

ALASKA LEGISLATURE COMPILED, 2009-2010

11926 SENATE LABOR & COMMERCE

March 1, 2005

**Potential Impact**

Information about Alaska cancer rates and research on the relationship between cancer rates and firefighters suggest that **cost of prospective claims in this classification could increase loss costs by 10% to 20%, with potentially greater impacts due to the retroactive nature of this proposal.** If HB 31 becomes law, respiratory diseases, heart problems, and cancer cases for firefighters previously covered under health insurance would more likely be covered under WC due to the exclusive remedy feature of WC, the lack of medical cost sharing under WC, and the proposed presumption of compensability for firefighters.

The above scenario assumes that current practice is not to provide WC coverage for such ailments (respiratory disease, heart ailments, certain cancers) for most claims. On the other hand, if most of the claimants with such ailments were currently being accepted for WC coverage, then the codification of this practice would not have much impact on system costs.

In situations where employees file claims as a result of their occupation and associated exposure to human blood or bodily fluids, the impact on WC costs for such classes is not expected to be significant. Such employees could include law enforcement officers, firefighters, nurses and emergency medical technicians, among others. Based on claims data available from NCCI's unit statistical plan (USP), there are several claims in Alaska that have resulted from exposure to AIDS or other contagious diseases. Thus, it appears that the enactment of HB 31 will result in the codification of current practice. Any additional impact will be reflected in subsequent data that is collected and used in future rate filings. However, due to the retroactive coverage provided by this proposal, the overall costs could be significant. Since coverage for such claims may not have been contemplated in previous loss cost filings, such retroactive costs would be unfunded.

Other potential impacts not explicitly priced but expected to offset one another to some degree are:

- a) Decrease in attorney costs due to fewer cases where an attorney needs to be involved as a result of the presumptive clause for firefighters, emergency responders, which could be easily offset or more by...
- b) Additional claim filings and disputes over other related diseases or occupations, filed in the spirit of this proposal.

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSSSHB 31(FIN)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title: Worker's Comp: Disease Presumption RDU: Insurance (116)  
 Component: Insurance Operations  
 Sponsor: Anderson, Lynn, Gato, Croft, et. Al  
 Requester: Senate Labor & Commerce Component No.: 354

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2006) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This is a benefits bill and has no fiscal impact on the operations of the division.

Prepared by: Linda S. Hall, Director Phone 907-269-7900  
 Division: Insurance Date/Time 3/31/06 4:49 PM  
 Approved by: William C. Noll, Commissioner Date 3/31/2006  
 Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB031CSSS-DOLWD-WC-03-30-06  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Department: Labor and Workforce Development  
 Title: Workers' Comp: Disease Presumption RDU: Workers' Compensation  
 Component: Workers' Compensation  
 Sponsor: Representative Anderson  
 Requester: House Rules Component Number: 344

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

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

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

Estimate of any current year (FY2006) cost: None  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The broadly applicable presumptions included in the bill could result in numerous claims. The seriousness of the covered conditions would involve large amounts of benefits, and those factors coupled with the broad scope of defenses (like heredity and other life exposures) could lead to extensive, complicated hearings.

\*The costs of this proposed legislation cannot be determined in advance as there are no comparable Workers' Compensation Act provisions at present. Increased costs, if any, would consist of additional personnel needed to resolve disputed claims for benefits based upon the new presumptions.

Prepared by: Paul F. Lisankie, Director Phone: 465-6059  
 Division: Workers' Compensation Division Date/Time: 3/30/06 10:53 AM  
 Approved by: Greg O'Claray, Commissioner Date: 3/30/2006  
 Agency: Department of Labor and Workforce Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2006 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSSHB 31(FIN)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 4/4/06 3:44 p.m. Dept. Affected: Administration  
Title: An act relating to presumption of coverage of w/c in certain occupations RDU: Risk Management  
Component: Risk Management  
Sponsor: Representative Anderson  
Requester: (S) L&C Component No.: 71

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

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
1007 I/A	.	.	.	.	.	.
<b>TOTAL</b>	.	.	.	.	.	.

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Risk Management (RM) will be financially impacted by the changes in this legislation. RM administers the self insurance program providing workers' compensation protection for all state employees, including illness claims filed by occupations affected by this legislation.

The self insured worker's compensation claims will realize increased litigation and benefit costs. As the number of reported exposures will vary by year, it is difficult to present accurate projections.

Future Risk Management's workers' compensation assessments to those agencies with employee occupations affected will reflect actual costs incurred as premiums charged each agency are developed from actual claims expenses incurred.

Prepared by: J. Brad Thompson, Director Phone: 465-5723  
Division: Risk Management Date/Time: 4/5/06 8:30 AM  
Approved by: Michael Tibbles, Deputy Commissioner Date: 4/5/2006  
Agency: Administration



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT  
Division of Insurance

Frank H. Murkowski, Governor  
William C. Nott, Commissioner  
Linda S. Hall, Director

March 21, 2006

Representative Norman Rokeberg  
State Capitol  
Juneau, AK 99801

RE: HB 31

Dear Representative Rokeberg,

After consulting with the National Council on Compensation Insurance regarding the impact of this proposed legislation on the Alaska Workers' Compensation system, I wanted to share the information I received.

While there is a potential impact on Classification Code 7704 (Firefighters & Drivers) of an increase in loss costs (one part of the premium rating) of 10% to 20%, the impact on the overall worker's compensation system is negligible. Much of the exposure appears to be covered in the self-insured market, generally by governmental entities.

Therefore, there does not seem to be any significant impact on the workers' compensation market as a whole nor on overall rates.

Please do not hesitate to contact me should there be any questions.

