

**HB**

**33**

**SFIN**

**FILE**

SENATE FINANCE COMMITTEE REPORT

DATE: 5/3/05

FURTHER:

REPORTED OUT  
MAY 9 2005  
SENATE FINANCE  
COMMITTEE

DATE TURNED  
IN TO OFFICE: 9 May 2005

Finance Committee considered CS FOR HOUSE BILL NO. 33(FIN)

HB 33 EFFECT OF REGULATIONS ON SMALL BUSINESSES

"An Act relating to required notification of the Department of Commerce, Community, and Economic Development, economic effect statements, and regulatory flexibility analyses regarding the adoption of regulations that may govern the conduct of small businesses; relating to a private cause of action, regulation invalidation, and judicial review related to required notification, economic effect statements, and regulatory flexibility analyses for the adoption of regulations that may govern the conduct of small businesses; and providing for an effective date."

and recommends:

- be replaced with S CS CS HB 33 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
DEC	4/1/05			✓	#7
Labor	4/1/05			✓	#9
Law	4/13/05		*		#10
CCED	4/15/05	95.1			#11
H&SS				✓	#12

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>			✓	

# FISCAL NOTE

REPORTED OUT

MAY 9 2005

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 7  
 Bill Version: SENATE FINANCE  
 (H) Publish Date: CSHB 33(FIN) COMMITTEE  
4/18/2005

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation.  
 Title Relating to regulations that may RDU Environmental Health  
govern the conduct of small bus. Component Environmental Health Dir.  
 Sponsor Rep. Meyer  
 Requester House Finance Committee Component No. 646

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

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

Prepared by: House Finance Committee Phone 465-4945  
 Approved by: Rep. Meyer, Co-Chair Date 04/15/05  
Rep. Chenault, Co-Chair

# FISCAL NOTE

REPORTED OUT

MAY 9 2005

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 8  
 Bill Version: CSHB 33(FIN) COMMITTEE  
 (H) Publish Date: 4/18/2005

Revision Date/Time (Note if correction):

Title Relating to regulations that may govern the conduct of small bus.

Dept. Affected: Health & Soc. Services

RDU Departmental Support Services

Component Commissioner's Office

Sponsor Rep. Meyer

Requester House Finance Committee

Component No. 317

**Expenditures/Revenues**

(Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</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						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: House Finance Committee

Phone 465-4945

Approved by: Rep. Meyer, Co-Chair  
Rep. Chenault, Co-Chair

Date 04/15/05

**COMMITTEE COPY**

# FISCAL NOTE

REPORTED OUT

MAY 9 2005

SENATE FINANCE  
COMMITTEE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 9  
 Bill Version: CSHB 33(FIN)  
 (H) Publish Date: 4/18/05

Revision Date/Time (Note if correction):  
 Title: Effect of Regulations on Small Businesses

Department: Labor and Workforce Development  
 RDU: Office of the Commissioner  
 Component: Commissioner's Office

Sponsor: Representative Meyer  
 Requester: House FIN

Component Number: 340

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

1002 Federal Receipts						
1004 GF						
1007 Interagency Receipts						
1157 Worker Safety Account						
1172 Building Safety Account						
1032 Fishermen's Fund						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: None

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Guy Bell, Assistant Commissioner  
 Division: Office of the Commissioner  
 Approved by: Greg O'Clary, Commissioner  
 Agency: Department of Labor and Workforce Development

Phone: 465-2700  
 Date/Time: 4/15/05 3:58 PM  
 Date: 4/15/2005

MAY 9 2005

SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 10  
Bill Version: CSHB 33(FIN)  
(H) Publish Date: 4/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title: "An Act relating to regulations that may govern RDU: CIVIL  
the conduct of small businesses;..." Component: Legislation and Regulations  
Sponsor: Representative Meyer  
Requester: House Finance Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</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						
Other - Regulatory Cost Charge						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill amends AS 44.62 (Procedures for Adopting Regulations) by adding a new section that would require The Departments of Public Safety; Environmental Conservation; Health and Social Services; and Commerce, Community and Economic Development to prepare an economic effect statement before regulations that govern the conduct of a small business may be adopted. While the requirement is not extended to the Department of Law, it would play a role in training the affected agencies to incorporate these steps into their development of regulations and in reviewing proposed regulation packages for compliance with the new law. There will be some fiscal impact in the initial year of adoption of this legislation, but it is difficult to quantify what it might be.

Prepared by: Kathryn Daughetee, Director Phone: 465-3673  
Division: Administrative Services Division Date/Time: 4/13/05 11:44 AM  
Approved by: Kathryn Daughetee for David Márquez, Attorney General Date: 4/13/2005  
Agency: Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 11  
Bill Version: CS:HB 33(FIN)  
(H) Publish Date: 4/18/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Effect of Regulations on RDU Executive Admin and Dev (119)  
Small Businesses Component Office of Economic Development  
Sponsor Meyer  
Requester House Finance Component No. 2743

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	79.1	79.1	79.1	79.1	79.1	79.1
Travel	1.0	1.0	1.0	1.0	1.0	1.0
Contractual	5.0	5.0	5.0	5.0	5.0	5.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	5.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>95.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	95.1	90.1	90.1	90.1	90.1	90.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
<b>TOTAL</b>	<b>95.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>	<b>90.1</b>

Estimate of any current year (FY2005) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

This bill requires certain designated state agencies to prepare economic effect statements and regulatory flexibility analyses for all regulations that may govern the conduct of small businesses. In addition to preparing these documents for department programs, Commerce must advise and assist all designated state agencies to comply with the provisions of the legislation. The department anticipates needing a development specialist (\$79.1) to coordinate the program for the department and to work with designated agencies to help them comply with the provisions of the bill. Funds are needed for supplies, equipment to set up an office, and for contractual costs including printing, contracts with Law and for expertise in certain areas. The department deals extensively with small business. Programs/agencies covered by this legislation include insurance, banking, securities and corporations, occupational and business licensing, investments, small business programs, and other economic development activities. During 2004 the department had 41 regulations projects (excluding agency boards projects) that would potentially be covered by this legislation. While this legislation has an effective date of January 1, 2006, the department anticipates establishing the program and procedures at the beginning of the fiscal year to ensure everything is in place when the requirements take effect.

Prepared by: Al Clough, Deputy Commissioner Phone (907) 465-1500  
Division: Commerce, Community, and Economic Development Date/Time 4/15/05 10:00 AM  
Approved by: Edgar Blatchford, Commissioner Date 4/15/2005  
Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 12  
Bill Version: CSHB 33(FIN)  
( S ) Publish Date: 5/3/05

Revision Date/Time (Note if correction):

Dept. Affected: Health & Social Services

Title RELATING TO THE EFFECT OF  
REGULATIONS ON SMALL BUSINESSES

RDU Departmental Support Services

Component Commissioner's Office

Sponsor MEYER

Requester HOUSE (FIN)

Component No. 317

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost:

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The proposed legislation will require the Department of Health and Social Services to prepare an economic effect statement and regulatory flexibility analysis documenting the impact of some regulations on small business in Alaska.

Department regulatory projects can generally be described as falling into 4 classifications:

1. Regulations necessary to implement new legislation;  
(cont. on page 2)

Prepared by: Sherry Hill, Special Assistant

Phone (907) \_\_\_\_\_

Division: Office of the Commissioner

Date/Time 04/19/2005

Approved by: Joel S. Gilbertson, Commissioner

Date 04/19/2005

Agency: Department of Health and Social Services

FISCAL NOTE  
FN # 12

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. CSHB 33(FIN)

ANALYSIS CONTINUATION  
(cont. from page 1)

2. Regulations to implement cost containment strategies necessary to live within the budget appropriated by the legislature;
3. Regulations necessary to protect the public health and safety of Alaskans; and
4. Regulations necessary to comply with federal law, federal regulations, or federal funding agreements.

The House Finance Committee Substitute exempts the following three categories of regulations from the provisions of the legislation that would allow the department to implement House Bill 33 without additional cost:

1. Regulations mandated by federal law as a condition for participating in or implementing a federally subsidized or assisted program, or for obtaining or maintaining state primacy in a federal program;
2. Regulations that address standards, requirements, or conditions for reimbursement by the designated state agency for services to be rendered on behalf of the designated state agency, that address amounts or rates of that reimbursement, or that adjust those amounts or rates to contain costs within the amount of appropriations from the legislature for a state fiscal year; and
3. Regulations that establish standards, requirements, or conditions for the eligibility of an individual for assistance under AS 18 or AS 47, or that establish standards for determining the amount of assistance that an eligible person is entitled to receive.

The department estimates that a large majority of its regulations will fall within one or more of these exempt categories. For regulations subject to the provisions of HB 33, the department believes it can complete the required analyses as part of its normal regulatory processes with existing resources and minimal delay.

