

ALASKA LEGISLATURE COMPILED FILES, 2003-2006 00/2

11523 HOUSE LABOR & COMMERCE



# Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 12 - Eielson AFB, Valdez, Delta Junction, Palmer, Glennallen, Saicha, Paxson, Sutton, Chickaloon

## SECTIONAL ANALYSIS

### 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."*

**Section 1:** Amends AS 46.03.030(b), Water quality enhancement, water supply, sewage, and solid waste facilities grants. Adds language referencing the new subsection (i), found in section 3 of this bill.

**Section 2:** Amends AS 46.03.030(e), Water quality enhancement, water supply, sewage, and solid waste facilities grants. Adds language that allows a public utility that is eligible under new subsection (i), to participate in the grant program. Also changes municipality to utility based on the population it serves, within this subsection.

**Section 3:** Adds a new subsection (i) to AS 46.03.030, Water quality enhancement, water supply, sewage, and solid waste facilities grants. States that a public water and sewer utility is eligible for the grant program as long as its rates are regulated by the Regulatory Commission of Alaska.

Co-Chair, Joint Armed Services Committee  
Co-Chair, House Finance Committee  
Member, Energy Council

Session: State Capitol, Juneau, Alaska 99801-1162 • Phone: (907) 465-4859 Fax: (907) 465-3799  
Interim: P.O. Box 305, Valdez, Alaska 99686 • Phone (907) 835-2836 Fax: (907) 835-3732

Sec. 46.03.030. Water quality enhancement, water supply, sewage, and solid waste facilities grants.

(a) *[Repealed, Sec. 19 ch 220 SLA 1976].*

(b) The department may grant to a municipality, as funds are available, a grant for any of the following:

- (1) a water quality enhancement project;
- (2) a public water supply, treatment, or distribution system;
- (3) a wastewater collection, treatment, or discharge system;
- (4) a solid waste processing, disposal, or resource recovery system.

(c) There is a water quality enhancement and water supply, wastewater, and solid waste systems program created in the department to carry out the purposes of this section.

(d) The department shall, by regulation, identify those costs that are eligible costs for the purposes of this section. Eligible costs do not include interest and financing and right-of-way acquisition, or costs that are related to the operation, maintenance, or repair of a system

(e) A grant under this section to a municipality for a project funded by an appropriation made by the legislature

(1) before July 1, 1994, may not exceed 50 percent of the eligible costs of the project;

(2) after July 1, 1994, may not exceed

(A) 85 percent of the eligible costs for a municipality with a population of 1,000 persons or less;

(B) 70 percent of the eligible costs for a municipality with a population of 1,001 to 5,000 persons; and

(C) 50 percent of the eligible costs for a municipality with a population greater than 5,000 persons; however, if a municipality with a population greater than 5,000 persons seeks a grant for a project that relates to a solid waste processing or disposal system that incorporates resource recovery, the department may provide a grant for up to 60 percent of the eligible costs of the project.

(f) *[Repealed, Sec. 14 ch 106 SLA 1994].*

(g) The match required for grants made under this section may include

(1) federal funds; or

(2) state funds, other than those funds received under this section or AS 37.06.

(h) Construction of a project for which a grant is made under this section may commence only after the department has approved in writing the plans and specifications for the project.

# Private Water and Sewer Utilities Economically Regulated by RCA

From the 2001 Annual Report (latest published data)

Wednesday, March 26, 2003

Summarized by James A. Evensen, PM MG&L

Sewer Utilities Certified/Regulated	Water Utilities Certified/Regulated
College Utilities Corp Fairbanks	Chugiak Utilities, Inc. Eagle River
Crystal Cathedrals W&S, INC Haines	College Utilities Corp Fairbanks
Golden Heart Utilities, Inc. Fairbanks	Crystal Cathedrals W&S, INC Haines
Trillium Corp. Wasilla	Dawn Development Corp Eagle River
	Eagle Utilities, Inc. Palmer
	Golden Heart Utilities, Inc. Fairbanks
	Kake Tribal Corp. Pelican
	McGahan Utilities, Inc. Nikiski
	Mckinley Utilities, Inc. Eagle River
	N.L.T. Water Co., Inc. Wasilla
	Potter Creek Water Co. Anchorage
	Scott Heberison & Randy Hestand D/B/A/ Sandlake Services Anchorage
	Southcentral Utilities, Inc. Anchorage
	Spenard Heights Water System Wayne Cates D/B/A Anchorage
	Swiss Castle Estates Water Works, Ron Alleva D/B/A Wasilla
	Trillium Corp Wasilla
	Valley Water Co., Inc. Fairbanks

# 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	0.9	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						
1007 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 Phone: 465-5135  
 Division: Water Date/Time: 1/25/05 2:30 PM  
 Approved by: Kurt Fredriksson, Acting Commissioner Date: \_\_\_\_\_  
 Agency: Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. 46

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.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB46  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Water/Sewer/Waste Grants to Utilities RDU: Regulatory Commission of Alaska (399)  
 Component: Regulatory Commission of Alaska  
 Sponsor: Harris, Coghill, Rokeberg, et al  
 Requester: House Labor & Commerce Component No.: 2417

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

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

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

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

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

Estimate of any current year (FY2005) cost: 0.0

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

**POSITIONS**

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

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

The Regulatory Commission of Alaska's (RCA) mission is to protect consumer interests and promote economic development by ensuring affordable, reliable utility and pipeline services and ensuring that the utility and pipeline infrastructure is adequate to support community needs. The RCA believes that passage of this legislation will increase utility infrastructure throughout the state. Grant-funded infrastructure reduces rates for consumers.

**ANALYSIS CONTINUED ON NEXT PAGE**

Prepared by: Kate Giard, Chair Phone 907.276.6222  
 Division: Regulator, Commission of Alaska Date/Time 1/25/05 5:38 PM  
 Approved by: Edgar Blatchford, Commissioner Date 1/25/2005  
 Agency: Commerce, Community & Economic Development

**Personal Services New Position Detail**

Department of Environmental Conservation

Scenario: A Scenario for FY2006 Fiscal Notes (4191)  
 Component: Facility Construction (637)  
 RDU, Water (210)

PCN	Job Class Title	Time Status	Retire Code	Barg Un <sup>1</sup>	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#018	Environmental Engineer I	FT	A	GG	Anchorage	2A	21 A	12 0		55,920	1,081	0	26,333	83,334

Justification: No justification provided

Funding Detail:		
1004	General Fund Receipts	83,334
<b>Total Funding:</b>		<b>83,334</b>

**Component Summary:**

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	83,334
<b>Total Funding:</b>	<b>100.00%</b>	<b>83,334</b>

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

## Municipal Grant Communities that Qualify for Federal Assistance

Wednesday, April 02, 2003

James A. Evensen, PE

Community	Federal and State Funding	State Funding
Anchorage Public Works		X
Anchorage Solid Waste		X
Bristol Bay Borough	X	X
Cordova	X	X
Craig	X	X
Dillingham	X	X
Eagle River		X
Fairbanks		X
Girdwood		X
Haines	X	X
Homer	X	X
Juneau, City and Borough		X
Kenai		X
Kenai Peninsula Borough	X (Off Road System)	X
Ketchikan		X
Ketchikan Gateway Borough	X (Off Road System)	X
King Cove	X	X
Kodiak	X	X
Kodiak Island Borough	X	X
Kotzebue	X	X
Mat-Su Borough		X
Nenana	X	X
Nome	X	X
North Pole		X
North Slope Borough	X	X
Palmer		X
Petersburg	X	X
Sand Point	X	X
Seward	X	X
Sitka, City and Borough	X	X
Skagway	X	X
St. Paul	X	X
Unalaska	X	X
Valdez	X	X
Wasilla		X
Wrangell	X	X
Yakutat	X	X

# STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
REGULATORY COMMISSION OF ALASKA

TONY KNOWLES, GOVERNOR

701 WEST PRINCE AVENUE, SUITE 300  
ANCHORAGE, ALASKA 99501-3461  
PHONE: (907) 276-4222  
FAX: (907) 276-0160  
TTY: (907) 276-4533

April 8, 2002

*Rec'd  
letter*

The Honorable Senator Gene Thernault  
Alaska State Senate  
State Capitol (MS 3100)  
Juneau, Alaska 99801-1182  
Faxed to 907-485-3884 (attention Wilda Rodman)

Re: SB 280 *HB 119 2003*

Dear Senator Thernault:

You asked whether the owners of a utility that received grant funding under this proposed legislation would receive a profit based on those grant funds if the utility was ever sold. The brief answer is no, for the two reasons explained below.

First, any grant funds received by a utility are considered contributed capital and, with limited exception, a regulated utility is not permitted to recover contributed capital from its customers. The utility is also, with the same limited exceptions, not permitted to count the contributed capital as a portion of its investment in establishing the amount of return on its investment it may recover from its customers. AS 42.05.471(b). Utilities must account for contributed capital in a manner in which it is clearly identified or excluded from the utility's rate base under the uniform system of accounts prescribed by regulations. Utilities with annual revenues in excess of \$100,000 are also required to maintain continuing property records that reflect this treatment. AS 42.05.481.

Second, market value for a utility, similar to unregulated enterprises, is generally established using the net present value of expected future cash flows the purchasing entity will receive. The cost of purchasing a utility in excess of the net book value of the selling utility's assets (an acquisition adjustment) usually constrains market value. The new owner of a utility should know that they will not automatically be allowed to recover the acquisition adjustment from its customers through rates and will set the price accordingly.

Senator Therrault

April 8, 2002  
Page 2

Either the stock or assets of a utility can be sold, and depending on the nature of the transaction, the prescribed uniform system of accounts will require the book value of the seller's plant to be carried forward by the purchaser rather than revaluing the assets to market value. At the time of the utility's next overall rate review, the RCA is directed by statute to establish the ratebase for the new owner using the lower of the purchase price or the value on the selling utilities' books. The book value represents the remaining value of the plant after the depreciation already paid by the utilities' customers has been deducted and the purchase price represents the market value of the utility. The statute requires rate base to be set at that value if lower so that the customers of the new utility are not paying for plant value the utility did not acquire.

The RCA has allowed acquisition adjustments to be recovered from ratepayers by the utility when the new owner provides evidence of public interest, like lower rates as the result of the acquisition. The RCA carefully scrutinizes proposed acquisition adjustments that utilities seek to recover through rates. The RCA's role is not to determine the purchase price in a utility sale, that is left to the parties. Rather, we regulate the amount of the purchase price that the utility will be allowed to recover from its ratepayers.

I hope this information is helpful to you. Please contact me if you need any further information.

Very Truly Yours.



