

11610 HOUSE RULES

**HB**

**35**

AMENDMENT # 1 *withdrawn*

OFFERED IN THE HOUSE  
TO: CSHB 35(FIN)

BY REPRESENTATIVE KOHRING

- 1 Page 1, lines 2 - 3:
- 2 Delete "relating to the membership of the State Board of Registration for
- 3 Architects, Engineers, and Land Surveyors;"
- 4
- 5 Page 1, line 9, through page 2, line 17:
- 6 Delete all material.
- 7
- 8 Renumber the following bill section accordingly.

*clauses moved out with individual recommendations  
HB35, Version A, adopted as Rules Recommendation*

# FISCAL NOTE

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

Fiscal Note Number: 1  
Bill Version: HB 35  
(H) Publish Date: 2/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title: Extend Board RDU: Occupational Licensing (117)  
Architects/Engineers/Surveyors Component: Occupational Licensing  
Sponsor: Kohring  
Requester: House Labor & 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		254.4	254.4	254.4	254.4	
Travel		50.8	50.8	50.8	50.8	
Contractual		168.2	168.2	168.2	168.2	
Supplies		1.0	1.0	1.0	1.0	
Equipment		0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2005) cost: 474.4

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

**POSITIONS**

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

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

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

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

24-LS0273A.1  
Bannister  
2/25/05

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

1 Page 1, line 2, following "Surveyors;":

2 Insert "relating to the membership of the State Board of Registration for  
3 Architects, Engineers, and Land Surveyors;"

4

5 Page 1, following line 6:

6 Insert new bill sections to read:

7 \* Sec. 2. AS 08.48.011(b) is amended to read:

8 (b) The board consists of 11 [10] members appointed by the governor having  
9 the qualifications as set out in AS 08.48.031. The board consists of

10 (1) two civil engineers;

11 (2) [,] two lan ' surveyors;

12 (3) [,] one mining engineer;

13 (4) [,] one electrical or mechanical engineer;

14 (5) [,] one engineer from another branch of the profession of  
15 engineering;

16 (6) [,] two architects;

17 (7) one landscape architect; [,] and

18 (8) one public member.

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

21 APPOINTMENT OF NEW BOARD MEMBER. (a) On or before September 1,  
22 2005, the governor shall appoint a new member to the State Board of Registration for  
23 Architects, Engineers, and Land Surveyors to satisfy the requirement of AS 08.48.011(b) ~~(c)~~.

24-LS0273VA.1

1 as amended by sec. 2 of this Act. The member shall be an individual who is registered under  
2 AS 08.48 to engage in the practice of landscape architecture and who is otherwise qualified  
3 under AS 08.48.031 to be a member of the State Board of Registration for Architects,  
4 Engineers, and Land Surveyors.

5 (b) The term of the member appointed under (a) of this section is four years from the  
6 date of appointment."

7

8 Renumber the following bill section accordingly.

# FISCAL NOTE

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

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

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Extend Board: RDU Occupational Licensing (117)  
Architects/Engineers/Surveyors Component Occupational Licensing  
 Sponsor Kohring  
 Requester House Labor & 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
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Supplies		1.0	1.0	1.0	1.0	
Equipment		0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>474.4</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2005) cost: 474.4

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

**POSITIONS**

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

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

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

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

# ALASKA STATE LEGISLATURE

*Interim:*

600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax (907) 373-4729



*Session:*

State Capitol Building  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax (907) 465-3818

## REPRESENTATIVE VIC KOHRING DISTRICT 14

March 2, 2005

To: Rep Rokeberg  
House Rules Chair

From: Vic Kohring *VK*

Re: Request for HB 35 to be scheduled to be heard on the House floor.

I respectfully request HB 35 "An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors; and providing for an effective date." to be heard on the House floor as soon as possible.

Attached you will find the following:

HB 35 in its original form  
Amendment 1 adopted in House Finance  
Sponsor statement  
Fiscal note  
Letters of Support

If you have any questions, please do not hesitate to contact me, or my aide Charisse Millett.

Thank you for your consideration.

# ALASKA STATE LEGISLATURE

*Interim:*  
600 East Railroad Avenue  
Wasilla, Alaska 99654  
(907) 373-1842  
Fax (907) 373-4729



*Session:*  
State Capitol Building  
Juneau, Alaska 99801-1182  
(907) 465-2186  
Fax (907) 465-2518

## REPRESENTATIVE VIC KOHRING DISTRICT 14

### House Bill 35 Sponsor Statement

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

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

The board consists of 11 members appointed by the governor. It consists of two civil engineers, two land surveyors, one mining engineer, one electrical or mechanical engineer, one engineer from another branch of the profession of engineering, two architects, one landscape architect, and one public member. The purpose of the board is to adopt regulations, oversee examinations, suspend, revoke or refuse the issuance of new licenses, and issue licenses to practice to architects, engineers, and land surveyors who meet standards of education and training determined to be necessary by the board.

The Legislative Audit Division performed an audit of the board dated November 1, 2004 as required by statute, and recommends that it be extended to June 30, 2009. The Division found the board to be operating in the public interest by effectively regulating the individuals who hold themselves out to the public as registered architects, engineers, land surveyors, and landscape architects. Further, the Division found the board has demonstrated an ability to conduct its business in a satisfactory manner, has been effective in developing regulations, and has ensured that licensees are competent and consistently practice within the requirements and ethical standards of the respective professions.



Alaska Professional Design Council • PO Box 100515 • Anchorage AK 99501-0515

21 January, 2005

MEMBER SOCIETIES

Alaska Society of Professional Engineers

Alaska Society of Professional Land Surveyors

American Congress on Surveying & Mapping Alaska Section

American Institute of Architects Alaska Chapter

American Society of Civil Engineers Alaska Section

American Society of Landscape Architects Alaska Chapter

Architecture/Engineering Marketing Association of Alaska

American Council of Engineering Companies of Alaska

Professional Engineers in Private Practice Alaska Chapter

American Society of Interior Designers

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


Dear Representative Kohring:

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

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

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

Sincerely,

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



## DIVISION OF OCCUPATIONAL LICENSING

*Frank H. Murkowski, Governor*

February 25, 2005

Senator Gene Therriault, Chair  
Representative Ralph Samuels, Vice-Chair  
Legislative Budget and Audit Committee  
P.O. Box 113300  
Juneau, AK 99811-3300

The Honorable Senator Therriault and Representative Samuels,

I would like to submit a follow-up letter to the Legislative Budget and Audit #08-20028-05, regarding the sunset audit report of the Alaska Board of Registration for Architects, Engineers, and Land Surveyors (AELS). The AELS Board reviewed the sunset audit at its Quarterly AELS Board meeting on February 17-18, 2005.

The former AELS Board Chair, Donald J. Iverson, previously responded to the preliminary audit on December 16, 2004. The AELS Board reviewed and confirmed support for the letter of response from Iverson. (a copy of the letter is contained within the sunset audit report). The AELS Board discussed the sunset audit report and has the following additional comments and actions taken:

**Priority Audit Recommendation No. 1**

The legislature should consider changes to the statutes mandating that BRAELS require continuing professional education of its licensees.... We continue to recommend the board either develop appropriate mandatory CE requirements for its professional registrants or the legislature considers making such requirements mandatory by statute.

The AELS Board adopted a draft proposal for mandatory continuing education for land surveyors only. Draft proposed regulations will be public noticed to interested parties and should be available, along with public comment, for the AELS Board to consider adopting at the June 2-3, 2005 Quarterly AELS Board meeting.

At this time, the AELS Board decided to postpone any decision for a mandatory continuing education program for the remaining professions it oversees (architects, engineers, and landscape architects). The AELS Chair assigned a Subgroup, chaired by Boyd Brownfield, P.E. to review the benefits of CE and make recommendations for the AELS Board, and to report back at its June 2005 meeting. The Subgroup has asked for feedback from professional societies to determine support for a regulatory program.

Several organizations have asked the AELS Board to allow them more time to assess support within their membership for mandatory CE program as a requirement for renewal of professional licenses. Among them are the Alaska Section of the Institute of Transportation Engineers (ITE), Mr. Anthony Strupulis, PE, Alaska Section President; and the Institute of Electrical and Electronics Engineers, Inc. (IEEE), Bogdan Hoanca, Vice Chair.

**Audit Recommendation No. 2**

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

At this time, the AELS Board has not taken action to arrange for a comprehensive study with the UA and professional societies. The AELS Board has been reviewing for several years the possibility of the addition of additional engineering disciplines (specialties) including Environmental, Control Systems, Fire Protection, and Geological Engineering. Contact has recently been made to the University of Alaska, Fairbanks to obtain input from the University of Alaska.

The Subgroup chaired by Robert Gilfilian, P.E. will continue to work with professional societies, including the Alaska Professional Design Council, to determine the public benefits of recognizing additional engineering specialties in Alaska.

**Audit Recommendation No. 3**

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

The AELS Board discussed this recommendation at its February 17-18, 2005 meeting. The majority of the AELS Board voted to support the recommendation to make the landscape architect representative a permanent, voting member.

**Other Issues****Mining Engineer Board member**

The AELS Board recommends the "mining engineer" Board member position be expanded to include "geological" and "petroleum" engineer. The current number of licensed mining engineers is very small (33) and it would benefit the Board to include petroleum engineers. At this time the Board is considering expanding disciplines to include "geological" engineering and would like the flexibility in statute to allow the related engineering field to be represented.

**Staggered Terms**

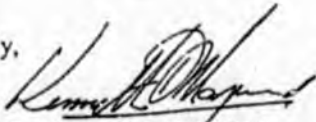
The AELS Board remains concerned that its member terms are no longer staggered. This changed when two Board members' terms expired in July 2003, and they were not replaced until 2004 (after the legislative session had reconvened).

Those two AELS Board member term dates were not updated to comport with the 1997 statutory changes for board member terms. Currently, 3 board member terms will expire March 2005, 2 terms will expire March 2006, zero terms expire March 2007, and 5 board member terms are scheduled to end in 2008.

The AELS Board believes this will create a burden to the Board to have nearly half of its board members replaced at one time. The overall AELS Board no longer has uniform staggered terms, as it had in the past. The AELS Board respectfully asks the AELS Board member terms be adjusted so 5 board member terms do not expire in 2008.