Amendment #1

SENATE FINANCE COMMITTEE  
5/9/2005 COMMITTEE ACTION

Bill Number	HB 33		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	none		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	<u>Y</u>	<u>Vote</u>	<u>N</u>
Senator Hoffman			
Senator Olson			
Senator Stedman			
Senator Bunde			
Senator Dyson			
Co-Chair Wilken			
Co-Chair Green			
<u>Tally</u>			
Yea			
Nay			
Absent			
<b>MOTION</b>	Pass		

Conceptual  
Act Sunsets Jan 1, 2009  
Report to Legislature no later than March 15, 2008



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 9 May 2009 TIME: 5:50pm

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please  
SCS CS HB 33 (FIN) 24-LS0239/C  
plus 1 amendment - attached

Thx  
Mindy



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## Sponsor Statement

### CSHB 33 (FIN)

**“An Act relating to the effect of regulations on small businesses; and providing for an effective date.”**

More than half of all Alaskans work for a small business. In recent years, almost all of the net job growth in Alaska was generated by small businesses. Small businesses provide the economic infrastructure in Alaska and facilitate organic growth in the economy.

Regulations can inadvertently create hurdles for small businesses and lead to significant costs. Money spent by a small business complying with regulations and red tape could be spent on wages, benefits, and new employees or be reinvested to grow the business. House Bill 33 requires state regulatory agencies to consider the impact of proposed regulations on small businesses before they adopt a regulation.

HB 33 also directs the Department of Commerce, Community and Economic Development to assist agencies in writing regulations to minimize the impact on small businesses without compromising the objectives of statutes.

HB 33 is modeled on the Federal Regulatory Flexibility Act of 1980 that saved small businesses over \$17 billion last year in compliance costs.

Adding an emphasis on the impact of regulation on small businesses to the regulatory process is a broad and significant policy statement. HB 33 is a bottom up approach to economic development, a step towards creating a more responsive government, and an effort to strengthen Alaska's economy for sustainable growth.

Revised April 18, 2005



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** April 18, 2004  
**TO:** Representative Kevin Meyer  
**FROM:** Mike Pawlowski  
**RE:** Sectional Analysis for CSHB 33 (FIN)  
(Version No. 24 - LS0239\C)

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As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

**Section 1.** Requires designated state agencies to notify the department of Commerce, Community and Economic Development before adopting regulations that may govern the conduct of small business. Requires designated state agencies to prepare an economic effect statement and regulatory flexibility analysis. Requires the department of Commerce, Community and Economic Development to advise and assist designated agencies in preparing the required statements and analyses. Exempts certain types of regulation from the required processes. Prohibits a private cause of action related to this section. Designates state agencies, defines regulation, proposed regulation, and small business.

**Section 2.** Establishes a transition schedule.

**Section 3.** Effective Date

## Changes to CSHB 33 (JUD) in CS HB 33 (FIN) version 24-LS 0239\C

### CSHB 33 (JUD)

- Title
- Page 2, lines 4-5 "The economic effect statement must provide"
- Page 3, line 8 "This section does not apply to regulations"

### CSHB 33

- Tightened the title
- Page 2, lines 13-14 "The economic effect statement required by (a) of this section must provide, if available from the information gathered under (b) of this section,"

(And renumbered/lettered accordingly)

Reason: Clarify the process an agency is required to follow in preparing the analyses required.

- Added two exceptions:
  1. Page 3 line 28 - "(6) that address standards, requirements, or conditions for reimbursement by the designated state agency for services to be rendered on behalf of the designated state agency, that address amounts or rates of that reimbursement, or that adjust those amounts or rates to contain costs within the amount of appropriations from the legislature for a state fiscal year; or"
  2. Page 4 line 2 - "(7) that establish standards, requirements, or conditions for the eligibility of an individual for assistance under AS 18 or AS 47, or that establish standards for determining the amount of assistance that an eligible person is entitled to receive."

Reason: To exempt regulations related to Medicare/Medicaid and other reimbursements.

**Workforce Information**  
 Department of Labor and  
 Workforce Development

**Employment Size In Alaska**

<b>Businesses</b>	<b>Number</b>	<b>Total number of Employees</b>
Not Affected:		
1000 and over employees	36	73,796
500 to 999 employees	54	38,137
250 to 499 employees	86	30,060
<b>Total:</b>	<b>176</b>	<b>141,993</b>

<b>Businesses</b>	<b>Number</b>	<b>Total number of Employees</b>
Affected:		
100 to 249 employees	267	40,111
50 to 99 employees	428	29,107
20 to 49 employees	1,377	41,651
10 to 19 employees	2,127	28,652
5 to 9 employees	3,348	21,961
1 to 4 employees	9,579	16,037
<b>Total:</b>	<b>17,126</b>	<b>177,519</b>

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

## Small Business Profile: ALASKA

Small businesses make a significant contribution to the U.S. economy, and in 2003, they were the engine of Alaska's economic performance. Nationally, half of U.S. non-farm private output and employment is generated by small firms with 500 or fewer employees; in Alaska, small business owners—including women, minorities, and home based individuals—were leaders in the state's economy in 2003. The Office of Advocacy's *Small Business Profile* reports on small businesses in the state using the most currently available data.

**Number of Businesses.** The estimated total number of small businesses in Alaska in 2003 was 629,000.<sup>1</sup> Of the 16,825 employer firms in 2003, 96.9 percent or an estimated 16,300 were small firms. The estimated number of employer businesses increased by 1.9 percent in 2003. The most recent data available show that non-employer businesses numbered 46,643 in 2001. Self-employment increased by 9.8 percent, from 28,641 in 2002 to 31,458 in 2003. (Source: U.S. Dept. of Labor, Employment and Training Administration; U.S. Dept. of Commerce, Census Bureau; U.S. Dept. of Labor, Bureau of Labor Statistics.)

**Women-Owned Businesses.** Self-employment by women increased by 10.6 percent, from 11,514 in 2002 to 12,732 in 2003 and represented 40.3 percent of self-employed persons in the state. Women-owned businesses generated \$1.9 billion in revenues, employed 16,520 workers, and constituted 16,600 firms or 25.9 percent of all firms in 1997. (Sources: U.S. Dept. of Labor, Bureau of Labor Statistics; U.S. Dept. of Commerce, Census Bureau.)

**Minority-Owned Businesses.** In 1997, 17.8 percent or 1,900 of the minority-owned businesses in the state were employer firms, and they generated 87.4 percent of the total minority-owned business revenue of \$2.2 billion. There were 1,400 Hispanic-owned businesses; 900 Black-owned businesses; 1,800 Asian and Pacific Islander-owned businesses; and 6,800 American Indian and Alaskan Native-owned businesses in 1997. (Source: U.S. Dept. of Commerce, Census Bureau.)

**Business Turnover.** The estimated number of new employer businesses was 2,441 in 2003, which is 7.5 percent more than

the previous year. Business bankruptcies increased by 0.8 percent, and totaled 121 in 2003. Business terminations decreased by 1.3 percent and numbered 2,507 in 2003. (Source: U.S. Dept. of Labor, Employment and Training Administration; Administrative Office of the U.S. Courts; U.S. Dept. of Commerce, Census Bureau.)

**Employment.** Small businesses with fewer than 500 employees numbered 15,455 in 2001 and employed 127,680 people or 59.6 percent of the state's non-farm private workforce (Table 1).<sup>2</sup> Total net employment gain in the state amounted to 9,031 between 2000 and 2001. Of that number, 6,350 are attributable to MSAs (metropolitan statistical areas). During the same time period, firms with fewer than 20 employees gained 2,824 jobs. (Source: U.S. Dept. of Commerce, Census Bureau, Statistics of U.S. Businesses. Note: Urban (MSA) and rural (non-MSA) employment data is available at: [www.sba.gov/advoc/stats/data.html](http://www.sba.gov/advoc/stats/data.html).)

**Small Business Income.** Small business proprietors' income in 2003 increased by 5.8 percent, from \$2.2 billion in 2002 to \$2.3 billion in 2003. (Source: U.S. Dept. of Commerce.)

**Finance.** Small firms typically use commercial bank lenders and rely on local bank services. Over the last five years there has been a gradual decline in the number of banks in Alaska (Table 3). The Office of Advocacy has identified banks in each state that make the most loans to small businesses. This information is available in its banking studies available at [www.sba.gov/advoc/state](http://www.sba.gov/advoc/state).

To learn more about the Office of Advocacy's research, data, and analyses of small businesses, visit [www.sba.gov/advoc](http://www.sba.gov/advoc), call (202) 205-6533 or email [advocacy@alaska.gov](mailto:advocacy@alaska.gov)

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<sup>1</sup> The Office of Advocacy's estimate of the total number of state small businesses is based on the percent of small businesses (2001 Census Bureau firm size data) multiplied by the total number of employer businesses in 2003 (Dept. of Labor). To this total, we add the 2001 number of non-employer firms (Census Bureau).