Sincerely,

Linda Hall

CC: Representative Anderson

# LEGAL SERVICES

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## MEMORANDUM

February 6, 2006

**SUBJECT:** Are volunteer fire fighters covered by CSSH B 31 (FN) via inclusion of references to fire fighters in AS 23.30.243? (Work Order No. 24-LS02251)

**TO:** Representative Bill Stoltze  
Attn: Ben Mulligan

**FROM:** Dennis C. Bailey  
Legislative Counsel

This memo responds to your question whether volunteer fire-fighters are covered by CSSH B 31 (FN). In the bill, section 1, at page 1, line 13, refers to fire fighters covered in AS 23.30.243. Page 2, lines 27-28, repeat the reference to fire fighters covered under AS 23.30.243.

The referenced section, AS 23.30.243, provides:

**Sec. 23.30.243. Extending coverage to certain fire fighters.** (a) For the purposes of workers' compensation any injury, disability or death incurred by a fire fighter by reason of the fire fighter's participation in authorized training, proceeding to or engaging in a fire suppression or rescue operation, or the protection or preservation of life or property, anywhere in the state is considered to have arisen out of and been sustained in the course of employment, and the fire department or regularly organized volunteer fire department of the fire fighter's primary employment or registration is considered to be the employer, except when the injured, at the time of injury or death, is acting for compensation from another.

(b) Nothing in this section requires the extension of benefits to a fire fighter employed by a municipality which by law or regulation expressly prohibits the activity giving rise to the injury, disability, or death.

In my opinion, volunteer fire fighters are covered by this reference. The first clause of subsection (a) says that for purposes of workers' compensation firefighter activities arise out of the course of employment. No exceptions are made within that definition for volunteers. The second clause says that a fire fighter's department, including a volunteer fire department, is considered the employer. The exception at the end of paragraph (a) applies to the employer status, i.e., if the fire fighter is working for another department or

Representative Bill Stoltze  
February 4, 2006  
Page 2

another employer, the department of regular employment is not the employer. In any event, the exception does not apply to volunteers since it only applies to employees receiving compensation.

You should also be aware that a provision of the Alaska Administrative Code, 13 AAC 52.040, appears to apply additional conditions for qualification of volunteer fire fighters.

**13 AAC 52.040. Workers' compensation for volunteer firefighters (a)**  
A fire department of any political subdivision or service area recognized by the state fire marshal under 13 AAC 52.030 may also be eligible under AS 23.30.220(a)(4) and 23.30.243 regarding workers' compensation if a complete list of members is submitted annually to the state fire marshal. The list must include the name, position, and status of each member.

(b) Each addition or deletion from the membership list must be forwarded to the state fire marshal within 10 days after the addition or deletion.

Arguably, two additional conditions may apply in order to be eligible under AS 23.30.243: (1) the department must be recognized by the fire marshal, and (2) a list must be properly submitted. Whether failure of these conditions would disqualify a volunteer under AS 23.30.243 is not certain, but you should be alerted to the issue.

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If I may be of further assistance, please advise.

DCB:ljw:lmb  
06-053.ljw

# Alaska State Legislature

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Rep Tom Anderson@legis.state.ak.us

**Representative Tom Anderson**  
District 19 - Anchorage

## Sponsor Statement CSHB 31(FIN)

**Title: "An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations"**

Firefighters and emergency response professionals are regularly exposed to dangerous chemicals, fumes and blood borne pathogens. Nationwide, emergency personnel suffer from an increased probability of contracting certain cancers and illnesses. It has been shown that after exposure to a toxic substance many of the resulting illnesses can take years to manifest.

Firefighter and emergency personnel are a valuable and necessary part of any community. They risk their lives on a regular basis in order to ensure the safety and well being of their community.

Their sacrifice, which ends up costing them so dearly, demands action on our parts. By assuming a "presumption of illness" for certain professions such as firefighters and EMTs HB 31 is just such an action. This bill would make them eligible for health benefits in the case that they are diagnosed with certain cancers or illnesses described in the bill.

By enacting HB 31 we will provide coverage and security for our at risk emergency personnel. This legislation is necessary and urgent in order to protect and preserve our State's brave men and women of the emergency response profession.

I urge your support for this bill.

Sponsor Statement

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK  
99801-1182

### Sectional Analysis for SSHB 31 BY: Representative Tom Anderson

**Section 1.** Adds a new section to AS 23.30

- (a) Outlines the fact that there is a presumption that the illnesses listed in (b)(1)(C) and (c) are attributed to the occupations listed in other subsections of this bill. Further, the presumption may be rebutted if certain evidence is found such as tobacco use or weight problems.
- (b) Deals with the coverage specific to fire fighters
  - (1) Lists the diseases for which firefighters are covered including respiratory diseases, heart problems experienced within 72 hours of exposure to smoke, fumes or toxic substances and certain cancers.
  - (2) Extends the coverage under the presumptions of this bill for retired fire fighters for three calendar months for each year of service up to 60 calendar months after the last day of their employment
  - (3) The coverage for cancers listed under (1)(C) of this subsection apply only to firefighters with 10 or more years of service who were given a qualifying medical exam upon becoming a fire fighter that showed no evidence of cancer.
- (c) Deals with the coverage for firefighters and first response personnel
  - (1) – (5) Lists the contagious diseases this section applies to including HIV, AIDS and hepatitis
- (d) Denies the coverage provided for under (b)(1) of this section to firefighters who smoke that develop a heart or lung condition
- (e) Directs the department to define through regulation
  - (1) The type and extent of the medical examination needed to comply with (b)(3)
  - (2) The nature and quantity of a person's tobacco use based on medical research that will make them ineligible for coverage under (1)

**Section 2.** Amends the uncodified law of the State of Alaska by adding a new subsection

Stating that the coverage established by this act applies to claims made on or before the effective date of this Act even if the exposure happened prior to the effective date.

