

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2813

ENCLOSURE 2
Letter to Legislative Council

[DATE]

Mr. John Walstad
Code Revisor
North Dakota Legislative Council
State Capitol
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Mr. Walstad:

The Notice of Intent to [Adopt, Amend, or Repeal] Administrative Rules and a copy of the proposed rules are enclosed as required by N.D.C.C. § 28-32-10(1).

Sincerely,

Enclosures

ENCLOSURE 3
Notice to Newspaper

[DATE]

North Dakota Newspaper Association
1435 Interstate Loop
Bismarck, ND 58503-0567

Please send the enclosed public notice to each official county newspaper for publication one time as soon as possible. Note that the publication of the notice must be in a display-type format with a minimum width of one column of approximately two inches [5.08 centimeters] and a depth of [between three inches [7.62 centimeters] and four inches [10.16 centimeters]]. Please also note that the notice must include a headline describing the general topic of the proposed rules.

Please send the billings along with the Affidavits of Publication to [Agency Name and Address].

Thank you for your assistance.

Sincerely,

Enclosure

[If the agency does not use the NDNA, then publication requests such as this must be sent by the agency to each of the state's official county newspapers]

ABBREVIATED NOTICE OF INTENT TO
[ADOPT, AMEND, OR REPEAL] ADMINISTRATIVE RULES
RELATING TO [SHORT DESCRIPTION OF PROPOSED RULES]

TAKE NOTICE that the [Agency] will hold a public hearing to address proposed changes to the N.D. Admin. Code at [time] on [day], [date], at [address where hearing(s) will be held].

A copy of the proposed rules may be obtained by [writing the [agency and address] or calling [telephone number] (note only the address or the phone number are required, not both)]. Also, written comments may be submitted to [address (note this is required for this purpose)] until [date comment period closes]. If you plan to attend the public hearing and will need special facilities or assistance relating to a disability, please contact the [agency] at the above telephone number or address at least [the amount of prior notice required] prior to the public hearing.

Dated this ____ day of _____, _____.

[Agency Head or Representative]

Small Entity Regulatory Analysis and Economic Impact Statement

SMALL ENTITY REGULATORY ANALYSIS

(Discuss each question)

1. Was establishment of less stringent compliance or reporting requirements for small entities considered? To what result?
2. Was establishment of less stringent schedules or deadlines for compliance or reporting requirements considered for small entities? To what Result?
3. Was consolidation or simplification of compliance or reporting requirements for small entities considered? To what result?
4. Were performance standards established for small entities for replacement design or operational standards required in the proposed rule? To what result?
5. Was exemption of small entities from all or any part of the requirements in the proposed rule considered? To what result?

SMALL ENTITY ECONOMIC IMPACT STATEMENT

(Discuss each question)

1. Which small entities are subject to the proposed rule?
2. What are the administrative and other costs required for compliance with the proposed rule?
3. What is the probably cost and benefit to private persons and consumers who are affected by the proposed rule?
4. What is the probable effect of the proposed rule on state revenues?
5. Is there any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule?

PUBLIC HEARING FORMAT

1. I am _____ and I will be acting as hearing officer for this public hearing.
2. It is now _____ (time) on _____ (date), in the _____ (place) so at this time, I open this hearing.
3. This public hearing has been called for the purpose of allowing all interested individuals an opportunity to submit information concerning.

Proposed [new, amendments to or repeal of] N.D. Admin. Code

Article _____ (number) _____ (title)
Section _____ (number) _____ (title)

4. Information gathered at this hearing will be transmitted to the _____ for its deliberation and final decision. [The _____ will not be responding to comments at this hearing. The comments received at this hearing will be considered with any written comments that are received and the _____ will present its consideration of all of the comments in writing. You may request a copy of the written response and one will be provided to you.]
5. This hearing is being taped and we ask everyone to use the podium so that the tape will be of good quality for transcribing purposes. Please identify yourself for the record before you speak.
6. Everyone present will be given an opportunity to speak. If you have a prepared statement, a written copy of your statement is appreciated and will be helpful.
7. A registration sheet has been placed next to the podium. I ask that everyone present please sign this sheet before they leave.
8. At this point, I open the hearing for comments.

Closing

1. Thank you all for coming. All of the information gathered at this hearing will be provided to the _____, which is the decision-making body.
2. The record will be held open for written comment until _____ (date).
3. At this point, I will close the hearing on:

Proposed [new, amendments to or repeal of] N.D. Admin. Code

Article _____ (number) _____ (title)
Section _____ (number) _____ (title)

[DATE]

The Honorable Wayne Stenehjem
Attorney General
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505-0040

Dear Mr. Stenehjem:

Enclosed please find the proposed [new, amendments to, or repeal of] N.D. Admin. Code [title, article, chapter] by the [Agency]. The proposed rules have been approved by [Board or Agency]. In accordance with N.D.C.C. § 28-32-14, the [Agency or Board] requests your examination of these rules as to their legality so they may be considered for formal adoption and publication in the North Dakota Administrative Code. The time for review of these rules should be recorded under [billing code].

Attached for purposes of review is a copy of the full and abbreviated Notices of Intent to [Adopt, Amend, or Repeal] Administrative Rules; and Affidavit of Publication from each newspaper in which the notice was published [or Affidavit of Publication from Newspaper Association]; a copy of the letter filing the Notice and Administrative Rules with the Legislative Council; [a copy of all written comments]; [a copy of the written summary of each oral comment]; [the Agency's written record of consideration of all public comments received]; [a copy of the regulatory analysis]; [the Agency's small entity regulatory analysis]; [the Agency's small entity economic impact statement]; and [a copy of the takings assessment if needed].

[No regulatory analysis required as the proposed rules are not expected to have an impact on the regulated community in excess of \$50,000, and neither the Governor nor any member of the Legislative Assembly requested a regulatory analysis.]

[No takings assessment was required because the rule does not limit the uses of real property.]

[No oral or written comments were received on the rules.]

[No small entity economic impact statement was required because (the agency is exempt from the requirement to prepare one); (the proposed rules are mandated by federal law); (none of the proposed rules will have an adverse economic impact on small entities).]

[No small entity regulatory analysis was required because (the agency is exempt from the requirement to prepare one); (the proposed rules are mandated by federal law).]

Sincerely,

Enclosures

ENCLOSURE 8
Letter to Legislative Council

[DATE]

Mr. John Walstad
Code Revisor
Legislative Council
600 East Boulevard, 2nd Floor
Bismarck, ND 58505-0360

Dear Mr. Walstad:

Enclosed please find a copy of the [new, amendments to, or repeal of] North Dakota Administrative Code [title, article, or chapter] regarding [topics of rules] and a copy of each written comment and a summary of each oral comment on the rules [or note that no comments were received]. By letter dated [date of Attorney General letter approving rules] the Attorney General approved the proposed rules as to their legality. On [date] the [agency] adopted the rules as approved, and is now submitting the rules for publication in the North Dakota Administrative Code.