G. Naretta Thompson  
Chair

GNT:dea

DEC. 9. 2004 1:33PM GFCC

NO. 934 P. 1

# GREATER \* FAIRBANKS CHAMBER OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-5968

e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

Introduced by: Governmental Affairs  
Date Introduced: March 11, 2003  
Date Passed: March 13, 2003  
Date Transmitted: March 18, 2003

## RESOLUTION 03-0318

### A RESOLUTION BY THE GREATER FAIRBANKS CHAMBER OF COMMERCE SUPPORTING AN AMENDMENT IN ALASKA STATE LAW ALLOWING A PRIVATE UTILITY ACCESS TO STATE GRANT FUNDS

WHEREAS publicly owned utilities are provided access to State grant funds for infrastructure development while privately owned utilities do not have the same access, residents served by privately owned utilities are being penalized by current Alaska State law; and

WHEREAS privately held companies regulated by the Regulatory Commission of Alaska may not generate a return on investment or receive depreciation expense credits for grant funds they receive; and

WHEREAS all utilities in the greater Fairbanks area are either privately owned or owned by a cooperative; and

WHEREAS utility ratepayers would be the only beneficiary of savings through a reduction of the burden to ratepayers for infrastructure improvements made to the utility system; and

WHEREAS House Bill 119 remedies this inequity by allowing privately owned public utilities that are regulated by the Regulatory Commission of Alaska to apply for grants under AS 46.03.030 (b); and

WHEREAS House Bill 119 would place ratepayers of privately owned, regulated utilities in the same position as ratepayers of community owned systems; and

WHEREAS House Bill 119 would promote economic development as privately owned utilities could afford to expand to serve customers that are not currently connected to a public utility system; and

# GREATER ★ FAIRBANKS CHAMBER OF COMMERCE

250 Cushman St., Suite 2D, Fairbanks, AK 99701-4665  
phone: (907) 452-1105, fax: (907) 456-6968  
e-mail: [staff@fairbankschamber.org](mailto:staff@fairbankschamber.org)  
website: [www.fairbankschamber.org](http://www.fairbankschamber.org)

WHEREAS House bill 119 would make utility service more affordable to citizens of the Fairbanks community; and

WHEREAS the State of Alaska should not be discriminating between utilities which are all serving the public;

NOW THEREFORE BE IT RESOLVED that the Greater Fairbanks Chamber of Commerce strongly supports passage of House Bill 119, to allow privately owned regulated utilities to have access to State Grant Funds.

BE IT FURTHER RESOLVED that this resolution be distributed to:

- Representative John Coghill
- Interior Delegation
- Governor Frank Murkowski
- Commissioner Ernesta Ballard -  
Department of Environmental Conservation
- Commissioner Tom Irwin  
Department of Natural Resources
- Regulatory Commission of Alaska

PASSED in Fairbanks, Alaska this 18<sup>th</sup> day of March, 2003 by the Greater Fairbanks Chamber of Commerce Board of Directors.



Terry Aldridge  
Board Chairman



Kara Moriarty  
President/CEO

Kb

Introduced by: Mayor Thompson  
Date: February 25, 2002

**RESOLUTION NO. 3976**

**A RESOLUTION OF THE CITY OF FAIRBANKS IN SUPPORT OF SENATE BILL 280, AND SETTING AN EFFECTIVE DATE**

**WHEREAS**, Senate Bill 280 would amend current law to permit state grants to regulated private utilities for water quality enhancement and supply, as well as sewage and ~~solid waste facilities~~ and

**WHEREAS**, regulation by the Regulatory Commission of Alaska ("RCA") insures that all of the economic benefits of the grants are passed on to the rate paying public; and

**WHEREAS**, currently Fairbanks is the only community that can not participate in this grant program due to the divestiture of the Municipal Utilities System.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council supports Senate Bill 280, and urges its adoption by the legislature of the State of Alaska.

Passed and Approved this 25<sup>th</sup> day of Feb, 2002.

  
STEVE M. THOMPSON, MAYOR

AYES:  
NAYS:  
ABSTAIN:  
ABSENT:  
ADOPTED: February 25, 2002

ATTEST:

APPROVED AS TO FORM

  
\_\_\_\_\_  
Carol L. Colp, City Clerk

  
\_\_\_\_\_  
Herbert P. Kuss, City Attorney



## Grant Eligibility

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- This bill will expand grant funding to include investor owned, **Economically Regulated Utilities.**



# Utility Accountability

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- **3 AAC 48.277 Uniform System of Accounts**

(14) Water utilities with annual operating revenues of \$1,000,000 or more shall maintain records and accounts in accordance with the Uniform System of Accounts for Class A water utilities prescribed by the National Association of Regulatory Commissioners which were in effect on January 1, 1982;



# Rate Base Terminology

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- **Rate Base:** The value of a utility's property used in computing an authorized return under the applicable laws and/or regulatory policies of the agency setting rates for the utility.

(National Association of Water Companies Sourcebook of Regulatory Techniques for Water Utilities, June 1997).

- **Contributions and Advances:** Contributions in aid of construction (CIAC), that is, capital or plant supplied by customers, developers, or public authorities, is **excluded from rate base**. . . [emphasis added].

(American Water Works Association Manual of Water Supply Practices Principles of Water Rates, Fees and Charges, AWWA M1, 2000).

# Rate Base: How is it calculated?

Utility Plant with Adjustments equals Rate Base

	<b>COST OF UTILITY PLANT</b>
<b>Less Adjustments</b>	<Accumulated Deprecation>
	<Contributions in Aid of Construction> Which includes developer and grant funded projects
<b>Other Adjustments</b>	Materials and Supplies
	Working Capital Allowance
<b>Equals</b>	<b>RATE BASE</b>

Note: This information was extracted from a presentation entitled "Basics of Rate Setting" prepared by John F. Guastella of Guastella Associates, Inc., presented at the NARUC sponsored 30<sup>th</sup> Annual Eastern Utility Rate School.

**HB**

**47**

# Audit Report

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DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
BOARD OF CERTIFIED REAL ESTATE  
APPRAISERS  
SUNSET REVIEW

July 17, 2003

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Audit Control Number:

08-20024-03

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.

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

### BUDGET AND AUDIT COMMITTEE

Representative Ralph Samuels, Chair  
Representative Mike Hawker  
Representative Beth Kerttula  
Representative Vic Kohring  
Representative Jim Whitaker  
Representative Reggie Joule (alternate)  
Representative Bill Williams (alternate)

Senator Gene Therriault, Vice Chair  
Senator Ben Stevens  
Senator Gary Wilken  
Senator Con Bunde  
Senator Lyman Hoffman  
Senator Lyda Green (alternate)

### DIVISION OF LEGISLATIVE AUDIT

Pat Davidson, CPA  
Legislative Auditor

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# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



P.O. Box 113300  
Juneau, AK 99811-3300  
(907) 465-3830  
FAX (907) 465-2347  
Internet e-mail address:  
legaudit@legis.state.ak.us

August 18, 2003

Members of the Legislative Budget  
and Audit Committee:

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

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
BOARD OF CERTIFIED REAL ESTATE APPRAISERS  
SUNSET REVIEW

July 17, 2003

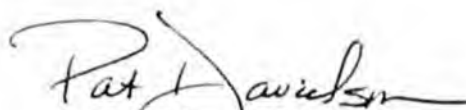
Audit Control Number

08-20024-03

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)(20) the Board of Certified Real Estate Appraisers is scheduled to terminate on June 30, 2004. 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.

In our opinion, the termination date for the Board of Certified Real Estate Appraisers should be extended. The certification of appraisers remains a central requirement attached to various types of real estate loans made by federally insured financial institutions. We recommend the legislature extend the termination date of the Board of Certified Real Estate Appraisers to June 30, 2008.

This sunset review was conducted in accordance with generally accepted government auditing 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 the intent of Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Certified Real Estate Appraisers (BCREA) to determine if the termination date for the board should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if BCREA should be reestablished. Currently, AS 08.03.010(c)(20) specifies that BCREA will terminate on June 30, 2004. If no action is taken by the legislature, the board will have one year from that date 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 real estate appraisers.

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 relate 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 the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Files and documentation related to individuals certified as appraisers, including those who have been issued a courtesy license to practice within Alaska.
- Files and documentation related to individuals who applied for certification as an appraiser or for a courtesy license to practice within Alaska.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by BCREA.
- Complaints filed with the Division of Occupational Licensing, the Alaska State Commission for Human Rights, the Office of the Ombudsman, the Office of Victims' Rights, and the Federal Equal Employment Opportunity Commission.
- Correspondence with the Appraisal Subcommittee, a national organization that reviews the regulation and oversight of real estate appraisers.
- A report to Congress by the U.S. General Accounting Office that assessed the oversight of real estate appraisers.

Additionally, we conducted interviews with Division of Occupational Licensing staff.

## ORGANIZATION AND FUNCTION

Alaska Statute 08.87.010 establishes the Board of Certified Real Estate Appraisers (BCREA). BCREA consists of five members, specified in statute to consist of at least one each of the following: (1) a certified general real estate appraiser, (2) a certified residential real estate appraiser, (3) a mortgage banking executive, and (4) a person from the general public. The fifth board position is undesignated in statute, and is commonly referred to as the "at large" position. Currently, the member at large happens to also be a certified general real estate appraiser.

Alaska Statute 08.87.020 defines the board's authority, purpose, and scope of work. Under this statute BCREA establishes the following: (1) examination specifications for certification as a real estate appraiser; (2) rules of professional conduct to establish and maintain a high standard of integrity in the real estate appraisal profession; and, (3) regulations necessary to carry out the purposes of the statutes.

BCREA certifies general real estate appraisers, residential real estate appraisers, institutional appraisers,<sup>1</sup> and registers appraiser trainees. Courtesy licenses are also issued for real estate appraisers who are certified or licensed in other states but are temporarily practicing in Alaska.

Qualifications for certification as a general and residential real estate appraiser include education related to real estate appraisal, experience in real property appraisal, and passing an examination endorsed by the board. The qualifications for receiving an institutional appraisal certificate are that the applicant is a full-time employee of a financial institution with offices in Alaska, and the applicant meets education and testing requirements. The requirement to become a registered trainee includes 75 hours of instruction in courses related to real estate appraisal theory or practices from an organization approved by the board.

Real estate appraisal certificates are renewed biennially. The next biennial renewal date is June 30, 2005. In order to renew their certification, certified appraisers must complete a renewal application, provide evidence of continuing education, and remit a license fee. Individuals certified or licensed as appraisers in other jurisdictions can obtain a courtesy license to conduct appraisals in Alaska. Such licenses are issued for a single appraisal assignment, and individuals are limited to only one courtesy license every twelve months.

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<sup>1</sup> While BCREA has the authority to certify institutional appraisers, as of the date of this report, no individuals have applied for this certification.

