uniform standards, including no statute of limitations, no regulations setting forth guidelines for sanctions for various offenses have created a haphazard approach to dental discipline that is not serving the public. Consistency and fairness based upon professionally recognized and enforced standards is needed to ensure public and professional confidence in the system.
- ③ This bill strives to enhance not only the process by which dentistry is governed and held accountable, but to improve the quality of dentistry in Alaska.

**Supported by:**  
**Alaska Dental Society,**

**Opposed by:**

No opposition to this bill has been presented to the Alaska Dental Society at the time this has been prepared. It is conceivable the Division of Occupational Licensing may oppose some portions of the bill since it elevates peer review by dentists and reduces the role of state workers who presently act in this capacity. This can be seen as institutional opposition and the natural tendency to preserve the status quo inherent in all bureaucracies.



## **Dental Complaint Flow Chart**

**Complaint** would be submitted to

**Occupational Licensing**, which would send complaint and their recommendation to

**President of the Board** for triage. The president can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and send to full board;
- forward to Peer Review Committee for recommendation;
- forward to Disciplinary Committee for recommendation; or
- forward to full board for action.

**Peer Review Committee** can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and refer to full board;
- determine complaint should be directed to Disciplinary Committee and forward;
- determine complaint should be directed to full board and forward; or
- recommend resolution and send to full board for approval.

**Disciplinary Committee** can:

- Return to Occ. Licensing for further investigation;
- recommend dismissal and refer to full board;
- determine complaint should be directed to Peer Review Committee and forward;
- determine complaint should be directed to full board and forward; or
- recommend discipline and forward to full board for approval.

**Full board** will:

- Return to Occ. Licensing for further investigation;
- review recommendations to dismiss (from president or committees) and confirm or it can:
  - send to Peer Review Committee;
  - send to Disciplinary Committee;
  - take action that will close case; or
- Review recommended resolutions from Peer Review Committee and;
  - approve and close case;
  - return for further action, or
  - determine complaint needs to be reviewed by Disciplinary Committee;
  - amend resolution of committee and close case
- Review recommendations from Disciplinary Committee and
  - Approve and close case
  - Return for further action
  - Amend recommendation and close case

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**CS FOR HOUSE BILL NO. 93( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVE ANDERSON**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to dentists and dental hygienists and the Board of Dental Examiners;**  
2 **establishing certain committees for the discipline and peer review of dentists; excluding**  
3 **the adjudicatory proceedings of the Board of Dental Examiners and its committees from**  
4 **the Administrative Procedure Act and from the jurisdiction of the office of**  
5 **administrative hearings; and providing for an effective date."**

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

7 **\* Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
8 to read:

9 **PURPOSE.** It is the purpose of this Act to modify the existing framework used to  
10 license and discipline dentists and dental hygienists in order to improve the practice of  
11 dentistry and dental hygiene in the state and to better protect the public. It is the further  
12 purpose of this Act to provide peer review and to ensure confidentiality for the complainants  
13 and the licensee, to involve licensed dentists and dental hygienists in the decision-making

1 process, and to better address patient and public complaints.

2 \* Sec. 2. AS 08.01.080 is amended to read:

3 **Sec. 08.01.080. Department regulations.** The department shall adopt  
4 regulations to carry out the purposes of this chapter including but not limited to  
5 describing

6 (1) how an examination is to be conducted;

7 (2) what is contained in application forms;

8 (3) how a person applies for an examination or license;

9 **(4) how to maintain the confidentiality of information required to**  
10 **be confidential under AS 08.01.087.**

11 \* Sec. 3. AS 08.01.087 is amended by adding new subsections to read:

12 (d) Except as otherwise provided under AS 08.36, the department shall  
13 maintain the confidentiality of information involving a dental hygienist or dentist  
14 licensed in the state under AS 08.32 or AS 08.36 or a person who is a patient or  
15 complainant of a licensed dentist or dental hygienist if the information pertains to the  
16 health, discipline, or rehabilitation of the licensee or other person.

17 (e) Not more than 30 days after receiving confidential information under (d) of  
18 this section, the department shall make available for inspection and copying by a  
19 licensee all information pertaining to a complaint against the licensee, including the  
20 name of the accuser, the nature of the complaint, and all evidence provided to the  
21 department in support of the complaint. If the department fails to make the  
22 information available as required under this subsection, the information withheld from  
23 the licensee must be excluded from a disciplinary hearing involving the licensee.

