

115 22 HOUSE LABOR & COMMERCE

*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. The Chief Counsel for Advocacy, who is appointed by the President and confirmed by the U.S. Senate, 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. Issues are identified through economic research, policy analyses, and small business outreach. The Chief Counsel's efforts are supported by offices in Washington, D.C., and by Regional Advocates. For more information on the Office of Advocacy, visit <http://www.sba.gov/advo>, or call (202) 205-6533.*

## Changes to HB 33 in CS HB 33 version 24-LS 0239\G

### HB 33

- Page 1, line 5-8:  
“Before an agency adopts a proposed regulation that may have an adverse effect on small businesses, the agency shall prepare and economic effect statement that provides”
  
- Page 3, line 14-15:  
No subsection (g) exists
  
- Page 3, lines 13-16:  
Subsection (g) allowed small businesses affected or aggrieved to challenge regulations adopted by agencies in superior court.

### CSHB 33

- Page 1, line 5-8:  
“Before an agency adopts a proposed regulation that may have an adverse effect on small businesses, the agency shall, using available information and without conducting new studies that are extensive, prepare and economic effect statement that provides”

#### **Rationale:**

Alaskans are familiar with Environmental Impact Statements, and there was concern that the phrase: Economic Effect Statement implied an extensive and subsequently expensive research process. The level of study was ambiguous in the original version, and the new language was added to express the sponsors intent and give statutory direction to agencies.

- Page 3, Line 14-15  
Add new subsection (g) - “This section does not apply to regulations adopted by the Board of Fish or the Board of Game created under AS 16.05.221.”

#### **Rationale:**

Regulations adopted by the BOF or BOG are subject to an intensive and open public process and the allocation decisions they make should not be covered by HB 33.

- Page 3, lines 13-16  
Former subsection (g) removed.

#### **Rationale:**

Former subsection (g) creates problems particularly for resource development projects by opening challenges in superior courts.

24-LS0239G  
Bannister  
2/9/05

**CS FOR HOUSE BILL NO. 33( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES MEYER, Wilson, Kelly, Neuman**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

4 **\* Section 1. AS 44.62 is amended by adding a new section to read:**

5 **Sec. 44.62.198. Regulations affecting small businesses. (a) Before an**  
6 **agency adopts a proposed regulation that may have an adverse effect on small**  
7 **businesses, the agency shall, using available information and without conducting new**  
8 **studies that are extensive, prepare an economic effect statement that provides**

9 (1) **an identification and estimate of the number of small businesses**  
10 **that would be subject to the proposed regulation;**

11 (2) **the projected reporting, recordkeeping, and other administrative**  
12 **costs that small businesses would be required to incur in order to comply with the**  
13 **proposed regulation, including an identification of the type of professional skills**  
14 **necessary to prepare the report or record or to take the administrative action;**

1 (3) a statement of the probable effect that the proposed regulation  
2 would have on the small businesses affected by the proposed regulation; and

3 (4) a description of any alternative methods of achieving the purpose  
4 of the proposed regulation that would be less intrusive or less costly for the small  
5 businesses affected by the proposed regulation.

6 (b) Before an agency adopts a proposed regulation that may have an adverse  
7 effect on small businesses, the agency shall prepare a regulatory flexibility analysis in  
8 which the agency shall consider using regulatory methods that

9 (1) minimize the adverse effect of the regulation on small businesses  
10 while accomplishing the objectives of statutes authorizing the proposed regulation;  
11 and

12 (2) are consistent with health, safety, environmental welfare, and  
13 economic welfare.

14 (c) When preparing the regulatory flexibility analysis under (b) of this section,  
15 the agency shall consider

16 (1) the establishment of less stringent compliance or reporting  
17 requirements for small businesses;

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

20 (3) the consolidation or simplification of compliance or reporting  
21 requirements for small businesses;

22 (4) the establishment of performance standards to replace design or  
23 operational standards for small businesses; and

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

26 (d) Before an agency adopts a proposed regulation that may have an adverse  
27 effect on small businesses, the agency shall notify the Department of Commerce,  
28 Community, and Economic Development of the agency's intent to adopt the proposed  
29 regulation. The Department of Commerce, Community, and Economic Development  
30 shall advise and assist agencies to comply with this section.

31 (e) Every five years after the agency's adoption of a proposed regulation that is

1 subject to this section, the agency shall review the regulation to ensure that the  
2 regulation minimizes its economic effect on small businesses in a manner consistent  
3 with the objectives of the statutes that authorized the regulation.

4 (f) When reviewing a regulation under (e) of this section, the agency shall  
5 consider

6 (1) the continued need for the regulation;

7 (2) the nature of complaints or comments received by the agency from  
8 the public concerning the regulation;

9 (3) the complexity of the regulation;

10 (4) the extent to which the regulation overlaps, duplicates, or conflicts  
11 with other federal, state, and local government regulations; and

12 (5) the degree to which technology, economic conditions, or other  
13 factors have changed in the area affected by the regulation.

14 (g) This section does not apply to regulations adopted by the Board of  
15 Fisheries or the Board of Game created under AS 16.05.221.

16 (h) In this section,

17 (1) "proposed regulation" means a proposal by an agency for a new  
18 regulation or for a change in, addition to, or repeal of an existing regulation;

19 (2) "regulation" has the meaning given in AS 44.62.640, except that  
20 "regulation" does not include a declaratory ruling or an intra-agency or interagency  
21 memorandum;

22 (3) "small business" means a business entity, including its affiliates,  
23 that

24 (A) is independently owned and operated; and

25 (B) employs fewer than 100 full-time employees or has gross  
26 annual sales of less than \$6,000,000.

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

29 TRANSITION. (a) AS 44.62.198, enacted by sec. 1 of this Act, applies to a proposed  
30 regulation proposed on or after January 1, 2006. In this section, "proposed regulation" has  
31 the meaning given in AS 44.62.198, enacted by sec. 1 of this Act.

1 (b) Within four years after the effective date of this Act, each state agency shall  
2 review its regulations that are in existence on the effective date of this Act to determine  
3 whether the regulations should be continued without change, amended, or repealed to  
4 minimize the effect of the regulations on small businesses in a manner consistent with  
5 AS 44.62.198, enacted by sec. 1 of this Act. If the head of an agency determines that  
6 completion of the review of an existing regulation is not feasible within the four-year period,  
7 the agency shall publish a statement certifying that determination, and the agency may extend  
8 the completion date by one year at a time for a maximum of five years.

9 \* Sec. 3. This Act takes effect January 1, 2006.

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February 02, 2005

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

Dear Representative Meyer,

RE: HB 33

I want to thank you for inviting the State Chamber of Commerce to meet with your staff regarding House Bill 33, introduced by you this session. The Chamber of Commerce supports any and all legislation mea... to streamline the regulatory process which ultimately allows Alaskan businesses to prosper.

The State Chamber supports HB 33 and the Chamber hopes that the bill will work its way through the committee process. 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; however, legislating common sense may be a difficult task within the scope of HB 33. The State Chamber lauds your efforts within HB 33, while the chamber also recognizes the need for further clarification of HB 33 within the committee process.

The State Chamber of Commerce is willing to help you and your staff as HB 33 moves through the legislative process and the State Chamber of Commerce supports any and all of your efforts with regards to HB 33. To that end we have alerted our membership about the bill and have asked them to offer comments to us about the bill and its impact on their business.

Thank you for your efforts to lessen the impact of the regulatory process to small business. It is much appreciated.

Respectfully,

Wayne A. Stevens  
President

# **REPRESENTATIVE KEVIN MEYER**

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**HOUSE DISTRICT 30**

## **Sponsor Statement**

### **House Bill 33**

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

In 2003, 97% of all Alaskan businesses were small businesses. One out of every 14 Alaskans runs a small business, and in recent years all of the net job growth in Alaska was generated by small businesses. Small business provides the economic infrastructure that serves large development concerns and facilitates organic growth in the economy.

Regulations written to address macro issues can inadvertently create hurdles for small businesses. House Bill 33 requires state regulatory agencies to consider the impact of proposed regulations on small businesses.

The process set in HB 33 begins when an agency proposes or reviews a regulation. Before an agency adopts a proposed regulation it will prepare an economic effect statement that identifies and estimates the number of small businesses that would be subject to the proposed regulation, the costs to the businesses of complying with the regulation, and alternative methods of achieving the goal of the regulation.

HB 33 does not prohibit agencies from promulgating rational regulations that adversely impact small businesses. HB 33 simply requires agencies to consider the impact of regulation and examine alternatives.

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.

# LEGAL SERVICES

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## MEMORANDUM

January 12, 2005

**SUBJECT:** Sectional summary of HB 33 relating to the effect of regulations on small businesses (Work Order No. 24-LS0239\A)

**TO:** Representative Kevin Meyer  
Attn: Mike

**FROM:** Theresa Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. 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.

**Section 1.** Sec. 44.62.198(a) requires a state agency to prepare an economic effect statement before it adopts a proposed regulation that may have an adverse effect on small businesses. Lists what information the statement must provide.

Sec. 44.62.198(b) requires an agency to prepare a regulatory flexibility analysis before adopting a proposed regulation that may have an adverse effect on small businesses. For the analysis directs the agency to consider using certain described regulatory methods to minimize the adverse effect.

Sec. 44.62.198(c) lists what items the agency is to consider when preparing a regulatory flexibility analysis.

Sec. 44.62.198(d) requires an agency to notify the Department of Commerce, Community, and Economic Development when the agency intends to adopt a proposed regulation that may have an adverse effect on small businesses. Directs that department to advise and assist the agency to comply with this section.

Sec. 44.62.198(e) requires an agency to review adopted regulations subject to this section every five years to ensure that the regulation minimizes its economic effect on small businesses in a manner consistent with the objectives of the authorizing statutes.

Sec. 44.62.198(f) lists what an agency is to consider when performing a five-year review under sec. 44.62.198(e).

Representative Kevin Meyer

January 12, 2005

Page 2

Sec. 44.62.198(g) authorizes a small business that is adversely affected or aggrieved by an agency's adoption of a proposed regulation that is subject to this section to bring an action in superior court regarding the agency's compliance with this section.