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### BOARD OF CERTIFIED REAL ESTATE APPRAISERS (As of June 30, 2003)

**Stephen Turner, Residential Real Estate Appraiser**  
*—Vice Chair (no Chair as of above date)*

**James A. Hage, Member at Large**

**Nelida Irvine, Public Member**

**Judy Kemplen, Mortgage Banking Executive**

**Steven J. MacSwain, MAI, General Real Estate Appraiser**

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### Duties of the Department of Community and Economic Development

The Department of Community and Economic Development, Division of Occupational Licensing provides administrative and investigative assistance to BCREA. This includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065 mandates the Department of 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 Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. The division may:

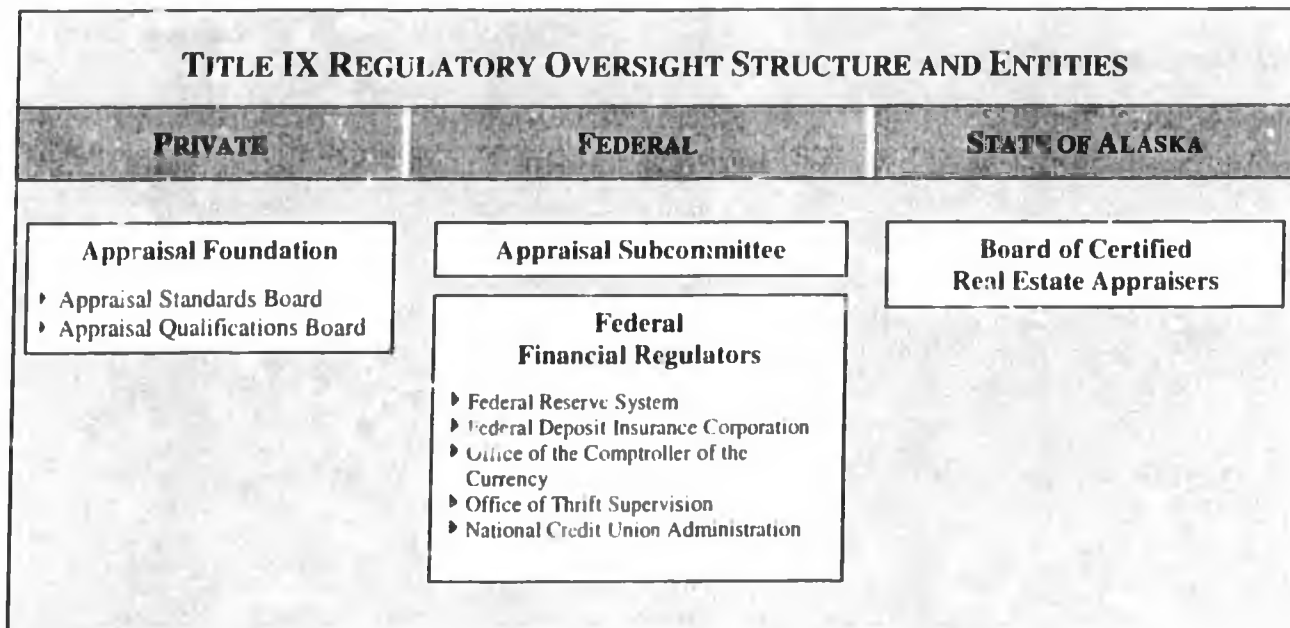
1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

## BACKGROUND INFORMATION

An appraisal is a decision-making tool used to facilitate a real estate transaction. The primary role of appraisals in the loan underwriting process is to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower was unable to repay the loan. Consumers often mistakenly assume that appraisals are intended to validate the purchase price of the property in question. In a loan transaction, the lender rather than the borrower engages the appraiser and this usually occurs after the borrower has agreed to purchase the property. The primary intent of federal statutory appraisal reforms was to protect the federal deposit insurance funds – and, by extension, mortgage lenders – from avoidable losses.

In 1986, the House Committee on Government Operations issued a report concluding that faulty and fraudulent appraisals contributed significantly to the losses that the federal government suffered during the savings and loan “crisis.”<sup>2</sup> In response to the “crisis,” Congress passed the 1989 Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). Congress set out provisions in Title XI of FIRREA that were intended to ensure federally-related transactions had appraisals that were: (1) performed by real estate appraisers who met minimum qualifications criteria; and, (2) conducted in compliance with uniform standards.<sup>3</sup>

Title XI established a complex oversight structure for real estate appraisals and appraisers that involves private, federal, and state entities (see table, below).



<sup>2</sup> *Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market*, H.Rep. 99-891 at 4-6 (Sept. 25, 1986), House Committee on Government Operations, 99th Congress, 2nd session.

<sup>3</sup> U.S. Code 3331 - 3351, Title XI, Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

## Appraisal Foundation

The Appraisal Foundation, a nonprofit educational organization composed of groups from the real estate industry, provides the organizational framework for the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB) to carry out their responsibilities related to Title XI.<sup>4</sup> The Appraisal Foundation was founded in 1987 by eight leading professional appraisal organizations in the United States to foster professionalism in real estate appraising. ASB and AQB establish minimum standards for developing and reporting an appraisal and the minimum criteria for certified appraisers in connection with federally related transactions.

ASB is responsible for setting standards for appraisals and is composed of six appraisers who are appointed for three-year terms by the Board of Trustees of the Appraisal Foundation. ASB's minimum standards for appraisals are contained in the Uniform Standards of Professional Appraisal Practice (USPAP). Under Title XI, these minimum standards apply to all federally-related transactions. The standards cover both of the steps appraisers must take in developing appraisals and information the appraisal report must contain.

AQB is composed of five appraisers who are appointed for three-year terms by the Board of Trustees of the Appraisal Foundation, establishes the minimum education, experience, and examination requirements for state-certified real estate appraisers (set out in Real Property Appraiser Qualification Criteria and Interpretations of the Criteria). In addition, AQB performs a number of ancillary duties related to real property and personal property appraiser qualifications. The AQB's criteria covers four categories of appraisers—certified general, certified residential, licensed, and trainee—each with specific education, experience, examination, and continuing education requirements.

## Appraisal Subcommittee

The Appraisal Subcommittee (ASC) was established by U.S. law as the principal federal agency responsible for monitoring the activities of the other components of the real estate appraisal industry oversight structure. Specifically, ASC is responsible for:

- Monitoring and reviewing the practices, procedures, activities, and organizational structure of the Appraisal Foundation—including making grants in amounts that it deems appropriate to the Appraisal Foundation to help defray costs associated with its Title XI activities;

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<sup>4</sup> The 2002 sponsors of the Appraisal Foundation consisted of eight appraisal organizations, four affiliate organizations (representing primarily the users of appraisal services), and one international appraisal organization. In addition, over 80 organizations, corporations, and government agencies are affiliated with the Appraisal Foundation.

- Monitoring the requirements established by the states, territories, and the District of Columbia and their appraiser regulatory agencies for the certification and licensing of appraisers;
- Monitoring the requirements established by the federal financial institution regulators regarding appraisal standards for federally related transactions and determinations of which federally-related transactions will require the services of state-licensed or state-certified appraisers;
- Maintaining a national registry of state-licensed and state-certified appraisers who may perform appraisals in connection with federally-related transactions; and,
- Transmitting an annual report to Congress regarding the activities of ASC during the preceding year.

ASC has six board members and seven staff members. Each of the respective board members is designated by the head of the Department of Housing and Urban Development's Federal Housing Administration (HUD/FHA) and the heads of the following five financial institution regulatory agencies:

1. Board of Governors of the Federal Reserve System,
2. Federal Deposit Insurance Corporation,
3. Office of the Comptroller of the Currency,
4. Office of Thrift Supervision, and
5. National Credit Union Administration.

#### State Oversight—Board of Certified Real Estate Appraisers

States may establish, under Title XI, their own agencies to certify and license appraisers. In 1990, the Alaska State Legislature created the Board of Certified Real Estate Appraisers (BCREA) in response to FIRREA. Although BCREA is responsible for the certification of appraisers, ASC has a role in ensuring Alaska's qualifications satisfy Title XI objectives. Federal agencies and federal financial institutions may not accept appraisals from BCREA certified appraisers if the subcommittee issues a written finding that:

- a. BCREA has failed to recognize and enforce the standards, requirements, and procedures of Title XI;
- b. BCREA does not have enough authority to carry out its functions under Title XI; or,

- c. BCREA does not make decisions on appraisal standards and qualifications or supervise appraiser practices in a method that carries out the purposes of Title XI<sup>5</sup>.

In addition, BCREA is required to provide ASC with the names of those appraisers who become certified or licensed in accordance with Title XI and to collect from them an annual registry fee that goes to the subcommittee.

In August 2001, BCREA was the subject of an ASC review. ASC found all but one of the eight earlier review findings had been appropriately resolved by the board.<sup>6</sup> In their report, ASC commented that "*Alaska needs to revise its [Courtesy License] regulations to comply with Title XI of [FIRREA]...*" In addition, ASC developed two new findings that required action by the board. The board is proposing regulatory and procedural changes to implement all ASC recommendations made in the 2001 report.

Recent federal study determined oversight of real estate appraisers should be enhanced.

In May 2003, the U.S. General Accounting Office (GAO) issued a report regarding oversight of the real estate appraisal industry. The primary policy question addressed in the report was whether certain provisions of FIRREA that require certification of real estate appraisers are still necessary.

GAO was asked to conduct this review because some industry observers believed the appraisal industry regulations, required by FIRREA, are no longer needed.<sup>7</sup> Others argued that the law's purpose and scope should be expanded.

In the report,<sup>8</sup> GAO concluded there was not only a continuing need for appraisers to be certified and regulated at the state level, but federal regulatory oversight should be enhanced. Among other things, GAO recommended that ASC "*develop and apply consistent criteria for determining and reporting states' compliance levels with Title XI.*" GAO also recommended that ASC "*explore potential options for assisting states in carrying out their [regulatory oversight] activities, particularly for investigating appraiser complaints.*"

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<sup>5</sup> 12 USC § 3347(a), (b) (2000).

<sup>6</sup> BCREA is subject to ASC reviews on a triennial basis. Prior to the 2001 review, the most recent ASC review was conducted in August 1998.

<sup>7</sup> More specifically, the report commented that some observers believed both "*the risk to federal deposit insurance funds and the lack of uniform [appraisal] standards and [appraiser] qualifications*" no longer existed.

<sup>8</sup> An abridged version of the GAO report is included as Appendix A to this report beginning on page 19. A complete report can be found at [www.gao.gov/cgi-bin/getrpt?GAO-03-404](http://www.gao.gov/cgi-bin/getrpt?GAO-03-404).

## REPORT CONCLUSIONS

In accordance with AS 08.03.010(c)(20), the Board of Certified Real Estate Appraisers (BCREA) is presently scheduled for termination on June 30, 2004. If no action is taken by the legislature, the board has one year in which to conclude its affairs and will be dissolved at June 30, 2005.