The AELS Board respectfully requests you consider and share its comments with your committees as you deliberate on HB 35, "An Act extending the termination date of the State Board of Registration for Architects, Engineers, and Land Surveyors; and providing for an effective date."

Sincerely,



Kenneth D. Maynard, FAIA, Chair

cc: House Finance Co-Chairs: Rep. Mike Chenault; Rep. Kevin Meyer  
Rep. Vic Kohring

November 1, 2004

Members of the Legislative Budget  
and Audit Committee

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

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

October 6, 2004

Audit Control Number

08-20028-05

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

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

Pat Davidson, CPA  
Legislative Auditor

# TABLE OF CONTENTS

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

## OBJECTIVES, SCOPE, AND METHODOLOGY

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

### Objectives

The three central, interrelated objectives of our report are:

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

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

### Scope and Methodology

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

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

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

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

## ORGANIZATION AND FUNCTION

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

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

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

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

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

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

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

#### BOARD OF REGISTRATION FOR ARCHITECTS, ENGINEERS AND LAND SURVEYORS

*As of June 30, 2004*

##### Professional Members

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

##### Public Member

Kimberly Mills

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

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

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

## REPORT CONCLUSIONS

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

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

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

## FINDINGS AND RECOMMENDATIONS

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

### Prior Audit Recommendation No. 1

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

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

### Legislative Audit's Current Position

The prior finding has been partially resolved. The board received statutory authority<sup>2</sup> to adopt regulations requiring CE for professionals it regulates. The board, however, has yet to adopt any mandatory CE regulations.

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

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

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

<sup>2</sup> CH 66 SLA 2004

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

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

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

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

#### Recommendation No. 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public may be better served through recognition of increased specialization.

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

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

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

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

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

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

### Recommendation No. 3

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

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

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

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<sup>7</sup> See section 31 of Chapter 47, SLA 1998.

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

## **ANALYSIS OF PUBLIC NEED**

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.***

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

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

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

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

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

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

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

Exhibit I

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

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

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

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

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

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

Regulatory changes made by the board included:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Exhibit 2

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

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

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

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

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

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

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



OFFICE OF THE COMMISSIONER

Frankie MacFarlane, Governor

December 31, 2004

Pat Davidson  
Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
P.O. Box 112600  
Juneau, AK 99811-0260

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

Dear Mr. Davidson:

Thank you for the opportunity to review the Board of Registration for Architects, Engineers, and Land Surveyors (BRAEL) Self-Inspection Audit Report.

Comments on the recommendations are noted below.

Recommendation No. 1:

The Legislature should consider changes to the statutes mandating to all CE programs continuing professional education of its licensees.

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

Recommendation No. 2:

BRAEL should arrange for a comprehensive study regarding the public health and related engineering specialties that may be involved with reviewing additional engineering specialties in the state and their engineering disciplines.

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

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

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

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

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

Per the 2000 NCEES Survey, Alaska, and 11 other jurisdictions license by discipline ("AZ, NV, MN, NE, HI, WY, VT, RI, GU, NM), about roughly 22 percent of registered engineers in the U.S. The largest of these, California, does not offer the most professional engineering exams such as environmental. Several (for Naval Architectural and Marine engineering but, does offer *most* disciplines or branches of registration.

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

### Recommendation No. 3:

The committee should consider making the landscape architect representative in BRACES a full voting member.

The board agrees the manner of board member representation should be considered. Extending the landscape architect board representation was recommended in the FY 04 Annual report as a Legislative recommendation, although not all board members nor is, whether the landscape architect board representative should be "young" or a "non-voting" member. The board is also considering whether the mining engineer representative should be broadened to include petroleum engineer (or possibly geological engineer or geological engineering branch is eventually added as a discipline). The legislative (page 4) and address (page 5) of the board make-up in addition to the landscape architect matter.

Again, thank you for the opportunity to comment.

Sincerely,

*Edgar Blackford*

Edgar Blackford  
Committee Chair

cc: Rick Loom, Director  
Division of Occupational Licensing



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

*Frank H. Murkowski, Governor*

December 16, 2004

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

Dear Pat:

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

**I. Continuing Education:**

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

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

Background and Board Actions:

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

Board Actions/Meetings

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

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

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

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

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

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

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

### Recommendation No. 2

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

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

### Background and Board Actions on Engineering Disciplines:

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

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

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

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

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

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

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

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

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

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

#### **4. Other Comments**

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

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

Sincerely,

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

**HB**

**88**

*adopted*

AMENDMENT # 1

*McGuire moved*

OFFERED IN THE HOUSE  
TO: CSHB 88(FIN)

BY REPRESENTATIVE [REDACTED]

1 Page 1, line 1, following "minors;":

2 Insert "relating to the definition of 'recreation or youth center' for purposes of  
3 misconduct involving a controlled substance;"

4  
5 Page 1, line 9:

6 Delete "Sections 1, 2, and 4"

7 Insert "Sections 1, 3, and 5"

8  
9 Page 1, following line 10:

10 Insert a new bill section to read:

11 "\*\* Sec. 2. AS 11.71.900(20) is amended to read:

12 (20) "recreation or youth center" means a building, structure, athletic  
13 playing field, or playground

14 (A) run or created by a municipality or the state to provide  
15 athletic, recreational, or leisure activities for minors; or

16 (B) operated by a public or private *organization licensed*  
17 agency *to provide*  
18 shelter, training, or guidance for minors."

19 Renumber the following bill sections accordingly.

20  
21 Page 3, line 12:

22 Delete "Sections 2 - 4"

23 Insert "Sections 2 - 5"

McGuire  
W/m  
MCS  
3+4+fn

**CS FOR HOUSE BILL NO. 88(FIN) .**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

Offered: 3/22/05  
Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to certain weapons offenses involving minors; to aggravating factors in  
2 sentencing for certain offenses committed on school grounds, on a school bus, at a  
3 school-sponsored event, or in administrative offices of a school district; to mitigating  
4 factors in sentencing for a defendant's assistance to authorities to detect, apprehend, or  
5 prosecute other persons who committed an offense; and providing for an effective date."

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

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

9 SHORT TITLE. Sections 1, 2, and 4 of this Act may be known as the School  
10 Violence Prevention Act of 2005.

11 \* Sec. 2. AS 12.55.155(c) is amended by adding a new paragraph to read:  
12 (31) the offense is a violation of AS 11.41 or AS 11.46.400 and the  
13 defendant directed the conduct constituting the offense against a person while the

1 person was on school grounds, on a school bus, at a school-sponsored event, or in the  
2 administrative offices of a school district; in this paragraph,

3 (A) "school bus" has the meaning given in AS 11.71.900;

4 (B) "school district" has the meaning given in AS 47.07.063;

5 (C) "school grounds" has the meaning given in AS 11.71.900.

6 \* Sec. 3. AS 12.55.155(d)(12) is amended to read:

7 (12) after commission of the offense for which the defendant is  
8 being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute  
9 other persons who committed an offense;

10 \* Sec. 4. AS 47.12.030(a) is amended to read:

11 (a) When a minor who was at least 16 years of age at the time of the offense is  
12 charged by complaint, information, or indictment with an offense specified in this  
13 subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense  
14 for which the minor is charged or to any additional offenses joinable to it under the  
15 applicable rules of court governing criminal procedure. The minor shall be charged,  
16 held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as  
17 an adult. If the minor is convicted of an offense other than an offense specified in this  
18 subsection, the minor may attempt to prove, by a preponderance of the evidence, that  
19 the minor is amenable to treatment under this chapter. If the court finds that the minor  
20 is amenable to treatment under this chapter, the minor shall be treated as though the  
21 charges had been heard under this chapter, and the court shall order disposition of the  
22 charges of which the minor is convicted under AS 47.12.120(b). The provisions of  
23 this subsection apply when the minor is charged by complaint, information, or  
24 indictment with an offense

25 (1) that is an unclassified felony or a class A felony and the felony is a  
26 crime against a person;

27 (2) of arson in the first degree; [OR]

28 (3) that is a class B felony and the felony is a crime against a person in  
29 which the minor is alleged to have used a deadly weapon in the commission of the  
30 offense and the minor was previously adjudicated as a delinquent or convicted as an  
31 adult, in this or another jurisdiction, as a result of an offense that involved use of a

*am #2*  
*Barkowitz*  
*Harris*  
*objected*  
V N  
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1 deadly weapon in the commission of a crime against a person or an offense in another  
2 jurisdiction having elements substantially identical to those of a crime against a  
3 person, and the previous offense was punishable as a felony; in this paragraph, "deadly  
4 weapon" has the meaning given in AS 11.81.900(b); or

5 (4) that is misconduct involving weapons in the first degree under

6 (A) AS 11.61.190(a)(1); or

7 (B) AS 11.61.190(a)(2) when the firearm was discharged  
8 under circumstances manifesting substantial and unjustifiable risk of  
9 physical injury to a person.

10 \* Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to  
11 read

12 APPLICABILITY. Sections 2 - 4 of this Act apply to acts committed on or after the  
13 effective date of this Act.

14 \* Sec. 6. This Act takes effect July 1, 2005.

# FISCAL NOTE

**STATE OF ALASKA  
2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 88  
 ( H ) Publish Date: 1/19/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title WEAPONS OFFENSES INVOLVING MINORS  
AND OFFENSES AGAINST SCHOOL  
EMPLOYEES

RDU Juvenile Justice  
 Component Probation Services

Sponsor (RLS) BY REQUEST OF THE  
GOVERNOR

Requester GOVERNOR

Component No. 2134

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

Note: Amounts do not include inflation unless otherwise noted below

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (0)</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2005) cost: \_\_\_\_\_

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This proposed legislation will not have a significant impact on workloads of the Division of Juvenile Justice staff. Therefore, this zero fiscal note is entered to reflect negligible fiscal impact.