# ALASKA PROFESSIONAL FIRE FIGHTERS LEGISLATIVE FACT SHEET

Released 1/27/2006

## HB 31

### FIRE FIGHTER PRESUMPTIVE DISABILITY LAW

#### BACKGROUND

Fire fighters are exposed on a daily basis to stress, smoke, heat, and various toxic substances. As a result, fire fighters are far more likely to contract heart disease and cancer than other workers. And as fire fighters increasingly assume the role of the state's leading providers of emergency medical services, they are also exposed to infectious diseases. Heart disease, lung disease, cancer and infectious disease are now among the leading causes of death and disability for fire fighters, and numerous studies have found that these illnesses are occupational hazards of fire fighting.

In recognition of this linkage, 38 states have enacted "presumptive disability" laws, which presume that cardiovascular diseases, certain cancers and infectious diseases are job related for purposes of workers compensation and disability retirement unless proven otherwise. No such law covers firefighters employed in Alaska.

Under Alaska workers compensation laws, fire fighters must be able to pinpoint the precise incident or exposure that caused a disease in order for it to be considered job-related. This burden of proof is extraordinarily difficult for fire fighters to meet because they respond to a wide variety of emergency calls, constantly working in uncontrolled environments under difficult conditions. As a result, very few cases of occupational disease contracted by fire fighters have been deemed to be service-connected.

HB 31, sponsored by Representative Tom Anderson (R) has been introduced that will amend workers compensation law so the cardiovascular disease, certain cancers and infectious diseases are presumed to be job related for purposes of workers compensation and disability retirement, and places the burden on the employer to prove otherwise.

#### APFF POSITION

The APFF supports HB 31 which provides a disability presumption for Alaska's fire fighters

#### APFF ARGUMENTS

- Most states have acknowledged the occupational hazards attributed to fire fighting and have presumptive disability laws for fire fighters because it is difficult for fire fighters to identify when and where they contracted an occupational disease.
- Alaska fire fighters regularly respond to HAZMAT incidents involving chemical, radiological and biological hazards. Working in such a hazardous environment, it is virtually impossible to precisely identify when and where a fire fighter contracted a disease.
- Alaska fire fighters do not have the benefit of a presumptive disability law. Instead they are faced with a burden of proof that is nearly impossible to meet and only in extraordinary cases do fire fighters, suffering from occupational diseases, receive fair and just compensation benefits.

#### CURRENT STATUS

HB 31 was referred to the Labor and Commerce Committee; Other referrals – HES and Finance Committees

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#### ALASKA PROFESSIONAL FIRE FIGHTERS

*International Association of Fire Fighter, AFL-CIO, CLC*

1120 E. Huffman Road, Suite 23, PMB 556 • Anchorage, Alaska 99516

Erik Tuott, Anchorage Local Rep.  
907-250-2311 E\_tuott@hotmail.com

## *What is Presumptive Legislation?*

What is presumptive legislation? As its name implies, presumptive legislation presumes for the purpose of worker compensation that a fire fighter's brain cancer, for example, is the result of their employment as a career fire fighter, if they have been a fire fighter for a certain number of years.

Typically, presumptive legislation amends a state's workplace compensation legislation to state that if a career fire fighter develops a certain form of cancer, it is presumed that the cancer is a direct result of their occupation as a fire fighter, and that compensation will be granted.

In the absence of presumptive legislation, the onus is on the worker to prove their illness is a result of their occupation. Presumptive legislation changes that onus; the claim is approved automatically if the appropriate criteria are met, unless the employer can demonstrate that the illness is not a result of the fire fighter's occupation.

Without presumptive legislation, a worker who contracts an illness as the result of their job must file a worker's compensation claim, and endure the uncertainties of the claim process. This system of claims and appeals can take years to produce a final decision. Even so, there is still no guarantee the worker's compensation claim system will recognize an occupational disease and award appropriate compensation. There are cases where a fire fighter who contracted cancer as the result of years of toxic exposures and filed a claim was asked, "At which fire did you contract this cancer?"

The latent nature of the disease poses other considerations. Many fire fighters who are currently battling cancer suffered their exposures decades ago, when less was known about the importance of respiratory and other protections and when protective equipment was built to lower standards than today. In some cases, individual fire departments didn't provide enough SCBAs to equip everyone at the scene of a fire; some were lucky to get one while others entered a fire without any respiratory protection. They may have made it home safely at the end of their shift, week after week, month after month, not knowing the seeds of a brain cancer or a leukemia that developed 20 years later had been irrevocably planted.

The days of entering fires without respiratory protection are over, and fire departments across the country are implementing comprehensive fitness and wellness programs. Most fire departments require annual medical examinations that include screening for cancers and infectious diseases. Fire fighters have better understanding of the products of combustion and the adverse effects upon their health, yet, in spite of these improvements fire fighting is still one of the most dangerous occupations in the United States. For example, one in three fire fighters in Los Angeles is expected to develop cancer by the age of 60. The introduction of new chemicals, plastics, and building materials continue to contribute to the myriad of toxins that fire fighters will encounter in their career. As long as fire fighters are exposed to these toxins while serving the public, some will contract job-related diseases as a direct result. This makes it all the more important to pass presumptive legislation, to protect Alaska's fire fighters and their survivors.

*From: Rep. Anderson*

## ***Why Do Alaskan Fire Fighters need Presumptive Legislation?***

Presumptions giving the benefit of the doubt to Alaskan fire fighters are justified because they are subjected to an occupational risk that would be intolerable in other lines of work. The nature of the work calls for fire fighters to mitigate emergencies in less than ideal conditions, including but not limited to extreme weather, natural disasters, acts of terrorism, and toxic environments. As of 2005, 38 states as well as the federal government have enacted some sort of presumptive legislation to protect their emergency responders. The men and women serving as Alaska's fire fighters need the same protection as their peers in other locations.