<sup>2</sup> The number of employees listed in Table 1 is not directly comparable to the figures listed in the *Number of Businesses* section due to different data sources.

**Table 1. Firms and Employment in Alaska by Industry and Firm Size, 2001 (Thousands)**

Industry	Non-employer Firms	Employer Firms			Employment		
		Total	< 100	< 500	Total	< 100	< 500
<b>Total</b>	46.64	15.96	15.19	15.46	214.3	92.95	127.68
Agriculture, forestry, fishing, and hunting	8.63	0.31	0.31	0.31	1.61	1.07	•
Mining	0.19	0.1	0.07	0.08	9.7	0.71	2.37
Utilities	0.08	0.07	0.06	0.06	1.93	•	•
Construction	3.92	2.3	2.27	2.28	15.18	10.67	12.2
Manufacturing	1.01	0.45	0.42	0.43	11.01	2.95	4.82
Wholesale trade	0.62	0.6	0.49	0.51	7.15	0.49	5.34
Retail trade	4.2	2.15	2.02	2.05	33.4	2.02	16.37
Transportation and warehousing	2.04	0.77	0.68	0.71	18.1	0.68	7.71
Information	0.45	0.23	0.19	0.2	6.43	1.72	2.77
Finance and insurance	0.8	0.4	0.34	0.35	7.08	2.33	3.32
Real estate; rental and leasing	3.58	0.68	0.65	0.67	4.86	2.96	4.86
Professional, scientific, and technical services	5.58	1.58	1.5	1.51	11.4	7.09	7.58
Management of companies and enterprises	N/A	0.08	0.04	0.06	2.77	•	0.62
Admin., support, waste mgnt., and remed., services	2.07	0.87	0.79	0.81	11.26	0.79	6.04
Educational services	0.87	0.2	0.19	0.19	2.66	NA	•
Health care and social assistance	4.03	1.52	1.45	1.49	32.6	11.2	18.58
Arts, entertainment, and recreation	2.37	0.45	0.44	0.44	•	•	•
Accommodation and food services	1.48	1.54	1.49	1.52	21.93	12.13	16.84
Other services	4.73	1.63	1.58	1.6	11.35	•	•
Auxiliary, except corp, subsidiary, and regional managing offices	N/A	0.02	•	0.01	•	•	•
Unclassified	N/A	0.36	0.36	•	•	•	•

\*Data suppressed to protect the confidentiality of individual firms.  
Source: U.S. Department of Commerce, Census Bureau.

**Table 2. Non-farm Establishment Job Gains and Losses by Firm Size, 2000-2001 (Thousands)**

	Firm Size (Number of Employees)			
	Total	1-19	1-499	500+
<b>Job Gains:</b>				
New establishments	12.51	4.73	7.53	4.98
Expanding establishments	25.16	8.94	17.31	7.85
<b>Job Losses:</b>				
Downsized establishments	-18.73	-5.98	-14.09	-4.64
Closed establishments	-9.91	-4.86	-8.17	-1.74
<b>Net change in employment</b>	<b>9.03</b>	<b>2.82</b>	<b>2.58</b>	<b>6.45</b>

Source: U.S. Department of Commerce, Bureau of the Census, Statistics of U.S. Businesses, 2001.

**Table 3. Number of Banks in Alaska by Asset Size, 1995 - 2003**

Number of Banks Per Year					Number of Banks by Asset Size, 2003				
1995	2000	2001	2002	2003	Below \$100M	\$100M-\$500M	\$500-\$1B	\$1B-\$10B	Over \$10B
8	6	6	6	6	1	2	1	2	0

Source: U.S. Small Business Administration, Office of Advocacy, from data collected by the Federal Reserve Board.  
The full list of small-business-friendly banks can be found on the Office of Advocacy's website at [www.sba.gov/advocacy](http://www.sba.gov/advocacy)

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Anchorage, Alaska 99501  
(907) 278-2722 FAX 278-6643

★ STATE ★  
CHAMBER  
OF COMMERCE

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March 15, 2005

Representative Kevin Meyer, Co-Chair  
House Finance Committee  
Capitol Room 515  
State Capitol  
Juneau, Alaska 99801

Dear Representative Meyer,

RE: HB 33

The Chamber of Commerce supports any and all legislation meant to streamline the regulatory process, which ultimately allows Alaskan businesses to prosper. While HB 33 does not streamline the process, it ultimately creates an avenue of awareness for departments during the drafting of regulations. Incorporating business awareness into the rulemaking process should ultimately create better regulations that work with business, which should lessen the impact of legal action on new regulations.

Already complicated, the rulemaking process is often obfuscating and difficult to incorporate into any private business. HB 33 certainly makes progress in creating a regulatory process that is responsive to business interests. The "L" version of HB 33 simply requires the department to compile a list of affected businesses, while also requiring an impact statement using current and readily accessible data.

The State Chamber of Commerce strongly supports HB 33 and we are hopeful the bill will reach final passage this session. As written, HB 33 appears to be a no-brainer with its simplicity and straightforward approach in creating business awareness for the regulatory process.

Respectfully,

A handwritten signature in dark ink, appearing to read "Wayne A. Stevens". The signature is written over a horizontal line that extends across the page.

Wayne A. Stevens  
President/CEO

**Connie Marshall  
Region X Advocate  
U.S. Small Business Administration  
before the  
House Labor and Commerce Committee  
of the  
Alaska State House  
March 4, 2005**

Chairman Anderson and members of the Labor and Commerce Committee, my name is Connie Marshall and I am the Regional Advocate for the U.S. Small Business Administration's Office of Advocacy's Region X (which includes Alaska, Washington, Oregon, and Idaho). It is an honor for me to speak to you today and testify on House Bill 33.

As the Regional Advocate for Region X, my job is to be the direct link between state and local governments, small business groups and small business owners and employees and the Office of Advocacy, based in Washington, DC. My chief concern is to help identify regulatory concerns of small business by monitoring the impact of federal and state policies at the grassroots level. It is my goal to see that programs and policies that encourage fair regulatory treatment of small business are developed and implemented to ensure future growth and prosperity. This is why I am testifying in support of proposed legislation which will strengthen small business regulatory flexibility in Alaska.

The Office of Advocacy enforces the Regulatory Flexibility Act (RFA) on the federal level in order to lessen the regulatory burden on small business. More than 93

percent of businesses in every state are small businesses. As you may know, small businesses with less than 20 employees spend \$6,975 each year per employee to comply with federal regulations—that is 60 percent more per employee than large firms with more than 500 employees spend. And that is just the cost of federal regulations. Small business owners also have to shoulder the cost of state regulations.

Under the RFA, Advocacy has shown time and again that regulations can be reduced and the economy improved without sacrificing such important goals as environmental quality, travel safety, and workplace safety. By working with federal agencies to implement the RFA, in 2004 the Office of Advocacy saved small businesses nationwide over \$17 billion in foregone regulatory costs that can now be used to create jobs, buy equipment and expand access to health care for millions of Americans, or simply maintain competitiveness in the marketplace.

While some states have state regulatory flexibility legislation that mandates state agencies to perform economic impact analysis before they regulate, many do not. For that reason, the Office of Advocacy drafted the Regulatory Flexibility Act model legislation and issued a report on the status of regulatory flexibility in the states in December of 2002.

There are five critical elements contained in the Regulatory Flexibility Act model bill. Successful state-level regulatory flexibility laws should have: (1) a small business definition that includes most small businesses, (2) a requirement that state agencies

perform an economic impact analysis before they regulate, (3) a requirement that state agencies consider less burdensome alternatives that still meet regulatory goals, (4) judicial review so that the law has teeth, and (5) a provision for state government to periodically review all its regulations. To be effective, there should be few, if any exemptions from the law. Even the best regulatory flexibility initiative has little value if the majority of state agencies are exempted from it. In order for regulatory flexibility to work, there is a need for the Governor's leadership, trained and educated state agencies that understand their responsibilities, and the continued involvement of the small business community.

During this time of tight state budgets, you may be wondering how much it costs a state to implement regulatory flexibility for small business. The answer is that implementing a regulatory flexibility system can be done at little to no additional cost to the state. Let me share information from two states that have recently implemented regulatory flexibility provisions.

In North Dakota, the agencies were granted no additional funds to carry out their duties under the new RFA legislation. The state legislative review committee is responsible for reviewing the regulations that their state agencies, using economic impact analysis, have determined might be overly burdensome to small business. So other than additional regulations for the committee to review, North Dakota has simply absorbed the new duties into their already existing system.

Similarly, in Colorado, the agencies were granted no additional funds to carry out their duties under the new RFA legislation. The Office of Policy Research and Regulatory Review in Colorado's Department of Regulatory Agencies was given responsibility for implementing the new law. To meet the new obligations, they shifted personnel in their office and dedicated part of an IT person to implement their e-rulemaking notification system. Like North Dakota, Colorado simply absorbed the new responsibilities into their current structure.