Prepared by: Pat. Ware  
 Division: Juvenile Justice  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-2112  
 Date/Time \_\_\_\_\_  
 Date 01/06/2005

# FISCAL NOTE

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

Fiscal Note Number: 2  
 Bill Version: HB 88  
 (H) Publish Date: 1/19/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act relating to penalties for certain weapons offenses involving minors; to delinquent minors..." RDU: CRIMINAL  
 Sponsor: \_\_\_\_\_ Component: CDCO  
 Requester: Governor Component No.: \_\_\_\_\_

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

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

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

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill seeks to address the issue of school violence by adopting an aggravating factor in sentencing a person convicted of felony assault directed at a school employee. The bill would deter minors 16 years and older from committing felony offenses involving misconduct with weapons in the first and second degrees by holding them accountable to the same legal consequences as adults. Passage of this legislation will not have a foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-5427  
 Division: Administrative Services Date/Time 1/18/05 3:14 PM  
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/18/2005  
 Agency: Department of Law

# FISCAL NOTE

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

Fiscal Note Number: 3  
 Bill Version: CSHB 88(FIN)  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Health | Social Ser.  
 Title: Relating to penalties for certain RDU: Juvenile Justice  
weapons offenses involving minors... Component: Probation Services  
 Sponsor: Governor  
 Requester: HFC Component No: 2134

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

Note: Amounts do not include inflation unless otherwise noted below

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 00  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

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

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

The legislation may or may not result in increased costs to the department.

Prepared by: House Finance Committee Phone: 465-4945  
 Division: \_\_\_\_\_ Date/Time: 3/21/05 3:48 PM  
 Approved by: Rep. Meyer, Co-Chair House Finance Committee Date: 3/21/2005  
 Agency: Rep. C. Anault, Co-Chair House Finance Committee

# FISCAL NOTE

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

Fiscal Note Number: 4  
 Bill Version: CSHB 88(FIN)  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: Relating to penalties for certain RDU: CRIMINAL  
weapons offenses involving minors... Component: CDCO  
 Sponsor: Governor  
 Requester: HFC Component No. \_\_\_\_\_

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

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

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

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

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 00  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The legislation may or may not result in increased costs to the department.

Prepared by: House Finance Committee Phone 465-4945  
 Division: \_\_\_\_\_ Date/Time 3/21/05 3:49 PM  
 Approved by: Rep. Meyer, Co-Chair House Finance Committee Date 3/21/2005  
 Agency: Rep. Chenault, Co-Chair House Finance Committee

**Sectional Analysis of CSHB 88(FIN) (School Violence Prevention Act of 2005;  
Mitigating Factors in Sentencing for a Defendant's Assistance to Authorities to  
Detect, Apprehend, or Prosecute Other Offenders)**

*(Prepared by the Department of Law, March 23, 2005)*

CSHB 88(FIN) would address certain weapons violations by children, assault and other crimes by adults in schools and mitigating factors in sentencing for a defendant's assistance to authorities to detect, apprehend, or prosecute other offenders.

**Sec. 1: *Short title:*** This section establishes a short title for secs. 1, 2, and 4 of CSHB 88(FIN).

**Sec. 2: *Certain offenses as aggravating factors for sentencing:*** This section would amend AS 12.55.155(c), the list of aggravating factors to be considered at sentencing, to add to aggravating factors an offense that is a violation of AS 11.41 (Offenses Against the Person) or AS 11.46.400 (Arson in the First Degree). These offenses are class A felony crimes. The aggravator would apply if the defendant "directed the conduct constituting the offense against a person" while the person was on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district. The amendment also includes definitions of school bus, school district, and school grounds.

**Sec. 3: *Mitigating factors in sentencing for a defendant's assistance to authorities to detect, apprehend, or prosecute other offenders:*** This section would amend AS 12.55.155(d)(12), within the list of mitigating factors to be considered at sentencing, to clarify that if a defendant assists authorities to detect, apprehend, or prosecute other persons who committed an offense, the assistance does not count as a mitigating factor unless provided after commission of the offense for which the defendant is being sentenced.

Superior  
Court  
dec  
felony  
Ketchikan

**Sec. 4: *Waiver of 16- and 17-year old minors into adult court for certain weapons offenses:*** This section would amend AS 47.12.030(a), to add certain offenses under AS 11.61.190 (Misconduct Involving Weapons in the First Degree) to the list of offenses for which 16- and 17-year old minors are automatically waived into adult court.

**Sec. 5: *Applicability:*** This section would make secs. 2 - 4 of the Act applicable to offenses committed on or after the effective date of the Act.

**Sec. 6: *Effective date:*** This section would establish an effective date of July 1, 2005.

-----Original Message-----

**From:** Bloodgood, Matthew  
**Sent:** Thursday, February 03, 2005 4:33 PM  
**To:** Holloway, Audie  
**Subject:** MICS law and schools

Chief,

The reminder e-mail about our conversation regarding cleaning up the language related to possession of drugs around a school. Moberly said the word "run" in the language is too ambiguous and makes it difficult to prosecute cases in or around schools. Perhaps we can add language to the statute related to any school sponsored training, such as found a Covenant House.

Additionally, the language related to "youth centers" requires the primary purpose of the center is "recreational." This means the teen medical clinic, Covenant House, Covenant House Youth Resource Center do not qualify. If this could be cleaned up to include language that any center specifically geared for youth would count, that would be great.

Matt

-----Original Message-----

**From:** Holloway, Audie  
**Sent:** Friday, February 04, 2005 7:50 AM  
**To:** 'Mike\_Hawker@legis.state.ak.us'  
**Subject:** FW: MICS law and schools

Mike,

APD continues to have a major drug problem around the Bus Accommodation Center Downtown. It centers mostly around younger drug users. Of course, it is also in close proximity to the Covenant House. The ASD also has an alternative school just across the street, which is the thrust of this maneuver. Dealing drugs in proximity to a school carries a stiffer sentence. The problem is that the statute is poorly written and really has only the common idea of a school in mind, a public facility in a neighborhood. The reality is that there are many kinds of schools, such as private schools and religious schools, and satellite options that do not fit into the standard idea of the "school".

Would this be something that you might be able to take a look at?

Thanks, Audie

STATE OF ALASKA

FRANK H. MURKOWSKI  
GOVERNOR

DEPARTMENT OF LAW  
CRIMINAL DIVISION

District Attorney's Office  
310 K Street, Suite 520  
Anchorage, Alaska 99501

Telephone: (907) 269-6300  
Fax: (907) 269-6321

February 18, 2005

Representative Mike Chenault  
Co-Chair, House Finance Committee  
Alaska Legislature  
State Capitol, Room 507  
Juneau, AK 99801

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

Re: H.B. 88 – automatic waiver of juveniles for weapons offenses

Dear Committee Chair:

During the House Judiciary Committee's consideration of the bill automatically waiving juveniles ages 16 and 17 to adult court for misconduct involving weapons in the first and second degrees, some members of the Judiciary Committee asked whether prosecutors have had difficulty utilizing discretionary waiver in juvenile cases. I have gathered information regarding our experience with discretionary waiver and I am writing to respond to those questions.

Since 2001, the prosecutors in juvenile cases in the Anchorage office of the Attorney General or the District Attorney have tried to use the discretionary waiver provisions of juvenile law in four cases. We were unsuccessful in three of the four. Two of the three unsuccessful applications were in murder cases; one was in an attempted murder case.

The four details of the four cases are as follows.

R.B. was a fourteen-year-old Anchorage resident who participated in the murder of Rachael Peace. While his eighteen-year-old accomplice strangled her to death, R.B. held his hand over Rachael Peace's mouth and nose. R.B. did not know Rachael Peace prior to night of her murder. R.B. and his accomplice later attempted to destroy the evidence of the crime by burning Rachael Peace's body at Crow Creek Pass near Girdwood, Alaska. The Division of Juvenile Justice in consultation with the Department of Law filed a petition to waive juvenile jurisdiction. Superior Court Judge Dan Hensley declined to waive juvenile jurisdiction.

February 18, 2005

Page 2 of 2

J.W. was a fifteen-year-old from Kenai, Alaska, who got engaged in a verbal argument with the driver of a truck and, as the truck drove away, pulled a .357 out of his back pack and fired three shots at the driver. The shots struck the back of the cab of the truck. One bullet lodged behind the driver's seat, but did not penetrate any further. Two other bullets passed through the rear window of the truck. One of those bullets lodged in the passenger doorframe, almost striking the passenger. No one was hurt during the incident. A petition to waive juvenile jurisdiction was filed in Kenai. Superior Court Judge Hal Brown declined to waive juvenile jurisdiction.

P.T. was a fifteen-year-old Anchorage teenager who participated in the robbery and murder of Anchorage businesswoman, Chong Cho. Three robbers, two adults and P.T., robbed Ms. Cho of the day's receipts from her restaurant as she returned home from work. One of the robbers shot her in the head, killing her. Police did not have evidence identifying which of the three robbers did the shooting. A petition to waive juvenile jurisdiction was filed by the Division of Juvenile Justice and the Department of Law. Superior Court Judge John Reese declined to waive juvenile jurisdiction.

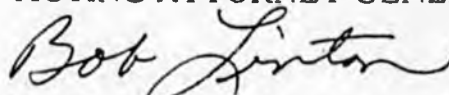
B.K. was a fifteen-year-old in Pilot Point, who shot his cousin in the head with a .22 rifle and sexually assaulted her as she lay dying. A petition to waive juvenile jurisdiction was filed. Superior Court Judge Fred Torissi waived juvenile jurisdiction.

Since judges would not waive juvenile jurisdiction in three out of four murder or attempted murder cases, we do not believe we would be successful in seeking discretionary waiver in a case of a drive-by shooting in which no one has actually been injured. If you would like any additional information regarding these cases, please let me know.