Sec. 44.62.198(h) defines certain terms for the section.

**Section 2.** Adds a transition section indicating to which proposed regulations sec. 44.62.198 applies. Also, within four years requires each agency to review its regulations that are in existence when this Act takes effect to determine whether the regulations should be continued without change, amended, or repealed to minimize the effect of the regulations on small businesses. Allows an agency to extend the four-year deadline by one year at a time for a maximum of five years.

**Section 3.** Gives the Act an effective date.

If I may be of further assistance, please advise.

TLB:med

05-028.med

**TELECONFERENCE REQUEST & CONTACT LIST**

**BILL #:** HB 33: Effect of Regulation on Small Businesses  
**COMMITTEE.** House Labor and Commerce  
**STAFF CONTACT:** Mike Pawlowski, x 2812  
**CONTACT LIST:** Please contact the following persons prior to scheduling a hearing so that they may have the opportunity to testify.

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1. Wayne Stevens, Alaska Chamber of Commerce. 586-2323
2. Further contacts to be added.



**Office of Advocacy**

*A Voice for Small Business*

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

August 2003 edition

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

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

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## Foreword

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

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

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

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

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



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

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# Regulatory Flexibility: What it is and Why it Matters

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

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

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

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

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

## A Brief History of Federal Regulatory Flexibility Legislation

## Federal Regulatory Flexibility in Action

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

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

## Regulatory Flexibility and the States

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

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

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

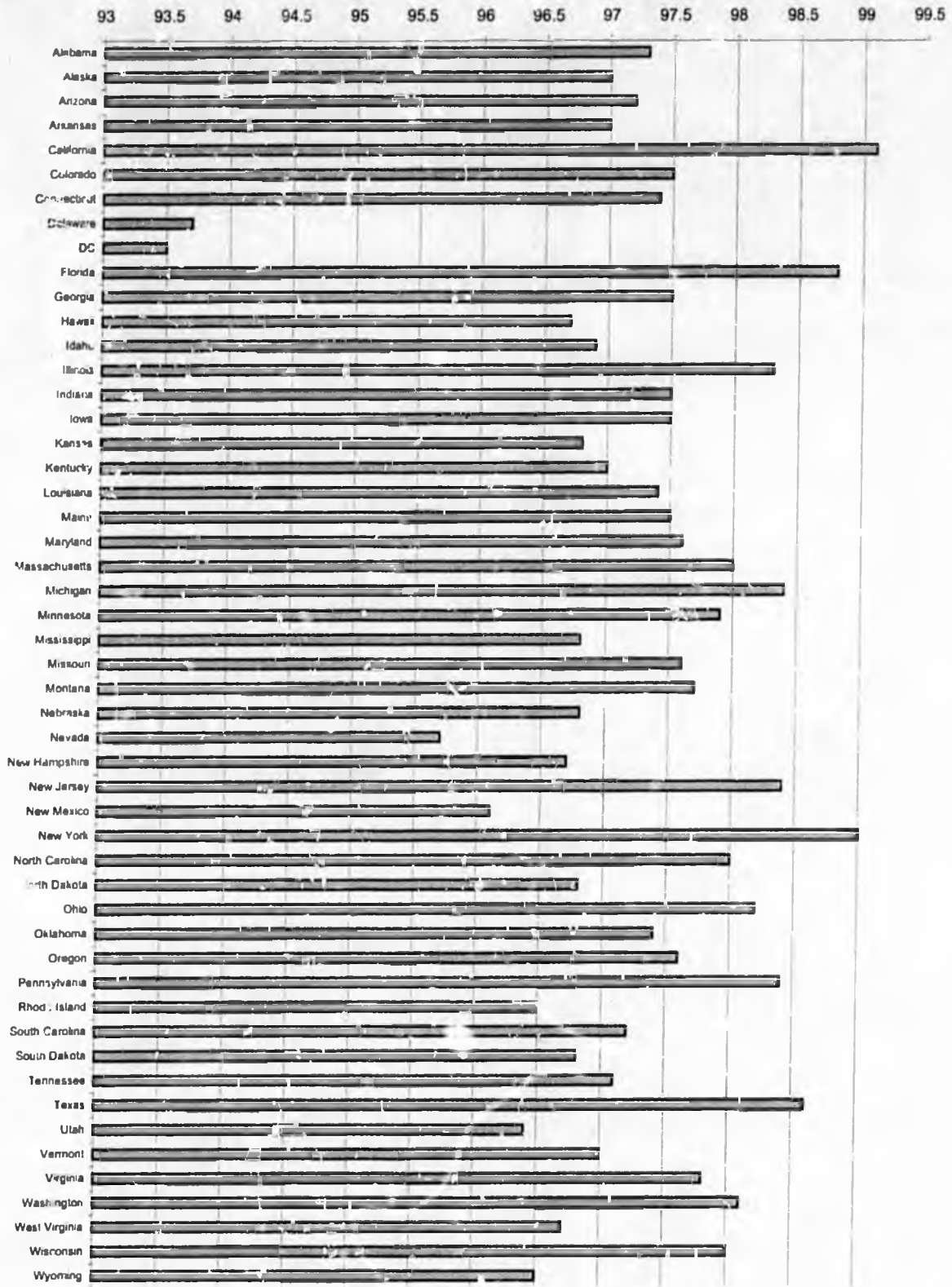
Aware of the state economic benefits of less burdensome regulations, the Office of Advocacy wants to build on the successes of federal regulatory flexibility and of states that have led the way with legislative and executive approaches of their own. In fiscal year 2002 the cost savings to small businesses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

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

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

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

## 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. §	4-160a(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 Gu.		9301 <sup>1</sup>		9309			
Hawaii	Haw. Rev. Stat. Ann. §	201M-1	201M-2	201M-2	201M-6	201M-7		201M-5
Idaho	Idaho Code §					67-5291		
Illinois	5 Ill. Crmp. Stat. Ann.	100/1-75; 100/1-80; 100/1-85	100/5-30(c)	100/5-30(a)		100/5-130 <sup>2</sup>		100/5-90
Indiana	Ind. Code Ann. §		4-22-2-28 <sup>1</sup>			4-22-2-46; 4-22-2.5-2 <sup>3</sup>		4-22-2-28; 4-22-2-46
Iowa	Iowa Code Ann. §		17A-4A <sup>4</sup>		17A-19	17A-33 <sup>4</sup>		17A-8
Kansas	Kan. Sta. Ann. §		77-416(b) <sup>1</sup>	77-416(b)				77-436; 77-423
Kentucky	Ky. Rev. Stat. Ann. §	13A.210(5); 13A.010	13A.240 <sup>1</sup>	13A.210	13A.337	13A.345		13A.020
Louisiana	La. Rev. Stat. Ann. §		49:953 <sup>1</sup>		49:965.1	49:968	49:967	
Maine	Me. Rev. Stat. Ann. tit 5	8052(5-A)		8052(5-A)	8058; 11001; 8072	8071; 8072	8054	
Maryland	Md. Code Ann. St. Gov.		10-124 <sup>1</sup>		10-222; 10-125	10-132.1; 10-133		2-502
Massachusetts	Mass. Gen. Law. Ann. §		30A-5	30A-5	30A-7			
Michigan	Mich. Comp. Laws Ann.	24.207a	24.240; 24.245	24.240	24.264; 24.301		24.315	24.234; 24.235
Minnesota	Minn. Stat. Ann. §		14.131 <sup>1</sup>		14.69	14.3691	14.03	
Mississippi	Miss. Code. Ann. §		25-43-6(2)(d)	25-43-6(2)(g)	25-43-17		25-43-6(4)	
Missouri	Mo. Ann. Stat. §							
Montana	Mont. Code Ann. §							
Nebraska	Neb. Rev. Stat. §							84-907.01
Nevada	Nev. Rev. Stat.	233B.0382	233B.0608; 233B.0609	233B.0608; 233B.0609	233B.105; 233B.110; 233B.130	233B.050		233B.067
New Hampshire	N.H. Rev. Stat. Ann. §	541-A:5(IV)(e)	541-A:5(IV)(e)		541-A:13; 541-A:24	541-A:2	541-A:21	541-A:2
New Jersey	N.J. Stat. Ann. §	52:14B-17; 52:14B-25	52:14B-19; 52:14B-25	52:14B-18; 52:14B-25		52:14B-5.1		

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

State	Citation Information	Small Business Definition	Economic Impact Analysis	Examining Alternatives	Judicial Review	Periodic Review	Exemptions	Rules Review Committee
New Mexico	N.M. Stat. Ann. §							
New York	NY CLS St. Admin. P Act §	102(8)	202-b(2)	202-b(1)	205	207	202-b(3)	Executive Order 20 <sup>1</sup>
North Carolina	N.C. Gen. Stat. §		150B-21.4 <sup>1</sup>					150B-21.16
North Dakota	N.D. Cent. Code §	28-32-08.1	28-32-08.1	<del>28-32-08.1</del>	28-32-08.1	28-32-18.1	28-32-08.1	28-32-17
Ohio	Ohio Rev. Code Ann. §	121.24(A)(9) & (10)	121.24(E); 127.18			119.032	121.24(F)	Yes
Oklahoma	75 Okla. Stat. Ann. tit. 75. §	502(4)	504	504	505	307.1; 250.10		Yes
Oregon	Or. Rev. Stat. §	183.310(9)	183.335(2)(b)	183.540	183.090; 183.480	183.720		
Pennsylvania	71 Pa. Cons. Stat. Ann.		745.5(9) & (10) <sup>1</sup>		745.12a	745.8a <sup>7</sup>		
Puerto Rico	H.B. 3038, No. 454	§2(c) & (d)	§4	§4	§11	§10		
Rhode Island	R.I. Gen. Laws §	42-35-1(i)	42-35-3(4)	42-35-3(4)	42-35-15 <sup>8</sup> 42-35-7	42-35-4.2 <sup>9</sup>		
South Carolina	S.C. Code Ann. §		1-23-10(7); 1-23-115		1-23-38J; 1-23-12J			
South Dakota	S.D. Codified Laws §							1-26-1.1
Tennessee	Tenn. Code Ann. §							
Texas	Tex. Govt Code Ann. §	2006.011; 2006.001	2006.002	2006.002	2006.013	2001.039	2006.012	
Utah	Utah Code Ann. §		63-46a-4(5)(1) <sup>1</sup>		63-46a-12.1	63-46a-11.5 <sup>3</sup>	63-46a-12.1; 63-46a-11	63-46a-11
Vermont	Vt. Stat. Ann. §	3-801(12)	3-838	3-832	3-815		3-816; 3-832	3-817; 3-820
Virgin Islands								
Virginia	Va. Code Ann. §					22-4017		
Washington	Wash. Rev. Code Ann. §	19.85.020	19.85.030, 19.85.040	19.85.030	34.05.570	34.05.630		34.05.610
West Virginia	W. Va. Code §					29A-3-16		29A-3-10
Wisconsin	Wis. Stat. Ann. §	227.114(1)(a)	227.114(2)	227.114(2)	227.52; 227.40		227.24	227.19; 227.26
Wyoming	Wyo. Stat. Ann. §							28-9-101