The benefits of implementing a regulatory flexibility system truly outweigh the costs. Let me give you an example of how regulatory flexibility works from a state that has had an active regulatory flexibility program for nearly ten years. In October 2004, New York State adopted an emergency regulation to prevent prescription fraud by requiring the use of an official State prescription form for all prescribing done in New York. The official prescription forms utilize security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Under New York's State Administrative Procedure Act and an Executive Order signed by Governor Pataki, the Department of Health was required to perform a regulatory flexibility analysis for small business (RFASB). It was found that the proposed regulation would affect small businesses such as practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

Therefore, in drafting the regulation, the Department of Health met with and considered comments from the affected small businesses. By consulting with small business throughout the rule writing process, the New York Department of Health was able to craft a regulation that met their goals without unduly burdening small employers.

The Serialized Official New York State Prescription Form regulation is expected to save private insurers and the Medicaid program millions of dollars due to the reduction of fraudulent prescription claims. In addition, the regulation will benefit the state, its citizens, and private insurers.

Since December of 2002, my fellow Regional Advocates and I have been working with state legislators across the country to make regulatory flexibility for small business a legislative priority. In 2004, 17 states (*California, Connecticut, Georgia, Idaho, Illinois, Kansas, Kentucky, Missouri, Nebraska, New Jersey, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Washington, and Wisconsin*) introduced regulatory flexibility legislation and seven states have signed legislation into law (*Connecticut, Kentucky, Missouri, Rhode Island, South Carolina, South Dakota, and Wisconsin*). In 2003, twelve states introduced regulatory flexibility legislation. Governors in North Dakota and Colorado signed regulatory flexibility legislation into law, while Massachusetts Governor Mitt Romney and West Virginia Governor Bob Wise signed Executive Orders to implement regulatory flexibility. To date, in 2005, twelve states including Alaska have introduced regulatory flexibility legislation. And a little over one

month ago, Arkansas Governor Mike Huckabee enacted regulatory flexibility by Executive Order.

One of the many reasons, I believe, this legislation has been so successful over the last two years is because policy makers across the country are realizing that regulatory flexibility is as an economic development tool. There are over 23.7 million small businesses in the United States and they are the job creators: small firms create between 60 and 80 percent of the net new jobs in our economy.

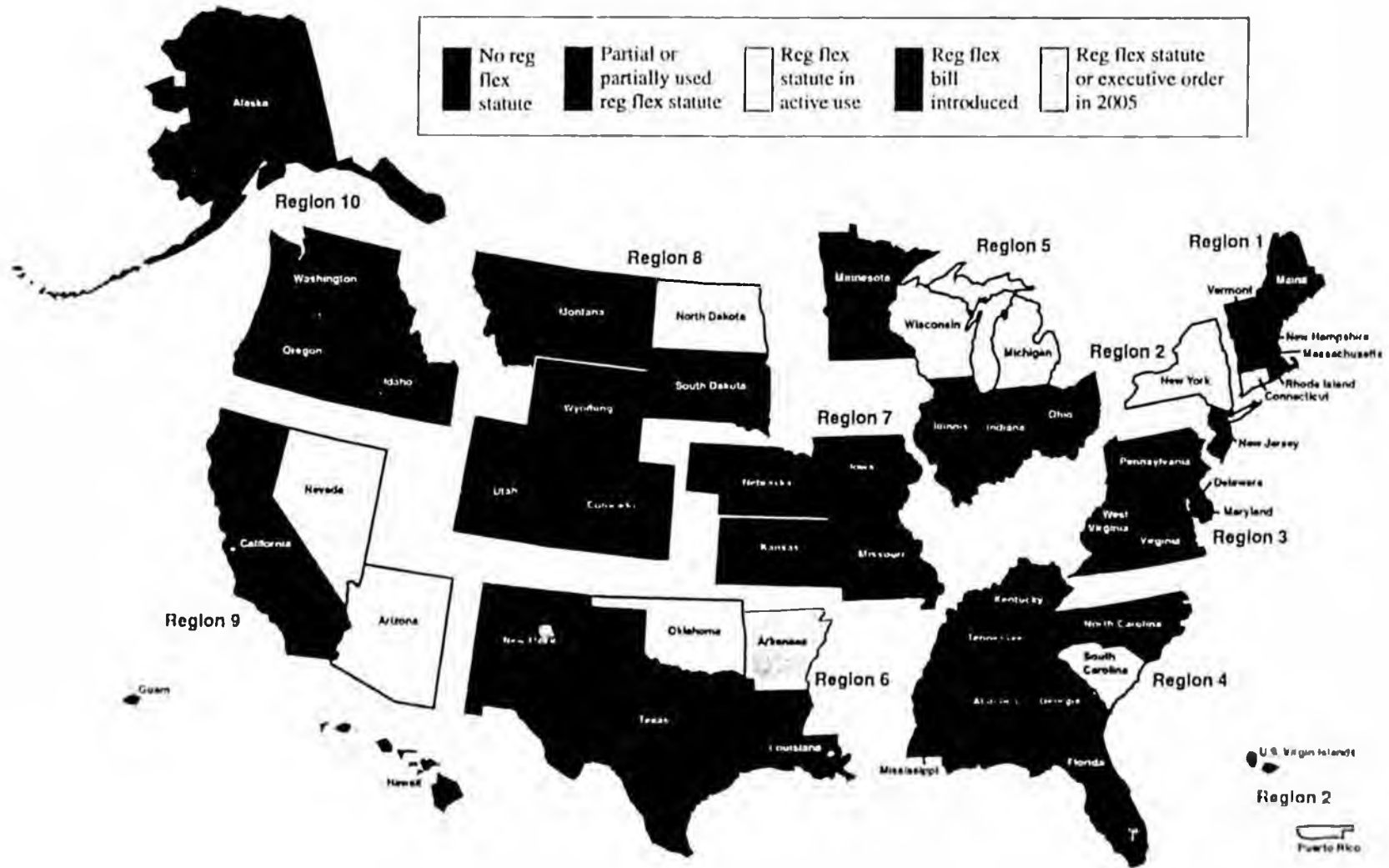
There is no question that small business is the backbone of the economy here in Alaska just as it is throughout the country. According to the federal definition of small business (500 employees or less), 96.9 percent (16,300) of Alaska's employers are considered small and employ over 59.6 percent (127,680) of Alaska's non-farm sector employees.

Sometimes, because of their size, small businesses aggregate importance to the economy can be overlooked. Because of this, it is very easy to overlook the negative impact of regulatory activities on them. The intent of this legislation is to compel regulatory agencies to consider small businesses when regulations are developed and particularly consider the disproportionate impact those regulations might have.

This legislation is needed. The Office of Advocacy commends you for bringing House Bill 33 forward.

# State Regulatory Flexibility Model Legislation Initiative

## 2005 Legislative Activity





**Office of Advocacy**

*A Voice for Small Business*

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**Small Business  
Friendly Regulation**  
Model Legislation  
for States

August 2003 edition

Created by Congress in 1976, the Office of Advocacy of the U.S. Small Business Administration (SBA) is an independent voice for small business within the federal government. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, federal courts, and state policy makers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional Advocates and an office in Washington, DC, support the Chief Counsel's efforts.

For more information on the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533. Receive email notices of new Office of Advocacy information by signing up on Advocacy's Listservs at <http://web.sba.gov/list>

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## Foreword

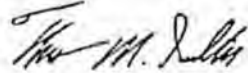
The mission of the U.S. Small Business Administration's Office of Advocacy has always been to help reduce the regulatory burden placed on small business. While the focus of that activity has been mostly at the federal level, Advocacy recognizes that state and local governments can also be a source of burdensome regulations.

A 2001 study funded by Advocacy, *The Impact of Regulatory Costs on Small Firms*, by W. Mark Crain and Thomas D. Hopkins, shows that small businesses spend nearly \$7,000 each year per employee to comply with federal regulations. That is \$2,500 more per employee than large firms spend. President Bush has an active and aggressive small business plan that includes reducing federal regulatory burdens on small business.

For that reason, the Office of Advocacy presented draft model regulatory flexibility legislation for consideration by state legislatures in December 2002. Since the introduction of this report, *Small Business Friendly Regulation: Model Legislation for States*, many states have taken steps to introduce or strengthen regulatory flexibility legislation. North Dakota took the lead in this effort and Governor John Hoeven signed a bill into law on April 29, 2003. Colorado followed, with Governor Bill Owens signing regulatory flexibility legislation into law on June 3, 2003. The Missouri legislature has sent a bill to Governor Bill Holden for signature. All told, 12 states introduced regulatory flexibility legislation during the 2003 spring legislative session.