### **Fire Fighters and Lung Disease**

There are 70,000 various toxins on file with the EPA, but in reality, when these toxins burn together, they can create more than 70 million possible combinations, the effects of which are not fully understood. Studies have shown that these toxins cause irreversible pulmonary changes and lung disease in fire fighters. (1, 2) In spite of improvements to safety gear and training, fire fighters are still regularly exposed to these toxic environments when protecting lives and property

Fire fighters also have an increased risk of dying from non-malignant respiratory diseases. (3)

### **Fire Fighters and Heart Disease**

Fire fighters exposed to carbon monoxide have increased cardiac arrhythmias during exercise. (4)

There is strong evidence of an increased risk of death overall from heart disease among fire fighters. This is particularly true because of the strong selection criteria for health in recruitment of fire fighters and, especially regarding diabetes-free individuals. (5)

### **Fire Fighters and Cancers**

Statistically speaking, fire fighters have been shown to be at increased risk of numerous cancers, chief among them brain, kidney, colon, bladder, bone marrow, melanoma, urinary tract, leukemia, prostate, and non-Hodgkin's lymphoma (6)

The relationship between cancer deaths and fire fighting is expressed by the Standard Mortality Ratio (SMR). An SMR greater than 100 indicates that the observed portion of deaths from a specific cancer is greater than the expected proportion. Fire fighters experience significantly elevated SMR's of 417 for benign neoplasms, 184 for colon cancer (7), 316 for bladder cancer (8) as well as 218 for brain cancer (9), to name a few.

### **Fire Fighters and Infectious Diseases**

Fire fighters and emergency responders routinely respond to medical calls without warning, time, or medical knowledge of their patients. Because of this, fire fighters are not afforded the same precautions as other health care professionals. Compounding emergency situations are other hazards such as broken glass, sharp objects, and poor scene lighting, to name a few. These problems place fire fighters and emergency responders at an elevated risk of being exposed to infectious diseases.

## References

- (1) [The Effect of Occupational Exposure on Pulmonary Function. *American Review of Respiratory Disease* 1982; 125:319-33.]
- (2) [Acute Effects of Occupational Exposure on Pulmonary Function. *American Journal of Industrial Medicine* 1986; 9:333-40]
- (3) [Respiratory mortality among fire fighters. *British Journal of Industrial medicine* 1990; 47:462-5.]
- (4) [Production of Arrhythmias by elevated carbonoxyhemoglobin in patients with Coronary Artery Disease. *Annals of Internal Medicine* 1990; 113:337-338.]
- (5) [A Technique to Re-Assess Epidemiologic Evidence in Light of the Health Worker Effect; the Case of Fire Fighting and Heart Disease. *Journal of Occupational and Environmental Medicine*, 2000, 42 (10):1021-34.]
- (6) [Occupational Cancer in New York City Fire Fighters. A report by the Department of Community Medicine, Division of Environmental and Occupational Medicine, Mount Sinai School of Medicine, City University of New York]
- (7) [Mortality of a Municipal-Worker Cohort: IV Fire Fighters. *American Journal of Industrial Medicine*, 1987, 11:671-684]
- (8) [Mortality of urban fire fighter in Alberta, 1927-1987. *American Journal of Industrial Medicine*, 1993, 23:921-940]
- (9) [Cohort mortality study of Seattle fire fighters: 1945-1983. *American Journal of Industrial Medicine* 1990, 17: 493-504]

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Rep Tom Anderson@legis.state.ak.us

**Representative Tom Anderson**  
District 19 - Anchorage

## Support Information CSHB 31(FIN)

*"An Act relating to the presumption of coverage for a workers' compensation claim for disability as a result of certain diseases for certain occupations"*

### **In the last 10 years in Alaska:**

- A 43 year old firefighter from Fairbanks died from non-Hodgkin's Lymphoma leaving behind his family.
- A retired Fire Captain from Anchorage, in his mid 50's, died less than 6 months after retirement from primary brain cancer.
- A retired Anchorage Engineer, in his late 40's, died shortly after retirement as a result of Lymphoma.
- Several current Anchorage Fire Department employees are suffering from bladder cancer.
- Several current and former Anchorage firefighters have tested positive for tuberculosis that they likely contracted while at work.

**NATIONAL COUNCIL ON COMPENSATION INSURANCE, INC.**

**ANALYSIS OF ALASKA HOUSE BILL 31**

The enactment of House Bill 31 could produce a significant increase in loss costs for the relatively few class codes directly impacted (particularly firefighters). Note that the proposed language allows for coverage of claims made after the effective date of the proposal, regardless of whether or not the exposure leading to the occupational disease occurred before the effective date. Therefore, it is expected that there would be a significant impact on total system costs due to the retroactive nature of this proposal.

**Summary of Bill**

HB 31 creates a presumption of workers compensation coverage for firefighters for the following occupational diseases:

Respiratory disease  
Heart problems that are experienced within 72 hours after exposure to smoke, fumes, or toxic substances  
After 10 years experience:  
Primary brain cancer  
Malignant melanoma  
Leukemia  
Non-Hodgkin's lymphoma  
Bladder cancer  
Ureter cancer  
Kidney cancer

HB 31 would also create a presumption of workers compensation coverage for employees in occupations involving exposure to human blood or bodily fluids for the following diseases:

Human immunodeficiency virus  
Acquired immunodeficiency syndrome  
All strains of hepatitis  
Meningococcal meningitis  
Mycobacterium tuberculosis

Currently, the employee has the burden of proof for compensability of a workers compensation disability claim. This proposal establishes a presumption of coverage, which must be overcome by a preponderance of evidence to the contrary. This would now place the burden of proof on the employer (and insurer.)

Additionally, this proposal could increase the frequency and total cost of claims in some classes (i.e. firefighters) significantly. It should also be noted that much of the impact for some of these classes would be felt by governmental entities as the employer of many of those being impacted by this proposal.

March 1, 2005

**Potential Impact**

Information about Alaska cancer rates and research on the relationship between cancer rates and firefighters suggest that **cost of prospective claims in this classification could increase loss costs by 10% to 20%, with potentially greater impacts due to the retroactive nature of this proposal.** If HB 31 becomes law, respiratory diseases, heart problems, and cancer cases for firefighters previously covered under health insurance would more likely be covered under WC due to the exclusive remedy feature of WC, the lack of medical cost sharing under WC, and the proposed presumption of compensability for firefighters.