The BCREA has been given the responsibility in AS 08.87.020 to: *(1) establish the examination specifications for certification as a general real estate appraiser, as a residential real estate appraiser, and as an institutional appraiser; (2) adopt rules of professional conduct to establish and maintain a high standard of integrity in the profession; and, (3) adopt regulations necessary to carry out the purpose of [the appraiser statute]...* As discussed in the Background Information section, a recent GAO study concluded that, nationwide, there is an ongoing need not only to maintain, but also to enhance these oversight functions.

The use of state certified real estate appraisers will be a continuing requirement for Alaska's financial institutions to qualify for federal deposit insurance and to participate in selling mortgage loans to federal government-sponsored enterprises.<sup>9</sup> Failure to maintain a real estate appraiser certification program that meets federal requirements could cause the financial institutions – and by extension, the citizens – of the State to not only lose the opportunity to participate in a number of federally-sponsored real estate loan programs, but also the ability to obtain federal deposit insurance. In this context, we recommend that the legislature extend BCREA's termination date to June 30, 2008.

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<sup>9</sup> Government-sponsored enterprises include such entities as the Federal Home Loan Mortgage Corporation (generally referred to as "Freddie Mac") and the Federal National Mortgage Association (generally referred to as "Fannie Mae").

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

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(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.***

As reflected in the discussion under the Background Information section, the original impetus for establishing the Board of Certified Real Estate Appraisers (BCREA) was the federal law passed by Congress responding to the savings and loan "crisis" of the 1980s. Accordingly, most of the regulatory and statutory requirements that BCREA responds to is set by organizations and entities established by, or affiliated with, the federal government.

As part of that federal oversight, the board's regulations and activities are periodically reviewed by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council.

In August 2001, BCREA was the subject of an ASC review. ASC found all but one of the eight earlier review findings had been appropriately resolved by the board.<sup>10</sup> In their report, ASC commented that "*Alaska needs to revise its [Courtesy License] regulations to comply with Title XI of Financial Institutions Reform, Recovery, and Enforcement Act [FIRREA]...*" In addition, ASC developed two new findings that required action by the board. The board is proposing regulatory and procedural changes to implement all ASC recommendations made in the 2001 report.

### ***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.***

Most of the board's revenue is from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in the board's revenues, with the board receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the Occupational Licensing (OccLic) for revenues and expenditures associated with the Board of Certified Real Estate Appraisers. We did not audit this information, but present it on the following page for general information purposes.

AS 08.01.065(c) requires "...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As the schedule on the

<sup>10</sup> BCREA is subject to ASC reviews on a triennial basis. Prior to the 2001 review, the most recent ASC review was conducted in August 1998.

following page reflects, the board was running a substantial deficit at the end of FY 02. However, for the FY 03/04 biennial licensing period, license renewal fees were increased more than 45% – from \$515 to \$750. Additionally, board expenses for FY 03 are projected to decrease from the previous fiscal year.

<b>State of Alaska</b> <b>Board of Certified Real Estate Appraisers</b> <b>Schedule of License Revenues and Board Expenditures</b> <b>FY 99 - FY 02</b> <b>(Unaudited)</b>				
	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>	<u>FY 99</u>
Revenue	\$ 18,676	\$ 77,645	\$ 8,680	\$ 77,355
Direct Expenses				
Personal Services	26,653	27,258	20,757	24,652
Travel	4,408	920	2,769	3,397
Contractual	23,227	17,339	7,881	13,943
Supplies	131	30	78	165
Equipment	-	-	-	-
Total Expenses	54,419	45,547	31,485	42,157
Indirect Expense	6,281	7,423	7,207	7,044
Total Expenses	60,700	52,970	38,692	49,201
Annual Surplus (Deficit)	(42,024)	24,675	(30,012)	28,154
Beginning Cumulative Surplus (Deficit)	9,690	(14,985)	14,954	(13,200)
Unallocated Administrative Indirect Revenue	20	-	73	-
Ending Cumulative Surplus (Deficit)	\$ (32,314)	\$ 9,690	\$ (14,985)	\$ 14,954

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

As discussed previously, during August 2001 the board was reviewed by the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. ASC presented BCREA with a list of recommendations which the board is implementing through various proposed regulatory and procedural changes.

These changes include clarifying the board's policy regarding the definition of "assignment" for courtesy license purposes, increasing the number of courtesy licenses a person may be issued within a year (from one to two per year), and lowering the fees charged for courtesy licenses, which ASC considered excessive. ASC also requested that BCREA require experience logs from certified residential real estate applicants, just as it does for certified general real estate applicants. Once implemented, these changes will bring Alaska regulations into compliance with Title XI of FIRREA.

As a result of one lengthy investigation, the board has sought to define moral turpitude in the regulation. BCREA recommended other statutory and regulatory changes primarily related to work experience, education requirements, and certification and renewal fees.

*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.*

The public received notice of all meetings consistent with the requirements of statute and regulation. The agenda of items to be discussed was available before scheduled meetings. A public comment period has been set aside in the agenda for each board meeting.

Interested parties can attend meetings in person or by teleconference. In addition to accepting public comment at the meetings, the board regularly discussed correspondence from various individuals, agencies and other interested parties. OccLic forwards public comment and concerns to the board for consideration during board meetings.

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

Draft regulations developed by the board were properly advertised for the required amount of time. Public notices of regulatory hearings were published in major newspapers and on the board's website. The board accepted public comment at meetings. We found no indication in the BCREA records that public testimony has been inappropriately restricted by the board.

*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.*

During the 48-month period from July 1, 1999 through June 30, 2003, the Division of Occupational Licensing opened 21 investigative cases related to individuals certified by the board. Almost half of the cases (9) involved complaints made by clients or individuals from the general public. Most of the complaints (15) involved alleged incompetence or professional ethics violations by the appraisers.

Of the 17 cases closed as of the date of our review, two resulted in licensure action involving the voluntary surrender of the appraiser's certificate. Of the remaining cases, 12 were closed with a finding of no violation, two were closed with warning letters issued by the board, while one case was closed through a referral to other investigative agencies (the Alaska Department of Labor and Workforce Development and the Internal Revenue Service).

Of the four cases not closed as of the date of our review, three had been opened within the previous 120 days. Of the three opened cases, two are in the process of closure and one is awaiting expert review by a board member. The remaining open case was still under active investigation and was being reviewed by the Department of Law.

We have reviewed the nature and extent of complaints filed involving appraisers. In our view OccLic, in conjunction with the board, has proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

There were no complaints filed with the Office of the Ombudsman or the Office of Victims' Rights for the period under review.

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

From FY 00 through FY 02 the board approved and certified 32 new appraisers and issued 35 courtesy licenses. We found no instances where the board issued a certificate or license to an unqualified candidate, nor did we find any instances where a qualified candidate was denied certification or licensure. The table below summarizes licensing activity for the prior three fiscal years, listing the number of new certificates or licenses issued each year for each certificate or license type, as well as the number of current certificates.

New Certificates Issued	FY 00	FY 01	FY 02	Total	Current Certificates as of June 30, 2002
General Appraisers	0	4	0	4	70
Residential Appraisers	6	4	7	17	81
Institutional Appraisers	0	0	0	0	0
Total	6	8	7	21	151
Registered Appraiser Trainees	6	1	4	11	9
Courtesy Licenses Issued	13	12	10	35	--

*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.*

We found no evidence of the board not complying with state personnel practices, including affirmative action, in the qualifying process of applicants. Each time the board has denied an applicant's certification, reasoning has been based on requirements set out by statute and regulation, not on the personal attributes of applicants. The reasons for denials are stated in writing, with the applicant always informed of their rights and the process in which they can contest or appeal any denial of licensure.

*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.*

As noted, much of the impetus and oversight of BCREA stems from actions taken by oversight organizations and entities affiliated with the federal government. In recent years, BCREA's licensing fees have not been set at a sufficiently high-enough level to cover the board's costs. However, as noted earlier in this section, the board has adopted a 45% increase in appraiser certification renewal fees and appears to have decreased board expenses.

During our review of the board's composition, we noted AS 08.87.010 requires two of the board members to be "licensed" real estate appraisers in the State of Alaska.

In the statutes, real estate appraisers are referred to as being certified, but state law does not use the term licensed. We encourage the department, when proposing sunset extension legislation, to consider amending AS 08.87.010 and make the nomenclature consistent within the statute.

APPENDIX A

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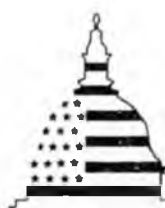
GAO

Report to Congressional Requesters

May 2003

REGULATORY  
PROGRAMS

Opportunities to  
Enhance Oversight of  
the Real Estate  
Appraisal Industry



G A O

Accountability • Integrity • Reliability

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Highlights of GAO-03-404, a report to Congressional Requesters

## REGULATORY PROGRAMS

# Opportunities to Enhance Oversight of the Real Estate Appraisal Industry

### Why GAO Did This Study

Since the passage of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the appraisal and mortgage lending industry has changed dramatically. Some have concluded that the law is obsolete because the problems Title XI was intended to address—the risk to federal deposit insurance funds and the lack of uniform standards and qualifications—no longer exist. Others argue that the law’s purpose and scope should be expanded. To help Congress better understand these issues, GAO looked at the roles of the private, state, and federal entities that oversee the appraisal industry, the challenges Title XI presented to these entities, and industry participants’ concerns about the effectiveness of the Title XI regulatory structure.

### What GAO Recommends

Among other things, the Chairman of the Appraisal Subcommittee should:

- develop and apply consistent criteria for determining and reporting states’ compliance levels with Title XI;
- explore potential options for assisting states in carrying out their Title XI activities, particularly for investigating appraiser complaints; and
- explore alternatives for providing future Title XI grant funding to the Appraisal Foundation and its two boards.

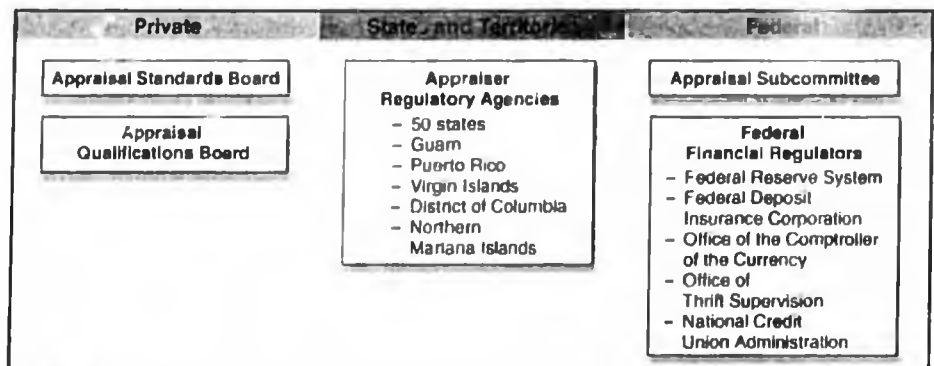
### What GAO Found

Title XI created a complex oversight structure for real estate appraisals and appraisers that involves private, state, and federal entities. Two private entities establish uniform rules for real estate appraisals and set minimum criteria for certifying appraisers. State regulatory agencies certify appraisers based on these criteria. The federal financial regulators oversee financial institutions’ use of appraisals, and a federal agency, the Appraisal Subcommittee, monitors and coordinates the functions of the parties involved in regulating appraisals and appraisers.