These state initiatives are showing results. One example of how states can fix one-size-fits-all rules involved a New York Department of Motor Vehicles regulation for safety devices and road restrictions for trailers and towing. While intended to cover highway transportation, the rules covered farm equipment and imposed unreasonable mandates on farmers who hauled fertilizer spreaders across roads to reach different acreage. Due to the work of the New York State Governor's Office of Regulatory Reform, a rule change took small business concerns into account by relieving farmers of the need to undertake costly retrofitting to meet trailer standards. The rule change saves the New York farming industry as much as \$120 million and was done without compromising highway safety.

Based on inquiries Advocacy has received, this report has been updated and revised to include information on periodic review and regulatory review committees. We hope this report will continue to serve as a useful tool for state legislators who are interested in leveling the regulatory playing field for small businesses in their states.



Thomas M. Sullivan  
Chief Counsel for Advocacy  
U.S. Small Business Administration

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# Regulatory Flexibility: What it is and Why it Matters

In September 1980, Congress enacted the Regulatory Flexibility Act (RFA)<sup>1</sup>, which mandated that agencies consider the impact of their regulatory proposals on small entities, analyze equally effective alternatives, and make their analyses available for public comment.

The law was not intended to create special treatment for small business. Congress intended that agencies consider impacts on small business to ensure that, in their efforts to fulfill their public responsibilities, their regulatory proposals did not have unintended anticompetitive impacts and that agencies explored less burdensome alternatives that were equally or more effective in resolving agency objectives.

In March 1996, amendments to the RFA, in the form of the Small Business Regulatory Enforcement Fairness Act<sup>2</sup> (SBREFA) became law. SBREFA raised the stakes for regulatory agencies. Congress had finally been persuaded by 15 years of uneven compliance with the RFA, and by the repeated urging of the small business community, to authorize the courts to review agency compliance with the RFA. "Judicial review" was thought to be the incentive that was lacking in the original statute. SBREFA also reinforced the RFA requirement that agencies reach out and consider the input of small businesses in the development of regulatory proposals, subjecting this outreach to judicial review as well.

One of the clearest examples of how benefits can be derived from efforts to ensure compliance with the RFA comes from the Department of Transportation (DOT). To implement provisions of the Americans with Disabilities Act, DOT proposed a regulation in March 1998 that would have required all motor carriers, tour bus operators, and other transportation companies to provide access for people with disabilities, primarily by installing mechanical lifts. Advocacy advised DOT that its proposed rule would have a serious impact on the small bus industry and would cause these small businesses to reduce transportation services to the entire public, including the disabled (the opposite consequence of DOT's intention).

DOT staff and representatives of the affected small businesses met to discuss the regulation and its alternative, an important step in the DOT's RFA analysis. The meeting

## A Brief History of Federal Regulatory Flexibility Legislation

## Federal Regulatory Flexibility in Action

<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 USC § 601 et seq.)

<sup>2</sup> Pub. L. No. 104-121, 110 Stat. 857 (codified at 5 USC § 601 et seq.)

## Regulatory Flexibility and the States

provided a meaningful opportunity for small businesses to discuss cost projections and other data relevant to the proposed rule. After the DOT met with Advocacy and small carriers, they published a final rule adopting an innovative approach recommended by small bus operators. The revised rule, published in September 1998, not only achieved the agency's objectives, but also struck a sensible balance. Essentially, DOT backed away from mandating a one-size-fits-all proposal and transitioned the redesign of all buses to accommodate passengers with disabilities while maintaining service for those who rely on small bus companies. Small businesses welcomed DOT's final rule, expected to save the small bus industry about \$180 million while guaranteeing transportation for the disabled.

The great need for reduced economic impact on small businesses does not stop at the federal level. More than 93 percent of businesses in every state are small businesses (see chart).<sup>1</sup> Therefore, small businesses should be protected from state regulations that require them to bear disproportionate costs and burdens. Small employers can help fix problems if they have a voice in the process!

In a survey of state legislation, the Office of Advocacy found that many states lack legislation that allows for regulatory flexibility.<sup>2</sup> Of the states that do have some form of regulatory flexibility, many are missing key legislative components. Advocacy has drafted model legislation to help state legislators create a structure in which small businesses can have meaningful input in the development of state policies and rules.

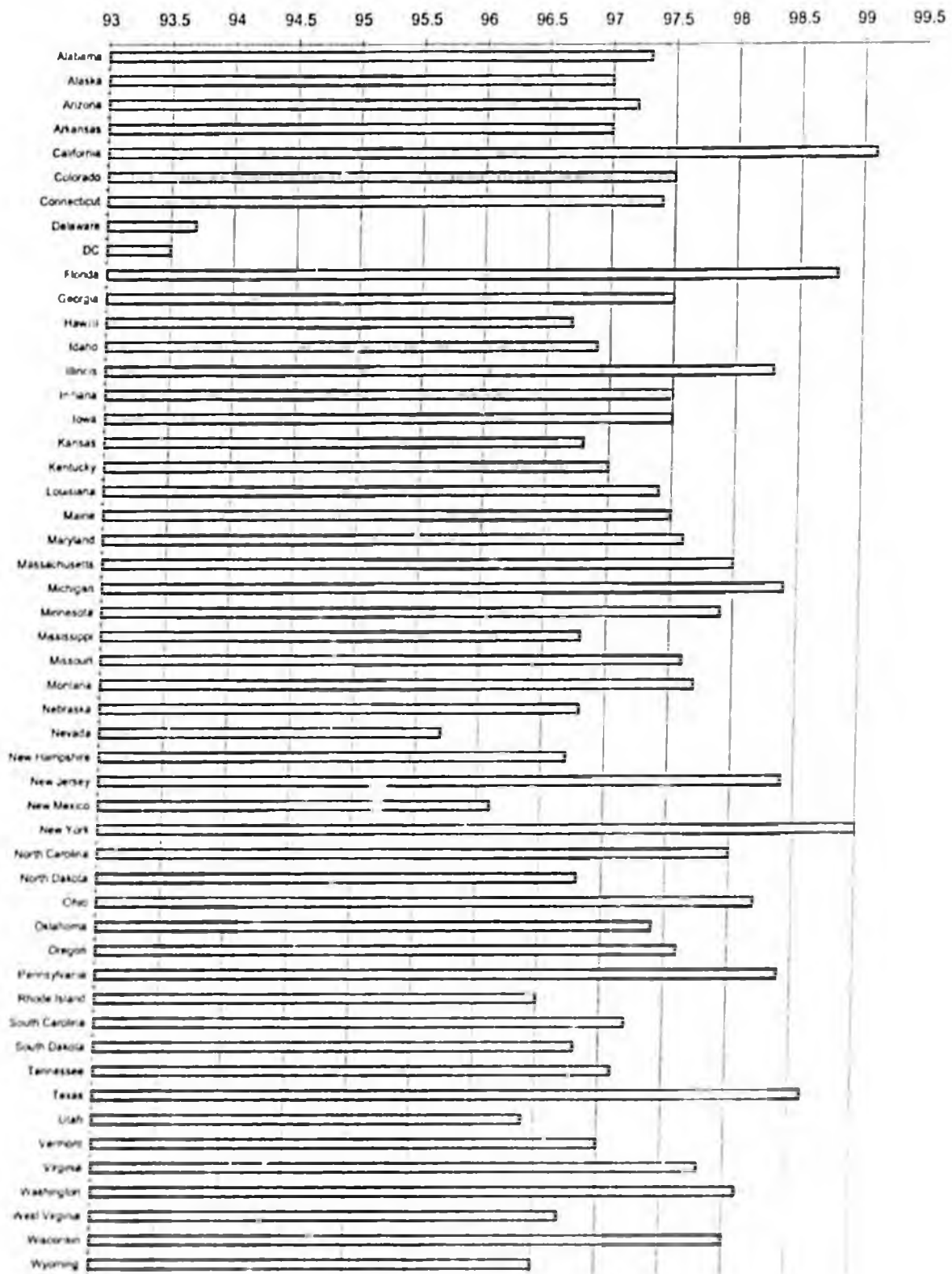
Aware of the state economic benefits of less burdensome regulations, the Office of Advocacy wants to build on the successes of federal regulatory flexibility and of states that have led the way with legislative and executive approaches of their own. In fiscal year 2002 the cost savings to small businesses from federal regulatory flexibility was more than \$21.1 billion.<sup>3</sup> The Office of Advocacy urges state policymakers to enact regulatory flexibility legislation or amend current legislation in order to pass on similar cost savings to state economies.

<sup>1</sup>The information in this chart is taken from the *2002 Small Business Profiles* published by the Small Business Administration Office of Advocacy (<http://www.sba.gov/adv/stats>) from data collected by the U.S. Dept. of Commerce, Census Bureau. The chart excludes Guam, Puerto Rico, and Virgin Islands because no data were available.

<sup>2</sup>See *Regulatory Flexibility Legislation in the States*, *infra*.