Thank you for your attention to this matter.

Sincerely,

Enclosure

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 33(L&C)
(H) Publish Date: 3/17/05

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
Title: Effect of Regulations on Small Businesses RDU: Office of the Commissioner
Sponsor: Representative Meyer Component: Commissioner's Office
Requester: House L&C 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	35.8	35.8	35.8	35.8	35.8	35.8
Travel						
Contractual	18.3	18.3	18.3	18.3	18.3	18.3
Supplies	7.0	1.5	1.5	1.5	1.5	1.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	61.1	55.6	55.6	55.6	55.6	55.6

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

1002 Federal Receipts	20.5	19.1	19.1	19.1	19.1	19.1
1004 GF	10.4	9.0	9.0	9.0	9.0	9.0
1007 Interagency Receipts						
1157 Worker Safety Account	15.1	13.7	13.7	13.7	13.7	13.7
1172 Building Safety Account	10.4	9.1	9.1	9.1	9.1	9.1
1032 Fishermen's Fund	4.7	4.7	4.7	4.7	4.7	4.7
TOTAL	61.1	55.6	55.6	55.6	55.6	55.6

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	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Guy Bell, Deputy Commissioner Phone: 465-2700
Division: Office of the Commissioner Date/Time: 3/3/05 10:59 AM
Approved by: Greg O'Claray, Commissioner Date: 3/3/2005
Agency: Department of Labor and Workforce Development

FISCAL NOTE # 4

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL VERSION: CSHB 33(L&C)

ANALYSIS: (continued)

HB 33 requires a study of the economic impact on small business of every regulatory change before the change can be adopted. In addition, an extensive regulatory flexibility analysis must be completed for each regulation change and alternatives must be evaluated and documented. This information must be compiled into a report that will be used to justify the adoption of the regulations.

This bill will impact three divisions in the Department of Labor and Workforce Development: Labor Standards and Safety, Workers' Compensation, and Employment Security. To prepare the extensive analysis and the economic effect statements a part time Regulations Specialist II is required. The position will be located in the Commissioner's Office.

The total FY 06 actual cost to the department is estimated to be \$61.1. This includes personal services of \$35.8, indirect, postage, printing and telephone costs of \$18.3, and \$7.0 for supplies. The supplies funding includes costs for a computer and office furnishings required in the first year only.

This bill will impact the Labor Standards & Safety (LS&S) Division's Occupational Safety & Health (OSH), Mechanical Inspection and Wage & Hour programs. These LS&S programs have extensive regulations, both adopted directly and for the OSH program adopted by reference to the federal regulations. Total cost for LS&S is estimated at \$41.7. Funding would be OSH \$20.9 (\$10.4 Federal/\$10.5 Worker Safety Account), \$10.4 Mechanical Inspection (Building Safety Account) and \$10.4 Wage & Hour (General Fund).

This bill will impact the Workers' Compensation Division's Workers' Compensation and Fishermen's Fund programs. The total estimated cost of \$9.3 would be funded from the Worker Safety Account (\$4.6) and the Fishermen's Fund (\$4.7).

This bill will impact the Employment Security Division's Unemployment Insurance program. The division estimates that the provisions of the bill will increase costs by approximately \$10.1 annually which would be funded by federal receipts.

This bill has an effective date of January 1, 2006. However, to establish the procedures and to develop the required analysis and reports to comply with the provisions of the bill, the department needs to add the requested position at the beginning of the fiscal year.

NOTE: Since the department will not receive increased federal funding to cover the cost of this legislation, the increased federal cost will need to be absorbed within existing federal grant levels.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB033CS(JUN)-DHSS-FMS-04-13-05
() Publish Date: _____

Revision Date/Time (Note if correction): 04/13/2005

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	162.6	162.6	162.6	162.6	162.6	162.6
Travel	10.0	10.0	10.0	10.0	10.0	10.0
Contractual	30.0	30.0	30.0	30.0	30.0	30.0
Supplies	15.0	10.0	10.0	10.0	10.0	10.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	217.6	212.6	212.6	212.6	212.6	212.6

CAPITAL EXPENDITURES

CHANGE IN REVENUES (0)

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	217.6	212.6	212.6	212.6	212.6	212.6
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	217.6	212.6	212.6	212.6	212.6	212.6

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	2	2	2	2	2	2
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 all department 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
Division: Commissioner's Office
Approved by: Joel S. Gilbertson, Commissioner
Agency: Department of Health and Social Services

Phone: (907) 465-1618
Date/Time: 04/11/2005
Date: 04/13/2005

ANALYSIS CONTINUATION
(cont. from page 1)

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

The capacity and expertise to prepare the detailed economic analyses envisioned in this legislation does not currently exist within the department. Virtually all department regulations affect small business in some fashion. In the absence of additional resources to comply with this new mandate, delays in implementing time-sensitive cost-containment or public health related regulations would be likely due to the time required to prepare these analyses.

A typical example would be Medicaid cost-containment regulations where reductions in reimbursement rates to small health care providers is proposed in order to live within legislative appropriations. A public health and safety example might include requirements on small businesses to obtain criminal background checks on employees.

DHSS provides many of its services through contractual or grant agreements with small business providers, or direct payment for services such as the Medicaid program. Virtually every regulation change proposed by the department would have some impact on small businesses. Currently on the Department's regulation tracking system there are 24 regulation changes underway for completion by June 30, 2005 and another 26 items already planned for FY06. Some of these proposals are very broad ranging such as cost containment items for the Medicaid program that would impact every medical provider that bills for services under the Medicaid program. Another example is the regulation changes necessary to implement new provider software (AKAIMS) that will be used for management and reporting of both substance abuse and mental health programs. Regulations will provide for standard and updated reporting requirements.

House Bill 33 will make it much more difficult for the department to comply with legislative intent directing the department to aggressively pursue Medicaid cost containment strategies. Legislative intent included in the House-passed version of the fiscal year 2006 budget directing the Department to promulgate cost-containment regulations includes: (cont. on page 3)

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB033CS(JUD)-DHSS-FMS-04-13-05

ANALYSIS CONTINUATION
(cont. from page 2)

"It is the intent of the legislature that the Department continue to aggressively pursue Medicaid cost containment initiatives undertaken in fiscal year 2005.... The Department must initiate efforts imposing regulations controlling and materially reducing the cost of Personal Care Attendant (PCA) services. Efforts must be initiated to impose regulations screening applicants for Residential Psychiatric Treatment Center (RPTC) services, especially for out-of-state services. The department must address the entire matrix of optional Medicaid services, reimbursement rates and eligibility requirements that are the basis of the Medicaid growth algorithm..... It is the intent of the legislature that the Department establish regulations requiring all residents of Pioneer Homes to apply for all appropriate benefit programs prior to a state subsidy being provided for their care from the State Payment Assistance Program."