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

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

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

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

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

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

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

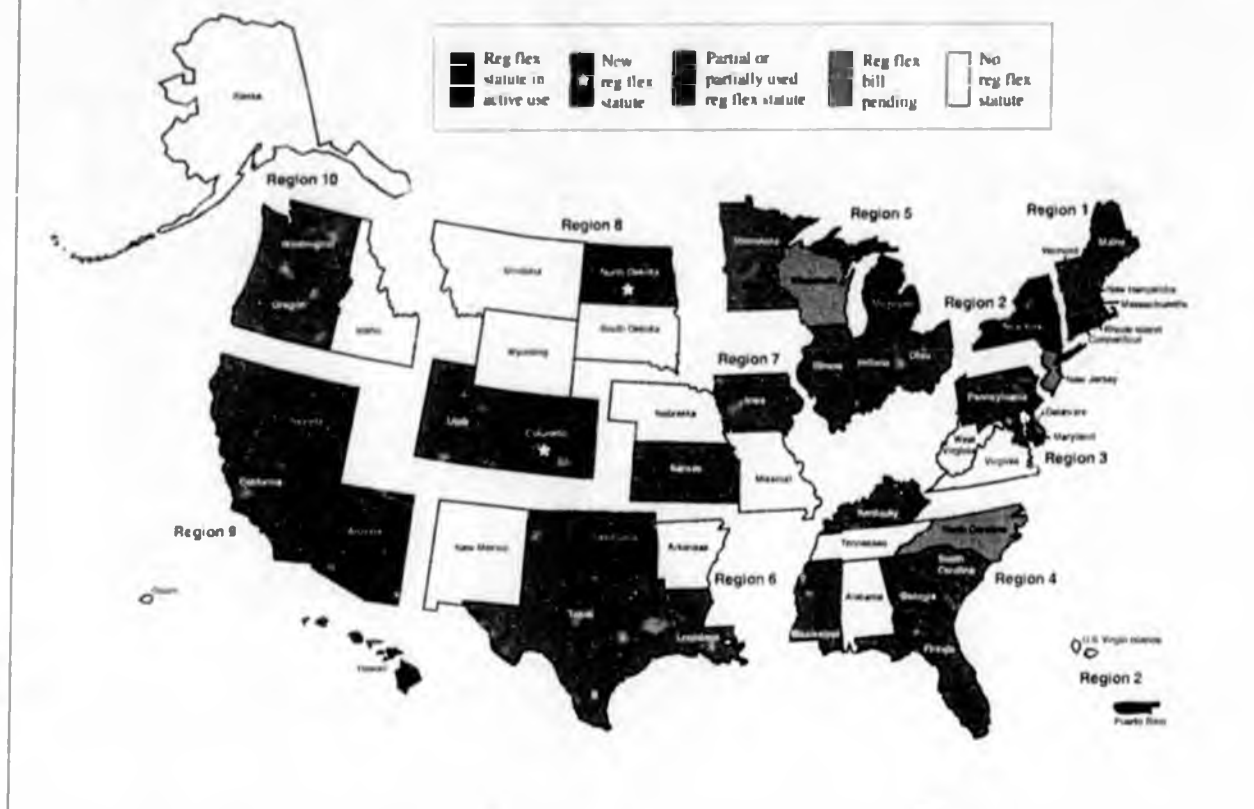
<sup>7</sup>Review of a rule is mandatory in Pennsylvania if requested by a third party.

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

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

## Model Legislation Initiative

Status of State Regulatory Flexibility Provisions, July 2003



### Small Business Administration Office of Advocacy Regional Advocates

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

### The Chief Counsel's Direct Link

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

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# North Dakota State Report

SPECIAL NFIB MEMBER REPORT ON LEGISLATIVE ACTIONS IN YOUR STATE

BE HEARD. BE INVOLVED. BE SMARTER. BE CONNECTED.

2003 EDITION

## Regulatory Flexibility

IMPROVING NORTH DAKOTA'S SMALL BUSINESS CLIMATE



(Seated) Sen. Dan Claitor, prime sponsor. (Standing) NFIB State Director Bill Butcher, Rep. Mark Ekstrom, and Senate IBL Committee Chair, Sen. Duane Mutch.

**OVERCOMING OPPOSITION** from state agencies, NFIB initiated and worked diligently to get HB 1212 passed by the Legislature and signed by the governor. The bill, which has been lauded by the Office of Advocacy of the Small Business Administration (SBA), requires state agencies to seek input from and take into consideration the interests of small business when implementing new regulations.

Most importantly, HB 1212 provides for judicial review. Any small business that thinks it has been or will be adversely affected by a final agency action is entitled

billions in regulatory costs.

NFIB President Jack Paris states that the federal law, which the North Dakota bill is modeled after, is calculated to have saved small business owners nationally more than \$21 billion in foregone regulatory compliance costs in 2002. It is safe to say that regulatory flexibility will make North Dakota a more small-business friendly atmosphere and may even help motivate small businesses to start up or move to North Dakota. Enactment of this law is considered a significant victory for small business owners.

to judicial review of agency compliance with the requirements of the bill. This process will give the law some real teeth because the outcome may ultimately result in monetary recovery or revision of a regulation.

While the total impact of this bill is difficult to measure, the SBA believes that if all states implemented a law like this one, it would ultimately save

### {HB 1212} STATE AGENCY REQUIREMENTS

Specifically, agencies shall consider:

Establishment of less-stringent compliance or reporting requirements; establishment of less-stringent schedules or deadlines for compliance or reporting requirements; consolidation or simplification of compliance or reporting requirements; establishment of performance standards for small entities to replace design or operational standards required; and exemption of small entities from all or any part of the requirements contained in the proposed rule.

In addition, agencies are required to prepare economic impact statements that include the consideration of:

The small entities subject to the proposed rule; the administrative and other costs required for compliance with the proposed rule; the probable cost and benefit to private persons and consumers who are affected by the proposed rule; the probable effect of the proposed rule on state revenues; and any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.

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## Workforce 2000 Survives Despite Deep Budget Cuts

**ECONOMIC FORECASTS** called for a \$40 million shortfall in revenues to the state of North Dakota, and so the 2003 Legislature cut budgets instead of raising taxes. The legislators primarily responsible for cutting budgets were those on the appropriations committees and one of the programs they looked at long and hard was Workforce 2000, a program administrated by North Dakota Job Service.

Workforce 2000, which came into existence in 1991, was designed to upgrade the skill level of North Dakota workers by helping employers fund skills training.

In the 2001-2003 biennium, the Legislature funded Workforce 2000 with \$2 million and many workers

increased their skill levels substantially as a result.

NFIB State Director Bill Butcher, who has served for several years on the Workforce 2000 Advisory Committee, testified before Senate Appropriations that Job Service does a good and responsible job of administering the program, and that workers in 2001-2003, who benefited from WF 2000 training, saw their wages increase by 24 percent on average.

Small, medium and rural businesses were awarded most of the monies granted under the program and approximately half of the businesses with which WF 2000 partnered were new businesses. Butcher emphasized in his testimony

that WF 2000 is not a business welfare program, but its purpose instead is to upgrade and train our existing workforce to increase its desirability and wage level.

Some legislators wanted to go so far as to eliminate the program entirely and, if it did continue to be funded, have it funded at a much lower level and restrict it to funding only new businesses. They also wanted to move the program to the Department of Commerce. In the end, WF 2000 funding was cut, as most other programs were, to \$1.25 million for the 2003-2005 biennium. Funds continue to be available to new and existing businesses and it remains administratively under Job Service.

## Tax Bills are Mixed Bag for Small Business

**SEVERAL TAX BILLS WERE INTRODUCED**, all of which do or would have affected small businesses. Two that would have established a flat corporate tax rate across the board were defeated, as was SB 2314, which would have increased the sales tax and eliminated all personal and corporate income taxes. SB 2314 was researched and introduced by Sen. Randy Schobinger of Minot, and was based on the South Dakota model.

NFIB testified in support of SB 2314 conceptually, while recognizing that numerous modifications would be considered before such a bill would be passed. The bill did pass the Senate and elicited much discussion after crossover in House Appropriations. In the end it was defeated.

HB 1471, which passed, reduced the number of tax brackets from six to five, effective in the 2004 tax year. The top corporate tax rate will be 7 percent beginning at \$30,000, which is considered to be much more palatable to businesses considering locating to North Dakota than the current top bracket of 10.5 percent beginning at \$50,000.

This change was made possible by eliminating corporate federal tax deductions. Also passed were SB 2095 and SB 2096, which streamlined

the administration of sales and use taxes in order to reduce the burden of tax compliance for businesses.

Sen. Randy Christmann of Hazen once again championed an effort to require a super majority of 60 percent of legislators to vote for any tax increases. The bill, SCR 4015, would have put the question up for a vote by the people at the next statewide election. NFIB supported this bill, but it was defeated just as it had been by the 2001 Legislature.