<sup>3</sup>See *Annual Report of the Chief Counsel for Advocacy on the Implementation of the Regulatory Flexibility Act, Fiscal Year 2002* (<http://www.sba.gov/adv/annual/flex02>).

## Percentage of Businesses That Are Small



## A BILL

To improve state rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small businesses.

### Findings

- (1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy;
- (2) Small businesses bear a disproportionate share of regulatory costs and burdens;
- (3) Fundamental changes that are needed in the regulatory and enforcement culture of state agencies to make them more responsive to small business can be made without compromising the statutory missions of the agencies;
- (4) When adopting regulations to protect the health, safety, and economic welfare of [State], state agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on small employers;
- (5) Uniform regulatory and reporting requirements can impose unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses with limited resources;
- (6) The failure to recognize differences in the scale and resources of regulated businesses can adversely affect competition in the marketplace, discourage innovation, and restrict improvements in productivity;
- (7) Unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;
- (8) The practice of treating all regulated businesses as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental, and economic welfare legislation;
- (9) Alternative regulatory approaches which do not conflict with the stated objective of applicable statutes may be available to minimize the significant economic impact of rules on small businesses;

(10) The process by which state regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, to examine the impact of proposed and existing rules on such businesses, and to review the continued need for existing rules.

### **Section 1. Short Title**

This act may be cited as the Regulatory Flexibility Act of [2003].

### **Section 2. Definitions**

(a) As used in this section:

- (1) "Agency" means each state board, commission, department, or officer authorized by law to make regulations or to determine contested cases;
- (2) "Proposed regulation" means a proposal by an agency for a new regulation or for a change in, addition to, or repeal of an existing regulation;
- (3) "Regulation" means each agency statement of general applicability, without regard to its designation, that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior regulation, but does not include (A) statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public, (B) declaratory rulings, or (C) intra-agency or interagency memoranda;
- (4) "Small business" means a business entity, including its affiliates, that (A) is independently owned and operated and (B) employs fewer than [five hundred] full-time employees or has gross annual sales of less than [six] million dollars.

### **Section 3. Economic Impact Statements**

(a) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall prepare an economic impact statement that includes the following:

- (1) An identification and estimate of the number of small businesses subject to the proposed regulation;
- (2) The projected reporting, recordkeeping and other administrative costs required for

compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(3) A statement of the probable effect on impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

#### **Section 4. Regulations Affecting Small Businesses**

(a) Prior to the adoption of any proposed regulation on and after [January 1, 2003], each agency shall prepare a regulatory flexibility analysis in which the agency shall, where consistent with health, safety, and environmental and economic welfare, consider utilizing regulatory methods that will accomplish the objectives of applicable statutes while minimizing adverse impact on small businesses. The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses;

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) The consolidation or simplification of compliance or reporting requirements for small businesses;

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

(b) Prior to the adoption of any proposed regulation that may have an adverse impact on small businesses, each agency shall notify the [Department of Economic and Community Development or similar state department or council] that exists to review regulations] of its intent to adopt the proposed regulation. The [Department of Economic and Community Development or similar state department or council] that exists to review regulations] shall advise and assist agencies in complying with the provisions of this section.

### **Section 5. Judicial Review**

(a) For any regulation subject to this section, a small business that is adversely affected or aggrieved by final agency action is entitled to judicial review of agency compliance with the requirements of this section.

(b) A small business may seek such review during the period beginning on the date of final agency action and ending one year later.

### **Section 6. Periodic Review of Rules**

(a) Within four years of the enactment of this law, each agency shall review all agency rules existing at the time of enactment to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of those statutes, to minimize economic impact of the rules on small businesses in a manner consistent with the stated objective of applicable statutes. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, the agency shall publish a statement certifying that determination. The agency may extend the completion date by one year at a time for a total of not more than five years.

(b) Rules adopted after the enactment of this law shall be reviewed within five years of the publication of the final rule and every five years thereafter to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(c) In reviewing rules to minimize economic impact of the rule on small businesses, the agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

## Regulatory Flexibility Legislation in the States

The Office of Advocacy surveyed state legislation looking for existing regulatory flexibility laws and identified seven key areas characteristic of strong state regulatory flexibility legislation, listed below. While 35 states and Puerto Rico have some legislation that pertains to small business regulations, many are missing key components that give regulatory flexibility its effectiveness.

### Small Business Definition

Every single state has some variety of an administrative procedures act governing regulatory protocol. Advocacy looked to see whether the state had any legislation specifically crafted for small business regulations and what the state defined as small business.

### Economic Impact Analysis

One of the critical parts of any regulatory flexibility scheme is understanding the economic impact of regulations as they relate to small businesses. Advocacy looked for legislation that required agencies to review or otherwise research the impact of the proposed regulations on small businesses.

### Examining Alternatives

In addition to examining the economic impact, agencies need to be proactive in looking for regulatory solutions that do not unduly burden small businesses. Advocacy looked for language that required agencies to examine regulatory alternatives and give reasons why such alternatives could not feasibly be implemented.

### Judicial Review

As we have learned on the federal level, having judicial review of enacted regulations that do not comply with regulatory flexibility legislation is critical. Without judicial review, agencies may not conduct a thorough and well-reasoned regulatory flexibility analysis. Advocacy looked for legislation that afforded judicial review either in the courts or through administrative review committees.

### Periodic Review

Existing regulations may also unduly burden small businesses because old rules may no longer serve their purpose, may be trumped by newer federal or state legislation, or are technologically obsolete. By periodically reviewing rules, the agencies can ensure that all of their regulations are still necessary. This ensures a streamlined and efficient regulatory environment.

Small business owners are the greatest resource agencies can use to understand how regulations affect small businesses and what alternatives may be less onerous. One way to allow small businesses to have a voice in the process is to allow them to serve on regulatory review committees where they help solve regulatory problems. While many states already have some form of committee to review regulations, most are composed of legislative members only. Advocacy supports allowing members of the small business community to serve on these review boards.

## Regulatory Review Committee

Even the best regulatory flexibility legislation has little value if most entities are exempted from it. Advocacy looked at any legislation that gave exceptions or exemptions for certain types of regulations and/or agencies.

## Exemptions

See the table on the next page for a summary of the provisions offered in the regulatory flexibility laws of the various states.

State Regulatory Flexibility Statutes (by Statute Reference Number), June 2003								
State	Citation Information	Small Business Definition	Economic Impact Analysis	Examining Alternatives	Judicial Review	Periodic Review	Exemptions	Rules Review Committee
Alabama	Ala. Code §							41-22-22
Alaska	Alaska Stat. §							44.62.125
Arizona	Ariz. Rev. Stat. Ann.	41-1001(19)	41-1052; 41-1055; 41-1056.01	41-1055	41-1034; 41-1051; 41-1052	41-1056	41-1057; 41-1005; 41-1044	41-1057
Arkansas	Ark. Code Ann. §							
California	Cal. Gov. Code §	11342.610	11346.2; 11346.3; 11346.9	11346.2; 11347.6	11349; 11350	11349.7	11346.1; 11353; 11356; 11361	
Colorado	Colo. Rev. Stat. Ann. §	24-4-102	24-4-103	24-4-103			24-4-103	
Connecticut	Conn. Gen. Stat. Ann. §	4-168a(a)(2)	4-168a(c)	4-168a(b)	4-175; 4-183	4-170(a) repealed	4-168a(d)	4-170
Delaware	Del. Code tit. 29, §	10403(3)	10404	10404	10141	10407		
Washington DC	DC Code Ann. §							
Florida	Fla. Stat. Ann. §	120.54(3)(b) (2)(a); 120.52(16) & (17)	120.54(3)(b) (1) and (2)	120.54(1)(d); 120.54(3)(b) (2)(a); 120.541	120.68; 120.545; 120.56	120.74	120.50; 120.63; 120.80; 120.81	120.545
Georgia	Ga. Code Ann. §	50-13-4(a)(3)	50-13-4(a)(3) & (4)	50-13-4(a)(3)	50-13-19; 50-13-10; 50-13-13; 50-13-20		50-13-4(b)	
Guam	5 GCA		9301 <sup>1</sup>		9309			
Hawaii	Haw. Rev. Stat. Ann. §	201M-1	201M-2	201M-2	201M-6	201M-7		201M-5
Idaho	Idaho Code §					67-5291		
Illinois	5 Ill. Comp. Stat. Ann.	100/1-75; 100/1-80; 100/1-85	100/5-30(c)	100/5-30(a)		100/5-130 <sup>7</sup>		100/5-90
Indiana	Ind. Code Ann. §		4-22-2-28 <sup>1</sup>			4-22-2-46; 4-22-2-5-2 <sup>1</sup>		4-22-2-28; 4-22-2-46
Iowa	Iowa Code Ann. §		17A-4A <sup>4</sup>		17A-19	17A-33 <sup>1</sup>		17A-8
Kansas	Kan. Sta. Ann. §		77-416(b) <sup>1</sup>	77-416(b)				77-436; 77-423
Kentucky	Ky. Rev. Stat. Ann. §	13A.210(5); 13A.010	13A.240 <sup>1</sup>	13A.210	13A.337	13A.345		13A.020
Louisiana	La. Rev. Stat. Ann. §		49.953 <sup>1</sup>		49.965.1	49.968	49.967	
Maine	Me. Rev. Stat. Ann. tit 5	8052(5-A)		8052(5-A)	8058; 11001; 8072	8071; 8072	8054	
Maryland	Md. Code Ann. St. Gov.		10-124 <sup>1</sup>		10-222; 10-125	10-132.1; 10-133		2-502
Massachusetts	Mass. Gen. Law Ann. §		30A-5	30A-5	30A-7			
Michigan	Mich. Comp. Laws Ann.	24.207a	24.240; 24.245	24.240	24.264; 24.301		24.315	24.234; 24.235
Minnesota	Minn. Stat. Ann. §		14.131 <sup>1</sup>		14.69	14.3691	14.03	
Mississippi	Miss. Code Ann. §		25-43-6(2)(d)	25-43-6(2)(g)	25-43-17		25-43-6(4)	
Missouri	Mo. Ann. Stat. §							
Montana	Mont. Code Ann. §							
Nebraska	Neb. Rev. Stat. §							84-907.07
Nevada	Nev. Rev. Stat.	233B.0382	233B.0608; 233B.0609	233B.0608; 233B.0609	233B.105; 233B.110; 233B.130	233B.050		233B.067
New Hampshire	N.H. Rev. Stat. Ann. §	541-A:5(IV)(e)	541-A:5(IV)(e)		541-A:13; 541-A:24	541-A:2	541-A:21	541-A:2
New Jersey	N.J. Stat. Ann. §	52:14B-17; 52:14B-25	52:14B-19; 52:14B-25	52:14B-18; 52:14B-25		52:14B-5.1		