24 \* Sec. 4. AS 08.32.160 is amended to read:

25 **Sec. 08.32.160. Grounds for discipline, suspension, or revocation of license.**

26 The board may revoke or suspend the license of a dental hygienist, or may reprimand,  
27 censure, or discipline a licensee, **or impose another form of discipline that the**  
28 **board determines is warranted and necessary,** if, after a hearing, the board finds  
29 that the licensee

30 (1) used or knowingly cooperated in deceit, fraud, or intentional  
31 misrepresentation to obtain a license or registration;

1 (2) engaged in deceit, fraud, or intentional misrepresentation in the  
2 course of providing or billing for professional services or engaging in professional  
3 activities;

4 (3) advertised professional services in a false or misleading manner;

5 (4) has been convicted of a felony or other crime that affects the  
6 licensee's ability to continue to practice competently and safely;

7 (5) failed to comply with this chapter, with a regulation adopted under  
8 this chapter or under AS 08.36, or with an order of the board;

9 (6) continued to practice after becoming unfit due to

10 (A) professional incompetence;

11 (B) addiction or dependence on alcohol or other drugs that  
12 threatens or compromises patient care, has the potential to compromise  
13 patient care, or impairs the licensee's ability to practice safely;

14 (C) physical or mental disability, not overcome through an  
15 accommodation for purposes of complying with this chapter, that  
16 threatened or compromised patient care, had the potential to compromise  
17 patient care, or impaired the licensee's ability to practice safely;

18 (D) failure to keep informed of or use current professional  
19 theories and practices;

20 (7) engaged in lewd or immoral conduct in connection with the  
21 delivery of professional service to patients;

22 (8) performed clinical procedures [FOR COMPENSATION] without  
23 being under the supervision of a licensed dentist.

24 \* Sec. 5. AS 08.32.171 is repealed and reenacted to read:

25 **Sec. 08.32.171. Disciplinary sanctions.** The board may summarily suspend  
26 the license of a licensee who refuses to submit to a physical or mental examination  
27 under AS 08.36.070(b)(1) upon proof by clear and convincing evidence that the  
28 licensee poses an immediate threat of harm to patient care in the absence of a physical  
29 or mental examination. A decision to suspend a license under this section is a final  
30 administrative decision subject to judicial review under AS 44.62.560 and 44.62.570.

31 \* Sec. 6. AS 08.36.010(a) is amended to read:

1 (a) There is created the Board of Dental Examiners consisting of nine  
2 members who physically reside in the state. Six members shall be currently  
3 licensed dentists under this chapter who have been engaged in the clinical practice  
4 of dentistry in the state for at least five years immediately preceding appointment, two  
5 members shall be dental hygienists currently licensed under AS 08.32 who have been  
6 engaged in the clinical practice of dental hygiene in the state for at least five years  
7 immediately preceding appointment, and one member shall be a public member.

8 \* Sec. 7. AS 08.36.010 is amended by adding new subsections to read:

9 (c) At least five board members who are licensed dentists must maintain a  
10 practice of dentistry in the state during the term of the appointment, and at least one  
11 member who is a licensed dental hygienist must maintain a practice of dental hygiene  
12 in the state during the term of the appointment.

13 (d) In this section, "practice of dentistry" and "practice of dental hygiene"  
14 must include at least an average of 20 hours a week of private clinical practice in the  
15 state, excluding temporary absences because of illness or travel, that is regulated by  
16 the board under this chapter.

17 \* Sec. 8. AS 08.36.025 is amended to read:

18 **Sec. 08.36.025. Suspension of board members.** A member against whom an  
19 accusation or complaint has been filed under this chapter [AS 44.62] for violation of  
20 AS 08.32.160 or AS 08.36.315 is suspended from the board until the decision of the  
21 board on the accusation or complaint takes effect [UNDER AS 44.62.520].

22 \* Sec. 9. AS 08.36.030 is repealed and reenacted to read:

23 **Sec. 08.36.030. Officers.** The board shall elect a president, vice-president, and  
24 secretary from among its members, each to serve a term of not more than two years. If  
25 the president is absent or incapable of performing the duties of president, the vice-  
26 president shall succeed to the presidency until the president is able to return to the  
27 duties of president. All officers must be licensed dentists except for the position of  
28 secretary. The president's duties include coordination, supervision, and direction of the  
29 functions of the board, with the assistance of the department or other staff and the  
30 concurrence of the board.

31 \* Sec. 10. AS 08.36.040 is amended to read:

1           **Sec. 08.36.040. Meetings.** The board shall meet at the call of the president at  
2           least four times annually and at other times necessary to conduct its business. In the  
3           absence of a call of the president, a majority of the board may call a meeting. A  
4           meeting of the board may be conducted telephonically except for a meeting  
5           conducted for the purpose of holding a disciplinary hearing. A disciplinary  
6           hearing shall be conducted in person.