The expertise needed to assess the projected reporting, recordkeeping and other administrative costs of small businesses from this type of regulation change would require analysis by an employee with program knowledge for each department program area, analysis skills, and small business knowledge. This would require additional positions to prepare the economic effect statement and regulatory flexibility analysis for each regulatory proposal.

In addition, this type of analysis could well delay implementation of some of the Medicaid provisions or other broad range regulation changes. On cost containment proposals, especially for Medicaid programs, any resulting delay in implementation of regulations could result in significant loss of savings to the Medicaid program.

A Research Analyst III, range 18, and a Medical Assistance Administrator IV (or Project Coordinator), range 21 are proposed to perform these functions. Estimated costs would be as follows:

Personal Services

Research Analyst III	73.7
MAA IV	88.9

Travel 10.0

To provide travel for coordination with First Health (Medicaid billing contractor), on-site review of small business requirements, coordination with department staff statewide involved in drafting regulations. (cont. on page 4)

FISCAL NOTE
FN #

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB033CS(JUD)-DHSS-FMS-04-13-05

ANALYSIS CONTINUATION
(cont. from page 3)

Contractual	30.0
Possible contractual assistance on complex analysis, printing, telephone, computer services, lease space, DOA chargeback for Risk Mgt, HR, Dept of Law consultations, etc.	
Supplies	15.0
Workstation including computer and office furniture for new employees, and on-going office supply needs.	
TOTAL	217.6

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB33CS-LAW-L&R-4-12
() Publish Date: _____

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						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 00

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

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 33(JUD)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title: "An Act relating to regulations that may govern the conduct of small businesses" RDU: Environmental Health
Sponsor: Representative Meyer Component: Environmental Health Director
Requester: House Judiciary 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	72.1	72.1	72.1	72.1	72.1	72.1
Travel	5.0	5.0	5.0	5.0	5.0	5.0
Contractual	28.7	28.7	28.7	28.7	28.7	28.7
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment	6.9	0.5	0.5	0.5	0.5	0.5
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	113.2	106.8	106.8	106.8	106.8	106.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	113.2	106.8	106.8	106.8	106.8	106.8
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	113.2	106.8	106.8	106.8	106.8	106.8

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	1	1	1	1	1	1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The proposed legislation will require the Division of Environmental Health (EH) to investigate and report the impact of new or revised regulations for food safety, seafood, public accommodations, pools & spas, animal health, and state regulated drinking water systems on small business in Alaska. In all of these program areas, we would expect that small businesses would be impacted by EH regulations.

The legislation requires an economic effect analysis and a regulatory flexibility analysis, which will require expertise and resource currently not available within EH. For more complex regulations we would anticipate needing the services of a contract economist or extensive support from the Department of Commerce, Community, and Economic Development (DCCED).

(continued on page 2)

Prepared by: Kristin Ryan, Director
Division: Environmental Health
Approved by: Kurt Fredriksson, Commissioner
Agency: Department of Environmental Conservation

Phone: (907)269-7644
Date/Time: 4/13/05 2:53 PM
Date: 4/13/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSHB 33(JUD)

ANALYSIS CONTINUATION

(continued from page 1)

The expertise needed to assess the projected reporting, recordkeeping and other administrative costs to small business as required by the legislation will require analysis by an employee with program knowledge of all programs within EH, except for Solid Waste and Pesticides. The position will need analysis skills and small business knowledge in order to investigate and report on the impact areas listed in the proposed legislation.

Personal Services \$72.1

A Research Analyst III will be hired to perform these functions.

Travel \$5.0

The position will travel to all regulations workshops and related public meetings to collect information on potential small business impacts and to coordinate with department staff statewide involved in drafting regulations.

Contractual \$28.7

\$20.0 is included to cover the cost of contractual assistance on complex analysis and increased cost for Law review. The balance is for other standard position related costs.

Supplies \$0.5

Position related supplies costs.

Equipment \$7.4

\$6.9 is included in the first year for one-time costs for a computer and office equipment. Thereafter, \$0.5 is included for ongoing and annual equipment costs.

Personal Services New Position Detail

Department of Environmental Conservation
Implement HB 33

Scenario: A Scenario for FY2006 Fiscal Notes #3 (4247)
Component: Environmental Health Director (646)
RDU: Environmental Health (207)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#005	Research Analyst III	FT	A	GP	Anchorage	2A	18 B	12.0		47,316	914	0	23,852	72,082

Justification:

Implement regulation analysis and reporting required by HB 33.

Funding Detail:

1004	General Fund Receipts	100.00%	72,082
Total Funding:		100.00%	72,082

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	72,082
Total Funding:	100.00%	72,082

Note: If a position is spot, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

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: CSHB 33(FIN) COMMITTEE
 (H) Publish Date: 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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)
 (H) Publish Date: 4/18/2005

SENATE FINANCE
COMMITTEE

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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): _____ Department: Labor and Workforce Development
 Title: Effect of Regulations on Small Businesses RDU: Office of the Commissioner
 Sponsor: Representative Meyer Component: Commissioner's Office
 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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

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

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 Phone: 465-2700
 Division: Office of the Commissioner Date/Time: 4/15/05 3:58 PM
 Approved by: Greg O'Clarav, Commissioner Date: 4/15/2005
 Agency: Department of Labor and Workforce Development

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						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other - Regulatory Cost Charge						
TOTAL	*****	*****	*****	*****	*****	*****

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						
TOTAL OPERATING	95.1	90.1	90.1	90.1	90.1	90.1

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

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

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						
TOTAL	95.1	90.1	90.1	90.1	90.1	90.1

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						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES (0)						
-------------------------------	--	--	--	--	--	--

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)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

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			
MOTION	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)

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

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

Businesses	Number	Total number of Employees
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
Total:	17,126	177,519

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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 629,000.¹ 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).² 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.)

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.

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

Sign up at <http://web.sba.gov/bsf> for email delivery of:

- Advocacy Communications
- Advocacy Newsletter
- Advocacy Press
- Advocacy Research

¹ 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).

² 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
Total	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+
Job Gains:				
New establishments	12.51	4.73	7.53	4.98
Expanding establishments	25.16	8.94	17.31	7.85
Job Losses:				
Downsized establishments	-18.73	-5.98	-14.09	-4.64
Closed establishments	-9.91	-4.86	-8.17	-1.74
Net change in employment	9.03	2.82	2.58	6.45

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

Headquarters:
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★ STATE ★
CHAMBER
OF COMMERCE

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,

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.