State Regulatory Flexibility Statutes (by Statute Reference Number), June 2003

State	Citation Information	Small Business Definition	Economic Impact Analysis	Examining Alternatives	Judicial Review	Periodic Review	Exemptions	Rules Review Committee
New Mexico	N.M. Stat. Ann. §							
New York	NY CLS St. Admin P Act §	102(8)	202-b(2)	202-b(1)	205	207	202-b(3)	Executive Order 20 <sup>1</sup>
North Carolina	N.C. Gen. Stat. §		150B-21.4 <sup>1</sup>					150B-21.16
North Dakota	N.D. Cent. Code §	28-32-08.1	28-32-08.1	28-32-08.1	28-32-08.1	28-32-18.1	28-32-08.1	28-32-17
Ohio	Ohio Rev. Code Ann. §	121.24(A)(9) & (10)	121.24(E); 127.18			119.032	121.24(F)	Yes
Oklahoma	75 Okla. Stat. Ann. tit. 75, §	502(4)	504	504	505	307.1; 250.10		Yes
Oregon	Or. Rev. Stat. §	183.310(9)	183.335(2)(b)	183.540	183.090; 183.480	183.720		
Pennsylvania	71 Pa. Cons. Stat. Ann.		745.5(9) & (10) <sup>1</sup>		745.12a	745.8a <sup>1</sup>		
Puerto Rico	H.B. 3038, No. 454	§2(c) & (d)	§4	§4	§11	§10		
Rhode Island	R.I. Gen. Laws §	42-35-1(i)	42-35-3(4)	42-35-3(4)	42-35-15; 42-35-7	42-35-4.2 <sup>9</sup>		
South Carolina	S.C. Code Ann. §		1-23-10(7); <sup>1</sup> 1-23-115		1-23-380; 1-23-120			
South Dakota	S.D. Codified Laws §							1-26-1.1
Tennessee	Tenn. Code Ann. §							
Texas	Tex. Govt Code Ann. §	2006.011; 2006.001	2006.002	2006.002	2006.013	2001.039	2006.012	
Utah	Utah Code Ann. §		63-46a-4(5)(1) <sup>1</sup>		63-46a-12.1	63-46a-11.5 <sup>1</sup>	63-46a-12.1; 63-46a-11	63-46a-11
Vermont	Vt. Stat. Ann. §	3-801(12)	3-838	3-832	3-815		3-816; 3-832	3-817; 3-820
Virgin Islands								
Virginia	Va. Code Ann. §					2-2-4017		
Washington	Wash. Rev. Code Ann. §	19.85.020	19.85.030; 19.85.040	19.85.030	34.05.570	34.05.630		34.05.610
West Virginia	W. Va. Code §					29A-3-16		29A-3-10
Wisconsin	Wis. Stat. Ann. §	227.114(1)(a)	227.114(2)	227.114(2)	227.52; 227.40		227.24	227.19; 227.26
Wyoming	Wyo. Stat. Ann. §							28-9-101

Note that some states' regulatory flexibility legislation is stronger than others' and their relative strengths are ascertainable only by examining the laws themselves.

<sup>1</sup>Not small-business-specific.

<sup>2</sup>Periodic review of small business rules only.

<sup>3</sup>This provision imposes expiration dates on rules rather than requiring periodic review.

<sup>4</sup>Iowa repealed its small business regulatory flexibility statute in 1998 (see 17A.31). The statute cited allows for a regulatory flexibility analysis, which includes an economic impact analysis and examination of alternatives, if requested by the Administrative Rules Coordinator or the Administrative Review Committee. An interested party can petition the ARC or ARRC to request a regulation be reviewed, but ultimately the ARC/ARRC decides whether or not to request such an analysis (see 17A.7).

<sup>5</sup>Minnesota has legislation that allows adversely affected small businesses to apply for a variance (exemption or other alternative) from an existing regulation if they can show economic hardship, among other factors. The application costs, at a minimum, \$10 (see 14.055 and 14.056).

<sup>6</sup>The Missouri legislature passed S.B. 69, which awaits the Governor's signature as of June 2003. Missouri's economic impact analysis looks at the impact of bills, rather than regulations, on small businesses (see 23.140).

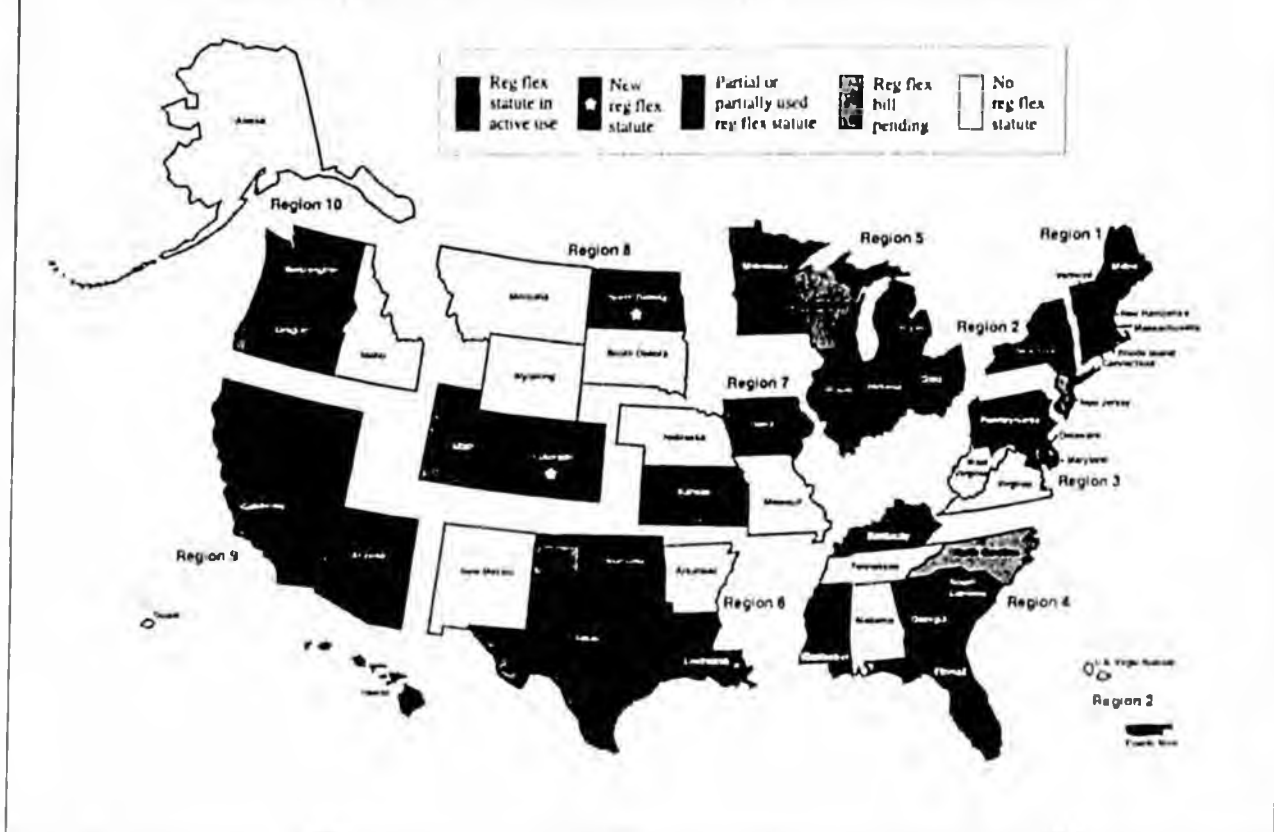
<sup>7</sup>Review of a rule is mandatory in Pennsylvania if requested by a third party.