The above scenario assumes that current practice is not to provide WC coverage for such ailments (respiratory disease, heart ailments, certain cancers) for most claims. On the other hand, if most of the claimants with such ailments were currently being accepted for WC coverage, then the codification of this practice would not have much impact on system costs.

In situations where employees file claims as a result of their occupation and associated exposure to human blood or bodily fluids, the impact on WC costs for such classes is not expected to be significant. Such employees could include law enforcement officers, firefighters, nurses and emergency medical technicians, among others. Based on claims data available from NCCI's unit statistical plan (USP), there are several claims in Alaska that have resulted from exposure to AIDS or other contagious diseases. Thus, it appears that the enactment of HB 31 will result in the codification of current practice. Any additional impact will be reflected in subsequent data that is collected and used in future rate filings. However, due to the retroactive coverage provided by this proposal, the overall costs could be significant. Since coverage for such claims may not have been contemplated in previous loss cost filings, such retroactive costs would be unfunded.

Other potential impacts not explicitly priced but expected to offset one another to some degree are:

- a) Decrease in attorney costs due to fewer cases where an attorney needs to be involved as a result of the presumptive clause for firefighters, emergency responders, which could be easily offset or more by...
- b) Additional claim filings and disputes over other related diseases or occupations, filed in the spirit of this proposal.



807 G Street, Suite 356 Anchorage, AK 99501

(907) 258-2625 (907) 279-3615 Toll Free in AK 1.800.337.3682 [www.amlja.org](http://www.amlja.org)

April 13, 2006

The Honorable Con Bunde, Chair, and  
The Honorable Ralph Seekins, Vice Chair  
Senate Labor and Commerce Committee  
Alaska State Capitol  
Juneau, Alaska 99801

RE: Oppose HB31

Dear Senator Bunde and committee members:

The Alaska Municipal League Joint Insurance Association (AMLJIA) opposes HB31.

The AMLJIA is a joint insurance arrangement organized under AS 21.76. With approximately 146 member municipalities and school districts pooling for workers' compensation coverage, these local government entities bear the single largest exposure to changes in workers' compensation law as it applies to employees such as firefighters, EMTs, and police.

HB31 creates a presumption of workers' compensation coverage for firefighters for cardio/respiratory problems, as well as a variety of cancers for firefighters with 10 or more years of service. All of these are chronic diseases that often have genetic and lifestyle choices as their cause.

HB31 further adds a presumption of workers' compensation coverage for several contagious diseases for employees whose jobs may include contact with bodily fluids.

The presumptions are unnecessary and potentially very costly. Present fire fighting technology and procedures call for use of personal protective equipment such as respirators and breathing dams. When following best practices and department procedures, the risk of contracting illnesses such as those listed in the bill is greatly reduced.

Currently, if a firefighter contracts a respiratory or heart disease and claims that it is work-related, it is up to the employer to demonstrate that it is not. These claims are covered by workers' compensation already. By creating a strict presumption, the claim will most often be covered by the workers' comp. system, even when it is not work-related.

The communicable disease provisions are also problematic. When EMTs, firefighters and others properly use personal protective equipment, the incidence rate of bloodborne diseases should be lower than the general population, not higher. In addition, exposures

PROTECT

A service of the ALASKA MUNICIPAL LEAGUE

to blood and needlesticks are events that are generally identifiable. There should be no doubt as to what day a firefighter gave mouth-to-mouth resuscitation to a victim or an EMT is accidentally stuck by a syringe. Therefore, the present system covers the work-related events just fine. Providing a presumption is unnecessary and would provide workers' compensation coverage to people who contract hepatitis, TB, HIV, AIDS or meningitis through more conventional means such as poor hygiene, unprotected sex, or even a dirty needle at a tattoo parlor.

These protections are offered once employees are cleared of pre-existing diseases by a medical screening. This presents a two-fold problem. One, the screenings may not be effective for latent diseases such as cancer. Two, depending upon the patient's age, the cost of such screenings approach \$1,000 a piece, according to the Fairbanks Fire Department. Since the municipality would be required to bear the cost of such an exam, the overall costs of initial screenings statewide are estimated at \$8 million, with annual recurring costs after that.

The National Council on Compensation Insurance (NCCI) promulgates the starting rates for all carriers and pools in Alaska. The NCCI estimates the cost to municipalities for the affected job classes to increase 10 to 20 percent, based on the presumptions in the bill. Worse yet, the bill is retroactive in nature, providing coverage for claims "even if the exposure leading to the occupational disease occurred before the effective date of this Act." These claims were never contemplated in the calculation of rates in the past and would be unfunded

There is no more expensive way to pay for an injury or illness than our current workers' compensation system. Health programs are able to control medical costs through negotiated agreements with health care providers. Workers' compensation can not. It is interesting to note that both workers' compensation and the health benefits are generally provided by the employer, at least with respect to the career firefighter.

As you likely know, Alaska's workers' compensation rates are the second highest in the nation. This crisis in workers' compensation costs contributes to some local governments and businesses closing their doors. As you'll recall, we have only begun to fix our workers' comp. problem less than one year ago. We should give the reforms some time to work, not immediately step in the opposite direction by expanding benefits. Please consider the negative financial impacts this legislation would have on the State's political subdivisions.

Thank you.



Kevin Smith  
Executive Director

## **Constance Hartle**

---

**From:** Kevin Smith [kevins@amljia.org]  
**Sent:** Wednesday, May 03, 2006 10:49 AM  
**To:** Sen. Ben Stevens; Sen. Con Bunde; Sen. Ralph Seekins  
**Cc:** jane\_alberts%@legis.state.ak.us, Brian Hove  
**Subject:** HB 31 - Pension and Other Questions

Dear Sen. Bunde and Committee Members:

I want to thank the Senate Labor and Commerce Committee for allowing me to testify again on HB31. I will be unavailable for further testimony on Thursday as I will be outside taking care of business.