7           \* Sec. 11. AS 08.36.070 is amended to read:

8           **Sec. 08.36.070. General powers.** (a) The board shall

9                   (1) provide for the examination of applicants and issue licenses to  
10                  those applicants it finds qualified;

11                   (2) register licensed dentists and licensed dental hygienists who are in  
12                  good standing;

13                   (3) affiliate with the American Association of Dental Examiners and  
14                  pay annual dues to the association;

15                   (4) establish peer review and confidentiality procedures for  
16                  hearings, direct investigations, hold hearings, and order the disciplinary sanction of a  
17                  person who violates this chapter, AS 08.32, or a regulation of the board;

18                   (5) supply forms for applications, licenses, permits, certificates, and  
19                  other papers and records;

20                   (6) enforce the provisions of this chapter and AS 08.32 and adopt or  
21                  amend the regulations necessary to make the provisions of this chapter and AS 08.32  
22                  effective;

23                   (7) adopt regulations ensuring that renewal of registration is contingent  
24                  upon proof of continued professional competence by a licensed dentist or licensed  
25                  dental hygienist;

26                   (8) provide the department with the requirements for proof of  
27                  continued professional competence and request the department to make these  
28                  requirements available to each licensed dentist and licensed dental hygienist at least  
29                  one year before the date on which the dentist or dental hygienist must renew  
30                  registration;

31                   (9) at least annually cause to be published in a newspaper of general

1 circulation in each major city in the state a summary of disciplinary actions the board  
2 has taken during the preceding calendar year that identifies only the name of the  
3 licensee, the type of discipline imposed, and a reference to the statute or  
4 regulation violated by the licensee; a copy of the summary published under this  
5 paragraph shall be delivered to the named licensee; if possible, the delivery shall  
6 be by electronic mail or facsimile;

7 (10) issue permits or certificates to licensed dentists, licensed dental  
8 hygienists, and dental assistants who meet standards determined by the board for  
9 specific procedures that require specific education and training;

10 (11) regulate the reentry into practice of inactive dentists and dental  
11 hygienists;

12 (12) require, as a condition of a license or license renewal issued by  
13 the board, that an applicant or licensee has, at the time of licensing or renewal and  
14 maintains throughout the period of a license, current certification in cardiopulmonary  
15 resuscitation techniques, except that the board may waive this requirement under an  
16 agreement with the applicant or licensee if the applicant or licensee documents, to the  
17 satisfaction of the board, the existence of a physical impairment that results in an  
18 inability to be certified in cardiopulmonary resuscitation techniques and the agreement  
19 specifies that the applicant or licensee will ensure that another person who is certified  
20 in cardiopulmonary resuscitation techniques will be in the same office [ROOM] as the  
21 applicant or licensee whenever the applicant or licensee is practicing dentistry [ON A  
22 LIVING PATIENT WHO IS ALSO PRESENT]; the board may include in the  
23 agreement an expiration date or provide that the agreement remains in effect until  
24 reviewed by the board;

25 (13) maintain confidentiality over patient, complainant, and  
26 licensee information that contains personal health information or is otherwise  
27 required to be kept confidential under federal or state law;

28 (14) rely on the department for legal, investigative, and  
29 administrative services as necessary to carry out the board's duties under this  
30 chapter.

31 (b) The board may

1 (1) order a licensed dentist or licensed dental hygienist to submit to a  
 2 reasonable physical or mental examination if there is reasonable evidence that the  
 3 dentist's or the dental hygienist's physical or mental capacity to practice safely during  
 4 the past 12 months is at issue and the examination is reasonably necessary to  
 5 determine whether the licensee has violated AS 08.32 or this chapter; an  
 6 examination ordered by the board shall be conducted in the state by a person  
 7 who is licensed in the state and otherwise qualified to perform the examination.  
 8 as determined by the board; a licensee may submit for the board's consideration  
 9 another medical evaluation in addition to an examination ordered by the board;  
 10 [AND]

11 (2) authorize its representative to inspect the practice facilities or  
 12 patient or professional records of a dentist at reasonable times and in a reasonable  
 13 manner to monitor compliance with this chapter and with AS 08.32; and

14 (3) monitor informal and confidential chemical dependency  
 15 intervention programs that may include a licensee's colleague, family member, or  
 16 friend.

17 \* Sec. 12. AS 08.36.080 is repealed and reenacted to read:

18 **Sec. 08.36.080. Application of Administrative Procedure Act.** (a) The  
 19 administrative adjudication procedures of AS 44.62 (Administrative Procedure Act)  
 20 do not apply to adjudicatory proceedings of the board or the board's committees  
 21 except that final administrative determinations by the board are subject to judicial  
 22 review as provided in AS 44.62.560 and 44.62.570.

23 (b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by  
 24 the board.

25 (c) An order issued under AS 08.36.070(b)(1) may be appealed to the superior  
 26 court. The court shall review the matter de novo.