<sup>8</sup>This Rhode Island provision requires rules to be re-filed periodically.

Source: Compiled by U.S. Small Business Administration, Office of Advocacy, from state statutory information.

## Model Legislation Initiative

Status of State Regulatory Flexibility Provisions, July 2003



### Small Business Administration Office of Advocacy Regional Advocates

The relationship between the nation's small businesses and the Chief Counsel for Advocacy is strengthened by regional advocates located in the SBA's 10 regions. They are the Chief Counsel's direct link to small business owners, state and local government bodies, and organizations that support the interests of small entities. The regional advocates help identify regulatory concerns of small business by monitoring the impact of federal and state policies at the grassroots level. Their work goes far to develop programs and policies that encourage fair regulatory treatment of small business and help ensure their future growth and prosperity.

### The Chief Counsel's Direct Link

Please contact these advocates for assistance and guidance in implementing the model legislation in your state. They are a great source for state small business information and are ready and willing to assist!

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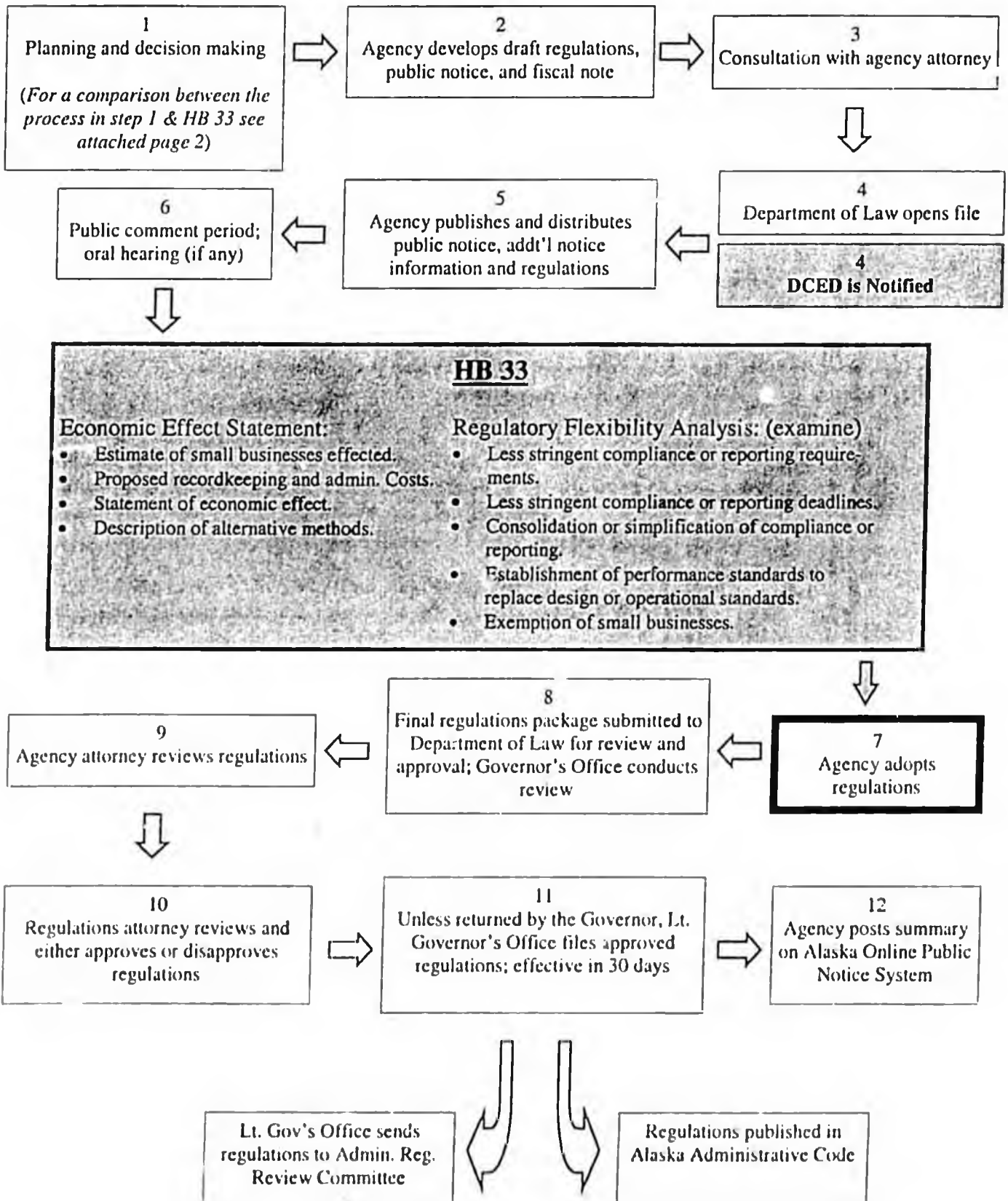
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# STEPS IN THE REGULATION ADOPTION PROCESS UNDER HB33

Shaded areas indicate processes added by HB 33



The above chart has been modified from page 8 in the 15th Edition of the Drafting Manual for Administrative Regulations, Revised June 2002

Prepared by Michael Pawlowski, Representative Kevin Meyer

provided by Mr. Pawlowski  
5/4/05 (Red memo)

## STEPS IN THE REGULATION ADOPTION PROCESS UNDER HB33

Modified from the Drafting Manual for Administrative Regulations 15th Edition 2002

### DRAFTING MANUAL FOR ADMIN. REGULATIONS

#### STEP 1: PLANNING & DECISION MAKING

"An agency should ask itself the following questions at the beginning of any regulations project."

1. What did the legislature intend to be accomplished through the program in question?
2. In reviewing relevant statutes, are there unanswered questions, ambiguous terms, or program details that must be clarified through regulations? Does the agency intend to allow electronic applications, submissions, or signatures?
3. What does the agency want to accomplish by adopting regulations?
4. What constitutional or statutory rights of individuals will be affected?
5. Who has the statutory authority to adopt the regulations (i.e., commissioner, board, governor)?
6. Which members of the public constitute the primary audience for the regulations and how should the regulations be organized and written to be most easily understood by them? Is there a way to write the regulations to achieve the agency's intent while keeping the public's cost of compliance low?\*
7. When do the regulations need to be in effect?
8. How will the regulations impact the agency's existing budget? Will more money be needed to implement the regulations? What are the alternatives?

### HB 33

#### ECONOMIC EFFECT STATEMENT

"An agency shall use information received under AS 44.62.210 and AS 44.62.215, information provided by the department under (e) of this section, and other information in the files of the agency to prepare an economic effect statement required by (a) of this section. The economic effect statement must provide:

1. An identification (suggest replacing with - general description) and estimate of the number of small businesses that would be subject to the proposed regulation.
2. The projected reporting, recordkeeping, and other administrative costs that small businesses would be required to incur in order to directly comply with the proposed regulation, including an identification of the type of professional skills necessary to prepare the report or record or to take administrative action.
3. A statement of the probable effect that the proposed regulation would have on small businesses whose conduct would be governed by the proposed regulation.
4. A description of any alternative methods of achieving the purpose of the proposed regulation that would be less intrusive or less costly for the small business whose conduct would be governed by the proposed regulation."

\*Underline added for emphasis, pg. 9-10

# SENATE COMMITTEE REPORT

DATE: 4/25/05

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 5/3/05

Judiciary Committee considered CS FOR HOUSE BILL NO. 33(FIN)

## HB 33 EFFECT OF REGULATIONS ON SMALL BUSINESSES

"An Act relating to required notification of the Department of Commerce, Community, and Economic Development, economic effect statements, and regulatory flexibility analyses regarding the adoption of regulations that may govern the conduct of small businesses; relating to a private cause of action, regulation invalidation, and judicial review related to required notification, economic effect statements, and regulatory flexibility analyses for the adoption of regulations that may govern the conduct of small businesses; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
HSS	4/19			✓	12

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
H.FIN/DEC	4/15			✓	7
LWF	4/15			✓	9
IAW	4/13		✓		10
CEO	4/15	✓			11

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
French			X	
Guess			X	
Therriault	✓			
Huggins	X			
CHAIR: Seckins	✓			

French  
Guess  
Therriault  
Huggins  
  
Seckins