All of these entities except the federal financial regulators identified potential impediments to carrying out their Title XI responsibilities. The two private entities stated that fund limitations could impede their ability to ensure that development of standards and qualifications evolve with changing conditions. State agencies said that funding shortfalls hindered their ability to enforce compliance. Appraisal Subcommittee staff reported that rule-making authority and additional enforcement sanctions could facilitate its oversight of state compliance with Title XI.

Industry participants raised concerns about aspects of the Title XI regulatory system for appraisers. They cited differences in state regulation that affect both lenders and appraisers, gaps in Title XI’s coverage—for example, transactions of less than \$250,000 do not require an appraisal—high fees and burdensome processes for having appraiser education courses approved, and weak enforcement and complaints processing. Some industry participants felt that states, traditionally involved in regulating professions, alone should regulate the appraisal industry. Others felt that the current structure needed a significant overhaul to become effective.

Title XI Regulatory Oversight Structure and Entities



Source: GAO.

[www.gao.gov/cgi-bin/getrpt?GAO-03-404](http://www.gao.gov/cgi-bin/getrpt?GAO-03-404).

To view the full report, including the scope and methodology, click on the link above. For more information, contact David G. Wood (202) 512-8678 or woodd@gao.gov.



United States General Accounting Office  
Washington, D.C. 20548

May 14, 2003

The Honorable Paul S. Sarbanes  
Ranking Minority Member  
Senate Committee on Banking,  
Housing, and Urban Affairs  
United States Senate

The Honorable Zell Miller  
United States Senate

Recent predatory mortgage lending cases, involving fraudulent and inflated appraisals, have highlighted the need for accurate real estate appraisals in preventing losses to the federal government and significant financial harm to individual consumers. When making mortgage loans, lenders need an objective and accurate assessment of the value of properties used as collateral to help avoid losses in the event that borrowers do not repay the loans. Congress enacted Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in response to concerns that faulty and fraudulent appraisals played a major role in the savings and loans crisis of the 1980s. Title XI provisions address both the quality of *appraisals* and the qualifications of *appraisers*. Specifically, Title XI requires that real estate appraisals used in connection with federally related transactions be performed (1) in writing, in accordance with uniform professional standards, and (2) by individuals whose competency has been demonstrated and whose professional conduct is subject to effective supervision.<sup>1</sup>

To ensure that the purpose of the legislation was carried out, Title XI created a regulatory structure to monitor and oversee the real estate appraisal industry. Among other things, it established a federal entity called the Appraisal Subcommittee to monitor the Title's implementation. Title XI provides for national uniformity in appraisal standards and minimal national qualification requirements for some, but not all, appraisers. The Title XI regulatory structure was set up primarily to protect federally

<sup>1</sup>As defined in Title XI, federally related transactions are real estate transactions involving financial institutions regulated by the federal government. These include banks, thrifts, and credit unions. Real estate transactions of mortgage bankers, brokers, pension funds, and insurance companies are not included.

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insured depository institutions from losses and by extension the federal deposit insurance funds.

Because of your concerns about the effectiveness of the current regulatory structure, you requested that we assess the appraisal oversight structure established in response to Title XI. As agreed with your offices, this report describes (1) the specific responsibilities under Title XI of the private, state, and federal entities that oversee the appraisal industry and the way these entities perform their roles; (2) factors that these entities identified as potential impediments to carrying out their Title XI responsibilities; and (3) concerns expressed by regulatory entities and industry participants about the effectiveness of the existing regulatory structure.

To answer these questions, we reviewed FIRREA and its legislative history; interviewed representatives of the private, state, and federal entities involved in the Title XI regulatory scheme; and, using a mailed questionnaire, surveyed appraiser regulatory agencies in the 50 states, the District of Columbia, and 4 U.S. territories.<sup>2</sup> A copy of the questionnaire, including summary responses to each question, can be found in appendix I. Additionally, we contacted industry participants, including trade groups that represent appraisers and lenders, Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSE) that establish standards for appraisals used in connection with mortgages that they purchase; the Department of Housing and Urban Development (HUD), which establishes requirements for appraisals used in connection with mortgages it insures; representatives of appraiser education providers; and academic experts on issues related to real estate appraisals. We also obtained and reviewed records of the Appraisal Subcommittee's state oversight activities, as well as information on appraisers maintained in the subcommittee's national registry database. We conducted our work between March 2002 and March 2003 in accordance with generally accepted government auditing standards. Appendix II provides a detailed discussion of our scope and methodology, and appendix III contains a list of the entities that we contacted.

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<sup>2</sup>The territories included in our survey are Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The only other U.S. territory—American Samoa—does not have a regulatory oversight structure for appraisers because real estate there can only be inherited. In this report, the term “states and territories” refers to the 50 states, the District of Columbia, and the 4 territories.

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## Results in Brief

Title XI created a complex regulatory system that relies upon the actions of private, state, and federal entities to help assure the quality of appraisals and the qualifications of appraisers used in federally related transactions.

- The two private entities—the Appraisal Standards Board and Appraiser Qualifications Board—respectively establish (1) uniform rules for preparing and reporting real estate appraisals and (2) minimum qualification criteria for certified real estate appraisers. Certified real estate appraisers are one of the two categories of appraisers listed in Title XI, the other being licensed real estate appraisers.
- Title XI defers to the states with respect to the minimum qualification criteria for the licensed appraisers. In addition, Title XI relies on the states to (1) implement the certification and licensing of all real estate appraisers and (2) monitor and supervise compliance with appraisal standards and requirements. To assure the availability of certified and licensed appraisers, all of the states and territories have adopted structures to regulate and supervise the appraisal industry. These structures typically consist of a state regulatory agency coupled with a board or commission to establish education and experience requirements, license and certify appraisers, and monitor and enforce appraiser compliance.
- The federal financial institution regulators—defined in Title XI as the Federal Reserve System (FRS), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), and National Credit Union Administration (NCUA)—are responsible for ensuring that federally insured depository institutions comply with Title XI requirements. To meet these responsibilities, the regulators have (1) adopted rules and policies specifying transactions for which regulated financial institutions are required to obtain an appraisal by a certified or licensed appraiser, (2) developed examination procedures to ensure that regulated financial institutions are in compliance with Title XI, and (3) appointed agency representatives to the Appraisal Subcommittee.
- The Appraisal Subcommittee is responsible for monitoring the implementation of Title XI by all parties—private, state, and federal. The subcommittee monitors the efforts of the federal financial institution regulators in developing and adopting appraisal-related regulations and policies, conducts periodic reviews of each state's licensing and

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certification program, and provides grants to the Appraisal Foundation to support the Title XI-related activities of its two boards—Appraisal Standards Board and Appraiser Qualifications Board.

The private, state, and federal entities involved in the Title XI regulatory structure described a number of factors that they believe could constrain their ability to perform more effectively and efficiently. For example, officials of the Appraisal Standards Board and the Appraiser Qualifications Board told us that insufficient federal grant funding may impede their ability in the future to ensure that standards and qualifications evolve with changing conditions, such as how to appraise contaminated or polluted properties. State appraiser agencies—which are funded at the state level—reported resource limitations as the primary impediment in carrying out their oversight responsibilities. For example, of the 54 states and territories that responded to our survey, 26 reported that the current number of investigators was insufficient for meeting its regulatory responsibilities, 37 cited a need for increasing the staff directed at investigations, and 22 cited a need for more resources to support litigation. Officials of the five federal financial institution regulators reported no major impediments to accomplishing their Title XI responsibilities. The Appraisal Subcommittee reported that rule-making authority and additional enforcement sanctions could facilitate its oversight of state compliance with Title XI. Subcommittee officials stated that the only enforcement action they can take under Title XI is to decertify a state, which would prohibit all licensed or certified appraisers from that state from performing appraisals in conjunction with federally related transactions. Subcommittee officials stated that using this sanction would have a devastating effect on the real estate markets and financial institutions within the state. However, the Appraisal Subcommittee stated that it has always been able to achieve states' compliance under the current enforcement and regulatory structure.

In addition to the impediments described above, officials of the regulatory agencies, appraiser trade groups, education providers, mortgage industry, HUD, and the GSEs raised concerns about the Title XI regulatory structure. However, there was no clear consensus regarding the need for or impact of possible changes. Some industry participants stated that a growing number of real estate transactions, such as those placed through mortgage brokers and those involving dollar amounts below the threshold level established by the federal financial institution regulators, are not universally subject to Title XI appraisal requirements. In addition, some industry participants cited concerns with the lack of a national qualification standard for the licensed real estate appraiser category. Education providers and appraiser

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trade groups expressed concerns about the Appraiser Qualifications Board's fees and requirements for instructor certification and course approval. Federal and state regulatory officials expressed concern about the apparent reluctance of lending institutions to make referrals or complaints regarding questionable appraisals they identify. HUD and GSE officials expressed concerns about a lack of consistent and effective enforcement actions by the states on referred cases and the adequacy of the Appraisal Subcommittee's oversight of state programs. This report makes recommendations to the Appraisal Subcommittee intended to enhance the effectiveness of the existing regulatory structure.

We received written comments on a draft of this report from the Appraisal Subcommittee, the Appraisal Foundation, HUD, Fannie Mae, and Freddie Mac. In addition, we received technical comments from the federal financial institutions regulators, who indicated that their overall comments had been incorporated into those provided by the Appraisal Subcommittee. The Appraisal Subcommittee agreed to take action on our recommendation to develop and apply consistent criteria for determining and reporting states' compliance with Title XI, and did not comment on our recommendation for greater coordination with HUD, Fannie Mae, and Freddie Mac on referrals of problem appraisers. Concerning the remaining two recommendations, the Appraisal Subcommittee

- agreed that additional funding for the states would improve compliance with Title XI, but stated that the Subcommittee is not the answer to that issue. Because the recommendation is to explore additional funding as well as other options for assisting the states, we did not revise it.
- agreed that the Appraisal Foundation faces future grant funding constraints, but stated that using the Subcommittee's surplus is not a long-term solution. We modified the report to emphasize that we are recommending that the subcommittee explore options, including drawing on the subcommittee's surplus, if necessary, for addressing future Appraisal Foundation grant shortfalls.