As my testimony and letter should make quite clear, no amount of tinkering with this bill makes it any more palatable for Alaska's local governments. The fact remains that legitimate work-related injuries and illnesses are covered by workers' compensation and non work-related illnesses are generally covered by the employer's health plan.

As it stands today, if a fire fighter comes down with AIDS or brain cancer, the onus would be on the employer to prove by the preponderance of the evidence (50% plus 1) that it is not work-related. This is generally only accomplished with a medical opinion. Then, the burden of proof shifts to the employee to demonstrate that the illness is work-related.

As an example of this mechanism, I attach a recent Workers' Compensation Board decision. Please read the findings of fact and conclusions at law starting on page 12 to understand the presumption that applies in the law today. As you can see the employer in this case was only able to avoid the kidney cancer claim through expert testimony that "the only way to explain the employee's advanced stage of cancer so soon after working on Amchitka, is that the cancer preexisted the employee's work on Amchitka and that exposure to radiation or other toxic materials once the cancer process is started does not aggravate or accelerate a preexisting cancer". (<http://146.63.134.55/workcomp/2005/05%2D0261.doc>). If it is a close call, the Alaska Workers' Comp. Board typically is generous by giving the benefit of the doubt to the employee.

HB31 turns this presumption upside down. As the Director of the Division of Workers' Compensation Paul Lisankie testified, this bill now creates a statutory presumption - so that any qualified fire fighter with the listed cancers will be assumed that the employee received it from the job. This ignores the many other places the employee may have picked up the disease, whether it be from a family member, a friend, a bad tattoo or other life-style considerations.

During Tuesday's hearing, Sen. Stevens asked some very good questions regarding the pension systems, where most of these presumptions lay in other states. Most of Alaska's paid fire fighters are now covered by the PERS system. PERS provides both an occupational disability benefit and a non-occupational disability benefit for peace officers and fire fighters, as well as other public employees. (<http://www.state.ak.us/drb/pers/police-fire.shtml>).

If the disability is occupational, workers' comp. may apply as well. PERS provides a wage supplement, continued medical coverage for the employee and family, and continued service credit until regular retirement is attained - then regular retirement. Even if the disability is non-occupational, depending on length of service - must be vested, there are wage replacement benefits.

Regardless of the circumstances, Alaska already treats our first responders fairly and generously. As Sen. Bunde pointed out, other long-term disability products are also available to public employees and the public at-large.

One advantage of leaving these disability benefits to be provided solely by the PERS system is that we do not differentiate remedies between various classes of employees and run into potential constitutional challenges on equal protection issues as other states have experienced. While the frequency of the incidents may be low, the severity of the incidents is extremely high.

HB31 imposes an inequitable benefit for a single class of employees at the expense of the citizens of Alaska. There is no question that the costs of this bill are an unnecessary burden on the public.

I appreciate your resistance to further burdening your local government partners with the fiscal obligations imposed by this proposed law.

Sincerely,

Kevin Smith  
Executive Director  
AMLJIA

**HB**

**35**

*Library*

**SENATE CONCURRENT RESOLUTION NO.  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Introduced:  
Referred:**

**A RESOLUTION**

1 **Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State**  
2 **Legislature, concerning House Bill No. 35, extending the termination date of the State**  
3 **Board of Registration for Architects, Engineers, and Land Surveyors.**

4 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of  
6 Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding  
7 changes to the title of a bill, are suspended in consideration of House Bill No. 35, extending  
8 the termination date of the State Board of Registration for Architects, Engineers, and Land  
9 Surveyors.

# LEGAL SERVICES

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Juneau, Alaska 99801-1182  
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## MEMORANDUM

April 21, 2005

**SUBJECT:** SCS HB 35(L&C) relating to the State Board of Registration for Architects, Engineers, and Land Surveyors (Work Order No. 24-LS0273F)

**TO:** Senator Con Bunde  
Chair of the Senate Labor and Commerce Committee  
Attn: Jane

**FROM:** <sup>JB</sup> Theresa Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

As you are aware, the changes that you requested require a title change to the bill and, since the bill is in the second house, a title change requires a senate concurrent resolution to waive the applicable rules. At your request a senate concurrent resolution to do this is being prepared.

If I may be of further assistance, please advise.

TLB:med  
05-282.med

Enclosure

24-LS0273\F  
Bannister  
4/21/05

**SENATE CS FOR HOUSE BILL NO. 35(L&C)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): REPRESENTATIVES KOHRING, Stoltze, Neuman**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act extending the termination date of the State Board of Registration for  
2 Architects, Engineers, and Land Surveyors; extending the term of a temporary member  
3 of the State Board of Registration for Architects, Engineers, and Land Surveyors; and  
4 providing for an effective date."

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

6 \* **Section 1.** AS 08.3010(c)(3) is amended to read:

7 (3) State Board of Registration for Architects, Engineers, and Land  
8 Surveyors (AS 08.48.011) - June 30, 2009 [2005];

9 \* **Sec. 2.** The uncodified law of the State of Alaska enacted in sec. 31, ch. 47, SLA 1998, as  
10 amended by sec. 2, ch. 46, SLA 2001, is amended to read:

11 Sec. 31. TEMPORARY BOARD MEMBFR. After considering  
12 recommendations made by the Alaska chapter of the American Society of Landscape  
13 Architects, the governor shall appoint a landscape architect to the Board of  
14 Registration for Architects, Engineers, and Land Surveyors. The person appointed

1 under this section

2 (1) must have been a resident in the state for three consecutive years  
3 immediately preceding appointment;

4 (2) serves in an advisory, nonvoting capacity on the board;

5 (3) is entitled to receive state money for per diem or travel expenses  
6 for work as a board member;

7 (4) serves a term that expires June 30, 2009 [2005]; and

8 (5) must be registered as a landscape architect under AS 08.48.