27 \* Sec. 13. AS 08.36.315 is amended to read:

28 **Sec. 08.36.315. Grounds for discipline, suspension, or revocation of license.**  
 29 The board may revoke or suspend the license of a dentist, or may reprimand, censure,  
 30 or discipline a dentist, or both, or impose another form of discipline that the board  
 31 determines is warranted and necessary, if the board finds after a hearing that the

1 dentist

2 (1) used or knowingly cooperated in deceit, fraud, or intentional  
3 misrepresentation to obtain a license;

4 (2) engaged in deceit, fraud, or intentional misrepresentation in the  
5 course of providing or billing for professional dental services or engaging in  
6 professional activities;

7 (3) advertised professional dental services in a false or misleading  
8 manner;

9 (4) received compensation for referring a person to another dentist or  
10 dental practice;

11 (5) has been convicted of a felony or other crime that affects the  
12 dentist's ability to continue to practice dentistry competently and safely;

13 (6) engaged in the performance of patient care, or permitted the  
14 performance of patient care by persons under the dentist's supervision, that does not  
15 conform to minimum professional standards of dentistry regardless of whether actual  
16 injury to the patient occurred;

17 (7) failed to comply with this chapter, with a regulation adopted under  
18 this chapter, or with an order of the board;

19 (8) continued to practice after becoming unfit due to

20 (A) professional incompetence;

21 (B) failure to keep informed of or use current professional  
22 theories or practices;

23 (C) addiction or dependence on alcohol or other drugs that  
24 threatens or compromises patient care, has the potential to compromise  
25 patient care, or impairs the dentist's ability to practice safely;

26 (D) physical or mental disability, not overcome through an  
27 accommodation for purposes of complying with this chapter, that  
28 threatened or compromised patient care, had the potential to compromise  
29 patient care, or impaired the licensee's ability to practice safely;

30 (9) engaged in lewd or immoral conduct in connection with the  
31 delivery of professional service to patients;

1 (10) permitted a dental hygienist or dental assistant who is employed  
2 by the dentist or working under the dentist's supervision to perform a dental procedure  
3 in violation of AS 08.32.110 or AS 08.36.070(a)(10);

4 (11) failed to report to the board a death that occurred on the premises  
5 used for the practice of dentistry within 48 hours.

6 \* **Sec. 14.** AS 08.36.315 is amended by adding new subsections to read:

7 (b) A dentist's choice to employ one of several treatment modalities  
8 recognized or approved by an accredited dental school may not be grounds for  
9 discipline imposed under (a) of this section.

10 (c) The board may not discriminate against a licensee solely on the basis of a  
11 mental or physical impairment or disability. The board may reinstate a license of a  
12 person who suffers from a mental or physical impairment or disability on proof of  
13 completion of rehabilitation through an accredited rehabilitation program designed for  
14 professionals and consistent with regulations adopted under this chapter. When  
15 making a decision under this section that is based on the existence of a physical or  
16 mental impairment or disability, the board shall comply with federal law. The board  
17 shall consider voluntary rehabilitation completed by a licensee as a mitigating  
18 circumstance in determining the form of discipline to impose on a licensee. The board  
19 shall consider a failure to complete a rehabilitation program by a licensee as an  
20 aggravating circumstance in determining the form of discipline to impose on a  
21 licensee.

22 (d) In this section, a "mental or physical impairment or disability" includes  
23 addiction to drugs or alcohol.

24 \* **Sec. 15.** AS 08.36 is amended by adding a new section to read:

25 **Sec. 08.36.316. Disciplinary and peer review procedures.** (a) The board  
26 shall conduct disciplinary proceedings consistent with principles of substantive and  
27 procedural due process and by using peer review, when applicable, as described in this  
28 section.

29 (b) The board shall appoint one or more disciplinary committees and one or  
30 more peer review committees to address disciplinary matters. The committees shall be  
31 made up of dentists who are currently licensed in Alaska, who have at least five years

1 private practice experience, and who are unbiased.

2 (c) A person may file a written complaint with the board on a form provided  
3 by the board and signed by the complainant for actions involving a person licensed  
4 under this chapter. The complaint must contain a clear statement of the details of each  
5 act of alleged misconduct, including the approximate place and time of the act.

6 (d) The department shall mail a copy of the complaint by certified mail to the  
7 licensee within 30 days after receipt of the complaint and shall provide notice to the  
8 licensee of the requirement to provide an answer within 30 days after receipt of the  
9 notice. Failure to file a timely answer may be presumed to be an admission of guilt  
10 except that a licensee may not be compelled to provide evidence of criminal  
11 wrongdoing.