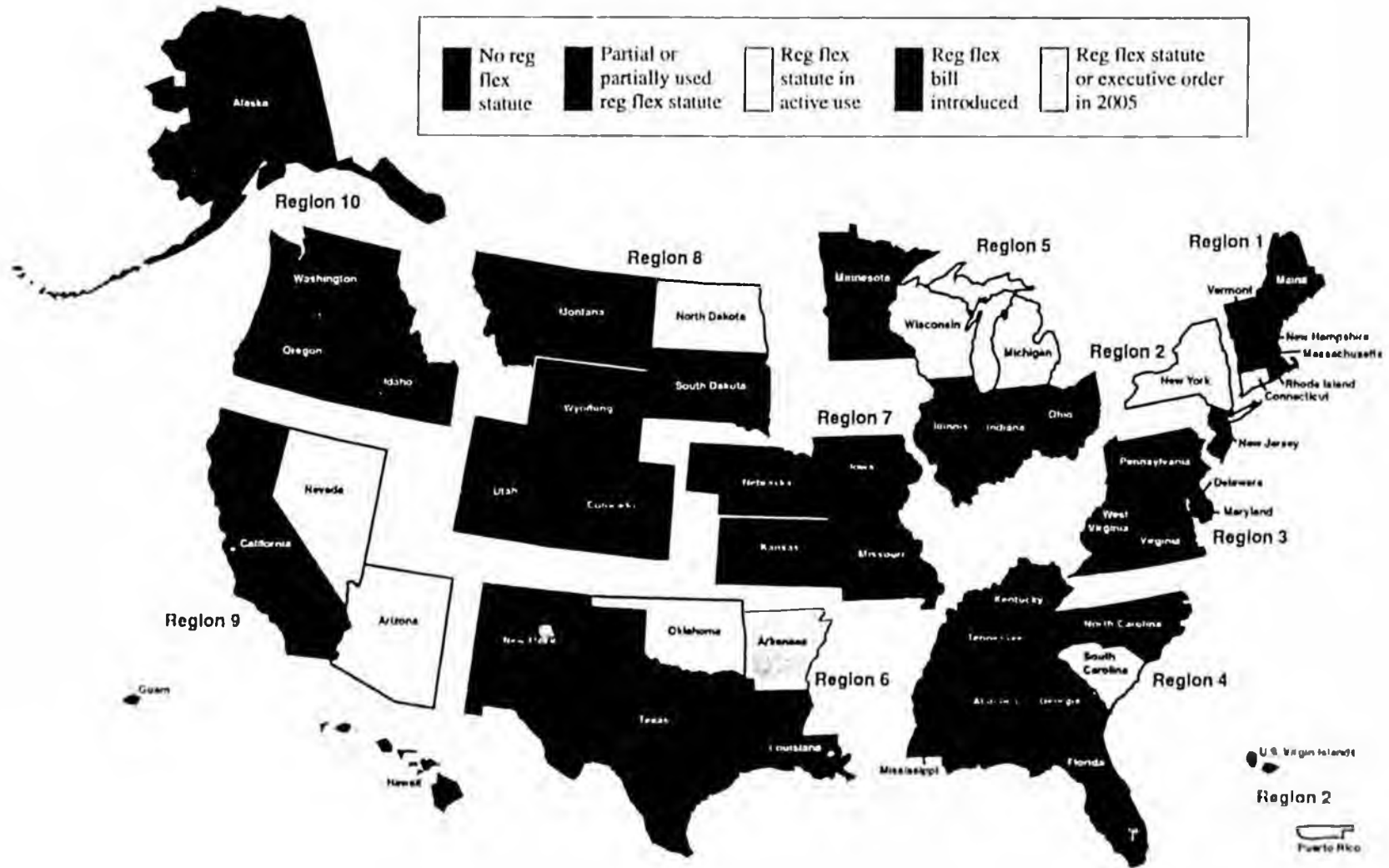
There is no question that small business is the backbone of the economy here in Alaska just as it is throughout the country. According to the federal definition of small business (500 employees or less), 96.9 percent (16,300) of Alaska's employers are considered small and employ over 59.6 percent (127,680)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

**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>

- Advocacy Communications
- Advocacy Newsletter
- Advocacy Press
- Advocacy Research

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

Contents

Foreword	iii
Regulatory Flexibility: What It Is and Why It Matters	1
A Bill	4
Regulatory Flexibility Legislation in the States	8
Small Business Administration Office of Advocacy Regional Advocates	12

Regulatory Flexibility: What it is and Why it Matters

In September 1980, Congress enacted the Regulatory Flexibility Act (RFA)¹, 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 Act² (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

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

² 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).¹ 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.² 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.

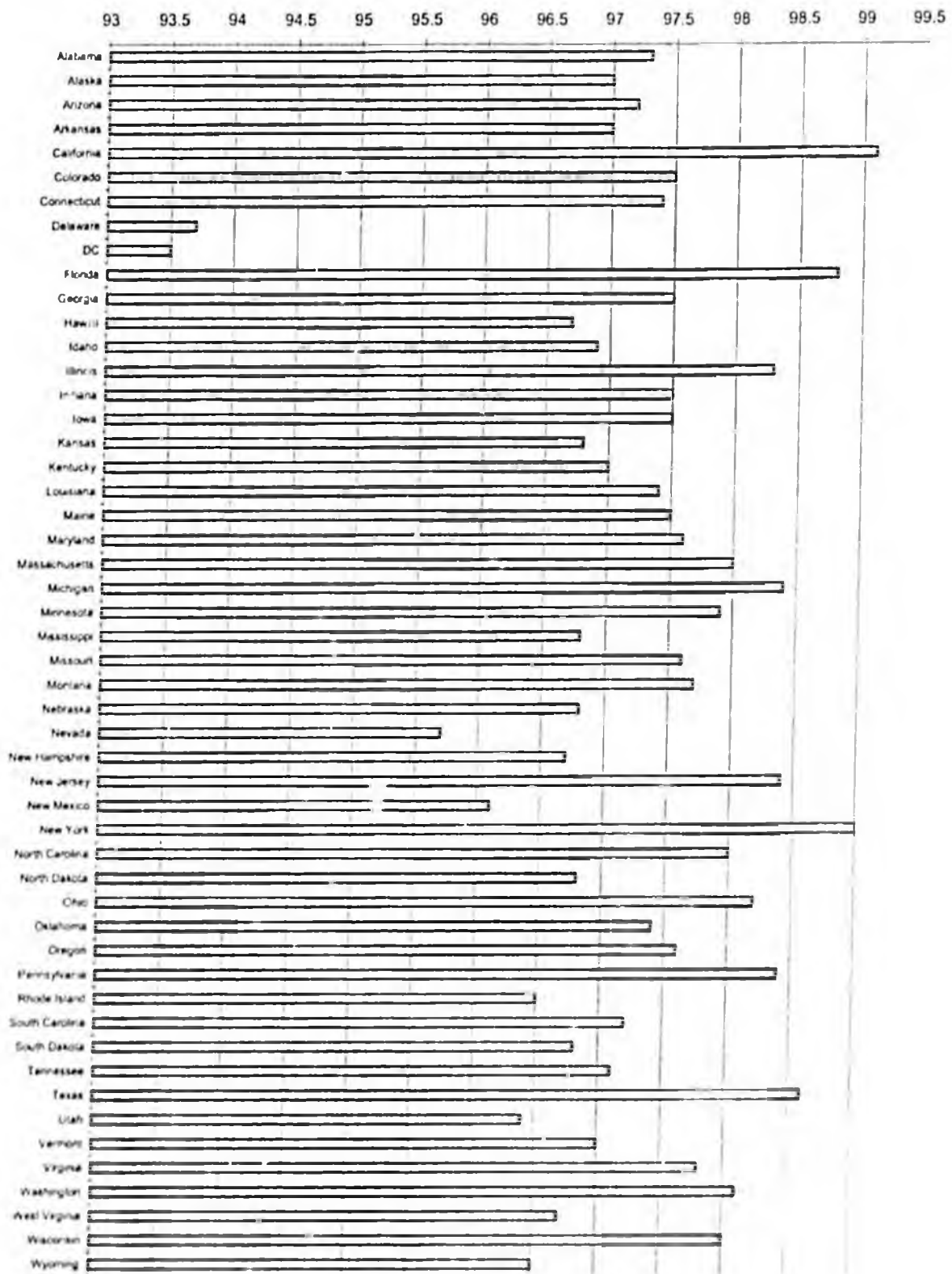
Aware of the state economic benefits of less burdensome regulations, the Office of Advocacy wants to build on the successes of federal regulatory flexibility and of states that have led the way with legislative and executive approaches of their own. In fiscal year 2002 the cost savings to small businesses from federal regulatory flexibility was more than \$21.1 billion.³ 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.