9 \* **Sec. 3.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

10 \* **Sec. 4.** Sections 1 and 2 of this Act take effect July 1, 2005.

# 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.: 2380

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

<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

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Copies of minutes listed below were originally included in this file. The minutes are available on the legislative computer database. In order to save space copies of minutes have not been left in the files.

Mary Pagenkopf

HB 35  
House Finance 3/1/05

Jan 21 05 12:54p

Sam Kito Jr.

907.463.3275

P.1



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

21 January, 2005

MEMBER SOCIETIES

Alaska Society of Professional  
Engineers

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

Alaska Society of Professional  
Land Surveyors

Dear Representative Kohring:

American Congress on  
Surveying & Mapping Alaska  
Section

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

American Institute of  
Architects Alaska Chapter

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

American Society of Civil  
Engineers Alaska Section

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

American Society of  
Landscape Architects Alaska  
Chapter

Sincerely,

Architecture/Engineering  
Marketing Association of  
Alaska

Sam S. Kito III, PE  
907-723-6486

American Council of  
Engineering Companies of  
Alaska

Chair, Legislative Liaison Committee  
Alaska Professional Design Council

Professional Engineers in  
Private Practice Alaska  
Chapter

American Society of Interior  
Designers



DIVISION OF OCCUPATIONAL LICENSING

*Franz J. 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:

**Prior Audit Recommendation No. 1**

The legislature should consider changes to the statutes mandating that BRAFLS 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

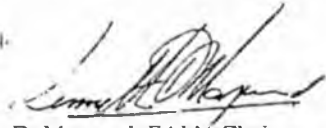
The AELS Board remains concerned that its member terms are no longer staggered. This changed when two Board members' terms expired in July 2003, and they were not replaced until 2004 (after the legislative session had reconvened).

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

# 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

### 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.

### Sponsor Statement

**\*Sec. 2.** The uncodified law of the State of Alaska enacted in sec. 31, ch. 47, SLA 1998, is amended to read:

Sec. 31. TEMPORARY BOARD MEMBER. After considering recommendations made by the Alaska chapter of the American Society of Landscape Architects, the governor shall appoint a landscape architect to the Board of Registration for Architects, Engineers, and Land Surveyors. The person appointed under this section

- (1) must have been a resident in the state for three consecutive years immediately preceding appointment;
- (2) serves in an advisory, nonvoting capacity on the board;
- (3) is entitled to receive state money for per diem or travel expenses for work as a board member;
- (4) serves a term that expires June 30, 2009 [2005]; and
- (5) must be registered as a landscape architect under AS 08.48.

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

TRANSITION: TEMPORARY BOARD MEMBER. The term of office of a person holding a temporary position on the Board of Registration for Architects, Engineers, and Land Surveyors before July 1, 2005, expires June 30, 2005. The person is eligible for reappointment under sec. 2 of this Act to a term beginning July 1, 2005, so long as the member continues to meet the qualifications set out in sec. 2 of this Act. The temporary member may remain in the position until the governor names a new appointee or reappoints the temporary member.

**\*Sec. 4.** Section 3 of this Act takes effect immediately under AS 01.10.070(c).

**\*Sec. 5.** Sections 1 and 2 of this Act take effect July 1, 2005.

# LEGAL SERVICES

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
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 22, 2005

**SUBJECT:** SCS HB 35(L&C) relating to the State Board of Registration for Architects, Engineers, and Land Surveyors (Work Order No. 24-LS0273\F)

**TO:** Senator Con Bunde  
Chair of the Senate Labor and Commerce Committee  
Attn: Jane

**FROM:**  Theresa Bannister  
Legislative Counsel

This memo accompanies a final of the bill described above.

This version went out without the transitional uncodified law provision that was intended to be included as bill sec. 3. Section 3 read as follows:

**TRANSITION: TEMPORARY BOARD MEMBER.** The term of office of a person holding a temporary position on the Board of Registration for Architects, Engineers, and Land Surveyors before July 1, 2005, expires June 30, 2005. The person is eligible for reappointment under sec. 2 of this Act to a term beginning July 1, 2005, if the member continues to meet the qualifications set out in sec. 2 of this Act. The temporary member may remain in the position until the governor names a new appointee or reappoints the temporary member.

This missing bill sec. 3 is necessary for the smooth operation of the transition to the new extended term of the temporary board member. Without it, there will be a lapse of one day between the extension under bill sec. 2 (the term presently expires June 30, 2005) and the effective date of sec. 2 (July 1, 2005). In addition, bill sec. 3 allows the governor to take action on the appointment before July 1, 2005, as well as allowing the current temporary member to remain in or be reappointed to the position. Since this bill has passed out of your committee, it would be appreciated if you would pass this memo on to the next committee of record.

If I may be of further assistance, please advise.

TLB:lmb  
05-139.lmb

Enclosure

**ORIGINAL**

**HB**

**47**

# SENATE COMMITTEE REPORT

E: 2/4/05

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Finance and Commerce Committee considered CS FOR HOUSE BILL NO. 47(FIN)

## HB 47 EXTEND BOARD OF REAL ESTATE APPRAISERS

Act extending the termination date of the Board of Certified Real Estate Appraisers; and relating to the requirements for membership on the Board of Certified Real Estate Appraisers."

Committee recommends:

to be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

to adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

with attached amendment(s)

to adopt Letter of Intent by \_\_\_\_\_ Committee

with further referral to \_\_\_\_\_ Committee

**Senate Bill:**

- Same Title
- New Title

**House Bill:**

- Same Title
- Technical Title Change
- New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Suzanne Mullen**

**From:** Executive Appraisal Service [plgulam@336-EASE.com]  
**Sent:** Friday, February 11, 2005 5:20 PM  
**To:** Sen. Con Bunde; Sen. Bettye Davis; Sen. John Cowdery; Sen. Fred Dyson; Sen. Johnny Ellis; Sen. Kim Elton; Sen. Hollis French; Sen. Lyda Green; Sen. Gretchen Guess; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Albert Kookesh; Sen. Donny Olson; Sen. Ralph Seekins; Sen. Bert Stedman; Sen. Ben Stevens; Sen. Gary Stevens; Sen. Gene Therriault; Sen. Tom Wagoner; Sen. Gary Wilken  
**Subject:** CSHB 47 to be heard at the Senate Labor and Commerce Meeting on 02/15/2005, Tuesday at 1:30.