HUD agreed with our recommendation for greater coordination on referrals of problem appraisers to state appraiser agencies. Both Fannie Mae and Freddie Mac expressed concern about this recommendation, commenting that they are not regulatory entities. We revised the wording of our recommendation to emphasize the role that HUD, Fannie Mae, and Freddie Mac can play in helping the subcommittee carry out its oversight responsibilities.

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## Background

An appraisal is a decision-making tool used to facilitate a real estate transaction. The primary role of appraisals in the loan underwriting process is to provide evidence that the collateral value of the property is sufficient to avoid losses on loans if the borrower was unable to repay the loan. Consumers often mistakenly assume that appraisals are intended to validate the purchase price of the property in question. Furthermore, appraisals are sometimes confused with home inspections, which are intended to warn consumers about serious defects in the home being purchased that should be repaired. In a loan transaction, the lender rather than the borrower engages the appraiser and this usually occurs after the borrower has agreed to purchase the property. The primary intent of the appraisal reforms contained in Title XI was to protect the federal deposit insurance funds—and, by extension, mortgage lenders—from avoidable losses.

An appraisal is an opinion of the value of a property as of a specific date. Appraisers generally consider the property's value from three points of view—cost, income, and comparable sales—and determine an estimated value based upon weighing the three valuation methods. The cost approach is based on an estimate of the value of the land plus what it would cost to replace or reproduce the improvements minus the physical deterioration, functional obsolescence, and economic obsolescence. The income approach is of primary importance in ascertaining the value of income producing properties and is an objective estimate of what a prudent investor would pay based upon the net income the property produces. The comparable sales approach compares and contrasts the property under appraisal with recent offerings and sales of similar property. This approach is usually considered the most appropriate valuation approach for estimating the value of residential real estate property.

In 1986, the House Committee on Government Operations issued a report concluding that faulty and fraudulent appraisals were an important contributor to the losses that the federal government suffered during the savings and loan crisis.<sup>3</sup> In response, Congress incorporated provisions in Title XI of FIRREA that were intended to ensure that federally related transactions had appraisals that were (1) performed by real estate

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<sup>3</sup>*Impact of Appraisal Problems on Real Estate Lending, Mortgage Insurance, and Investment in the Secondary Market*, H.Rep. 99-891 at 4-6 (Sept. 25, 1986), House Committee on Government Operations, 99th Congress, 2<sup>nd</sup> session.

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appraisers that had met minimum qualifications criteria and (2) conducted in compliance with uniform standards.

In addition to those identified in Title XI, there are other federal and government sponsored entities that have roles with respect to oversight of the real estate appraisal industry. Among these entities, the most important with respect to appraisal oversight issues are the HUD's Federal Housing Administration (HUD/FHA) and the two large GSEs that purchase residential loans in the secondary market—Fannie Mae and Freddie Mac. HUD/FHA uses appraisals to determine a property's eligibility for mortgage insurance and to estimate the value of a property for mortgage insurance purposes. Certified and licensed appraisers wishing to perform appraisals for HUD/FHA loans must first be placed on the FHA Roster of Appraisers, which requires the appraiser to pass a HUD/FHA examination on appraisal methods and meet other eligibility requirements. Both Fannie Mae and Freddie Mac consider appraisals or evaluations of the property value as a vital part of their risk analysis for loans that they purchase. For those loans for which Fannie Mae and Freddie Mac require an appraisal, the lender is required to use an appraiser that is state licensed or certified in accordance with the provisions of Title XI.<sup>4</sup> Fannie Mae and Freddie Mac largely hold the lender responsible for the selection and quality control of the appraiser. As such, Fannie Mae and Freddie Mac do not maintain a list of approved appraisers.

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## Title XI Created a Complex Appraiser Regulatory Oversight Structure

Various private, state, and federal entities play a role with respect to the Title XI regulatory structure (table 1). Private entities—the Appraisal Standards Board (ASB) and the Appraiser Qualifications Board (AQB)—establish minimum standards over the development and reporting of real estate appraisals and minimum qualification criteria for certified appraisers. States conduct the certification and licensing of appraisers, including setting education and experience requirements that, at minimum, must meet AQB criteria for certified appraisers and enforcing compliance with appraisal standards. FRS, FDIC, OCC, OTS, and NCUA—hereinafter referred to as the federal financial institution regulators—issue appraisal requirements for the financial institutions under their jurisdiction and

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<sup>4</sup>Both Fannie Mae and Freddie Mac allow lenders the options to use an inspection or evaluation instead of a traditional appraisal, on loans that they determine to be low-risk based on their automated loan underwriting systems. In the case of Freddie Mac, certain low risk loans may be eligible for delivery to Freddie Mac with no appraisal or inspection.

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monitor compliance with their regulations. Lastly, the Appraisal Subcommittee has primary responsibility for monitoring and reviewing the actions of the private, state, and federal entities as they relate to Title XI.

**Table 1: Title XI Roles and Responsibilities for Appraisal Standards and Appraiser Qualifications**

	Private	State	Financial institution regulatory agencies	Federal
Appraisal Standards Board (ASB)	Appraiser Qualifications Board (AQB)	Appraiser regulatory agencies		Appraisal Subcommittee
<b>Appraisal standards</b>				
Standard setting				
Develop standards for the performance of real estate appraisals.			Promulgate regulations that establish appraisal standards, which meet or exceed ASB's standards, for federally insured depository institutions.	
<b>Implementation/Monitoring</b>				
		Enforce compliance with appraisal standards and requirements.	Monitor and enforce compliance by federally insured depository institutions with appraisal regulations.	<p>Monitor and review the Appraisal Foundation's practices, procedures, activities, and organizational structure.</p> <p>Monitor policies, practices, and procedures of states to determine consistency with Title XI requirements.</p> <p>Monitor appraisal requirements established by federal financial institution regulatory agencies.</p> <p>Make grants to the Appraisal Foundation to defray the costs of the Appraisal Standards Board's Title XI activities.</p>

(Continued From Previous Page)

	Private	State	Federal
<b>Appraisal Standards Board (ASB)</b>	<b>Appraiser Qualifications Board (AQB)</b>	<b>Appraiser regulatory agencies</b>	<b>Financial institution regulatory agencies</b> <b>Appraisal Subcommittee</b>
<b>Appraiser qualifications</b>			
Standard setting	Develop minimum qualification criteria for certified real estate appraisers.	Set qualifications criteria for certification, which meet or exceed AQB's criteria, and licensing of appraisers.	Establish additional qualification criteria as may be necessary or appropriate to carry out their statutory responsibilities.
<b>Implementation/Monitoring</b>			
		Transmit to the Appraisal Subcommittee a roster of appraisers who have been licensed or certified.  Collect from appraisers and transmit to the Appraisal Subcommittee a \$25 annual registry fee.  Enforce compliance with standards, requirements, and procedures prescribed by Title XI.	Prescribe categories of federally related transactions that should be appraised by a state certified appraiser and those that can be performed by either a state certified or licensed appraiser.  Monitor and enforce compliance by federally insured depository institutions with appraisal regulations.  Monitor qualification criteria set by states for the certification and licensing of individuals qualified to perform appraisals in connection with federally related transactions.  Maintain a national registry of state certified and licensed appraisers eligible to perform appraisals in federally related transactions.  Monitor and review the Appraisal Foundation's practices, procedures, activities, and organizational structure.  Make grants to the Appraisal Foundation to defray the costs of the Appraiser Qualifications Board's Title XI activities.

Source: GAO.

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**Office of the Commissioner**

P.O. Box 110800, Juneau, AK 99811-0800

Telephone: (907) 465-2500 • Fax: (907) 465-5442 • Text Telephone: (907) 465-5437

Email: questions@dced.state.ak.us • Website: www.dced.state.ak.us/

October 3, 2003

RECEIVED

OCT 03 2003

LEGISLATIVE AUDIT

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

RE: PRELIMINARY AUDIT - BOARD OF CERTIFIED REAL ESTATE APPRAISERS

Dear Ms. Davidson,

Thank you for the opportunity to comment on your preliminary audit report on the Board of Certified Real Estate Appraisers.

The department concurs with the findings in your report. As you requested, I have also provided a summary of the Board's FY 03 revenues and expenditures.

Your report clearly identifies the background which led to creation of the licensing program for Real Estate Appraisers in Alaska, including oversight and standards mandated by the Appraisal Foundation, and the Appraisal Subcommittee. Title XI allow States to establish their own agencies to certify and license appraisers; and therefore, the Alaska State Legislature created the Board of Certified Real Estate Appraisers in 1990.

Generally, your findings indicate the licensing of Real Estate Appraisers are in compliance with federal mandates. Page 15 of the report states that license denials have been based on requirements set out by statute and regulation. Since creation of the Board and its current statutes and regulations, the licensing function has become perfunctory. The considerable amount of staff time required to prepare for board meetings and to provide administrative support to the Board actually slows down the licensing process. In the interest of providing better service to the public and potential licensees, I request consideration be given to elimination of the Board of Certified Real Estate Appraisers but, to continue licensing by the Division of Occupational Licensing.

Again, I appreciate the opportunity to comment on your findings.

Cordially,

A handwritten signature in black ink that reads "Edgar Blatchford". The signature is written in a cursive, slightly slanted style.

Edgar Blatchford  
Commissioner

Enclosure

**State of Alaska**  
**Board of Certified Real Estate Appraisers**  
**Schedule of License Revenues and Board Expenditures**  
**FY 03**

Revenue	\$119,240
Direct Expenses	
Personal Services	20,011
Travel	1,005
Contractual	7,078
Supplies	195
Equipment	--
Total Expenses	<u>28,289</u>
Indirect Expense	<u>8,597</u>
Total Expenses	<u>36,886</u>
Annual Surplus (Deficit)	<u>82,354</u>
Beginning Cumulative Surplus (Deficit)	(32,314)
Unallocated Administrative Indirect Revenue	--
Ending Cumulative Surplus (Deficit)	<u>\$ 50,040</u>

Mr. Stephen F. Turner, Vice Chair  
Board of Certified Real Estate Appraisers  
P. O. Box 240088  
Anchorage, Alaska 99524-0088

September 9, 2003

Pat Davidson, CPA, Legislative Auditor  
Alaska State Legislature  
Legislative Budget and Audit Committed  
Division of Legislative Audit  
P. O. Box 113300  
Juneau, Alaska 99811-3300

Dear Ms. Davidson;

I have carefully reviewed the "CONFIDENTIAL" preliminary audit report on:

*Department of Community and Economic Development, Board of Certified  
Real Estate Appraisers, Sunset Review.*

I found the report to be thorough, both in its review of the historical context of the board, and in its assessment of the board's ongoing actions. The audit reaffirmed that we have appropriately handled our responsibilities and that we play an essential role in appraiser oversight.