12 (e) The department shall conduct a preliminary investigation and determine  
13 whether to dismiss the complaint for insufficiency of evidence to support the  
14 allegation. If the department determines that a complaint contains some factual basis,  
15 the department shall present the complaint and supporting documentation to the board  
16 president. The board president may return the complaint to the department for further  
17 investigation or submit the complaint and supporting documentation to the board with  
18 a recommendation for dismissal of the complaint, submission of the complaint to a  
19 disciplinary committee, or submission of the complaint to mediation by a peer review  
20 committee. The board president may not recommend mediation by a peer review  
21 committee, nor may the board refer a matter for mediation by a peer review  
22 committee, if the allegations in the complaint include fraud, sexual misconduct,  
23 criminal activity, or prescription medication abuse.

24 (f) The peer review committee may decide to dismiss a complaint, subject to  
25 the approval of the board, mediate the complaint, refer the matter to the disciplinary  
26 committee, or refer the matter to the board. The peer review committee shall issue a  
27 written report to the board that includes its recommendations. Mediation shall be  
28 informally conducted without regard to the rules of evidence. If mediation is  
29 successful, the complaint shall be closed subject to the terms of the mediation and the  
30 approval of the board. The board shall approve a mediated agreement under this  
31 subsection unless good cause is shown that the agreement is contrary to law or the

1 facts of the case. The peer review committee may oversee a resolution that the parties  
2 agree on, including refunds, payment of damages, release of claims, fines, disciplinary  
3 action, or other action that is just and equitable under the circumstances. The peer  
4 review committee proceedings and records are confidential and are not subject to the  
5 public records law under AS 40.25.100 - 40.25.220. The committee may request the  
6 assistance of counsel through the department and the Department of Law.

7 (g) Within 30 days after service of the peer review committee findings and  
8 decision, a party to the peer review may appeal the peer review committee's findings  
9 and decision to the board if the decision includes a recommendation for disciplinary  
10 action by the board. The appeal shall be limited to a decision by the board of whether  
11 sufficient evidence supported the findings and decision of the peer review committee.  
12 An appeal to the board under this subsection does not disqualify the board from  
13 reviewing further decisions on the matter.

14 (h) The board shall appoint a disciplinary committee made up of three  
15 currently licensed dentists who have each been engaged in the practice of dentistry in  
16 the state for at least five years in the same field as the licensee. The disciplinary  
17 committee shall review complaints referred to it by a peer review committee or by the  
18 board. The disciplinary committee is not bound by a peer review committee's findings  
19 in cases that have involved peer review and may fully reconsider the issues and  
20 conduct an evidentiary hearing consistent with the court rules of evidence and civil  
21 procedure. The parties may be represented by counsel at a proceeding of the  
22 disciplinary committee. After a hearing, the disciplinary committee shall issue written  
23 findings and a decision that dismisses the case, accepts the findings of a peer review  
24 committee with or without modification and orders disciplinary action, remands the  
25 matter back to a peer review committee, or orders disciplinary action. The department  
26 shall provide necessary staff to support the disciplinary committee except that  
27 disciplinary and enforcement recommendations shall be made only by a member of  
28 the disciplinary committee, the peer review committee, or the board. Each member of  
29 the disciplinary committee shall be present during the presentation of evidence in  
30 order to participate in the decision on a matter. The disciplinary committee may  
31 resolve a complaint through a stipulated agreement with the licensee in lieu of a

1 hearing at any stage in the proceedings.

2 (i) At the next regularly scheduled board meeting, the board shall conduct a  
3 review of the disciplinary committee recommendations and shall either affirm the  
4 decision or remand the matter to the disciplinary committee with instructions. A party  
5 may appeal a board decision to the superior court within 30 days after the filing and  
6 service of the board decision.

7 (j) Decisions made under this section shall be made by a quorum of the  
8 committee membership.

9 (k) The department, with the assistance of the Department of Law, shall  
10 investigate and present a complaint involving a dentist or dental hygienist and may  
11 negotiate a settlement agreement with a licensee, subject to the approval of the  
12 committee and the board. The department and the Department of Law may not have ex  
13 parte contact with the board or a disciplinary or peer review committee member. The  
14 disciplinary committee shall appoint an attorney to serve as administrative law judge  
15 who shall rule on matters of law and procedure and who may issue subpoenas. The  
16 committee shall serve as the sole fact finder and shall issue written findings, based on  
17 clear and convincing evidence, and a recommendation of discipline or dismissal of the  
18 complaint to the board, within 180 days following the conclusion of the hearing.

19 (l) A licensee may appeal a decision of the disciplinary committee to the full  
20 board by filing a written notice of appeal on a form provided by the board within 30  
21 days after receiving notice of a decision of the disciplinary committee. The board shall  
22 review the evidence and the conclusions and recommendations. The board shall issue  
23 a written decision within 90 days after receiving the notice of appeal and shall mail a  
24 copy of the decision to the licensee. A board decision under this section is a final  
25 administrative decision subject to appeal to the superior court. Documents pertaining  
26 to an administrative appeal are confidential, and the heading shall be styled "in the  
27 matter of" followed by the licensee's initials.