The only tax increase that passed, and then only by one vote in the House, was SB 2337, which increased the lodging sales tax by 1 percent on hotels and motels throughout North Dakota. Its purpose is to defray out-of-state marketing expenses related to the Lewis and Clark bicentennial celebration. This tax, which will not be imposed on bed and breakfast accommodations, is expected to increase the tourism budget by \$2.9 million for the biennium beginning July 1. The increased tax sunsets on June 30, 2005.

Legislators are to be commended for dealing with a significant revenue shortfall by controlling spending and not raising taxes. An NFIB national study released in March found that North Dakota

did a good job of controlling spending while other states broke the bank. Studying the comparative spending habits of all 50 states during the past two decades, it was determined that North Dakota spent 19 percent less per capita than most other states.

### SMALL BUSINESS DAY AT THE CAPITOL



(From left) NFIB State Director Bill Butcher, NFIB Regional Director Charlie Owens, Gov. John Hoeven and NFIB member John Carlson in the governor's office during an NFIB Day at the Capitol.

## North Dakota State Report

# State Battles Corps of Engineers on Upstream Missouri River Water Levels

NFIB CRAFTS AND PROMOTES PRO-BUSINESS LEGISLATION

TWO HOUSE CONCURRENT RESOLUTIONS, HCR 3040 and HCR 3041, were written by NFIB State Director Bill Butcher in a collaborative effort between the NFIB, Friends of Lake Sakakawea, North Dakota Parks and Recreation and the state's Water Commission.

HCR 3040 urges the president of the United States and the secretary of the Army to require the U.S. Army Corps of Engineers to upgrade the Missouri River Master Water Control Manual so as to give fair consideration to the substantial recreation values present on Lake Sakakawea, Lake Oahe and the Missouri River in North Dakota.

HCR 3041 urges the president and secretary of the Army to require the Corps to improve, rehabilitate and repair visitor facilities, event sites and other areas within their jurisdiction in North Dakota. These areas are expected to experience significant increases in visitation as a result of the bicentennial commemoration of the Lewis and Clark Expedition.

Rep. John Warner of Ryder was the prime sponsor of both bills. NFIB members worked together with other advocates to achieve unanimous passage in both chambers. Both resolutions have been forwarded by the North Dakota secretary of state to the president, the secretary of the army and the Corps of Engineers.

On another front, Attorney General Wayne Stenehjem filed a lawsuit against the U.S. Army Corps of Engineers, using North Dakota's Clean Water Act to force the Corps to store more water in Lake Sakakawea.

SB 2419, which was supported by NFIB, passed both chambers of the Legislature unanimously under an emergency clause when the governor signed the bill into law. This bill gave the state the authority to fine both the Corps and individual employees of the Corps \$25,000 per day for adversely impacting the state's water quality standards by allowing the water pool on Lake Sakakawea to drop below 1,825 feet above sea level. That is the level below which the smelt will be killed off, thus depriving sport fish of their food supply.

Passage of the bill gave real teeth to the state's effort to stop the Corps from excessive releases of water through Garrison Dam to the detriment of our \$84 million upstream Missouri River recreational business interests.

The legal battles persist while NFIB, with the support of 82 percent of its members according to a 2002 poll, continues to fight for equitable and acceptable water levels in our lakes that allow for a healthy business environment in western North Dakota.

## KEY Legislative ACTION

### Fiscal Notes On Ballots

The Legislature passed a concurrent resolution to ask the voters to require that initiated measures placed on statewide ballots include cost estimates. HCR 3069 passed, but only after a similar resolution was defeated earlier. The issue arose from an initiated measure known as the Youth Investment Initiative, which was on the June 2002 primary ballot. The initiative would have paid North Dakotans under the age of 30 to stay in the state. There was a lot of discussion about the program's cost before the initiated measure was soundly defeated by voters. NFIB supported HCR 3069.

### New Paid Holiday Defeated

HB 1418 would have given employees who are veterans a paid vacation day on Veteran's Day. Rep. Larry Klemin of Bismarck, a former NFIB state director, took the lead in defeating the NFIB-opposed bill.

### Workers' Compensation Death Benefits Retained

An effort to allow employees' heirs to claim death benefits indefinitely, regardless of when the employee died, was defeated. The requirement that such claims be made within six years of death was kept intact. The bill was HB 1455, and NFIB opposed it.

### Health Care Providers May Cover Dependents

Under the provisions of SB 2281, small business health care plan providers may offer coverage for employees' dependents. NFIB supported this bill.



## Award Winners

NFIB State Director Bill Butcher (center) presents *Guardian of Small Business Awards* to Sen. Herb Urlacher (left), who has a 100 percent small business voting record in four of the five past legislative sessions in which he served, and Rep. Larry Klemin (seated), who is a former NFIB state director. Rep. George Kaiser also received a *Guardian Award*, but was unable to attend the Leadership Council luncheon.

## NFIB Takes Leadership Role in Coalition Against Mandates

WHEN IT CAME TIME TO STEP UP TO THE PLATE against unfunded mandates, NFIB was among the first to join the Coalition Against Mandates. Such government mandates show up in many forms in the course of a legislative session, and 2003 was no exception.

Ranking high among such contested bills were HB 1309 and HB 1493, which respectively called for a biodiesel fuel mandate and required the sale of gasoline blended with ethanol throughout North Dakota. State Director Bill Butcher

testified in opposition to HB 1309 on behalf of NFIB and the other 21 members of the coalition before the House Finance and Tax Committee.

It was the premise of the coalition that the free enterprise system should depend upon consumer choice and competition to determine the products offered in the marketplace. Government mandating the offering of a certain product or service is not necessary as consumer demand will create self-sustaining markets.

The members of the coalition were

pointedly not against agriculture in taking their position. They acknowledged the importance of agriculture's vital role in the North Dakota economy, but simply opposed bad economic policy. Mandates restrict competition, infringe on free enterprise, and can result in supply/distribution problems in the economy. The coalition opposes government telling businesses which products must be sold and consumers which products must be purchased.

Both proposed mandates were soundly defeated in the House of Representatives. The bill also called for subsidizing operating costs of new and existing plants in the state. After the session ended, opponents of that provision circulated petitions to have that question put to the people as an initiated ballot measure.

## NFIB Member John Carlson Makes a Difference

Kudos to Fargo restaurateur and former caterer John Carlson for getting active in the legislative process and shepherding through good legislation.

PRIOR TO THE SESSION, Carlson worked with his area legislators to have HB 1241 introduced. The bill forbade institutions of higher education and school boards in communities with populations of more than 5,000 from serving food to persons who were not affiliated with the schools. The root of the problem was that Carlson and other caterers were experiencing unfair competition from public school, college and university food service operations.

The path this legislation took was convoluted and provides a good lesson in the legislative process. While the bill addressed a business issue, the House Industry, Business and Labor (IBL) Committee was overloaded with work so HB 1241 was assigned to the Education Committee. Carlson and others, including NFIB State Director Bill Butcher, testified for the bill while public school service representatives and North Dakota Department of Public Instruction employees testified against it.

The committee passed the bill out with a "do not pass" recommendation and instead forwarded HB 1397, which specifically allowed public schools and institutions of higher learning to

compete with the private sector in providing food service to the public, with a "do pass." The House followed those recommendations and HB 1241 was dead by a vote of 21 to 70. Private enterprise was now in a worse competitive position than it had been before.

That setback only inspired Carlson to fight harder. He talked with Butcher, who successfully lobbied to get HB 1397 assigned in the Senate to the more business-friendly IBL Committee. The testimony was much the same, but the IBL Committee members would not hear of allowing government to have an unfair competitive advantage over small business.

They amended HB 1397 to read almost exactly the way that HB 1241 originally had read, forwarded it to their colleagues with a unanimous "do pass" recommendation and it passed the Senate.

A House/Senate Conference Committee tweaked it slightly, and it was easily passed by both chambers. Carlson testified on other small business friendly bills during the session, so he can claim this and the others as personal victories for small business owners throughout the state.

NFIB member John Carlson testifies before a legislative committee.



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?

**HB**

**35**

# Audit Report

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

October 6, 2004

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Audit Control Number:

08-20028-05

Division of Legislative Audit

P.O. Box 113300, Juneau, Alaska 99811-3300

# LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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## 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 programs 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.

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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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

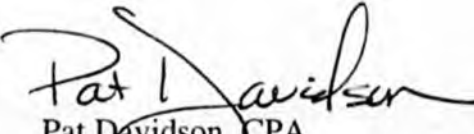
October 6, 2004

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

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## 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.

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## FINDINGS AND RECOMMENDATIONS

In our prior sunset audit report,<sup>1</sup> 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 authority<sup>2</sup> 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 requires 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

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<sup>1</sup> 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.*

<sup>2</sup> 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)<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>3</sup> 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.

<sup>4</sup>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.<sup>5</sup> 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

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<sup>5</sup>According 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.<sup>6</sup> 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.

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<sup>6</sup> 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.<sup>7</sup> 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.

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<sup>7</sup> 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.

## **A ANALYSIS OF PUBLIC NEED D**

The following analyses of board activities relate to the public-need factors defined in AS 44.6.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

***The extent to which the board, commission, or program has operated in the public interest.***

The board through its administration of architects, engineers, land surveyors, and landscape architects licensure, has endeavored to present competent professionals to the public. There is a public need for this board because of the professional expertise required to practice the various professions within its purview. The licensing of applicants who meet necessary qualifications is necessary to protect the public's safety, health, and welfare.

The board is responsible for adopting regulations to ensure only persons with the proper qualifications are admitted into the profession. The board disciplines, suspends, or revokes licenses of practitioners who have committed acts listed as violations under state law. Licensees are required to stamp final drawings, specifications, surveys, plats, plates, reports, or similar documents with a seal bearing the registrant's name, registration number, and the profession for which they are registered. By affixing this seal and signing the documents, the registrant certifies that these documents were prepared by or under the registrant's direct supervision, and the registrant has met the minimum standards set to protect public safety, health, and welfare.

The board has established regulations governing its duties and licensure requirements, enforces the laws for issuing licenses in a uniform and consistent manner, holds meetings, and administers examinations in accordance with statutory requirements.