¹The 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.

²See *Regulatory Flexibility Legislation in the States*, *infra*.

³See *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 ¹		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 ⁷		100/5-90
Indiana	Ind. Code Ann. §		4-22-2-28 ¹			4-22-2-46; 4-22-2-5-2 ¹		4-22-2-28; 4-22-2-46
Iowa	Iowa Code Ann. §		17A-4A ⁴		17A-19	17A-33 ¹		17A-8
Kansas	Kan. Sta. Ann. §		77-416(b) ¹	77-416(b)				77-436; 77-423
Kentucky	Ky. Rev. Stat. Ann. §	13A.210(5); 13A.010	13A.240 ¹	13A.210	13A.337	13A.345		13A.020
Louisiana	La. Rev. Stat. Ann. §		49.953 ¹		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 ¹		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 ¹		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 ¹
North Carolina	N.C. Gen. Stat. §		150B-21.4 ¹					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) ¹		745.12a	745.8a ¹		
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 ⁹		
South Carolina	S.C. Code Ann. §		1-23-10(7); ¹ 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) ¹		63-46a-12.1	63-46a-11.5 ¹	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.

¹Not small-business-specific.

²Periodic review of small business rules only.

³This provision imposes expiration dates on rules rather than requiring periodic review.

⁴Iowa 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).

⁵Minnesota 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).

⁶The 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).

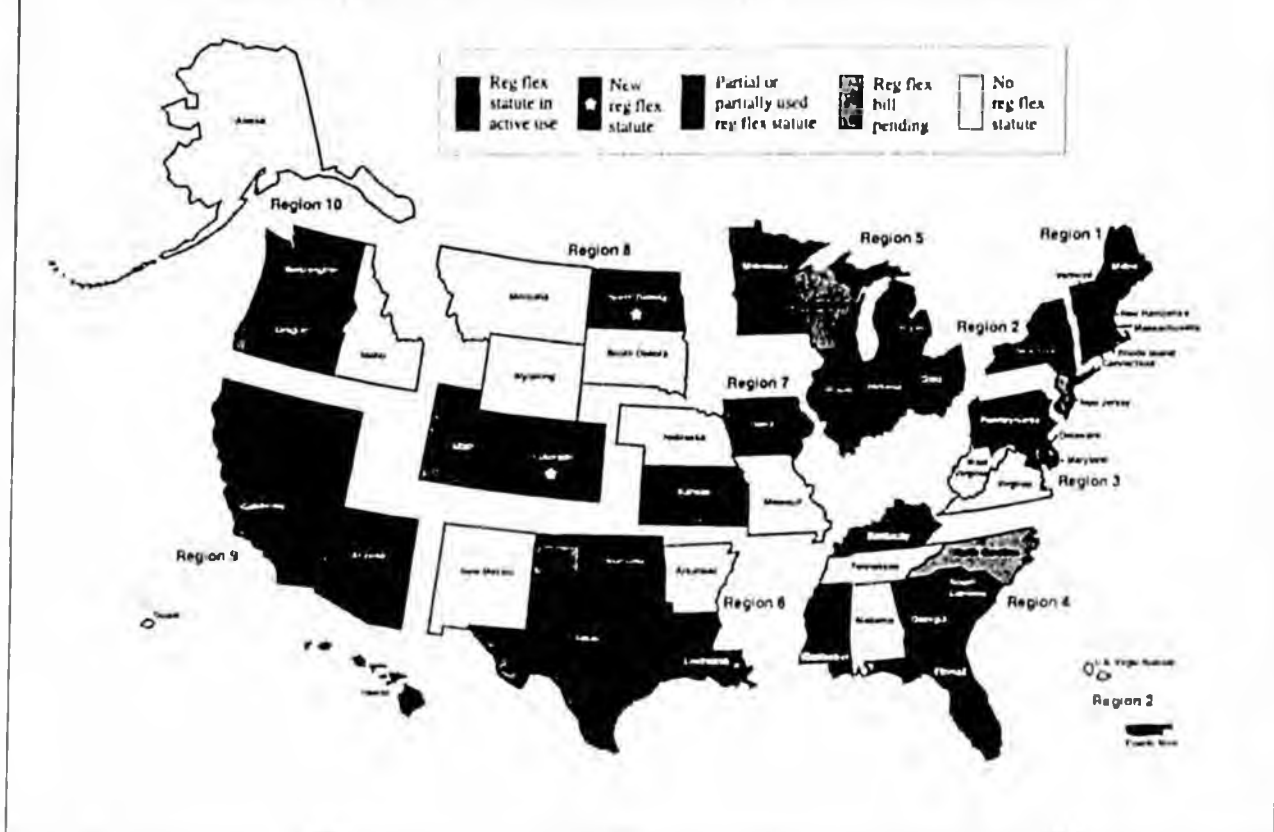
⁷Review of a rule is mandatory in Pennsylvania if requested by a third party.