28 (m) Evidence at any stage of a disciplinary proceeding shall be admitted under  
29 the standards set out in the Alaska Rules of Evidence except that rebuttal testimony of  
30 patients of the licensee may not be excluded. An expert shall be allowed to testify  
31 before the board only if the expert is a licensed dentist in good standing and is actively

1 engaged in the clinical practice of dentistry. The conduct of the hearing shall adhere to  
2 the extent practicable to the Alaska Rules of Civil Procedure.

3 (n) The attorney for the licensee is entitled to receive copies of all relevant  
4 material, including names of witnesses and investigative records in the possession and  
5 control of the department or the Department of Law. The department shall provide  
6 copies to the licensee not later than 120 days before a disciplinary hearing. Failure to  
7 timely disclose relevant evidence shall result in the exclusion of the nondisclosed  
8 evidence.

9 (o) Disciplinary committees and peer review committees established under  
10 this section are review organizations for the purposes of AS 18.23.005 - 18.23.070.

11 (p) An administrative law judge appointed to a disciplinary matter may enter  
12 an order requiring the licensee to pay a portion of the reasonable costs of the  
13 disciplinary hearing if the judge finds by clear and convincing evidence that the  
14 licensee acted maliciously or outrageously toward a patient. A cost order may not  
15 exceed 50 percent of actual costs. A licensee shall be entitled to a portion of the  
16 licensee's reasonable defense costs and fees incurred as part of a disciplinary matter if  
17 the administrative law judge determines that the department or the Department of Law  
18 acted in bad faith or recklessly in pursuing the disciplinary matter. Not more than 50  
19 percent of the licensee's reasonable costs and fees may be imposed.

20 (q) Investigative, peer review, and disciplinary records shall be confidential  
21 and related disciplinary and peer review proceedings shall be closed to the public  
22 except that a summary of the results of a disciplinary proceeding may be released to  
23 the public after the board has issued a final decision in a matter. Information and  
24 records obtained through disciplinary investigations and peer review and disciplinary  
25 proceedings are not subject to disclosure under subpoena or court order.

26 \* **Sec. 16.** AS 08.36.317 is amended to read:

27 **Sec. 08.36.317. Civil fine authority.** Notwithstanding AS 08.01.075(a), in a  
28 disciplinary action, the board may impose a civil fine not to exceed \$50,000 [\$25,000]  
29 for each complaint resulting in a finding of a violation or violations of this chapter  
30 or of a regulation adopted under this chapter.

31 \* **Sec. 17.** AS 08.36.320(c) is amended to read:

1 (c) The board may summarily suspend the license of a licensee who refuses to  
2 submit to a physical or mental examination under AS 08.36.070(b)(1). A person  
3 whose license is suspended under this section is entitled to a hearing conducted by the  
4 board [OFFICE OF ADMINISTRATIVE HEARINGS (AS 44.64.010)] within seven  
5 days after the effective date of the order. If, after a hearing, the board upholds the  
6 suspension, the licensee may appeal the suspension to a court of competent  
7 jurisdiction.

8 \* Sec. 18. AS 08.36.320 is amended by adding a new subsection to read:

9 (f) For purposes of implementing the board's power to summarily suspend a  
10 license under AS 08.01.075(c), the term "clear and immediate danger to the public  
11 health and safety" in AS 08.01.075(c), as applied to persons licensed under this  
12 chapter, means that the licensee's physical or mental condition or professional  
13 judgment is such that patients will likely suffer serious injury or death if the licensee is  
14 permitted to continue to practice dentistry. Proof of "clear and immediate danger to the  
15 public health and safety" shall be by clear and convincing evidence and shall be based  
16 on verifiable recent harm to patients when there was a substantial probability of death  
17 or serious personal injury to the patient.

18 \* Sec. 19. AS 08.36 is amended by adding new sections to read:

19 **Sec. 08.36.325. Statute of limitations.** A disciplinary action may not be  
20 considered by the board or a committee of the board if the conduct giving rise to a  
21 complaint or accusation has occurred, or is discovered after reasonable inquiry, more  
22 than two years before the filing of a complaint or accusation except when the licensee  
23 has actively attempted to conceal the conduct.

24 **Sec. 08.36.330. Disciplinary action; board principles.** The board shall be  
25 ultimately responsible for approving and imposing all disciplinary actions. The  
26 governing principle of all disciplinary investigations and proceedings shall be direct,  
27 confidential, and candid peer review, with a focus on solving and correcting  
28 deficiencies, not on punishment or public humiliation. The board shall establish  
29 standards in regulation for the imposition of consistent discipline linked to each action  
30 giving rise to the discipline.