Sincerely,

SCOTT J. NORDSTRAND  
ACTING ATTORNEY GENERAL

By:



Leonard M. Linton, Jr.  
District Attorney



# *Alaska Youth Risk Behavior Survey 2003*



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**2003 Youth Risk Behavior Survey (YRBS)**



**A Joint Project Between  
Alaska Department of Health and Social Services,  
Division of Public Health, Section of Epidemiology  
P.O. Box 240249  
Anchorage, AK 99524-0249  
(907) 269-8000**

**and**

**Alaska Department of Education & Early Development,  
Division of Teaching and Learning Support  
801 West 10<sup>th</sup> Street, Suite 200  
Juneau, AK 99801  
(907) 465-2887**

**Authors**

**Tammy Green, MPH, CHES  
John Middaugh, MD  
Scott Saxon, BS  
Charles J. Utermohle, Ph. D**

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**Alaska Department of Health & Social Services**

Joel Gilbertson, Commissioner

Division of Public Health  
Doug Bruce, Director

**Alaska Department of Education & Early Development**

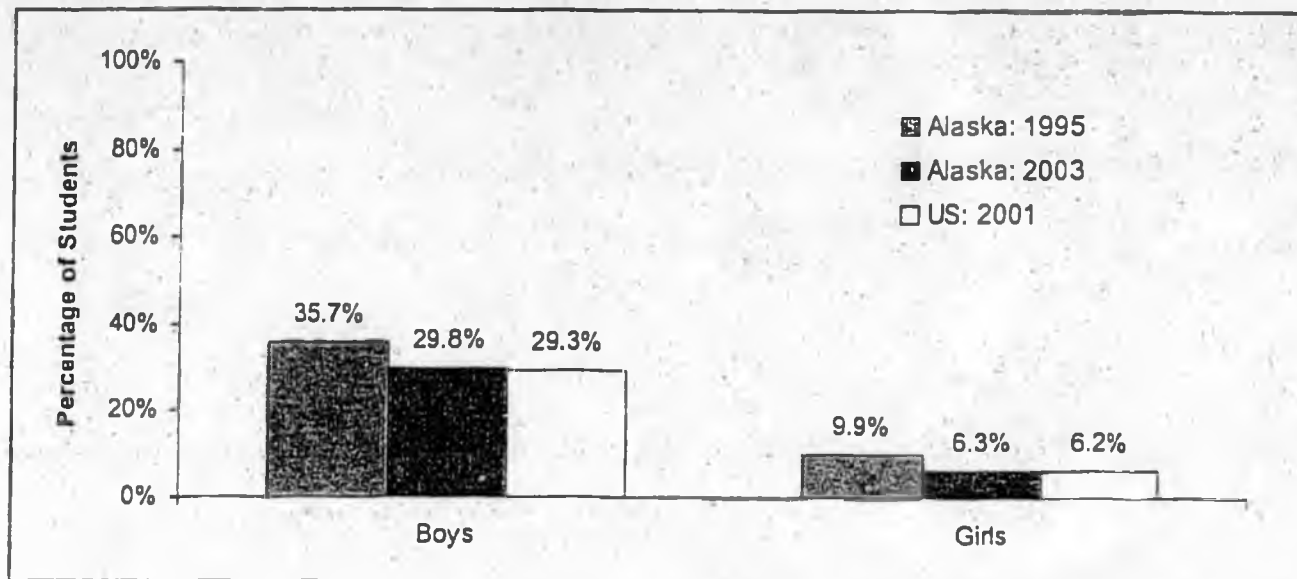
Roger Sampson, Commissioner  
Karen Rehfeld, Deputy Commissioner

**Alaska State Board of Education & Early Development**

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Esther J. Cox, First Vice-chair  
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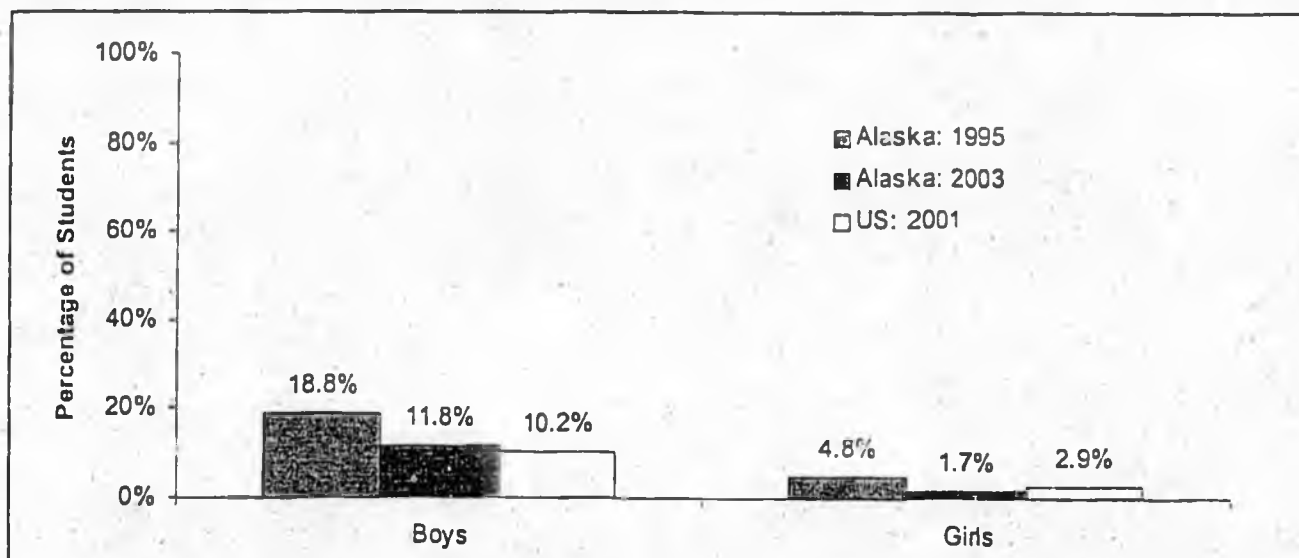
### Carried a Weapon

About 6.3% of girls report carrying a weapon compared to 29.8% of boys. Both Alaska boys and girls report similar weapon carrying behavior as U.S. boys and girls. Significant decreases have occurred in weapon carrying behavior for combined sexes since 1995.



### Carried a Weapon on School Property

Among Alaska high school students, 11.8% of boys and 1.7% of girls report having carried a weapon, such as a gun, knife or club, on school property in the previous 30 days. Both boys and girls show a significant decrease in weapon carrying on school property from 1995. In 2003 Alaska boys were somewhat (11.8%) more likely to report carrying a weapon on school property than were 2001 U.S. boys (10.2%).

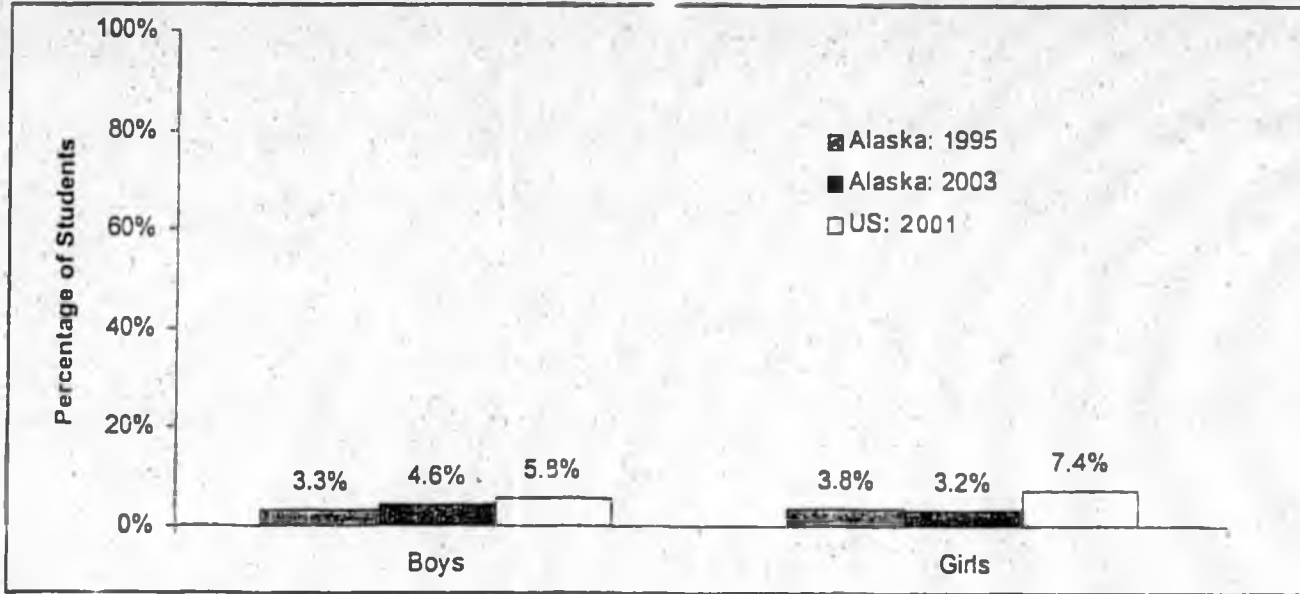


**Healthy Alaskans 2010 Objective:**

- ▶ Reduce to 3% weapon carrying by high school students on school property (percentage of students who carried a weapon on school property in the past 30 days)

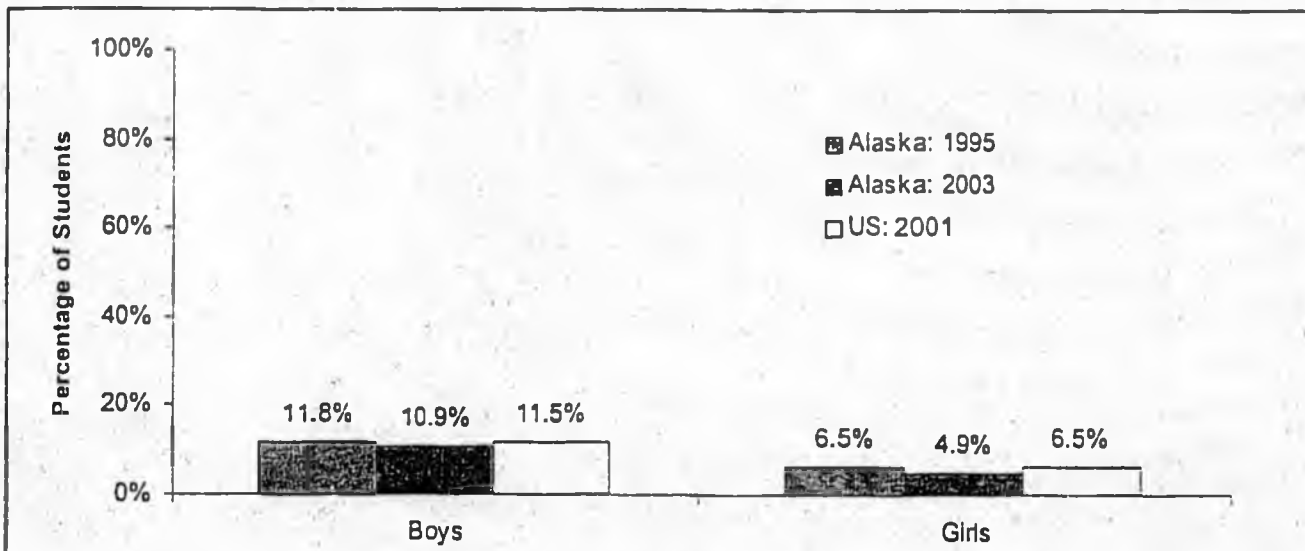
### Did Not Go to School on One or More Days in Past 30 Days Because They Felt Unsafe


Among Alaska high school students fewer than 5% of either boys or girls did not go to school because they felt unsafe. Boys show a slight increase (1.3%) from 1995, as where among girls there appears to be no difference.