⁸This 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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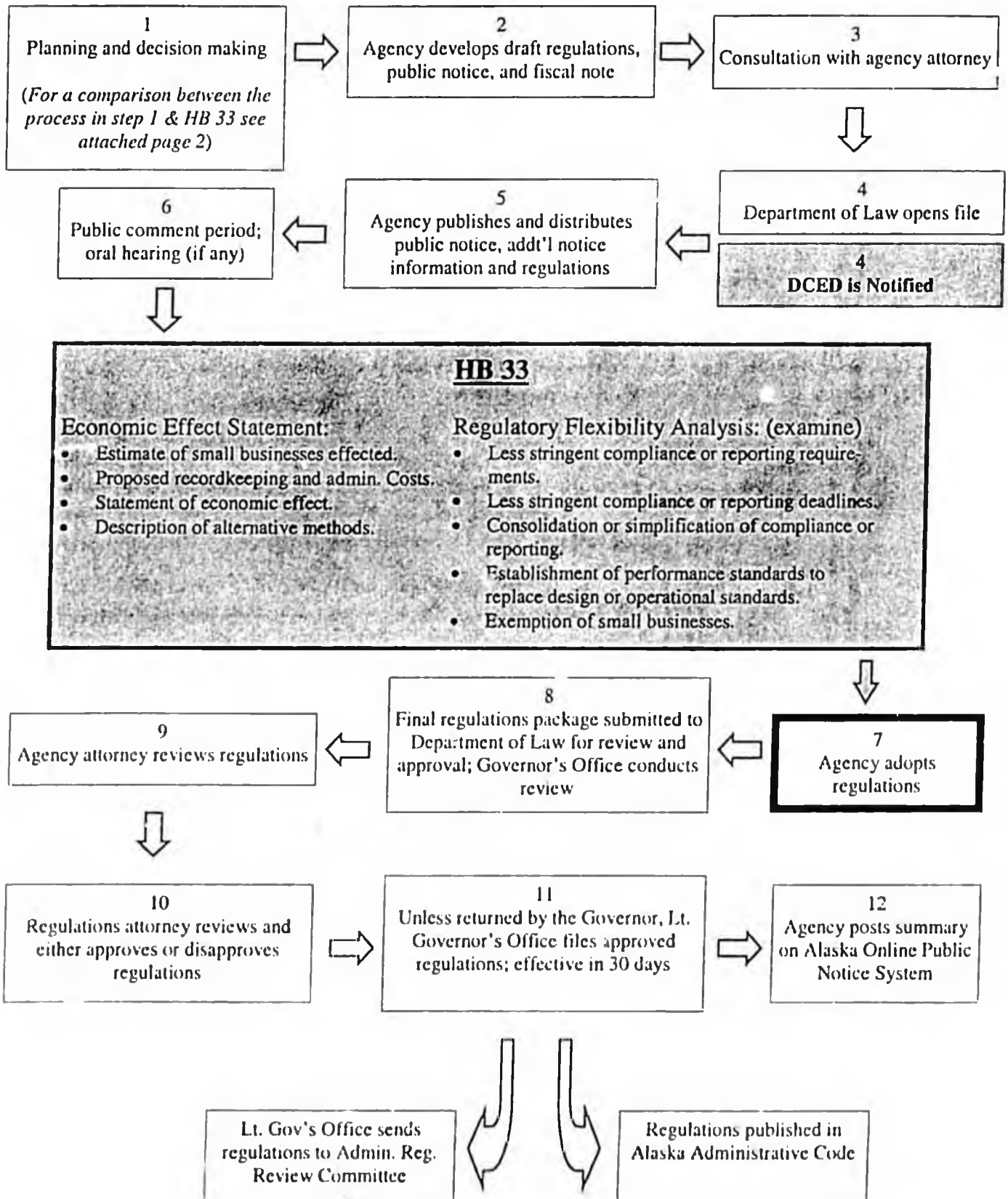
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STEPS IN THE REGULATION ADOPTION PROCESS UNDER HB33

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 <i>[Signature]</i>			X	
Guess <i>[Signature]</i>			X	
Therriault <i>[Signature]</i>	✓			
Huggins <i>[Signature]</i>	X			
Seckins CHAIR: <i>[Signature]</i>	✓			

HB

35

HFIN

FILE

Audit Report

DEPARTMENT OF COMMERCE,
COMMUNITY, AND ECONOMIC DEVELOPMENT
BOARD OF REGISTRATION FOR ARCHITECTS,
ENGINEERS, AND LAND SURVEYORS
SUNSET REVIEW

October 6, 2004



Audit Control Number:

08-20028-05

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

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

DIVISION OF LEGISLATIVE AUDIT

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

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

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

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

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ALASKA STATE LEGISLATURE

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November 1, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF REGISTRATION FOR ARCHITECTS,
ENGINEERS, AND LAND SURVEYORS

October 6, 2004

Audit Control Number

08-20028-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(3), the Board of Registration for Architects, Engineers, and Land Surveyors is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations. We recommend that the legislature extend the board's termination date to June 30, 2009.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

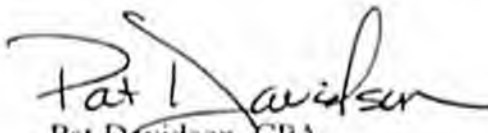

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Report Conclusions.....	5
Findings and Recommendations.....	7
Analysis of Public Need	13
Agency Responses	
Department of Commerce, Community, and Economic Development	19
Board of Registration for Architects, Engineers, and Land Surveyors.....	21

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of the Board of Registration for Architects, Engineers, and Land Surveyors (BRAELS). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the board should be reestablished. Currently, AS 08.03.010(c)(3) states that the board will terminate on June 30, 2005, and will have one year from that date to conclude its affairs. If the legislature does not extend the termination date for the board, BRAELS will have one year to conclude its administrative operations.

Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of architects, engineers, land surveyors, and landscape architects.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted most of this review. We followed professional standards to determine that the other auditor was independent and their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions for fiscal years ending June 30, 2001 through 2004. During the course of our examination we reviewed and evaluated the following:

1. Applicable statutes and regulations.
2. Compliance with statutes and regulations related to the Board of Registration for Architects, Engineers and Land Surveyors.

3. Minutes of meetings of the board.
4. Licensing and investigation files.
5. Annual reports issued by the Board of Registration for Architects, Engineers and Land Surveyors.
6. Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing, Office of the Ombudsman, Human Rights Commission, and Equal Employment Opportunity Commission.
7. Reading and correspondence files maintained with the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
8. Interviews with employees of the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing.
9. Other documents and interviews deemed pertinent.