***The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.***

Alaska Statute 08.01.065(c) states, "... the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." Further, AS 08.01.065(i) requires, "... the total amount of fees collected by the State Board of Registration for Architects, Engineers, and Land Surveyors approximately equals the total regulatory costs of the department and the board for all occupations regulated by the board."

The revenues for the Board of Registration for Architects, Engineers, and Land Surveyors come from licensing and renewal fees. Renewals are conducted on a biennial basis and are due by December 31<sup>st</sup> of odd-numbered years. This creates a two-year cycle in board

revenues, with BRAELS receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the Division of Occupational Licensing (OccLic) for revenues and expenditures associated with BRAELS. The schedule in Exhibit 1 reflects financial information of the board for FY 02, FY 03, and FY 04. We did not audit this information, but present it for general information purposes.

Exhibit 1

<b>State of Alaska</b> <b>State Board of Registration for</b> <b>Architects, Engineers, and Land Surveyors</b> <b>Schedule of License Revenues and Board Expenditures</b> <b>FY 02 - FY 04</b> <b>(Unaudited)</b>			
	<u>FY 04</u>	<u>FY 03</u>	<u>FY 02</u>
Revenue	\$ <u>1,174,500</u>	\$ <u>166,600</u>	\$ <u>1,143,600</u>
Direct Expenditures			
Personal Services	254,400	215,000	212,200
Travel	50,800	51,700	49,500
Contractual	168,200	84,200	106,700
Supplies	1,000	1,800	2,100
Equipment	-0-	700	-0-
Total Direct Expenditures	<u>474,400</u>	<u>353,400</u>	<u>370,500</u>
Indirect Expenditures	<u>314,600</u>	<u>298,100</u>	<u>264,500</u>
Total Expenditures	<u>789,000</u>	<u>651,500</u>	<u>635,000</u>
Net Income (Loss)	<u>385,500</u>	<u>(484,900)</u>	<u>508,600</u>
Beginning Cumulative Surplus (Deficit)	84,100	569,000	60,400
Ending Cumulative Surplus (Deficit)	\$ <u>469,600</u>	\$ <u>84,100</u>	\$ <u>569,000</u>

During the period covered by the sunset review, it appears licensing fees were adequately set. The board ended FY 01 with a net balance of just over \$60,000 and has managed to maintain sufficient surplus to carry them through the lower revenue nonrenewal years without incurring a deficit. Given the number of professions and the total number of licensees the board regulates, the cumulative surplus of \$469,600 at the FY 04 year-end is not unreasonable given expected lower revenues in FY 05.

***The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.***

Several changes were made to the board's statutes during the period under review. The board supported these changes, with the more significant issues being:

- (1) the addition of Limited Liability Companies and Limited Liability Partnerships to the organizations authorized to practice under the jurisdiction of BRAELS (Chapter 38, SLA 2000); and,
- (2) the authority for BRAELS to establish continuing education requirements for individuals regulated by the board (Chapter 66, SLA 2004).

***The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.***

Regulatory changes made by the board included:

- (1) acceptance of NCEES "model law engineer" council record as meeting minimum standards for engineer registration by comity (12 AAC 36.105(f));<sup>8</sup>
- (2) a requirement that a minimum of two years of course work in an ABET (Accreditation Board for Engineering and Technology) accredited engineering curriculum be completed by applicants prior to taking the fundamentals and professional engineering examinations (12 AAC 36.062);
- (3) allowing disciplinary sanctions against an Alaskan registrant, if another jurisdiction has disciplined the individual (12 AAC 36.320); and,
- (4) revision of the expired license regulation so retesting is no longer required. An applicant previously registered in Alaska, whose license has expired needs only to prove they have taken one of the examinations listed in 12 AAC 36.100.

The location, date, and time of upcoming board meetings, examination dates, and notices of proposed regulatory changes are published in the *Anchorage Daily News*, the board's internet website and the State's online public notice internet website. The State also offers a subscription service whereby the State will email public notices to the subscriber.

<sup>8</sup> There is an exception, which involves an applicant that has taken a principles and practices examination in a branch of engineering outside the six core disciplines that Alaska licenses. In such cases, the applicant would be required to provide additional work experience in one of the six branches, or sit for the examination in one of the Alaska-recognized six core disciplines.

***The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.***

Public notices of proposed regulations are published in major newspapers. Meetings are adequately advertised, and time is set aside for public testimony. The board reviews all public correspondence at their meetings.

The board's meeting agenda sets aside adequate time for the board to take public comment. Minutes from the meetings of the board reflect public participation throughout the meeting. Proposed regulations are often circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from OccLic.

***The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.***

For the period July 2001 through May 2004, OccLic opened 92 investigative cases related to individuals either seeking licensure or licensed by the BRAELS. Of those cases, approximately 40% were initiated by OccLic staff. Another 16% came from complaints of individuals holding a BRAELS or other related license. Other government agencies generated approximately 20% of the complaints while the general public generated 15%. The remaining 9% came from various sources such as clients, inquiries from other states, or other law enforcement agencies.

As of June 2004, 33 of the 92 complaints remained open. We reviewed nine complaints that had been open for longer than 120 days; the average length of time these cases had been opened exceeded a year (397 days). Four of the nine complaints involved allegations of unlicensed practice; three alleged incompetence; one was a complaint about a possible professional ethics violation; and, one involved fraud or misrepresentation.

Seven of the nine cases reviewed had periods of inactivity exceeding 90 days. Three of the cases that had been significantly delayed involved consultation with "expert witnesses." There was no apparent rationale for the delays in the remaining six complaints. Based on evidence reviewed, we conclude BRAELS complaints are not consistently being resolved efficiently. Efficiency issues related to investigations are being evaluated in another audit report. This report addresses the history, and evaluates the effectiveness, of the State's overall sunset process.

No complaints or investigations specifically involving the actions and activities of the Board of Registration for Architects, Engineers, and Land Surveyors were received, or undertaken

by, either the Office of the Ombudsman or the Office of Victim's Rights within the past three fiscal years.

*The extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.*

The board is statutorily responsible for the issuance of all licenses. A person may apply for licensure by examination or by using past performance records. Licensure using past performance records is more commonly referred to as licensure by comity. The application process for licensing appears reasonable and appropriate.

Overall, the application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Each applicant is required to satisfy requirements for licensing. When reviewing licensure procedures, we found no instances of unqualified applicants being awarded a license.

Exhibit 2 summarizes licensing activity for the past three fiscal years, listing the number of new licenses issued per year and the number of current license holders regulated by the board at the end of FY 04.

Exhibit 2

New Licenses Issued (Exclusive of Renewals)	FY 01	FY 02	FY 03	FY 04	Active as of June 30, 2004
Engineers - Chemical	7	10	6	8	97
Engineers - Civil	91	139	111	113	2,610
Engineers - Electrical	23	32	25	30	548
Engineers - Mechanical	34	30	36	35	622
Engineers - Mining	0	1	1	2	31
Engineers - Petroleum	5	1	8	5	105
Total Engineers	160	213	187	193	4,013
Architects	23	12	20	13	502
Land Surveyors	14	33	14	7	585
Landscape Architects	6	5	8	5	30
Corporate Authorization	36	36	41	33	342
Total licenses issued	239	299	270	251	5,472

*The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.*

The Ombudsman received no complaints regarding the Division of Occupational Licensing. We did not find any evidence that the board was not complying with State personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

***The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.***

Annually, the board prepares a report for the Department of Commerce, Community, and Economic Development, Division of Occupational Licensing. This report includes information on the prior year activities of the board including their goals and objectives, legislative recommendations, budget report, and a statistical overview of licensing activity. Minor errors in statistical information and omission of several sections of the reports were consistently found from year to year. Due care and attention should be paid to the preparation of all schedules and reports included in the annual report, so as not to bring into question the overall integrity of the report.

As discussed in Prior Year Recommendation No. 1, the board has obtained statutory authority to write regulations requiring continuing education (CE) as a condition for registration renewal. There appears to be some willingness on the part of the board to develop regulations that would require mandatory CE for the renewal of land surveyor licenses. However, for architects and engineers, the board believes many registrants are voluntarily complying with continuing education requirements of their respective professional organizations. Requiring CE for all licensees would safeguard the public interest by ensuring registrants maintain a minimal level of competence consistent with current standards and information related to the regulated profession.

As discussed in Recommendation No. 2, we recommend that BRAELS conduct a study to assess the costs and benefits involved with possibly expanding the number of licensed engineering disciplines that would be recognized by the board.



OFFICE OF THE COMMISSIONER

*Frank H. Murkowski, Governor*

December 30, 2004

Pat Davidson  
Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

RECEIVED  
DEC 30 2004  
LEGISLATIVE AUDIT

RE: Board of Registration for Architects, Engineers and Land Surveyors

Dear Ms. Davidson:

Thank you for the opportunity to review the Board of Registration for Architects, Engineers, and Land Surveyors (BRAELS) Preliminary Audit Report.

Comments on the recommendations are noted below:

**Recommendation No. 1:**

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

It is our understanding the board is not opposed to adopting a continuing education (c e) program. The board is considering implementing a voluntary or mandatory CE program since statutory authority was granted effective September 14, 2004. The board assigned a subgroup to study CE and make recommendations to the board. The subgroup is reviewing issues surrounding adoption of a mandatory program including: perceived administrative burden to registrants, concern of availability of courses, costs to registrants to comply, staff time to implement and oversee a regulatory CE program, expected drop off in registrants deciding not to renew, and no demonstrated correlation between design professional's performance with mandatory CE and those not submitting to a mandatory CE program.

**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.

The board currently has assigned a subgroup to study engineering disciplines. The board believes specialties can be practiced as sub-sets of the core disciplines, although the board is currently studying

adding additional branches. So far, the small number of requests for licensure in sub-disciplines of civil, electrical, and mechanical engineering less than 25 in 5 years have not, in the opinion of the board, warranted specific specialty licensure (sub-disciplines) because applicants can currently get licensed in a core discipline, and then can specialize their practice.