31 \* Sec. 20. AS 08.36.365 is amended by adding new paragraphs to read:

1 (5) be judged by the dentist's peers who are licensed dentists in the  
2 state;

3 (6) be treated consistently and fairly, in light of the goal of upholding  
4 the professional and personal dignity of the licensee and the profession in general;

5 (7) be afforded privacy and confidentiality; in light of the number of  
6 unfounded patient allegations made and the harmful effects those allegations have on  
7 the professional reputation of the licensee, and in order to promote true peer review,  
8 investigations and disciplinary hearings shall be closed to the public and the records  
9 shall be confidential.

10 \* Sec. 21. AS 18.23.070(5) is amended to read:

11 (5) "review organization" means

12 (A) a hospital governing body or a committee whose  
13 membership is limited to health care providers and administrative staff, except  
14 where otherwise provided for by state or federal law, and that is established by  
15 a hospital, by a clinic, by one or more state or local associations of health care  
16 providers, by an organization of health care providers from a particular area or  
17 medical institution, or by a professional standards review organization  
18 established under 42 U.S.C. 1320c-1, to gather and review information relating  
19 to the care and treatment of patients for the purposes of

20 (i) evaluating and improving the quality of health care  
21 rendered in the area or medical institution;

22 (ii) reducing morbidity or mortality;

23 (iii) obtaining and disseminating statistics and  
24 information relative to the treatment and prevention of diseases, illness,  
25 and injuries;

26 (iv) developing and publishing guidelines showing the  
27 norms of health care in the area or medical institution;

28 (v) developing and publishing guidelines designed to  
29 keep the cost of health care within reasonable bounds;

30 (vi) reviewing the quality or cost of health care services  
31 provided to enrollees of health maintenance organizations;

1 (vii) acting as a professional standards review  
2 organization under 42 U.S.C. 1320c;

3 (viii) reviewing, ruling on, or advising on controversies,  
4 disputes, or questions between a health insurance carrier or health  
5 maintenance organization and one or more of its insured or enrollees;  
6 between a professional licensing board, acting under its powers of  
7 discipline or license revocation or suspension, and a health care  
8 provider licensed by it when the matter is referred to a review  
9 organization by the professional licensing board; between a health care  
10 provider and the provider's patients concerning diagnosis, treatment, or  
11 care, or a charge or fee; between a health care provider and a health  
12 insurance carrier or health maintenance organization concerning a  
13 charge or fee for health care services provided to an insured or enrollee;  
14 or between a health care provider or the provider's patients and the  
15 federal or a state or local government, or an agency of the federal or a  
16 state or local government;

17 (ix) acting on the recommendation of a credential  
18 review committee or a grievance committee;

19 (B) the State Medical Board established by AS 08.64.010;

20 (C) a committee established by the commissioner of health and  
21 social services and approved by the State Medical Board to review public  
22 health issues regarding morbidity or mortality; at least 75 percent of the  
23 committee members must be health care providers;

24 (D) the Joint Commission on Accreditation of Healthcare  
25 Organizations (JCAHO);

26 **(E) the state Board of Dental Examiners established under**  
27 **AS 08.36.010 and a disciplinary or peer review committee established by**  
28 **the Board of Dental Examiners.**

29 \* Sec. 22. AS 44.64.030(a)(6) is amended to read:

30 (6) AS 08 (occupational licensing), other than AS 08.08, AS 08.32,  
31 AS 08.36, and AS 08.62.046;

1 \* **Sec. 23.** AS 44.62.330(a)(2) is repealed.

2 \* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to  
3 read:

4 **APPLICABILITY.** AS 08.36.316, added by sec. 15 of this Act, applies to complaints  
5 filed on or after the effective date of this Act.

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

8 **TRANSITIONAL PROVISION; BOARD MEMBERS.** Notwithstanding  
9 AS 08.36.010, as amended by secs. 6 and 7 of this Act, a member of the Board of Dental  
10 Examiners who holds a position on the board on the day before the effective date of this Act  
11 may continue to hold the position, subject to removal as provided by law, until the person's  
12 term expires. Appointments occurring on or after the effective date of this Act are governed  
13 by AS 08.36.010, as amended by secs. 6 and 7 of this Act, whether the appointment is for a  
14 new term or to fill the unexpired portion of a term.