ORGANIZATION AND FUNCTION

The Board of Registration for Architects, Engineers and Land Surveyors (BRAELS) is a regulatory board consisting of 11 members appointed by the governor. The board consists of two civil engineers, two land surveyors, one mining engineer, one electrical or mechanical engineer, one engineer from another branch of the profession of engineering, two architects, one landscape architect, and one public member.

Alaska Statute requires each board member to have been a resident in the State for three consecutive years immediately preceding an appointment to BRAELS.

Additionally, except for the public member and the nonvoting landscape architect position, board members must be registered and have a minimum of five years of professional practice in their field.

Alaska Statutes 08.48.101 and 08.48.111 establish the powers of the board. They include:

1. Adopting regulations.
2. Describing the contents, conducting and establishing a minimum score for passing examinations.
3. Suspending, revoking, or refusing to issue or renew a license.
4. Issuing licenses to practice to architects, engineers, and land surveyors who meet standards of education and training determined to be necessary by the board.

Department of Commerce, Community, and Economic Development, Division of Occupational Licensing

The Department of Commerce, Community, and Economic Development, Division of Occupational Licensing, provides administrative and investigative assistance to the Board of Registration for Architects, Engineers and Land Surveyors. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

As of June 30, 2004

Professional Members

Donald Iverson, Chair, Civil Engineer
Clifford Baker, Lands Surveyor
Boyd Brownfield, Civil Engineer
Linda Cyra-Korsgaard, Landscape Architect
Craig Fredeen, Mechanical Engineer
Robert Gilfilian, Civil Engineer
Richard Hughes, Mining Engineer
Kenneth Maynard, Architect
Scott McLane, Lands Surveyor
Patricia Peirsol, Architect

Public Member

Kimberly Mills

Alaska Statute 08.01.065, mandates the Department of Commerce, Community, and Economic Development, with the concurrence of the board, adopt regulations to establish the amount and manner of payment of application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing, with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged or is about to engage in a prohibited professional practice.
2. Bring an action in Superior Court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Registration for Architects, Engineers, and Land Surveyors (BRAELS) should be extended. The board is operating in the public interest by effectively regulating the individuals who hold themselves out to the public as registered architects, engineers, land surveyors, and landscape architects.

BRAELS serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to develop regulations to improve its effectiveness and ensure that registered architects, engineers, land surveyors, and landscape architects licensed in the State of Alaska are competent and consistently practiced within the requirements and ethical standards of the respective professions involved.

Alaska Statute 08.03.010(c)(3) requires BRAELS to be terminated on June 30, 2005. If no action is taken by the legislature, under AS 08.03.020, the board will have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2009.

(Intentionally left blank)

FINDINGS AND RECOMMENDATIONS

In our prior sunset audit report,¹ we made three recommendations. Two of these recommendations have been satisfactorily addressed; the remaining is reiterated as Prior Audit Recommendation No. 1 below. Additionally, Recommendations No. 2 and No. 3 are new recommendations.

Prior Audit Recommendation No. 1

The legislature should consider changes to the statutes mandating that BRAELS require continuing professional education of its licensees.

At the time of the prior review, no statutory or regulatory provision existed requiring registered professionals to obtain specified continuing education (CE) as a condition for registration renewal. The purpose of requiring continuing education for licensed professionals is to promote professional practices consistent with current standards and information. The board supported the idea of voluntary continuing education for registrants; however, it did not support statutory or regulatory changes that would make such CE mandatory.

Legislative Audit's Current Position

The prior finding has been partially resolved. The board received statutory authority² to adopt regulations requiring CE for professionals it regulates. The board, however, has yet to adopt any mandatory CE regulations.

The current board supports professionals obtaining professional education. Continuing professional education is critical for these professionals to stay competitive in their respective fields. While the board has not yet adopted a continuing education program – it continues to consider a mandatory CE program and is consulting professional societies for their input.

In recent annual reports, the board has stated it believes most licensees are voluntarily complying with the continuing education requirements of various professional societies. While many national organizations maintain continuing education requirements as a requirement for membership, there is no legal, statutory, or ethical mandate that require licensees in the State of Alaska to maintain current affiliation with a national organization. Accordingly, there is no assurance that registered professional architects, engineers, and land

¹ Division of Legislative Audit's *Department of Community and Economic Development, Board of Registration for Architects, Engineers, and Land Surveyors, October 20, 2000, Audit Control No. 08-20001-00.*

² CH 66 SLA 2004

surveyors keep abreast of current developments and maintain a minimum level of competency in their professional field.

Based on review of continuing education requirements of other state boards and licensing jurisdictions, the national trend is to require continuing education for engineers and other construction-related professionals. Currently, 24 states have mandatory continuing education requirements for professional engineers and 31 jurisdictions require continuing education for land surveyors.

The National Council of Examiners for Engineers and Surveyors (NCEES)³ has set out in its "Model Law" and "Model Rules," for licensing jurisdictions, specific suggested requirements related to CE for engineers and land surveyors. Similarly, the American Institute of Architects (AIA) has established minimum guidelines for aiding licensing jurisdictions in their efforts of establishing minimum continuing education requirements. Use of such guidelines in developing state requirements would promote consistency with other jurisdictions and not necessarily create an undue burden on professionals that choose to relocate from one jurisdiction to another.

We continue to recommend the board either develop appropriate mandatory CE requirements for its professional registrants or the legislature considers making such requirements mandatory by statute.

Recommendation No. 2

BRAELS should arrange for a comprehensive study regarding the public benefits and related off-setting costs that may be involved with recognizing additional engineering specialties in the State's licensing structure.

NCEES is the organization primarily responsible for preparing and scoring the examinations used for assessing the qualifications of applicants for engineering licensure. Examinations cover a broad spectrum of specialized engineering disciplines. In addition to the more traditional, long-time recognized fields related to chemical, civil, electrical, and mechanical engineering, NCEES also provides examinations for 13 other specialty areas, or branches (disciplines and subdisciplines) of engineering.⁴ Such a variety of examinations allows a large array of individuals, with various specialized training to be licensed and recognized as a professional engineer. In addition to the core engineering disciplines, Alaska recognizes mining and petroleum engineers with the designation of professional engineer.

³ NCEES is a federation of engineering licensing boards in all 50 states, the District of Columbia, and four territories or possessions (Puerto Rico, Guam, Virgin Islands, and the Northern Mariana Islands). Membership in NCEES also includes 14 separate boards for land surveyors and one independent board for structural engineers. In all, NCEES' membership is made up of 70 boards. Like Alaska, in many states the engineering or engineering-surveying board also regulates one or more other professions such as architects and landscape architects.

⁴ The disciplines involved are: (1) agricultural; (2) building architectural; (3) control systems; (4) environmental; (5) fire protection; (6) industrial; (7) metallurgical; (8) mining and mineral; (9) naval architectural and marine; (10) nuclear; (11) petroleum; (12) structural engineering I; and, (13) structural engineering II.