I concur with the single recommendation that the wording of AS 08.87.010 be amended. As the audit points out, the law presently requires two of the board members to be "licensed" real estate appraisers in the State of Alaska. Since Alaska appraisers are certified, not licensed, the correct terminology should be "certified" real estate appraisers. I plan to bring this issue before the board at our next meeting with the intent that a motion be passed recommending this change.

Thank you for this opportunity to review and respond to the audit report. My responses, of course, are mine alone, and do not represent the entire board. Be assured that I understand that the report is confidential at this time, and is not for public release pending final review and approval by the Legislative Budget and Audit Committee.

Sincerely;



Stephen F. Turner, Vice Chair  
Board of Certified Real Estate Appraisers

RECEIVED  
SEP 09 2003  
LEGISLATIVE AUDIT

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# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 47  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Extend board of RDU: Occupational Licensing (117)  
Real Estate Appraisers Component: Occupational Licensing  
 Sponsor: SAMUELS, Lynn  
 Requester: House Labor and Commerce Component No.: 2360

**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	0.0	26.1	26.1	26.1	26.1	26.1
Travel	0.0	1.4	1.4	1.4	1.4	1.4
Contractual	0.0	5.3	5.3	5.3	5.3	5.3
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( 1156 )</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>
------------------------------------	------------	-------------	-------------	-------------	-------------	-------------

**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	32.8	32.8	32.8	32.8	32.8
<b>TOTAL</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>

Estimate of any current year (FY2006) cost: 32.8

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill extends the Board of Certified Real Estate Appraisers to June 30, 2010. In accordance with AS 08.03.020, funding should be 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. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager Phone: (907) 465-2144  
 Division: Occupational Licensing Date/Time: 1/20/05 5:48 PM  
 Approved by: Edgar Blatchford, Commissioner Date: 1/20/2005  
 Agency: Commerce, Community and Economic Development

## **Sponsor Statement for House Bill 47**

**TITLE:** An Act extending the termination date of the Board of Certified Real Estate Appraisers.

**Sec. 98.87.010** Established the Board of Certified Real Estate Appraisers and provided for the appointment of members by the governor. The board consists of one licensed general real estate appraiser, one licensed residential real estate appraiser, one mortgage banking executive, and one member who represents the public at large. If enacted, HB 47 would extend the board's operation for another 5 years to June 30, 2010.

The board is charged with establishing exam standards for the certification of real estate appraisers, adopting rules of professional conduct that establish standards and integrity in the real estate appraisal profession, and the adoption of regulations to satisfy state and federal regulations.

In the opinion of Legislative Audit, the Board of Certified Real Estate Appraisers should be extended. The regulation and certification of real estate appraisal professionals provides necessary public protection in the buying and selling of residential and commercial properties. I recommend that the board be extended to June 30, 2010, and urge you to vote for its passage.



# REPRESENTATIVE RALPH SAMUELS

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HOUSE DISTRICT 29

## Memorandum

Date: January 11, 2005

To: Representative Tom Anderson, Chair  
House Labor and Commerce Committee

From: Representative Ralph Samuels

RE: Hearing Request for House Bill 47

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Please schedule House Bill 47 to be heard in the House Labor and Commerce Committee at your earliest convenience. The bill simply extends the termination date of the Board of Certified Real Estate Appraisers.

Attached you will find:

1. HB 47
2. Sponsor statement
3. Sunset review audit

If you have any questions regarding this bill, please contact Lalanya Snyder in my office at (907) 465-2095.

Email: [Representative\\_Ralph\\_Samuels@legis.state.ak.us](mailto:Representative_Ralph_Samuels@legis.state.ak.us)

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242



# REPRESENTATIVE RALPH SAMUELS

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HOUSE DISTRICT 29

## Sponsor Statement for House Bill 47

**TITLE:** An Act extending the termination date of the Board of Certified Real Estate Appraisers.

**Sec. 08.87.010** Established the Board of Certified Real Estate Appraisers and provided for the appointment of members by the governor. The board consists of one licensed general real estate appraiser, one licensed residential real estate appraiser, one mortgage banking executive, and one member who represents the public at large. If enacted, HB 464 would extend the board's operation for another 4 years to June 30, 2010.

The board is charged with establishing exam standards for the certification of real estate appraisers, adopting rules of professional conduct that establish standards and integrity in the real estate appraisal profession, and the adoption of regulations to satisfy state and federal regulations.

In the opinion of Legislative Audit, the Board of Certified Real Estate Appraisers should be extended. The regulation and certification of real estate appraisal professionals provides necessary public protection in the buying and selling of residential and commercial properties. I recommend that the board be extended to June 30, 2010, and urge you to vote for its passage.

**Email:** Representative\_Ralph\_Samuels@legis.state.ak.us

**Session:** Alaska State Capitol, Juneau, Alaska 99801-1182 • **Phone:** (907) 465-2095 **Fax:** (907) 465-3810  
**Interim:** 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • **Phone:** (907) 269-0240 **Fax:** (907) 269-0242

August 18, 2003

Members of the Legislative Budget  
and Audit Committee:

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

DEPARTMENT OF COMMUNITY AND  
ECONOMIC DEVELOPMENT  
BOARD OF CERTIFIED REAL ESTATE APPRAISERS  
SUNSET REVIEW

July 17, 2003

Audit Control Number

08-20024-03

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)(20), the Board of Certified Real Estate Appraisers is scheduled to terminate on June 30, 2004. 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.

In our opinion, the termination date for the Board of Certified Real Estate Appraisers should be extended. The certification of appraisers remains a central requirement attached to various types of real estate loans made by federally insured financial institutions. We recommend the legislature extend the termination date of the Board of Certified Real Estate Appraisers to June 30, 2008.

This sunset review was conducted in accordance with generally accepted government auditing 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

**HB**

**51**

# ALASKA STATE HOUSE OF REPRESENTATIVES

710 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

To: Legislative Legal Fax: 2029  
From: Josh Applebee Date: 3/18/2006  
Re: Amendments to SSHB 51  
CC:

Urgent  For Review  Please Comment  Please Reply  Please Recycle

Good Afternoon,

The House Labor & Commerce Committee adopted the committee substitute for SSHB 51 24-LS0233IS. Additionally, the Committee adopted the attached two amendments. Please incorporate these amendments and provide a final copy to Room 408. Thanks.

Please let me know if you have any questions or if there is anything else you need.

-Josh

465-4954

CSHB 51

passed 4/1

Amendment # 1: *Rokeberg*

To page 1 line 14 insert "tangible" following "a" before "net worth."

CSHBS1  
PASSED v/c

Amendment #2 *Froberg*

To Page 5 line 5 replace "shall" with "may" to make consistent with page 1 line 1

Linda Hall

CS for HB 51

House Labor and Commerce

March 17, 2006

I. INTRODUCTION

Appreciate the time to comment on this CS. I would like to acknowledge the efforts of the group to include more specific financial requirements for self-insured associations. I will limit my comments today to some general concepts and attempt not to delve into the minutia of a 20 page bill. I may address some specific areas and will be happy to answer questions that may arise.

II. FINANCIAL OVERSIGHT

- I. One of the basic principles of insurance regulation is financial oversight to ensure that claims get paid. The CS before us today does include far more detailed requirements but I still have concerns about the bottom line repercussions of insolvency:
  - a. "tangible net worth" – there is no definition but does not require any liquidity. Insurance regulation limits the types of assets and the valuation of the assets in determining an insurer's financial position. The quality of the assets is a critical principal of solvency.
  - b. The \$5 million net worth aggregate is still excessively low – the DOL projection of the adjusted for inflation for this limit required of the individual self-insured single employer today would be approximately \$10 million. Testimony has been provided as to the average and median net worth of current self-insured employers which is substantially higher than these minimal requirements.

- c. Solvency Bond – This is a requirement of this CS but I am, in reality, not sure this is even practical. I have discussed the availability of this type of bond with a bond underwriter who is currently active in the Alaska bond market. He has indicated that this would be very difficult to obtain given the reliance on a group of “members” who have not been required to provide audited financial statements and feels it would be difficult. For the “association” to be the principal on a bond requires a corporate signer who agrees to indemnify the bond company and generally there is not a person in the association itself able or willing to take this responsibility.
2. Concept – One area of confusion for me is the actual working of the financial responsibility. Most of the bill provides that the Association is the responsible party for payment of benefits due employees under AS 23. However, the indemnity agreement in 77.010 (a) (6) is between the members. Generally trade associations do not have the assets that would enable them to provide the payments of workers’ compensation benefits and yet this CS places the primary responsibility on the association.
3. Termination of Membership - This section details the conditions under which a member could terminate or be terminated. The conditions deal with going forward mechanisms for providing benefits but do not address what happens to the liabilities (either the employer’s own or the joint liabilities) for the time they were part of the association.
4. 21.77.230 is a section dealing with insufficient assets and the circumstances in which an association is considered insolvent – The issue here seems to be that there is no solution – there is no provision for receivership, for wrap-up of the affairs, etc. The director can withdraw a certificate but THEN WHAT???

5. 21.77.270 deals with the retention of the security deposit in event of termination – 36 months is not sufficient time. Workers' compensation claims have very long tails and in some instances can take 20 years or more to close. It would be more appropriate to condition release of a deposit upon termination of liabilities as determined by actuarial analysis.

## II. REGULATORY OVERSIGHT

An additional function of the Division of Insurance is to have oversight of the practices of any person or entity transacting insurance in Alaska.

1. Chapter 36 of the Insurance Title provides the statutes controlling Trade Practices and Frauds. This includes such things as oversight of marketing insurance including misrepresentation and false advertising, unfair discrimination, unfair claims settlement practices. 21.77.220 would not allow these authorities to apply to the self-insured associations.
2. The CS also provides for a "third party administrator" to administer claims. Today the DOI licenses adjusters who handle workers' compensation claims. Title 23 provides that an individual self-insured employer may have either their own staff or independent licensed 3<sup>rd</sup> parties adjust claims. This bill does not require licensing of the 3<sup>rd</sup> party administrator as an adjuster and therefore would not provide any oversight of the claims handling practices.

This CS does not include any oversight of practices for these small associations. There is no complaint process and no authority to require accountability for the handling of claims. What do injured workers do if claims are not paid promptly?

### III. NEVADA

Most of this CS appears to be based on Nevada statute/regulation. As I have made preliminary comparisons with those provisions, it appears that some significant provisions have not been included, such as:

1. The indemnity agreement also includes the Association
2. Annual assessments must be at least \$300,000 or an amount which the director would determine to be satisfactory based on an annual review of actuarial solvency
3. Each member of the association must have a tangible net worth of at least \$250,000 and a minimum premium for workers comp insurance of at least \$10,000
4. The director would approve annual assessments much as we approve rate filings in the insured industry today
5. Provisions are made to assess other self-insured associations for the claims obligations of an insolvent association.