### Threatened or Injured by a Weapon on School Property

Among Alaska high school students, 10.9% of boys and 4.9% of girls report having been threatened or injured with a weapon such as a gun, knife or club on school property within the past 12 months. There has been little or no change in this behavior since 1995. A smaller percentage of both Alaska boys and girls report having been threatened or injured with a weapon on school property than U.S. boys and girls report.





## **Division of Juvenile Justice Agency Mission (AS 47.12.010)**

- Hold juvenile offenders accountable
- Promote safety and restoration of victims and communities
- Assist offenders and their families in developing skills to prevent crime



## **Juvenile System**

- Delinquency Statutes/Regs: AS 47.12; AS 47.14; 7AAC 52; 7 AAC 54;
- Jurisdiction: Minors under age 18
- Waiver into Adult Court (47.12.030(a)):
  1. Age 16-17
  2. Unclassified/Class A felonies against person
  3. Class B felonies against person with deadly weapon- prior adjudication of similar crime required

## Options in the Juvenile System Judgments and Orders (AS 47.12.120)

- ❖ **Minor found delinquent by judge**
  - DHSS Custody- locked institution
  - "Supervisory custody"/ released to parent
  - DHSS Custody/ placed in non-detention setting (foster care, residential care)
  - Restitution order only

## DJJ Data (FY '04)

### FY2004 Delinquency Referral Summaries

Charge Type	Number of Reports	Percent of Total
Against Persons	1,159	19%
Property	3,026	49%
Public Order	333	5%
Drug/Alcohol	679	11%
Weapon	67	1%
Miscellaneous offenses	925	15%
<b>Total</b>	<b>6,189</b>	<b>100%</b>



## **DJJ Core Services Detention and Long-Term Treatment**

- Eight DJJ secure facilities- 288 beds
- Short-term (30 days) detention pending court hearing
- Long-term institutionalization for serious offenders
- Transition/ Step-Down services (Re-Entry)
- Performance-Based Standards (PbS)



## **Selected DJJ Performance Measures**

### **Re-offense Data**

- Closed probation cases: Average 22% tracked for two years; adult offenses not included
- Release from Facility: Average 37% (one year), increases to 58% for two years; adult offenses included

TABLE. (Continued) Percentage of high school students who reported violence-related behaviors, by sex, race/ethnicity, and grade — Youth Risk Behavior Survey, United States, 1991–2003\*

Behavior	1991	1993	1995	1997	1999	2001	2003
	% (95% CI) <sup>†</sup>	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)	% (95% CI)
<b>In a physical fight on school property<sup>‡</sup></b>							
Overall	—	16.2 (±1.2)	15.5 (±1.6)	14.8 (±1.3)	14.2 (±1.2)	12.5 (±1.0)	12.8 (±1.5) <sup>‡</sup>
Sex							
Female	—	8.6 (±1.4)	9.5 (±1.9)	8.6 (±1.5)	9.8 (±1.9)	7.2 (±0.9)	8.0 (±1.4) <sup>‡</sup>
Male	—	23.5 (±1.4)	21.0 (±1.9)	20.0 (±2.0)	18.5 (±1.3)	18.0 (±1.5)	17.1 (±1.8) <sup>‡</sup>
Race/Ethnicity							
White, non-Hispanic	—	15.0 (±1.3)	12.9 (±1.2)	13.3 (±1.7)	12.3 (±1.7)	11.2 (±1.2)	10.0 (±1.4) <sup>‡</sup>
Black, non-Hispanic	—	22.0 (±2.7)	20.3 (±2.2)	20.7 (±2.4)	18.7 (±3.0)	16.8 (±2.5)	17.1 (±2.5) <sup>‡</sup>
Hispanic	—	17.9 (±3.1)	21.1 (±3.3)	19.0 (±2.9)	15.7 (±1.8)	14.1 (±1.7)	16.7 (±2.2) <sup>‡</sup>
Grade							
9th	—	23.1 (±3.0)	21.6 (±3.5)	21.3 (±2.5)	18.6 (±2.0)	17.3 (±1.5)	18.0 (±2.4) <sup>‡</sup>
10th	—	17.2 (±2.1)	16.5 (±3.0)	17.0 (±3.3)	17.2 (±2.4)	13.5 (±1.7)	12.8 (±1.8) <sup>‡</sup>
11th	—	13.8 (±2.5)	13.6 (±2.0)	12.5 (±1.7)	10.8 (±2.0)	9.4 (±1.4)	10.4 (±1.8) <sup>‡</sup>
12th	—	11.4 (±1.3)	10.6 (±1.3)	9.5 (±1.4)	8.1 (±2.0)	7.5 (±1.1)	7.3 (±1.4) <sup>‡</sup>
<b>Threatened or injured with a weapon (e.g., a gun, knife, or club) on school property<sup>‡</sup></b>							
Overall	—	7.3 (±0.9)	8.4 (±1.1)	7.4 (±0.9)	7.7 (±0.8)	8.9 (±1.1)	9.2 (±1.5)
Sex							
Female	—	5.4 (±0.8)	5.8 (±1.4)	4.0 (±0.6)	5.8 (±1.3)	6.5 (±1.0)	6.5 (±1.2)
Male	—	9.2 (±1.3)	10.9 (±1.2)	10.2 (±1.4)	9.5 (±1.6)	11.5 (±1.3)	11.6 (±1.9)
Race/Ethnicity							
White, non-Hispanic	—	6.3 (±1.1)	7.0 (±1.0)	6.2 (±1.1)	6.6 (±0.7)	8.5 (±1.3)	7.8 (±1.5) <sup>‡</sup>
Black, non-Hispanic	—	11.2 (±1.8)	11.0 (±3.3)	9.9 (±1.8)	7.6 (±1.7)	9.3 (±1.4)	10.9 (±1.6) <sup>**</sup>
Hispanic	—	8.6 (±1.5)	12.4 (±3.2)	9.0 (±1.2)	9.8 (±2.1)	8.9 (±2.1)	9.4 (±2.4)
Grade							
9th	—	9.4 (±1.8)	9.6 (±2.0)	10.1 (±2.0)	10.5 (±1.9)	12.7 (±1.7)	12.1 (±2.5) <sup>‡</sup>
10th	—	7.3 (±1.2)	9.6 (±2.1)	7.9 (±2.2)	8.2 (±1.8)	9.1 (±1.5)	9.2 (±2.0)
11th	—	7.3 (±1.3)	7.7 (±1.3)	5.9 (±1.4)	6.1 (±0.9)	6.9 (±1.3)	7.3 (±1.4) <sup>**</sup>
12th	—	5.5 (±1.2)	6.7 (±1.1)	5.8 (±1.6)	5.1 (±1.6)	5.3 (±1.0)	6.3 (±1.8)
<b>Did not go to school because of safety concerns<sup>§</sup></b>							
Overall	—	4.4 (±0.7)	4.5 (±0.7)	4.0 (±0.6)	5.2 (±1.3)	6.6 (±1.0)	5.4 (±0.8) <sup>‡</sup>
Sex							
Female	—	4.4 (±0.9)	4.3 (±1.1)	3.9 (±0.7)	5.7 (±1.5)	7.4 (±1.3)	5.3 (±1.0) <sup>‡</sup>
Male	—	4.3 (±0.8)	4.7 (±1.1)	4.1 (±0.8)	4.8 (±1.6)	5.8 (±1.1)	5.5 (±1.0)
Race/Ethnicity							
White, non-Hispanic	—	3.0 (±0.7)	2.8 (±0.8)	2.4 (±0.6)	3.9 (±1.3)	5.0 (±1.2)	3.1 (±0.6) <sup>‡</sup>
Black, non-Hispanic	—	7.1 (±1.4)	7.7 (±1.8)	6.8 (±1.5)	6.0 (±1.2)	9.8 (±1.5)	8.4 (±1.2)
Hispanic	—	10.1 (±1.7)	8.5 (±2.7)	7.2 (±1.7)	11.2 (±3.3)	10.2 (±1.3)	9.4 (±1.5)
Grade							
9th	—	6.1 (±0.8)	5.6 (±1.6)	5.5 (±1.0)	7.0 (±1.8)	8.8 (±1.7)	6.9 (±1.2)
10th	—	5.2 (±1.4)	5.0 (±1.2)	4.0 (±1.0)	4.8 (±1.4)	6.3 (±1.3)	5.2 (±1.1)
11th	—	3.3 (±1.0)	4.1 (±1.0)	4.2 (±1.7)	4.5 (±1.8)	5.9 (±1.2)	4.5 (±1.0) <sup>‡</sup>
12th	—	3.0 (±1.0)	3.3 (±1.0)	2.6 (±0.8)	3.9 (±1.5)	4.4 (±0.7)	3.8 (±1.1)

\* Linear and quadratic trend analyses were conducted by using a logistic regression model controlling for sex, race/ethnicity, and grade. Prevalence estimates shown here were not standardized by demographic variables.

<sup>†</sup> Confidence interval.

<sup>‡</sup> On ≥1 of the 30 days preceding the survey.

<sup>‡</sup> Significant (p<0.05) linear effect.

<sup>\*\*</sup> Significant quadratic effect.