15 \* **Sec. 26.** This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: HB 93  
 Bill Version: \_\_\_\_\_  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Dentists and Denta: Hygienists RDU: Corp, Bus & Prof Licenses (117)  
 Component: Corp, Bus & Prof Licensing  
 Sponsor: Anderson  
 Requester: Labor and Commerce Component No.: 2360

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	131.1	131.1	131.1	131.1	131.1	131.1
Travel	6.0	6.0	6.0	6.0	6.0	6.0
Contractual	62.4	62.4	62.4	62.4	62.4	62.4
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	12.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>212.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1156 )</b>	<b>212.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	212.5	200.5	200.5	200.5	200.5	200.5
<b>TOTAL</b>	<b>212.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>	<b>200.5</b>

Estimate of any current year (FY2006) cost: \$154.3

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time	2	2	2	2	2	2
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

HB 93 provides the Board of Dental Examiners significant authority to conduct its licensing functions independently. The bill authorizes the Board to establish its own procedures for conduct of investigations, hearings, and to employ or contract legal, investigative and administrative services.

Currently, administrative, budgetary, technical and investigative support are provided by the Division of Corporations, Business and Professional and Licensing under AS 08.01, Centralized Licensing. The Board does not have its own budget appropriation structure. Given the new authority in the bill to employ or contract services, the Division anticipates staffing support from the division to cease unless otherwise requested by the Board. The costs above are explained on the following pages.

Prepared by: Jennifer Strickler, Chief Phone (907) 465-2144  
 Division: Corporations and Licensing Date/Time 1/17/06 3:40 PM  
 Approved by: William C. Noll, Commissioner Date 1/17/2006  
 Agency: Commerce, Community and Economic Development

**FISCAL NOTE**

**STATE OF ALASKA  
2006 LEGISLATIVE SESSION**

**BILL NO. HB 93**

**ANALYSIS CONTINUATION**

**Personal Services: \$131.1**

This funding provides for the following positions -

- 1 - Occupational Licensing Examiner, PFT, GGU, Range 13B - \$57.5
- 1 - Investigator III, PFT, GGU, Range 18A - \$73.6

Currently, the Board receives support from these positions in the Division of Corporations and Licensing. The services provided are charged to the board based on positive timekeeping, making the Board responsible only for services it actually receives. The new Board authority to employ services directly will require its own dedicated positions through the State system.

\*In FY05, the Board spent \$78.2 on direct personal services; which is anticipated to be replaced by the new costs above.

*(Indirect costs for clerical support, accounting, management, etc. are not new costs and therefore not included in this fiscal note. In FY05, the personal services indirect cost to the Dental Board totaled \$28.9 and is expected to continue.)*

**Travel: \$6.0**

This funding is based on the cost of one additional meeting for the Board, whether the funding is used by the Board to hold one extra meeting for a disciplinary hearing in person as required by Section 9 of the bill; or whether this funding is to be used by the peer review or disciplinary committee.

\*In FY05, the Board spent \$13.5 on travel. This funding is expected to continue with the addition of \$6.0 new costs.

*(Indirect FY05 travel costs totaled \$0.4. This cost is not new and therefore not included in this fiscal note but is expected to continue.)*

**Contractual Services: \$62.4**

This funding assumes that at least the same level of legal services used in FY05 will continue. However, the Board's new authority to contract or employ legal services could raise this cost rapidly and significantly. The Division currently operates under agreement with the Department of Law to obtain legal services for all licensing programs. The programs are then charged back based on actual attorney time. The new authority provided in the bill allows the Board to contract or employ services directly, and the Board will need to do so in accordance with State procurement requirements.

\*In FY05, the Board spent \$62.4 on contractual services. It assumes the activity of the peer review and disciplinary committees will generate need for additional legal services, resulting in costs remaining high.

*(Indirect FY05 contractual services costs totaled \$25.2. This cost is not new and therefore not included in this fiscal note but is expected to continue.)*

FISCAL NOTE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

BILL NO. HB 93

**ANALYSIS CONTINUATION**

Supplies: \$1.0

Provides funding for general operating supplies of the two new positions.

*(Indirect FY05 supplies cost \$1.8. This cost is not new and therefore not included in this fiscal note but is expected to continue.)*

Equipment: \$12.0 (one-time costs)

Provides funding for equipment and space needs of two new positions.

<b>New Costs resulting from HB93:</b>	<b>\$212.5</b>
Existing Direct Cost in FY05:	\$154.3
Indirect Costs in FY05:	<u>\$56.3</u>
<b>TOTAL Costs:</b>	<b><u>\$423.1</u></b>

*(For comparison purposes, FY05 Direct and Indirect Costs for the Board of Dental Examiners totaled \$210.6. The independent authority to contract and employ services provided in FY05 anticipates an increase of \$212.5).*

Note: If the Board of Dental Examiners remains in Centralized Licensing (AS 08.01.010(13)) indirect costs will apply resulting from the self sufficiency mandate of AS 08.01.065. If the Board is removed from AS 08.01 and made autonomous, other costs will apply.

\*\*The current Board cost under the present organizational structure is \$210.6, and is included in the Governor's FY06 operating budget.