While I still think Alaska is a very different environment, economy and market from Nevada, I would think these types of provisions would have also been included.

### IV. RECIPROCAL

Not to repeat my past testimony but Alaska statute (AS 21.75) provides for the formation of reciprocal insurers, which allow the formation of a regulated entity to provide various lines of insurance for the members of the reciprocals. The reciprocal statutes provide for a lesser level of capital and surplus – the overall start up would require \$1.5 million with maintenance of \$1,375,000. These amounts are not overly stringent. If ability to pay claims of injured workers is our goal, we need to guarantee that there are liquid monies available to achieve this goal. The reciprocal insurers are regulated in much the same way as a traditional insurer which is intended to protect the public.

The reasons that I have been given for the desirability of a self-insured association program have included safety programs, control of the programs for the industry group, a potential for cost savings and others. Each of these objectives can be accomplished with the formation of a reciprocal.

I still have not heard any reason that the reciprocal as already provided in Alaska statute would not be a viable entity for trade associations to form their own programs.

## V. CONCLUSION

It is still not my intent to come before you today to be negative. I am pleased to see the efforts to include more accountability in this CS. But I continue to have serious reservations about the viability of these small plans when the down side potential of there not being sufficient monies to pay the claims of injured workers exists and there is still not what I consider to be an appropriate level of oversight.

I would urge you to carefully consider the possible effects of this legislation. This legislation has been crafted with great care, time and expense by an Alaska trade group who is attempting to find a viable alternative and remain responsible. The bill, however, would apply to any group who decided to participate and might not have the same principals of accountability but would merely just be looking for a way to skimp on workers' compensation costs.



### Self Insured Groups

Not an insurance entity - Less administrative expense burden

Regulated as a self insured entity by  
director of workers comp division/or Insurance Commissioner

#### Rates

Develops own rates based upon actuarial information of members  
Rates are based upon own experience and not subsidizing poorer performing class codes

Reports financials utilizing GAAP which is how business report and members understand and utilize in their daily business

Are subject to self insured rules for being self insured

Members have joint and several liability

Self insured regulation results in lower operation costs

Requires 5 employers with 100 employees to start

Average administrative overhead expenses 25-30% - More funds set aside to pay claims

#### Solvency

- Must agree to Joint & Several Liability (JSL) agreement - pledging assets of corporation constituting a minimum of \$5 million of Tangible Net Worth (TNW) calculated in accordance with NAIC standards. Over 3X Reciprocal requirements.

Requires excess and aggregate insurance

#### Investments

Must comply with insurance company statutes regarding investments.  
Need not report to NAIC SVU

#### Risk Based Capital (RBC)

Not subject to RBC as a SIG is not an insurance entity. Capital Surplus is by and through JSL where employers pledge the value of their entire company. The solvency of a SIG is determined by its ability to pay expenses and claims as they come due plus the combined TNW of member entities.

### Insurance/Reciprocal Insurance companies

Is and insurance entity - increased administrative expense burden

Regulated as a insured entity by Insurance Commissioner

- Subject to NCCI rating - better performing class codes subsidize other class codes

- Must file "statutory" (SAP) financials a very complex and insurance specific accounting method utilized by National Association of Insurance Commissioners. A method to standardize evaluation across state and product lines.

- Subject to increased capital and surplus requirements for a casualty insurer

Subscribers guarantee contingent liability for 10 times premium

Insurance regulation increases operation costs

Requires at least 10 subscribers

Average administrative overhead expenses 35-45% - Less funds set aside to pay claims.

- Must have \$1.5 million of cash as required by AK statute

Must comply with insurance company statutes regarding investments.  
Has to report to SVU for approval

Is subject to increased regulation since only the assets of the entity are considered for RBC valuation. It provides a method for insurance commissioners in all states to compare the performance criteria for like kind insurance companies. If a company falls below certain thresholds determined by NAIC and state regulatory agencies, then certain actions may be taken.

**Regulatory Audits**

Provides for state regulatory audits to ensure compliance with Regulations established for self insured entities

Provides for state regulatory audits to ensure compliance with Regulations established for insurance entities

**Financial Audits**

Requires indepent CPA audits of group financials presented on GAAP basis with statements as to group calcuaiton of TNW of members

Requires indepent CPA audits of group financials presented on SAP basis with increase administration expense burden.

**Actuarial Analysis**

Requires indepent actuary audits of group reserves

Does not require indepent actuary audits of insurance company reserves, may be done internally

**Guarantee Fund**

Is not covered by any Gurantee fund, does not rely on the public sector for protections, rely Conuibute a % to gurantee fund to protect them (public) In case of insolvency, JSL of members equity.

**Regualtory oversight**

Deceptive Practices subject to regualtory oversight

Requires hiring of licsenced TPA for adminstering claims - subject to identical oversight for payment of claims

Deceptive Practices subject to regulatory oversight

Subject to oversight of administration of claims

**Other States/other lines**

Only authorized to provide coverage in Alaska

Only authorized to provide workers compensation coverage

May register and provide coverage in other states

May provide other lines of coverage other than workers compensation

Fifty Years Serving Alaska



# NECA

ALASKA CHAPTER  
1953-2003

March 17, 2006

Rep. Tom Anderson, Chairman  
House Labor and Commerce Committee  
State Capitol, Room 408  
Juneau, AK 99801-1182

FAX 907 465-2418

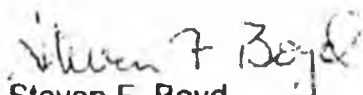
Dear Rep. Anderson,

I am writing on behalf of the members of the Alaska Chapter of the National Electrical Contractors Association ("NECA"). We currently are seeking your support for SSHB 51; "An act relating to modifying the qualifications required for workers' compensation self-insurance and permitting employers in the same trade or industry to form an employer association for self-insured workers' compensation coverage; and providing for an effective date."

State law currently requires a business to have 100 employees and net assets of \$5 Million to be able to self insure for workers comp. Our goal is to allow associations to collectively pool employees and assets to achieve the same requirements. By working together in a self insurance program we have the best probability of controlling safety in the work place; by rewarding those businesses who go the extra mile with lower premiums.

Workers' compensation is a major expense in any business but especially to small business. These costs have risen substantially in the last few years. The percentage paid compared to our gross income is very high. Any relief to this cost while maintaining workers ability to get medical treatment from a job related injury would be greatly appreciated.

Sincerely,  
Alaska Chapter, NECA



Steven F. Boyd  
Chapter Manager

24-LS0233AS  
Bailey  
3/3/06

**CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 51( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - SECOND SESSION**

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES MEYER, Holm, Ramrus, Wilson, Neuman

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to associations of self-insured employers for purposes of providing  
2 workers' compensation coverage and allowing employers who are members of the same  
3 trade to form associations for providing self-insurance for workers' compensation  
4 coverage; and providing for an effective date."

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

6 \* Section 1. AS 21 is amended by adding a new chapter to read:

7 **Chapter 77. Associations of Self-insured Employers for Providing Workers'**  
8 **Compensation Coverage.**

9 **Sec. 21.77.010. Self-insurance certificates.** (a) The director may issue a self-  
10 insurance certificate to an association of employers if the association files an  
11 application for a certificate and demonstrates that

12 (1) the members of the association of employers have at least 100  
13 employees in the aggregate;

14 (2) the members of the association of employers have a net worth of at

1 least \$5,000,000 in the aggregate;

2 (3) the association of employers has paid the annual service fee  
3 assessed under AS 23.05.067;

4 (4) each member of the association of employers has a workplace  
5 safety rate reduction program in effect under AS 21.89.015;

6 (5) the association of employers has obtained excess insurance  
7 coverage in amounts and with coverage required by the director; and

8 (6) the association of employers has filed with the director an  
9 indemnity agreement in a form approved by the director jointly and severally binding  
10 each member of the association of employers to secure the payment of all  
11 compensation due to the members' employees under AS 23.30.

12 (b) An application for a self-insurance certificate must include

13 (1) the name of the association of employers;

14 (2) the address of the principal office of the association of employers  
15 and the location where the books and records of the association will be maintained;

16 (3) the date the association of employers was organized;

17 (4) the name and address of each member of the association of  
18 employers;

19 (5) the names of the initial members of the board of directors of the  
20 association of employers and the name of the association's initial administrator;

21 (6) a copy of agreements entered into with the administrator of the  
22 association of employers and a third-party administrator;

23 (7) a copy of the bylaws of the association of employers;

24 (8) a pro forma financial statement prepared by an independent  
25 certified public accountant in accordance with generally accepted accounting  
26 principles that shows the financial ability of the association of employers to pay all  
27 compensation due to its members' employees and their beneficiaries under AS 23.30;

28 (9) a compiled, reviewed, or audited financial statement prepared by an  
29 independent certified public accountant for each member of the association of  
30 employers or internal financial statements with at least three years of tax returns or  
31 evidence of the ability of the association or its members to provide a solvency bond

1 under AS 21.77.020(c);

2 (10) proof that each member of the association of employers will make  
3 the initial payment to the association required under AS 21.77.160 on a date specified  
4 by the director.

5 (c) Financial information relating to a member of an association of employers  
6 received by the director under this section is confidential and is not a public record.

7 (d) For purposes of this section, "association of employers" means a group of  
8 five or more employers who are

9 (1) merchants, craftsmen, or businesses in a similar trade or industry;  
10 and

11 (2) members of an Alaska trade association for that trade or industry;  
12 the Alaska trade association shall be organized under the laws of this state to promote  
13 the common interests of the trade or industry and shall have been in existence for at  
14 least five years.

15 **Sec. 21.77.020. Excess insurance, reinsurance contracts, surety, and**  
16 **solvency bonds.** (a) Except as otherwise provided in this section, an association of  
17 self-insured employers shall

18 (1) maintain a policy of specific and aggregate excess insurance or a  
19 reinsurance contract in a form and amount required by the director; excess insurance  
20 or a reinsurance contract must be written by an insurer approved by the director;  
21 nothing in this paragraph prohibits an association from purchasing secondary excess  
22 insurance or reinsurance contracts in addition to the excess insurance or reinsurance  
23 contract required under this paragraph;

24 (2) collect an annual assessment from each member of the association  
25 in an amount necessary to maintain the solvency of the association;

26 (3) except as provided in (4) of this subsection, deposit as security with  
27 the director a bond executed by the association as principal and issued by a licensed  
28 surety, payable to the State of Alaska, and conditioned on the payment of  
29 compensation due to the members' employees under AS 23.30;

30 (4) in lieu of a bond, deposit with the director a like amount of lawful  
31 money of the United States or other form of security authorized by the director; if