<sup>††</sup> One or more times during the 12 months preceding the survey.

<sup>§§</sup> Injuries had to be treated by a doctor or nurse.

[Return to top.](#)

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Table 38  
 Anchorage School District  
 Student Report Card Survey  
 Number = 19,186

Question	Strongly				Strongly Disagree
	Agree	Agree	Neutral	Disagree	
Our school is clean and well maintained.	20%	44%	18%	12%	6%
I am treated fairly by adults here at school.	25%	38%	20%	11%	6%
I am treated fairly by other students.	16%	40%	24%	12%	8%
I find my school work interesting.	18%	32%	27%	13%	10%
I understand the school work I am given.	22%	44%	23%	7%	4%
Our school rules are fair.	23%	30%	22%	14%	11%
My teachers treat me with respect.	36%	37%	16%	6%	5%
Students here treat me with respect.	15%	39%	26%	12%	8%
Our school rules are fairly enforced.	22%	32%	26%	11%	9%
I like school.	24%	27%	24%	11%	15%
I am safe at school.	34%	34%	20%		
If I have a problem at school, I know where I can go for help.	32%	38%	18%	7%	6%
Have chances to participate in school activities.	34%	42%	15%	5%	4%
I use computers at school.	37%	39%	12%	7%	7%
The library/media center has the materials I need to do my school work.	25%	37%	25%	8%	6%
I feel welcome at school.	29%	35%	22%	7%	7%
I feel safe on the bus and at the bus stop.	17%	24%	40%	7%	11%

(2) no person suffered physical injury as a result of the presence of the substance on the highway.

(c) Obstruction of highways is a class B misdemeanor. (§ 7 ch 166 SLA 1978)

**Collateral references.** — 39 Am. Jur. 2d, Highways, Streets and Bridges, §§ 175, 189, 190, 194, 253, 257, 279, 283-294, 297-303, 305-307. 40 C.J.S., Highways, §§ 221-231.

**Sec. 11.61.160. Recruiting a gang member in the first degree.** (a) A person commits the crime of recruiting a gang member in the first degree if the person uses or threatens the use of force against a person or property to induce a person to participate in a criminal street gang or to commit a crime on behalf of a criminal street gang.

(b) Recruiting a gang member in the first degree is a class C felony. (§ 2 ch 60 SLA 1996)

**Sec. 11.61.165. Recruiting a gang member in the second degree.** (a) A person commits the crime of recruiting a gang member in the second degree if the person is 18 years of age or older and, without force or the threat of force, encourages or recruits a person who is under 18 years of age and at least three years younger than the offender to participate in a criminal street gang.

(b) Recruiting a gang member in the second degree is a class A misdemeanor. (§ 2 ch 60 SLA 1996)

## Article 2. Weapons and Explosives.

### Section

190. Misconduct involving weapons in the first degree

195. Misconduct involving weapons in the second degree

200. Misconduct involving weapons in the third degree

### Section

210. Misconduct involving weapons in the fourth degree

220. Misconduct involving weapons in the fifth degree

240. Criminal possession of explosives

250. Unlawful furnishing of explosives

**Collateral references.** — 31A Am. Jur. 2d, Explosions and Explosives, §§ 214, 216, 219-223, 225-228, 232, 233, 235, 237, 238, 245-250; 79 Am. Jur. 2d, Weapons and Firearms, §§ 1-34.

35 C.J.S., Explosives, § 1 et seq; 94 C.J.S., Weapons, §§ 9-51.

Validity and construction of gun control laws, 28 ALR3d 845; 86 ALR4th 931; 37 ALR Fed. 696; 60 ALR Fed. 305; 125 ALR Fed. 613.

Validity of state statutes restricting right of aliens to bear arms, 28 ALR4th 1096.

Sufficiency of evidence of possession in prosecution under statute prohibiting persons under indictment for or convicted of crime from acquiring, having, carrying or using firearms or weapons, 43 ALR4th 788.

Validity of state statute proscribing possession or carrying of knife, 47 ALR4th 651.

**Sec. 11.61.190. Misconduct involving weapons in the first degree.** (a) A person commits the crime of misconduct involving weapons in the first degree if the person

(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 — 11.71.040; or

(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

NOTES TO DECISIONS

**Offense required proof of both specified conduct and a specified result.** — The State was required to prove two different culpable mental states; offense required proof of a particular type of conduct: knowing discharge of a firearm from an operated vehicle, proof was also required that defendant's conduct created a specified result: the risk of physical injury to a person or damage to property. *Smith v. State*, 28 P3d 323 (Alaska Ct. App. 2001).

**Sentence.** — A five-year presumptive term applied to first felony offenders convicted of first-degree weapons misconduct as the legislature could not have intended to impose a seven-year presumptive term when a drive-by shooting endangered a person but a lesser five-year presumptive term if the shooting resulted in death. *Smith v. State*, 28 P3d 323 (Alaska Ct. App. 2001).

**Collateral references.** — What constitutes "constructive possession" of unregistered or otherwise prohibited weapon under state law. 88 ALR5th 121.

**Sec. 11.61.195. Misconduct involving weapons in the second degree.** (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040;

(2) violates AS 11.61.200(a)(1) and is within the grounds of or on a parking lot immediately adjacent to

(A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or

(B) a center, other than a private residence, licensed under AS 47.33 or AS 47.35 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

(A) a building with reckless disregard for a risk of physical injury to a person; or

(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994; am § 1 ch 89 SLA 1997; am § 3 ch 58 SLA 1999; am § 3 ch 99 SLA 2004)

**Effect of amendments.** — The 1999 amendment, effective July 1, 2000, inserted a section reference in subparagraph (a)(2)(B).

The 2004 amendment, effective June 26, 2004, deleted "AS 14.37" following "licensed under" in paragraph (a)(2)(B), and made related changes.

NOTES TO DECISIONS

**Nexus between firearm possession and drug offense.** — Paragraph (a)(1) requires proof of a nexus between a defendant's possession of the firearm and the defendant's commission of the felony drug offense. *Collins v. State*, 977 P2d 741 (Alaska Ct. App. 1999).

Convictions for possession of a firearm during the commission of a felony drug offense requires proof of a nexus between a defendant's possession of a firearm and the defendant's commission of the felony drug offense; therefore, where the state never presented evidence of this element of the offense to the grand jury and the trial jury never was asked to evaluate this evidence at trial, there was no basis to sustain the convictions. *Lewis v. State*, 9 P3d 1028 (Alaska Ct. App. 2000).

Paragraph (a)(1) requires proof of a nexus between a defendant's possession of the firearm and the defendant's commission of the felony drug offense, and the court's findings must demonstrate that the state proved the nexus. *Murray v. State*, 12 P3d 784 (Alaska Ct. App. 2000).

Where the trial court's instruction did not allow the jury to consider the nexus element of the felony drug offense and possession or exercise of control over a firearm, the error was not harmless beyond a reasonable doubt; a jury reasonably could have found no connection between defendant's possession of marijuana and his possession of the firearms, and accordingly, the appellate court reversed defendant's conviction of second-degree misconduct involving a weapon. *Maness v. State*, 49 P3d 1128 (Alaska Ct. App. 2002).

Because AS 11.61.195(a)(1) requires proof of a nexus between defendant's possession of the firearm and his commission of the felony drug offense, and the fact that the firearm and drugs were located in the same house was insufficient to establish it, the appellate court remanded for reconsideration of the nexus issue. *Murray v. State*, 54 P3d 821 (Alaska Ct. App. 2002).

**Collateral references** "constructive possession" of prohibited weapon under

**Sec. 11.61.200.** M. son commits the crim

(1) knowingly poss: having been convicted would constitute a fe United States, or a c

(2) knowingly sells a person who has bee States, or a court of

(3) manufactures, i

(4) knowingly sell: condition is substanti: or controlled substanc

(5) removes, covers with intent to render

(6) possesses a fire covered, altered, or covered, altered, or de

(7) violates AS 11.4: when the person's phy: of an intoxicating liqu

(8) violates AS 11.46 or in a propelled vehic 18.66.100 — 18.66.180

the violation, possesses an ordinary pocketknif

(9) communicates in communication, posses than an ordinary pock

(10) resides in a dwe one's person or a prohib felony by a court of this territory, unless the per is a concealable weapon tion or from the head dwelling is located;

(11) discharges a fire in circumstances other

(12) knowingly posse convicted of a felony or a felony if committed by a court of another state

(b) It is an affirmativ

(1) under (a)(1) of thi

(A) the person convic pardon for that convicti

(B) the underlying co: AS 12.55.085 or as a re:

(C) a period of 10 y unconditional discharge

rehabilitating juveniles to make them productive citizens, and imposing state tort liability for harm caused by released juveniles would have distorted this balance; likewise the policy of preventing future harm was not obviously going to be served by imposing a

duty, given that AS 47.12.010(b) limited commitment and re-commitment periods of time, and there was no clear correlation between the length of commitment and the rate of recidivism. *State v. Sandsness*, 72 P.3d 299 (Alaska 2003).

**Sec. 47.12.020. Jurisdiction.** Proceedings relating to a minor under 18 years of age residing or found in the state are governed by this chapter, except as otherwise provided in this chapter, when the minor is alleged to be or may be determined by a court to be a delinquent minor as a result of violating a criminal law of the state or a municipality of the state. (§ 46 ch 59 SLA 1996)

#### NOTES TO DECISIONS

Quoted in *Nao v. State*, 953 P.2d 522 (Alaska Ct. App. 1998).

**Collateral references.** — Homicide by juvenile as within jurisdiction of juvenile court, 48 ALR2d 662.  
Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile court, 89 ALR2d 506.

Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. 5 ALR4th 1211, § 7.

**Sec. 47.12.030. Provisions inapplicable.** (a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree; or

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b).

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;  
 (2) AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21;

(5) AS 04.16.050, relating to possession, control, or consumption of alcohol, except for conduct constituting habitual minor consuming or in possession or control under AS 04.16.050(d); and

(6) a municipal curfew ordinance, whether adopted under AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for the violation of a municipal curfew ordinance, the court shall allow a defendant the option of performing community work; the value of the community work, which may not be lower than the amount of the fine, shall be determined under AS 12.55.055(c); in this paragraph, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendant's place of residence, would benefit persons within the municipality or village who are elderly or disabled.