For example, environmental engineering applicants are not excluded from registration but the licensure path is via core disciplines. Environmental engineers by examination can take the civil professional engineering examination and can select "environmental" as the afternoon depth segment of the examination.

One concern the board has is due to the unique size of Alaska and cost to ensure compliance with its statutes and regulations. Alaska is unique because it is a large state geographically, with limited site inspections by investigators. Investigators are responsible for having many small communities without building officials to oversee the construction. Site inspections help provide assurances for health, safety, and welfare. With a limited investigative staff (1.5 investigators are assigned to BRAELS), considerations of how enforcement staff may be affected by changes in disciplines will need to be considered.

Alaska, like California and seven other states, limits the number of disciplines licensed.

Per the 2003 NCEES Survey, Alaska, and 11 other jurisdictions license by discipline (CA, AZ, NV, WV, NE, HE, WY, VT, RI, GU, NMI), about roughly 22 percent of registered engineers in the U.S. The largest of these, California, does *not* offer the newest professional engineering exams such as environmental, Structural I or Naval Architectural and Marine engineering but, does offer *most* disciplines or branches of engineering.

Another concern the board has is how licensure of sub-disciplines would affect current registrants of the six core disciplines. For example, civil engineers may no longer be able to continue to offer specialized services such as environmental engineering, or they may be subject to additional examination or licensure in order to work as "environmental engineers."

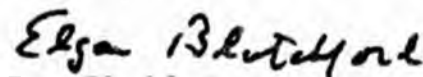
**Recommendation No. 3:**

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

The board agrees the matter of board member representation should be considered. Extending the landscape architect board representative was recommended in the FY 04 Annual report as a Legislative recommendation, although not all board members concur whether the landscape architect board representative should be "voting" or remain a "non-voting" member. The board is also considering whether the mining engineer representative should be broadened to include petroleum engineer (or possibly geological engineer if geological engineering branch is eventually added as a discipline). The legislature may want to address this aspect of the board make-up in addition to the landscape architect matter.

Again, thank you for the opportunity to comment.

Sincerely,



Edgar Blatchford  
Commissioner

cc: Rick Urion, Director  
Division of Occupational Licensing

RECEIVED

DEC 20 2004

LEGISLATIVE AUDIT



**DIVISION OF OCCUPATIONAL LICENSING**  
Board of Registration for Architects, Engineers, and Land Surveyors (AELS)

*Frank H. Murkowski, Governor*

December 16, 2004

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

Dear Pat:

In response to the recommendations by the Division of Legislative Audit (Audit Control Number 08-20028005), as current AELS Board Chair, I am happy to respond on behalf of the Board to the three Legislative Audit recommendations:

**1. Continuing Education:**

Prior Audit Recommendation No. 1 and current recommendation that the board either develop appropriate mandatory CE requirements for its professional registrants or the legislature considers making such requirements mandatory by statute.

The Board is currently considering if it should require a mandatory CE program and will consider the requirements for its licensees with respect to health, safety, and welfare of the public.

Background and Board Actions:

In 2000, the Legislative Budget and Audit Committee recommended the Legislature should consider revising statutes requiring continuing education for architects, engineers, and land surveyors, and the board regulations requiring that some level of continuing education (CE) be mandated. Recommendation for CE was also included in the 1996 audit.

Board Actions/Meetings

At numerous meetings in 2001 and 2002, the Board has discussed if it should proceed with CE. It did not feel there was uniform support for mandatory CE. Consequently, the Board did not implement a mandatory program as a condition of renewal. At the urging of the Alaska Professional Society of Land Surveyors (ASPLS) for mandatory CE for land surveyors, in its annual report to the Legislature, asked the Legislature to grant statutory authority. Through the efforts of the Alaska Professional Design Council (APDC), and its member ASPLS, HB 252 was introduced in April 2003, providing the

P.O. Box 110806, Juneau, Alaska 99811-0806

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Email: [license@commerce.state.ak.us](mailto:license@commerce.state.ak.us) Website: <http://www.commerce.state.ak.us/occ/>

statutory framework for CE. The bill passed the Legislature in May 2004, granting the statutory authority to develop regulations as a condition of license renewal, not to exceed national norms

At its June 2004 meeting, since the Board has 7 new Board members since 2002, the Chair requested a new Subgroup be formed to assess the current trends and support for a mandatory or voluntary program for CE. In the past, some registrants have expressed concern for costs involved to administer CE; costs for courses; concern about governmental oversight; and effectiveness of mandatory CE for architects, engineers, land surveyors, and landscape architects.

The CE subgroup, under the leadership of Board member Boyd Brownfield, is working first, to decide if the Board will embrace CE as a matter of state policy. Since there are costs involved to registrants, the subgroup is proceeding carefully. Next, it will review current requirements for U.S. jurisdictions by profession, and to assess support for mandatory continuing education by profession.

Many AELS Board members, some registrants and professional societies strongly support CE to maximize their professional skills, the real question is if the requirements will ensure public health and safety are met. There are many approaches to address CE. A mandatory education program will be an administrative burden to registrants, through the cost of the program, and may provide little tangible proof the ones who could benefit most will acquire skills. There is no question that participating in many courses and seminars is beneficial, but some may seek ways to meet the requirements without really improving their professional skills. Crafting a mandatory program, administered by state government, is a serious matter, with the potential for disciplinary action on licensees. Creating a successful volunteer program would require effective incentives. Some professional organizations, such as the American Institute of Architects (AIA), require its members to meet CE to be in good standing, and offer countless courses and will track CE for members. One option the Board can consider would be to recommend professional societies develop and model CE programs, using the effective AIA model.

Status reports have been given at the August and November 2004 AELS Board meetings, and it is anticipated the subgroup will report its recommendations at the February 2005 AELS Board meeting.

## **2. Expand Engineering Disciplines Offered**

### 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.

The AELS Board agrees it would be useful to have a comprehensive study and will explore the option to partner with professional societies and the University of Alaska. A comprehensive study may prove cost prohibitive and it may be possible to move forward with expansion of disciplines if its own subgroup recommends expansion based on public protection and public need for services.

### Background and Board Actions on Engineering Disciplines:

In the past five years, the AELS Board has considered adding to the six engineering disciplines its licenses. The Board has concluded the specialty practice can be performed as a sub-set of the core disciplines of civil, electrical, mechanical, chemical, mining, and petroleum, and did not find necessity to add expand the disciplines offered. So far, the small number of requests from sub-disciplines of civil, electrical, and mechanical engineering (less than 25 in 5 years) have not, in the opinion of the Board, warranted specific specialty licensure (sub-disciplines) because applicants can get licensed in a core discipline, and then can specialize their practice. For example, environmental engineering applicants are not excluded from registration but the licensure path is via core disciplines. Environmental engineers by examination can take the civil engineering examination and can select "environmental" as the afternoon depth segment of the examination.

With recent requests by control system engineers, and geological engineers seeking specialty licensure, the Board is revisiting the issue of adding additional engineering branches. The AELS Board has formed a subgroup, under the leadership of Robert Gilfilian, assigned to study engineering disciplines, in particular, control systems, environmental engineering, fire protection, and geological engineering branches.

One concern the Board has is how licensure of sub-disciplines, such as environmental engineering, would affect current registrants. Some registered civil engineers have built an environmental engineering practice (a subset of civil engineering). It is possible that requests for proposals (RFPs) would specify registration as an "environmental engineer" in order to provide environmental engineering services on projects. If that happened it may be necessary for civil engineers practicing environmental engineering to take the environmental examination in order to continue to offer specialized services. Or it may be necessary to require dual licensure with biennial fees for "civil engineering" and "environmental engineering" practices in order to provide a full scope of services.

Another concern the Board has is the impact additional branches of engineering and overlap between professions that requires investigative action to ensure public protection is met. The AELS Board supports increased site inspections and travel for its investigators to ensure adequate oversight of projects.

The Board anticipates the subgroup will make recommendations to the full AELS Board at its February 2005 AELS Board meeting.

### **3. Consider adding a permanent voting Landscape Architect Board member**

Recommendation # 3: The legislature should consider making the landscape architect representative to BRAELS a full, voting member.

Composition of the Board has been a consideration of the Board, and the Board agrees the matter should be considered. Extending the landscape architect board member was recommended in the FY 04 Annual report as a Legislative recommendation, although not all board members concur if the landscape architect board member should be "voting" or remain "non-voting" since only 31 landscape architects are licensed in Alaska. The Board has faced a similar issue with respect to the "mining engineer" Board member, with only 33 mining engineers registered in Alaska. The Board recognizes the difficulty has been to find licensees willing to serve from such a small pool of eligible registrants.

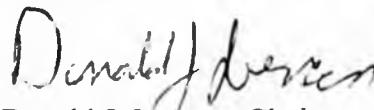
Also being considered and studied is if the Board should ask the Legislature to address the issue to expand the "mining engineer" Board member position to include related fields of petroleum and geological engineering.

#### 4. Other Comments

The Board recognizes the importance of efficient investigators and agrees cases should be handled timely and efficiently. The Board requested and was granted an additional half-time investigator to provide better coverage for investigations statewide. The Board works closely with its full-time and part-time investigator and would like to note that the quantity and quality of the work of its current investigative staff is very much appreciated by the Board. The Board has also asked the Division of Occupational Licensing for additional site investigations to ensure the appropriate professionals are involved in the design of large residential, commercial, and public projects.

I appreciate the opportunity to make comments on behalf of the AELS Board.