One of these specialty areas is environmental engineering. In recent years, individuals have appeared before the board requesting it to consider registering environmental engineers. Such action would allow the individuals with training and background in this area, who have passed the relevant NCEES examination, to be able to hold themselves out to the public as a professional engineer.

Alaska, like California and ten other jurisdictions, license by discipline.

Alaska is one of 12 jurisdictions that register engineers by specific discipline.⁵ In Alaska, discipline categories are limited to individuals passing the NCEES examinations for Civil, Electrical, Mechanical, Chemical, Mining/Mineral, and Petroleum engineering. Successful applicants earn a given designation depending on the examination(s) they took and passed. Although all individuals can use the title "Professional Engineer," or "PE" – separate licenses are required for each branch of engineering in which the individual wants to practice.

PE discipline and related scope of practice are reflected in review of construction documents.

In engineering, the central procedure to affix professional responsibility is by the use of seals and signatures. Engineers place their seal or signature on a document using an embossing stamp or, increasingly, a digital representation of such a stamp, listing their name, area of licensed discipline, and license number. Under state regulation, an engineering registrant may not sign or seal a plan or document dealing with professional services in which they are not qualified by "*virtue of education, experience, or registration.*"

State regulations define what constitutes the practice of chemical engineering, civil engineering, electrical engineering, mechanical engineering, mining engineering, and petroleum engineering. These regulatory definitions of the various branches of engineering, coupled with the prohibition against registrants sealing documents or plans outside their area of registration, establishes a scope of practice for each discipline. The scope of practice for each engineering discipline may, to varying degrees, overlap with the other disciplines. Accordingly, enforcement of such regulatory requirements often involves making subjective judgments about where various specialties may or may not overlap. However, with only six recognized disciplines in Alaska, such overlap in the scope of practice between engineering specialties is lessened.

In over 40 other licensing jurisdictions, applicants take examinations in one of up to 16 specific branches of engineering. Upon successful completion and licensure, the engineer may then practice in any area in which they are competent. All licensed engineers are called

⁵According to the BRAELS chair, other jurisdictions that license by discipline are California, Arizona, Nevada, West Virginia, Nebraska, Hawaii, Wyoming, Vermont, Rhode Island, Guam, and the Northern Mariana Islands. He also noted these states represent almost 22 percent of registered engineers.

"Professional Engineers or PE," regardless of the examination they took and passed.⁶ In contrast, within states like Alaska and California, the PE designation is limited to much fewer engineering disciplines and the scope of practice of each discipline is set out explicitly in state regulations.

Whereas many state boards administer most, if not all, NCEES examinations; Alaska is selective and consistent with the eventual licensing designations, choosing not to administer most of the nationally-available examinations.

Recently, applicants with specialized engineering backgrounds have sought PE registration.

As previously mentioned, individuals have appeared before BRAELS in recent years asking that the board expand the registrant categories and, accordingly, the number of people who can use the PE designation in commercial practice. Most specifically, individuals who have received accredited academic training in the field of environmental engineering or were recognized as a PE in another jurisdiction after passing only the NCEES environmental engineering examination, have sought BRAELS registration. To date, the board has shown no inclination to seek legislative changes to the current engineering licensure process.

The board's administrator has characterized the board's position as stemming from the uniqueness of Alaska's construction and related engineering environment. BRAELS looks upon engineers who are licensed in Alaska as representing the core disciplines that are most applicable to the State's resource extraction and construction activities. In the absence of uniform building codes in much of Alaska, it is the engineering review and certification -- the aforementioned sealing or "stamping" of plans -- that best serves the public protection.

Public may be better served through recognition of increased specialization.

Alaska presents unique engineering challenges because of its climate, seismic risks, and lack of consistent local government oversight on many construction projects in the unorganized borough. Such factors serve to place more burdens on the licensing and practice of engineering to promote public protection. Given the trends in engineering over the years to higher degrees of specialization, it may be that public protection is better served by the recognition of more specialized disciplines.

As stated earlier, California has a licensing structure for engineers similar to Alaska. A comprehensive study of California's engineering licensing structure evaluated the merits of expanding the use of the PE designation to allow specialists to utilize that title. The study concluded that licensing of engineers should be expanded to cover more disciplines -- primarily because of the demands of modern construction and the need for better public protection. The California legislature however, has not acted on the recommendations of the study.

⁶ In all states, as either a matter of law or professional ethics, engineers are constrained to practice only in areas in which they are competent and proficient by reason of education or experience.

Such an assessment is beyond the scope of a sunset audit review. The California study considered such factors as:

- the academic training involved with the various engineering specialties and the degree to which subject matter overlapped with the “central” disciplines or was unique to a given discipline.
- the content of the various NCEES examinations and the degree to which subjects covered overlap with the traditional “central” disciplines or was unique to the specialty area.
- the complaints, investigations, disciplinary actions involving licensees to determine if engineering failures could be attributable to lack of specialized expertise.
- the nature of the state’s construction marketplace, and whether there was a demand for more specialized engineering services that could be utilized in projects to the same extent as that of licensed engineers.

A study that considered such factors, as they applied to Alaska, would provide more insight into where the best interests of the public may lie when it comes to licensing engineers. We suggest BRAELS consider partnering with State professional organizations and/or the engineering schools affiliated with the University of Alaska to conduct such a study. The study could comprehensively address public policy benefits and costs which would provide guidance whether the number of PE specialties should be expanded.

Recommendation No. 3

The legislature should consider making the landscape architect representative to BRAELS a full, voting member.

In 1998, the legislature began the process of licensing the practice of landscape architecture in Alaska. The profession was placed under BRAELS, and legislation setting up the regulatory structure amended the State’s uncodified law to provide for a temporary, nonvoting representative of the new profession to sit on the board.⁷ The uncodified statute set a lapse date of June 30, 2001, for the landscape architect nonvoting seat.

In 2001 legislation extending the termination date for BRAELS, the nonvoting seat was extended through June 30, 2005 – the new “sunset date” for the board. This 2001 amendment also allowed the individual to be reimbursed for travel and per diem expenses. Similar to the requirements for BRAELS members from the engineering, architectural, and land surveying professions, the individual appointed to this position is required to have been a State resident for the three years immediately prior to appointment.

⁷ See section 31 of Chapter 47, SLA 1998.

We suggest the legislature consider amending BRAELS' statutes to make the landscape architect position a permanent voting member of the board. While such action would increase the size of BRAELS to 11 voting members, the cost of meetings would not be appreciably increased given the effect of the 2001 legislation. As shown by Exhibit 2 on page 17 of this report, the number of landscape architects is small but close to the number of mining engineers – a group that by State law is specifically afforded representation on the board.