(c) The provisions of AS 47.12.010 — 47.12.260 and the Alaska Delinquency Rules do not apply to driver's license proceedings under AS 28.15.185; the court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings. (§ 46 ch 59 SLA 1996; am § 2 ch 72 SLA 1997; am § 1 ch 9 SLA 1998; am § 16 ch 107 SLA 1998; am § 15 ch 65 SLA 2001)

**Effect of amendments.** — The 1997 amendment, effective September 9, 1997, added paragraph (b)(6) and made related stylistic changes.

The first 1998 amendment, effective July 7, 1998, added paragraph (a)(3) and made related stylistic changes.

The second 1998 amendment, effective July 1, 1998, rewrote the introductory language in subsection (a).

The 2001 amendment, effective July 4, 2001, added the exception in paragraph (b)(5).

**Editor's notes.** — Section 57, ch. 107, SLA 1998 provides that the 1998 amendments to subsection (a), made in § 16, ch. 107, SLA 1998, apply to offenses committed on or after July 1, 1998. Also, § 2, ch. 9, 1998 provides that paragraph (a)(3), added by § 1, ch. 9, SLA 1998, applies to offenses committed on or after July 7, 1998, but that references in (a)(3) to previous adjudications or convictions include offenses committed on, before, or after July 7, 1998.

#### NOTES TO DECISIONS

**Constitutionality.** — Subsection (a), placing the burden on defendant to prove his amenability to juvenile treatment, does not violate the equal protection and due process clauses of the Alaska Constitution. *Wilson v. State*, 967 P.2d 98 (Alaska Ct. App. 1998).

**Constitutionality of criminal penalties faced by 16- and 17-year-olds.** — Enactment of the provision changing criminal penalties faced by 16- and 17-year-olds for certain criminal acts did not violate Alaska Const., art. IV, § 15 since it did not alter the Delinquency Rules but, rather, it redefined the coverage of the delinquency law. *Nao v. State*, 953 P.2d 522 (Alaska Ct. App. 1998).

**Rehabilitation, rather than punishment, is the express purpose of juvenile jurisdiction.** Mere confinement without treatment does not contribute to the goal of rehabilitation; such confinement constitutes cruel and unusual punishment. *Rust v. State*, 582 P.2d 134 (Alaska 1978) (decided under AS 47.10.010).

**Principal precept behind children's court concept is that a person under 18 years of age does not have mature judgment and may not fully realize the**

consequences of his acts, and that therefore he should not generally have to bear the stigma of a criminal conviction for the rest of his life. *P.H. v. State*, 504 P.2d 837 (Alaska 1972) (decided under AS 47.10.010).

**The phrase "under 18 years of age" refers to the age of the accused person at the time of the alleged offense.** *P.H. v. State*, 504 P.2d 837 (Alaska 1972) (decided under AS 47.10.010).

**Jurisdiction dependent upon age of offender at time of act.** — Juvenile jurisdiction of the superior court in delinquency proceedings is dependent upon the age of the offender at the time of the delinquent acts. *Henson v. State*, 576 P.2d 1352 (Alaska 1978) (decided under AS 47.10.010).

**Child is exempt from criminal prosecution until children's court waives jurisdiction.** — From the moment a child commits an offense he is exempt from criminal prosecution until the children's court properly waives its jurisdiction. *P.H. v. State*, 504 P.2d 837 (Alaska 1972) (decided under AS 47.10.010).

**Deferring action against child until 18th birthday would frustrate purpose of juvenile courts.** — To allow officials charged with the execu-

tion of the law to punish a child merely by delaying action until the child's 18th birthday would frustrate the purpose of juvenile courts. *P.H. v. State* (decided under AS 47.10.010).

**Serious constitutional nature of the proceeding is not dependent upon the nature of the offense.** *P.H. v. State* (decided under AS 47.10.010).

**When person over 18 years of age is charged with a crime, the court has jurisdiction to hear the case.** *State v. Lir* (decided under AS 47.10.010).

**"Delinquent" status is not a conviction but upon proof of acts which would have been committed by an adult.** *Rust v. State* (decided under AS 47.10.010).

**One who commits a crime as a juvenile when he had been previously convicted as a minor and the court has jurisdiction over him until he reaches 18 years of age.** *P.2d 1352* (Alaska 1978).

**Former AS 17.12.11(d) is unconstitutional.** *Former AS 17.12.110(d)* person who, while under 18 years of age, controls or uses any firearm or dangerous weapon is guilty of a crime if the fine of not more than \$1,000. *AS 47.10.010(a)(1)* and *AS 47.10.010(b)* State 645 P.2d 1229 (Alaska 1978).

**State may interfere with parental custody of children in need of supervision.** *State, 547 P.2d 827* (Alaska 1978).

**Interests to be protected in need of supervision of children in need of supervision.** *State, 547 P.2d 827* (Alaska 1978).

**Means chosen by the state to protect children in need of supervision must be appropriate government action.** *State, 547 P.2d 827* (Alaska 1978).

**The purpose of the statute is to protect children in need of supervision.** *State, 547 P.2d 827* (Alaska 1978).

**Burden of proving amenability to juvenile jurisdiction is on the state.** — Where a child is found guilty of one of the felonies listed in AS 47.10.010, the state is ultimately found guilty of violating the provision imposing on the child the burden of proving that he or she is amenable to juvenile jurisdiction. *State, 547 P.2d 827* (Alaska 1978).

**Janet Seitz**

---

**From:** Rynnieva Moss  
**Sent:** Monday, April 11, 2005 1:25 PM  
**To:** Janet Seitz  
**Subject:** RE: HB 16

Just talked to Eddy Jeans. He said that he can absorb the cost of the report.

---

**From:** Janet Seitz  
**Sent:** Monday, April 11, 2005 12:45 PM  
**To:** Rynnieva Moss  
**Subject:** HB 16

Rynnieva:

Will the amendment impact the current fiscal note or can the report costs be asorbed within that fiscal note?  
We'll either need a new fiscal note or a statement that the fiscal note will remain the same.

*Janet Seitz*  
**House Rules Committee Staff**  
**State Capitol, Room 214**  
**Juneau, AK 99801-1182**  
**Voice: (907) 465-3764**  
**FAX: (907) 465-2040**

4/11/2005

**HB**

**95**

AMENDMENT #1

OFFERED IN THE HOUSE  
TO: CSHB 95(JUD)

*status moved  
Berkowitz object +  
with [unclear] to [unclear]  
Berkowitz discuss*

1 Page 2, line 29:

2 Delete "isolation, medical treatment, or"

3 Insert "or isolation, or by"

*Y N  
Cog Koh  
McGuire Berk  
Rokob  
Karris*

5 Page 2, line 31:

6 Delete "in circumstances provided under AS 18.15.388"

*passed  
4-2*

7 Insert "for damages caused by medical treatment provided under AS 18.15.355 -  
8 18.15.395 by a state employee"

*1 b as amended  
no objection adopted*

10 Page 9, following line 17:

11 Insert a new subsection to read:

12 "(c) A person who knowingly discloses identifiable health information in  
13 violation of this section or a regulation adopted under this section is guilty of a class B  
14 misdemeanor. In this subsection, "knowingly" has the meaning given in  
15 AS 11.81.900(a)."

16

17 Page 16, lines 22 - 25:

*EB object*

*Y N 10 adopted  
Harris Berk 5-1  
Cog  
Kohr  
McG  
Rok.*

18 Delete all material.

*1 b conerp Berkowitz - adopted  
burg in knowing violations of quarantine or  
18.55.385 violation  
misdemeanor  
unanimous  
adopt.*

*P. 16*

AMENDMENT

#2 am  
Rokberg moved  
McGinn object

~~Withdrawn~~  
McGinn

Withdrawn

OFFERED IN THE HOUSE  
TO: CSHB 95(JUD)

1 Page 12, line 13, following "restrictive":

2 Insert "or most effective"

3

4 Page 12, line 14, following "others":

5 Insert "or to prevent the exposure to or transmission of a highly toxic agent or  
6 substance. The department shall carry out isolation or quarantine"

7

8 Page 19, line 7:

9 Delete "radiological"

10 Insert "radioactive"

11

12 Page 19, line 10:

13 Delete "radiological"

14 Insert "radioactive"

15

16 Page 20, line 18:

17 Delete "nurse,"

18 Insert "licensed nurse, nurse practitioner,"

19

20 Page 20, following line 19:

21 Insert a new paragraph to read:

22 "(13) "highly toxic agent or substance" means an agent or substance, or the  
23 quality of an agent or substance, that can cause serious illness, injury, or death to a

Prohibit am to am  
delete w exception  
of lines 16, 17, 18 p. 1  
Withdrawn in final

- 1 person exposed to the agent or substance; "highly toxic agent or substance" includes a
- 2 radioactive material or an individual who has been exposed to a radioactive material."
- 3
- 4 Renumber the following paragraphs accordingly.

AMENDMENT # 3

*adopted*

*Berkowitz  
moved  
impolitic  
to H. H. Brown*

OFFERED IN THE HOUSE  
TO: CSHB 96(JUD)

BY REPRESENTATIVE BERKOWITZ

*5*

Page 26, following line 30:

Insert a new bill section to read:

\*Sec. 15. The uncodified law of the State of Alaska is amended by adding a new section to read:

GRANT APPLICATIONS. The Department of Health and Social Services is encouraged to apply for appropriate funding sources relating to transforming health care quality through information technology, including one or more of the implementation grants sponsored by the United States Department of Health and Human Services, the National Institutes of Health, and the National Library of Medicine."

Renumber the following bill section accordingly.