Sincerely,



Donald J. Iverson, Chair  
Board of Registration for Architects, Engineers,  
and Land Surveyors (AELS)



# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 35  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Extend Board: RDU Occupational Licensing (117)  
Architects/Engineers/Surveyors Component Occupational Licensing  
 Sponsor Kohring Component No 2360  
 Requester House Labor & Commerce

**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		254.4	254.4	254.4	254.4	
Travel		50.8	50.8	50.8	50.8	
Contractual		168.2	168.2	168.2	168.2	
Supplies		1.0	1.0	1.0	1.0	
Equipment		0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1156 )</b>	<b>0.0</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	474.4	474.4	474.4	474.4	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 474.4  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

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

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

The bill extends the State Board of Registration for Architects, Engineers, and Land Surveyors to June 30, 2009. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Board to conclude its affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget. The Board supports an Executive Administrator position exclusively assigned to the licensing program. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division Occupational Licensing Date/Time 1/25/05 6:09 PM  
 Approved by: Edgar Blatchford Date 1/25/2005  
 Agency Commerce, Community, and Economic Development

# ALASKA STATE LEGISLATURE

*Interim:*

60<sup>th</sup> East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax (907) 373-4729



*Session:*

State Capitol Building  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax (907) 465-3816

## REPRESENTATIVE VIC KOHRING DISTRICT 14

### House Bill 35 Sponsor Statement

## **Extension of the termination date for the Board of Registration for Architects, Engineers and Land Surveyors**

House Bill 35 extends the termination date for the Board of Registration for Architects, Engineers and Land Surveyors for an additional five years. The current termination date is set for June 30, 2005. If the Legislature takes no action to extend the board, it will go into a one-year phase out to allow the board to conclude its administrative operations, followed by termination.

The board consists of 11 members appointed by the governor. It 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. The purpose of the board is to adopt regulations, oversee examinations, suspend, revoke or refuse the issuance of new licenses, and issue licenses to practice to architects, engineers, and land surveyors who meet standards of education and training determined to be necessary by the board.

The Legislative Audit Division performed an audit of the board dated November 1, 2004 as required by statute, and recommends that it be extended to June 30, 2009. The Division found the board to be 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. Further, the Division found the board has demonstrated an ability to conduct its business in a satisfactory manner, has been effective in developing regulations, and has ensured that licensees are competent and consistently practice within the requirements and ethical standards of the respective professions.



Alaska Professional Design Council • P.O. Box 100515 • Anchorage AK 99501-0515

MEMBER SOCIETIES

21 January, 2005

Alaska Society of Professional Engineers

Representative Vic Kohring  
State Capital via fax 465-3818  
Juneau Alaska 99801

Alaska Society of Professional Land Surveyors

Dear Representative Kohring:

American Congress on Surveying & Mapping Alaska Section

The Alaska Professional Design Council thanks you for introducing House Bill 35 extending the Board of Architects Engineers and Land Surveyors (AELS) until June 30 2009.

American Institute of Architects Alaska Chapter

The AELS Board performs a valuable function in protecting public safety through licensure and disciplinary action for the design professions. The board membership includes Architects, Engineers, Land Surveyors and a non-voting Landscape Architect who contribute their time to insure that the design professions provide a positive contribution to public safety in Alaska.


American Society of Civil Engineers Alaska Section

Please contact either myself or our Lobbyist, Amy Daugherty if you have any questions or comments.

American Society of Landscape Architects Alaska Chapter

Sincerely,

Architecture/Engineering Marketing Association of Alaska

  
Sam S. Kito III, PE  
907-723-6486  
Chair, Legislative Liaison Committee  
Alaska Professional Design Council

American Council of Engineering Companies of Alaska

Professional Engineers in Private Practice Alaska Chapter

American Society of Interior Designers

**HB**

**46**

# STATE OF ALASKA

**FRANK H. MURKOWSKI, GOVERNOR**  
410 Willoughby Avenue, Suite 303  
Juneau, Alaska 99801-1795  
PHONE: (907) 465-5300  
FAX: (907) 465-5274  
<http://www.state.ak.us/DEC/>

**DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER  
DIRECTOR'S OFFICE**

January 28, 2005

Representative Tom Anderson, Chair  
Labor and Commerce Committee  
Alaska State House of Representatives  
State Capitol  
Juneau, Alaska 99801-1182

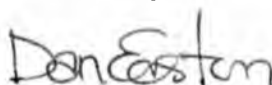
Dear Chairman Anderson:

I understand that in providing testimony on HB 46 this Wednesday, January 26, 2005, Representative Rokeburg asked that we provide:

1. General information on the Municipal Water, Sewerage and Solid Waste Matching Grant Program;
2. General information on the Municipal Loans Program; and
3. A list of recipients of grants from our Water, Sewerage and Solid Waste Matching Grant program for the last three years.

The requested information is enclosed. Please let me know if I can answer questions or provide additional information.

Sincerely,



Dan Easton, Director

Enclosures

1. Municipal Water, Sewerage and Solid Waste Matching Grant Program Description
2. Municipal Loans Program Description
3. Water, Sewerage and Solid Waste Matching Grants SFY 2003 – SFY 2005

cc: Representative Harry Crawford, House Labor and Commerce  
Representative David Guttenberg, House Labor and Commerce  
Representative Pete Kott, House Labor and Commerce  
Representative Gabrielle LeDoux, House Labor and Commerce  
Representative Bob Lynn, House Labor and Commerce  
Representative Norm Rokeberg, House Labor and Commerce

## **Municipal Water, Sewerage and Solid Waste Matching Grants Program Description**

- The matching grants program provides technical and financial assistance to Alaska's larger, incorporated communities to design and construct water, wastewater and solid waste facilities.
- Each year, communities submit grant applications which are scored weighing primarily the extent to which proposed projects address critical public health needs. Grants are awarded to the highest ranking projects.
- Community requests for financial assistance through the Municipal Matching Grants program exceed available funding. In FY05 grant applications were received for over 75 projects. Funding was available for the 7 highest ranked projects.
- Program engineers assist communities by providing technical assistance with planning, design and construction, as well as helping secure needed state and federal permits and approvals.
- The engineers review and approve all grant disbursements to make sure that state and federal dollars are invested wisely and each project is audited to make sure that all funds were used properly.
- The percentage of local financial participation depends on the population of the community. Up to 85% of project costs can be granted for communities of less than 1,000 people. The grant amount can be 70% for municipalities with populations between 1,000 and 5,000. Communities with a population exceeding 5,000 are eligible for 50% grants.
- Federal grant funds are available to fund projects in smaller communities that are considered "rural". These federal funds require a 25% State match.
- The program has provided financial assistance to over 850 projects in 63 communities since 1970.

## **Municipal Loans Program Description**

- The Municipal Loans Program consists of two revolving loan funds - the Alaska Drinking Water Fund and the Alaska Clean Water Fund.
- Both loan funds were established with federal and state grants to create perpetual sources of low-interest loans to municipalities and boroughs.
- Each annual federal capitalization grant requires a 20% State match. State matching funds have come from short-term bonds and general funds.
- Loans can be used to plan, construct and refinance a variety of project types including drinking water facilities, water source rehabilitation, water treatment facilities, water storage facilities, water transmission and distribution systems, wastewater treatment facilities, sewer interceptor and collection systems, storm water collection and treatment, non-point source prevention and restoration, and estuary enhancement projects.
- Private utilities that are economically regulated by the Alaska Regulatory Commission may obtain loans for drinking water projects.
- Loans may finance up to 100 percent of a project's eligible costs.
- Loans may also be used to meet the local match requirements for the Municipal Water, Sewerage and Solid Waste Matching Grants program or most other federal or state funding sources.
- Since its inception in 1987 the Alaska Clean Water Fund has received \$137.7 million in federal capitalization grants and \$27.8 million in state match. It has loan commitments totaling \$186.8 million.
- The Alaska Drinking Water Fund is a slightly younger program (established in 1994). It has received \$73.5 million in federal capitalization grants and \$14.7 million in state match. It has loan commitments totaling \$76.6 million.

## Water, Sewerage and Solid Waste Matching Grants SFY 2003 - SFY 2005

Community	Project Title	Federal	State	Total
<b>SFY 2005</b>				
Craig	East Hamilton Drive Pump Station and Force Main Upgrade	244,500	81,500	326,000
Wasilla	Stormwater Pumping and Treatment Facility, Phase 2	0	455,500	455,500
Palmer	Water System Improvements, Phase 3	0	1,045,000	1,045,000
Ketchikan	Tongass Avenue Water and Sewer Improvements, Phase 2	0	1,471,200	1,471,200
Palmer	Southwest Distribution Main Extension	0	500,000	500,000
Wrangell	Municipal Landfill Improvements	0	592,200	592,200
Anchorage	Water Loop Transmission Main, Phase 4 (modified amt)	0	2,000,000	2,000,000
<b>Total:</b>		<b>244,500</b>	<b>6,145,400</b>	<b>6,389,900</b>
<b>SFY 2004</b>				
Nome	Water Transmission Line Analysis	78,700	26,300	105,000
Seward	Water Source Study		99,800	99,800
Valdez	Outlying Wastewater Treatment Plant Analysis		141,400	141,400
Soldotna	Wastewater Treatment Plant Improvements		1,485,000	1,485,000
Wasilla	Storm Water Pumping and Treatment		271,500	271,500
Wasilla	Water Main Improvement Program, Phase 2		945,100	945,100
Hoonah	Water Storage Tank, Water and Sewer Mains	1,466,200	488,800	1,955,000
Sitka	Granite Creek Water Quality Improvements	33,700	11,300	45,000
Valdez	Sewer Treatment Plant Aeration Improvements, Phase 2		494,900	494,900
Juneau	Third Street Douglas Water and Sewer Replacement		750,000	750,000
Cordova	Wastewater Treatment Plant Upgrade, Phase 3	1,410,200	470,100	1,880,300
Anchorage (Revised)	Water, Wastewater and Water Quality Projects		1,250,000	1,250,000
<b>Total:</b>		<b>2,988,800</b>	<b>6,434,200</b>	<b>9,423,000</b>
<b>SFY 2003</b>				
Haines	Mud Bay Water and Sewer Study	41,100	13,700	54,800
Ketchikan	Shoreline Drive Water and Sewer Analysis and Prelim Design		140,000	140,000
Sand Point	Wastewater Improvement Analysis	75,000	25,000	100,000
Soldotna	Funny River Road Water and Sewer Analysis and Prelim Design		150,000	150,000
Unalaska	Leachate Collection and Treatment Analysis		49,000	49,000
Matanuska-Susitna	Central Landfill Expansion, Phase 2		160,000	160,000
Palmer	Wastewater Treatment Expansion, Phase 3		362,300	362,300
Juneau	North Douglas Sewer Extension Project, Phase 2		1,900,000	1,900,000
Cordova	Wastewater Treatment Plant Upgrade, Phase 2	1,464,900	488,300	1,953,200
Ketchikan	Tongass Avenue Water and Sewer Improvements		1,230,000	1,230,000
Palmer	Water System Improvements, Phase 2A		1,176,800	1,176,800
Kenai	Well House No. 4 with Main Line Tie-Ins, Phase 3		700,000	700,000
Klawock	Three-Mile Water Intake	431,200	143,800	575,000
Wasilla	Septage Facility Emergency Generator		61,900	61,900
Matanuska-Susitna	Garden Terrace Water System Renovation		491,000	491,000
Petersburg	Airport Sewer Project	321,000	107,000	428,000
Wrangell	Bennet Street Watermains Extension, Phase 1	32,500	10,900	43,400
Wrangell	Cassiar and Weber Sewer and Water Main Replacement	162,700	54,300	217,000
Craig	Water Treatment Plant Upgrades	284,200	94,800	379,000
Sitka	Sawmill Cove Industrial Park Wastewater Outfall	230,200	76,800	307,000
Homer	One Million Gallon Storage Reservoir	1,179,000	393,000	1,572,000
King Cove	Landfill Expansion Design		162,600	162,600
Soldotna	Funny River Road Water and Sewer Mainline Extension		1,400,000	1,400,000
Valdez	Wastewater System Improvements		402,500	402,500
Kodiak	Monashka Dam Enlargement, Phase 2	1,463,900	488,000	1,951,900
Nome	Water and Sewer System Expansion, Phase 4	1,125,000	375,000	1,500,000
North Pole	Badger - Hurst Water Transmission Main		1,049,000	1,049,000
Matanuska-Susitna	Talkeetna Wastewater Treatment Facility	1,409,700	469,900	1,879,600
Ketchikan Gateway	Ketchikan International Airport Wastewater Plant		50,000	50,000
Petersburg	Landfill Closure		79,300	79,300
Seward	Gateway to Forest Avenue Waterline Extension	297,400	99,200	396,600
Anchorage	Water, Wastewater and Water Quality Projects		3,000,000	3,000,000
<b>Total:</b>		<b>8,517,800</b>	<b>15,404,100</b>	<b>23,921,900</b>