Y      N

*Am #5 tighten title yes*

AMENDMENT

# 41 *fact*

OFFERED IN THE HOUSE  
TO: CSHB95(JUD)

BY REPRESENTATIVE

*Beckwith*

*object*  
Y  
*Bak*

*N*  
*COB*  
*KOH*  
*MCG*  
*Hann*  
*Rok*

Insert the following language:

AS 47.07.020(b) is amended to read:

(13) persons under age 19 who are not covered under (a) of this section and whose household income does not exceed

[(A) \$1,847 A MONTH IF THE HOUSEHOLD CONSISTS OF ONE PERSON;

(B) \$2,489 A MONTH IF THE HOUSEHOLD CONSISTS OF TWO PERSONS;

(C) \$3,130 A MONTH IF THE HOUSEHOLD CONSISTS OF THREE PERSONS;

(D) \$3,772 A MONTH IF THE HOUSEHOLD CONSISTS OF FOUR PERSONS;

(E) \$4,414 A MONTH IF THE HOUSEHOLD CONSISTS OF FIVE PERSONS;

(F) \$5,055 A MONTH IF THE HOUSEHOLD CONSISTS OF SIX PERSONS;

(G) \$5,697 A MONTH IF THE HOUSEHOLD CONSISTS OF SEVEN PERSONS;

(H) \$6,339 A MONTH IF THE HOUSEHOLD CONSISTS OF EIGHT PERSONS;

(I) \$6,339 A MONTH, PLUS AN ADDITIONAL \$642 A MONTH FOR EACH EXTRA PERSON ABOVE EIGHT PERSONS WHO IS IN THE HOUSEHOLD IF THE HOUSEHOLD CONSISTS OF NINE PERSONS OR MORE] 200 percent of the federal poverty guideline as defined by the Federal Office of Management and Budget and revised under 42 U.S.C. 9902(2):

*1-5*  
*fact*

(14) pregnant women who are not covered under (a) of this section and whose household income does not exceed

[(A) \$2,489 A MONTH IF THE HOUSEHOLD CONSISTS OF TWO PERSONS; A PREGNANT WOMAN IN A HOUSEHOLD ALONE IS CONSIDERED TO BE A HOUSEHOLD OF TWO PERSONS;

(B) \$3,130 A MONTH IF THE HOUSEHOLD CONSISTS OF THREE PERSONS;

(C) \$3,772 A MONTH IF THE HOUSEHOLD CONSISTS OF FOUR PERSONS;

(D) \$4,414 A MONTH IF THE HOUSEHOLD CONSISTS OF FIVE PERSONS;

(E) \$5,055 A MONTH IF THE HOUSEHOLD CONSISTS OF SIX PERSONS;

(F) \$5,697 A MONTH IF THE HOUSEHOLD CONSISTS OF SEVEN PERSONS;

(G) \$6,339 A MONTH IF THE HOUSEHOLD CONSISTS OF EIGHT PERSONS;

(H) \$6,339 A MONTH PLUS AN ADDITIONAL \$642 A MONTH FOR EACH EXTRA PERSON ABOVE EIGHT PERSONS WHO IS IN THE HOUSEHOLD IF THE HOUSEHOLD CONSISTS OF NINE PERSONS OR MORE;] 200 percent of the federal poverty line as defined by the Federal Office of Management and Budget and revised under 42 U.S.C. 9902(2).

Tighter Title to more accurately reflect isolation/ quarantine language

Tighter title to more accurately reflect quarantine

Accepted #5 McBurr

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 95  
 ( H ) Publish Date: 1/21/05  
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title RELATING TO PUBLIC HEALTH AND PUBLIC HEALTH EMERGENCIES

RDU Public Health

Component Public Health Admin Svcs

Sponsor (RLS) BY REQUEST OF THE GOVERNOR

Requester GOVERNOR

Component No. 292

**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>						
-----------------------------	--	--	--	--	--	--

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

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

Estimate of any current year (FY2005) cost: \_\_\_\_\_

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Passage of this legislation is not expected to have a budget impact on the Division of Public Health, as the bill simply clarifies legal authority and provides new due process provisions for programmatic activities already conducted by the Division. The bill does not add new functions or mandates to the Department of Health & Social Services' legal responsibilities.

Prepared by: Richard Mandsager, M.D.  
 Division: Public Health  
 Approved by: Joel S. Gilbertson, Commissioner  
 Agency: Department of Health and Social Services

Phone 465-3090  
 Date/Time 01/05/2005  
 Date 01/06/2005

## Sectional Analysis of CS HB 95 (JUD) (Public Health)

*(Prepared by the Department of Law and the Department of Health and Social Services,  
March 10, 2005)*

CS HB 95 (JUD) would clarify the Department of Health and Social Services' legal authority to detect and respond to a public health threat, including the authority to conduct testing, screening, and examination of individuals, as well as quarantine and isolation powers with court authority; and the authority to collect relevant data; the Department's powers are augmented in conjunction with the Department of Military and Veterans' Affairs when the governor declares a condition of disaster emergency related to public health; and legal representation and court powers are clarified with respect to court proceedings related to conditions of public health importance.

### **I. Purpose and Intent (Section 1):**

**Sec. 1:** Section 1 sets out the purpose and intent of the bill.

### **II. Changes to kinds of claims that may not be brought against the state or its agents, officers, or employees (Section 2):**

**Sec. 2: Types of damage:** Section 2 adds acts or omissions related to isolation, quarantine, medical treatment, or other actions taken under the state's public health authority and power to a list of damages for which an action may not be brought against the state or its agents, officers, or employees. This immunity provision does not cover knowing violations of the provisions regarding information security safeguards, medical treatment, and quarantine and isolation.

### **III. Repeal of statutes and changes to citations of repealed statutes (Sections 3, 6, and 14):**

**Sec. 3:** Section 3 deletes a citation to a statute that would be repealed by the bill regarding tuberculosis screening of public school employees.

**Sec. 6:** Section 6 renumbers citations to reflect statutes that would be repealed by the bill regarding registry of person with impairments.

**Sec. 14:** Section 14 repeals certain statutes regarding registry of persons with impairments and regarding tuberculosis and other disease control.

### **IV. Changes to general section regarding the Department of Health and Social Services' administration of public health laws (Sections 4, 5, and 7):**

**Sec. 4:** Section 4 rewrites the section on the administration of public health laws to modernize and more clearly and accurately reflect the Department of Health and Social Services' public health powers.

**Sec. 5:** Section 5 clarifies the nature of the regulations the Department of Health and Social Services is charged with adopting as regards reporting of conditions of public health

importance and confidentiality of information received under provisions regarding public health authority and powers. It also limits the commissioner of Health and Social Services' authority to require that a dead body be embalmed to certain situations.

**Sec. 7:** Section 7 adds a definition of "condition of public health importance" to the chapter regarding the administration of public health laws.

**V. Updates to the Department of Health and Social Services' public health powers and authority (Section 8):**

**Sec. 8:** Section 8 adds new sections regarding the Department of Health and Social Services' public health authority and powers to the chapter dealing with disease control. These sections replace provisions for two disease-specific conditions (tuberculosis and SARS), repealed under sec. 12, and provide authority that is not specific to a particular disease. The new sections are described as follows:

- prevention and control of conditions of public health importance
- data collection
- acquisition and use of identifiable health information
- requirement to maintain confidentiality of information obtained
- requirement to maintain list of reportable diseases
- power to conduct epidemiological investigation
- medical treatment powers and authority
- isolation and quarantine powers and authority
- penalty and civil action for violations
- powers in a public health disaster
- legal representation and guardian ad litem
- definitions

Section 8 also balances the state's public health powers with modernized due process provisions for protection of individual rights.

**VI. Changes to legal representation and court powers (Sections 9-11):**

**Sec. 9:** Section 9 amends the right of an indigent person to counsel to include when the person is subject to isolation, quarantine, testing, screening, or examination related to disease control. If eligible, such right to counsel may be provided by the Public Defender Agency.

**Sec. 10:** Section 10 gives magistrates and district court judges the power to issue orders related to testing, screening, and examination of individuals related to disease control.

**Sec. 11:** Section 11 expands the Office of Public Advocacy's responsibilities to include acting as guardian ad litem for individuals in court proceedings related to testing, screening, examination, isolation, and quarantine related to disease control.

**VII. Indirect court rule amendments and vote requirements (Sections 12 and 13):**

**Sec. 12:** Section 12 sets out the indirect court rule amendments certain sections and subsections of this bill would cause, of the following civil rules:

- Rule 4 – the form and timing of service of process
- Rule 7 – form of motions and pleadings allowed
- Rule 8 – general rules of pleading
- Rule 38 – right to trial by jury
- Rule 40 – trial calendar and continuance
- Rule 65 – injunctions
- Rule 72 – eminent domain actions
- Rule 77 – motions

**Sec. 13:** Section 13 provides that the sections and subsections requiring indirect court rule amendments will only take effect if sec. 12 receives a two-thirds vote in each house.

**VIII. Effective date (Section 15):**

**Sec. 15:** Section 15 sets out an immediate effective date for the bill.

# STATE OF ALASKA

## DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110601  
JUNEAU, ALASKA 99811-0601  
PHONE: (907) 465-3030  
FAX: (907) 465-3068

March 21, 2005

Honorable Norman Rokeberg, Chairman  
House Rules Committee  
Alaska State Capitol: Rm. 214  
Juneau, AK 99801

Dear Representative Rokeberg,

The Department of Health and Social Services respectfully requests a hearing in the House Rules Committee on House Bill 95 "An Act relating to public health and public health emergencies and disasters; relating to duties of the public defender and office of public advocacy regarding public health matters; relating to certain claims for public health matters; making conforming amendments; and providing for an effective date."

This bill is the culmination of a number of years work to develop a modern public health statute for Alaska.

The House Health, Education, and Social Services Committee and the House Judiciary Committee heard the bill and recommends it be replaced with a House (HES) Committee Substitute. The House Judiciary Committee heard the bill and recommends it be replaced with a House (JUD) Committee Substitute which incorporates the improvements made by the House (HES) amendments as well as additional changes.

Subsequent to the House Judiciary Committee moving the bill from committee, the Department of Law identified two issues relating to the State's tort immunity and the criminal penalties associated with the bill that require further clarification. A proposed amendment to address these issues is attached for the Rules Committee's consideration.

The following materials are provided for placement in the House (RLS) Committee packet:

1. Copies of HB 95, CS HB 95 (HES) and CS HB 95 (JUD);
2. A sectional analysis for the most recent version, CS HB 95 (JUD);
3. The Governor's transmittal letter for HB 95 still applicable as a sponsor statement for CS HB 95 (JUD);
4. The fiscal note for HB 95 applicable to all three versions of the bill;