Bill Kranich

From: Bill Kranich [kranich@pci.net]  
 Sent: Wednesday, January 26, 2005 2:18 PM  
 To: 'Rep.tom.Anderson@Legs.state.ak.us'  
 Cc: 'Sen.tom.Wagoner@Legs.state.ak.us'  
 Subject: HB 46 and SB 32 -- Testimony

*1/27/05  
 My computer says this  
 message failed to be  
 delivered, so I'm faxing it.  
 Sorry for the delay  
 BK  
 Fax 465-2418  
 Fax 465-4779*

We have just become aware that subject bills are presently being considered by your respective committees. It is our understanding that these bills provide for access to the Municipal Water and Wastewater Matching Grant Program by privately owned water and wastewater utilities that are regulated by the RCA. WE STRONGLY URGE PASSAGE OF THOSE BILLS.

By way of justification, consider that grants to any utility are essentially given to the customers of that utility to lower the cost of the service they receive. (Be advised that RCA is very careful to make sure that any capital or facilities donated to "for-profit" utilities are not considered as a part of the rate base on which they are allowed to earn a return.) Passage of these bills would allow the customers of both privately owned and publicly owned utilities access to similar advantages. Under the present arrangement, customers that happen to be served by privately owned utilities are penalized since they have to pay through rates -- the cost of capital expansion that their neighbors a few doors away receive for free.

Thank you for your consideration of these comments.

If further questions remain, you can contact me at 907-346-1901, day or night, cell - 907-240-7804 or email -

Robert "Bill" Kranich  
 Vice President and Manager  
 SOUTHCENTRAL UTILITIES, INC.

1/27/2005

# ALASKA STATE HOUSE OF REPRESENTATIVES

Interim Address:  
345 W. Sterling Highway  
Suite 102B  
Homer, Alaska 99603  
907-235-2921  
907-235-4008 FAX



Session:  
Alaska State Capitol, Room 102  
Juneau, Alaska 99801  
907-465-2689  
907-465-3472 FAX

## HOUSE STATE AFFAIRS

REPRESENTATIVE PAUL SEATON, CHAIRMAN

### MEMORANDUM

Date: January 19, 2005

To: Representative Tom Anderson, Chair  
House Labor and Commerce

From: House State Affairs

Re: House Bill 90

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We respectfully request that House Bill 90, "An act requiring warrants drawn on the Department of Administration against the state treasury to be negotiable instruments," be scheduled for hearing in the House Labor and Commerce Committee at your earliest possible convenience.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 46  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Environmental Conservation  
 Title Permitting grants to certain regulated public RDU Division of Water  
utilities for water and wastewater systems Component Facility Construction  
 Sponsor Harris, Coghill, and Rokeberg  
 Requester House Labor and Commerce Component No. 637

**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	83.3	83.3	83.3	83.3	83.3	83.3
Travel	12.0	12.0	12.0	12.0	12.0	12.0
Contractual	29.0	29.0	29.0	29.0	29.0	29.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.9	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>132.2</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>

<b>CAPITAL EXPENDITURES</b>	<b>132.2</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1061 CIP Receipts	132.2	125.8	125.8	125.8	125.8	125.8
<b>TOTAL</b>	<b>132.2</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>	<b>125.8</b>

Estimate of any current year (FY2005) cost: 0.0

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

**POSITIONS**

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

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

HB 46 will expand eligibility for Municipal Water, Sewer and Solid Waste Matching Grants to include privately-owned water and sewer utilities that are economically regulated by the Regulatory Commission of Alaska (RCA). The grant program is administered by the Department of Environmental Conservation (DEC). Eligibility is currently restricted to municipally-owned utilities. DEC, along with the RCA, estimates that there are 193 water and sewer utilities that could qualify for the expanded grant program. We estimate that approximately 50% -- or 96 utilities -- would seek to participate in the grant program over the next 10 years. This suggests that the expanded program would result in DEC administering 6 grants each year to these newly eligible, primarily small utilities. This would require an increase of \$132.2 to Ref Number 40142, Municipal Matching Grants Project Administration, in the capital budget. An additional Environmental Engineer I position will be required to manage these new grant projects, along with contractual funding to audit each grant upon completion in accordance with program requirements.

Prepared by: Dan Easton, Director  
 Division: Water  
 Approved by: Kurt Fredriksson, Acting Commissioner  
 Agency: Department of Environmental Conservation

Phone 465-5135  
 Date/Time 1/25/05 2:30 PM  
 Date \_\_\_\_\_

**FISCAL NOTE**

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

**BILL NO. HB46**

**ANALYSIS CONTINUATION**

The RCA is in the process of implementing a reduced regulatory program for small water and sewer utilities. When fully implemented, this program will reduce the regulatory burden and reporting requirements on these utilities. However, passage of this legislation may cause some of these utilities to seek a higher degree of regulation in order to be eligible to receive grant funds. The RCA can identify the number of utilities which may seek expanded regulation, but it is more difficult to quantify the number or timing of these applications. At this juncture, the RCA anticipates that existing staff can absorb any additional applications resulting from this legislation in the normal course of Commission operations. Therefore, this legislation is anticipated to have no fiscal impact on the RCA.

RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers.

✓ READ INTO RECORD

**Josh Applebee**

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**From:** Renee Forbes [forbes@co.fairbanks.ak.us]  
**Sent:** Wednesday, January 26, 2005 12:20 PM  
**To:** Rep. John Harris  
**Cc:** Sen. Gene Therriault; Rep. Tom Anderson; Rep. Carl Gatto; Rep. Nancy Dahlstrom; Rep. Nancy Dahlstrom; Rep. Norman Rokeberg; Rep. Harry Crawford; Rep. David Guttenberg; 'Charlie Fox'; 'Earl Romans'; 'Garry Hutchison (w)'; 'Hank Baros'; 'Linda Anderson'; 'Randy Frank'; 'Terry Aldridge'; Jim Whitaker  
**Subject:** From Fairbanks North Star Borough Assemblymember Bonnie Williams

I am unable to come to the LIO to testify in favor of your HB 46 regarding water/sewer/waste grants to utilities. This is an excellent bill that would greatly benefit the community of Fairbanks, allow for enhanced economic development, improve the overall environment and lastly, would treat Fairbanksans fairly and equally with all other residents in the State.

I want to thank you for putting forth the bill and will myself be presenting a resolution to the Fairbanks North Star Borough Assembly in support of this.

Sincerely,

Bonnie Williams, Assemblymember  
Legislative Liaison, FNSB Assembly

# Alaska State Legislature

*Session: (Jan-May)*  
State Capitol, Room 208  
Juneau, AK 99301-1182  
(907) 465-4859  
Fax (907) 465-3799



*Interim: (June-Dec)*  
716 West 4th Avenue, Suite 300  
Anchorage, AK 99501-2133  
(907) 269-0129  
Fax (907) 269-0128

## John Harris Speaker of the House

### SPONSOR STATEMENT House Bill 46

*"An Act relating to permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."*

Four years ago, legislation passed that allowed privately owned economically regulated water and wastewater utilities to be eligible for the low-cost Municipal Water & Wastewater Loan Program. This legislation has been introduced to ensure that privately owned public utilities are eligible for grant funds through the Municipal Water and Wastewater Matching Grant Program within the Department of Environmental Conservation.

The residents of a community, the utility ratepayers, are the only beneficiaries of these grants through a reduction in costs for infrastructure improvements made to a utility system. The legislation is limited to only those privately owned companies economically regulated by the RCA. That is, the RCA sets the rates and thereby ensures the benefits of the grants to the ratepayers rather than the owners. Privately held companies regulated by the RCA may not generate a return on investment or receive depreciation expense credits for grant funds they receive.

Current residents of communities with municipally owned water and wastewater systems are already the benefactors of these grant funds. It is only fair that all residents of Alaska benefit from these federally generated funds.

All existing municipally owned water and wastewater utilities remain eligible for these grants.