Peggy Lynn  
Gulam.vcf (608 B)  
Senators

Please support the bill to extend the life of the Certified Real Estate Appraisers.

This correspondence is to request your support in extending the Life of the Board of Certified Real Estate Appraisers. This board is crucial to appraiser's being able to take part in regulating the profession and has been an integral part of the state's Professional Practice oversight. To lose this board would be highly detrimental not only to the appraisers that this board oversees but to the public as well.

Any move that takes us down the path that may lead to poor quality appraisal reporting or destroy the potential of this profession even being in the state is obviously a poor move. If the appraisers do not have a voice in regulations, and a decision is made such as not adopting the upcoming changes by the Appraiser Qualifications Board, that would then disqualify all Alaska State Certified Real Estate Appraisers from performing work for federally related transactions, all of Alaska will lose. If a local professional cannot do this work, who will. An out-of-state professional will, that's who. I have seen the work of out of town appraisers that try to come to this state for a few job assignments, they are terrible. Who knows Alaska better than an Alaskan. I personally have been here more than 30yrs, not that one needs that much experience but a resident that lives and breathes Alaska is obviously going to better report the real estate market. Being local we understand seismic activity, we understand the wet soil conditions that plague much of the Anchorage real estate, the appraisers that live here understand all of the issues that affect our state. An out of state appraiser would not recognize these issues therefore would produce a lesser quality appraisal. The quality of a report in say Nome would be jeopardized even greater. How could someone living in Seattle possibly understand all the nuances of bush Alaska. Does anybody remember the real estate crash of the 80's. If we lose the quality of reports, that could happen again in a very big way. The decision to do away with this board is the first link that could put us in a very big downward spiral.

PLEASE... do not let this happen! We need your support for the extension of our Board of Certified Real Estate Appraisers

I am available for questions at any time if you should wish to contact me back, attached is a virtual business card, just in case (907) 336-3273.

Thank You for your time and your support.  
Sincerely,

Peggy Lynn Gulam  
Certified Residential Appraiser, AA60

**Suzanne Mullen**

---

**From:** Paige 1 [paigeh@alaska.net]  
**Sent:** Monday, February 14, 2005 10:53 AM  
**To:** Sen. Johnny Ellis; Sen. Ralph Seekins; Sen. Bettye Davis; Sen. Ben Stevens; Sen. Con Bunde  
**Subject:** Board of Certified Real Estate Appraiser/CB HB 47

Dear Labor & Commerce Committee Members:

It is my understanding there is a bill termed CBHB 47 that will be heard before you on 2/15/2005 at 1:30 p.m. This bill is about extending the termination date of the Board of Certified Real Estate Appraisers.

It is imperative that the Board's termination date be extended. Without a Board of Certified R.E. Appraiser's, Alaska would not be in conformity with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. This is a federal law that requires Alaska to implement and enforce the Appraisal Quality Board's January 1, 2008 criteria changes by that date.

To cut directly to the chase, Alaska certified real estate appraisers no longer could perform appraisals in connection with federally related transactions if a Board does not exist. As a result, Alaska's real estate market would be severely effected.

Thank you for your time and consideration in voting to extend the termination date of the Board of Certified Real Estate Appraisers.

Sincerely,

Paige R. Hodson, SRA  
903 W. Northern Lights Boulevard, Suite 220  
Anchorage, Alaska 99503  
(907) 274-8258  
[paigeh@alaska.net](mailto:paigeh@alaska.net)

2/14/2005



# REPRESENTATIVE RALPH SAMUELS

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HOUSE DISTRICT 29

## Sponsor Statement for CS for House Bill 47 (FIN)

**TITLE:** An Act extending the termination date of the Board of Certified Real Estate Appraisers; and relating to the requirements for membership on the Board of Certified Real Estate Appraisers.”

**Sec. 08.87.010** Established the Board of Certified Real Estate Appraisers and provided for the appointment of members by the governor. The board consists of one licensed general real estate appraiser, one licensed residential real estate appraiser, one mortgage banking executive, and one member who represents the public at large. If enacted, HB 47 would extend the board’s operation for another 5 years to June 30, 2010.

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

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

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

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810

Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242

# FISCAL NOTE

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

Fiscal Note Number: 1  
Bill Version: HB 47  
(H) Publish Date: 1/24/05

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

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	26.1	26.1	26.1	26.1	26.1
Travel	0.0	1.4	1.4	1.4	1.4	1.4
Contractual	0.0	5.3	5.3	5.3	5.3	5.3
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( 1156 )</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>
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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	32.8	32.8	32.8	32.8	32.8
<b>TOTAL</b>	<b>0.0</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>	<b>32.8</b>

Estimate of any current year (FY2006) cost: 32.8  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

The bill extends the Board of Certified Real Estate Appraisers to June 30, 2010. In accordance with AS 08.03.020, funding should be extended one year following the termination date allowing the Board to conclude its affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget. New funds are not required to implement this bill.

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

# ALASKA STATE LEGISLATURE

## LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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

August 18, 2003

Members of the Legislative Budget  
and Audit Committee:

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

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

July 17, 2003

Audit Control Number

08-20024-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(20), the Board of Certified Real Estate Appraisers is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations.

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

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

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA  
Legislative Auditor

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## OBJECTIVES, SCOPE, AND METHODOLOGY

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

### Objectives

The three central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of real estate appraisers.

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

### Scope and Methodology

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

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

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

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

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

## ORGANIZATION AND FUNCTION

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

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

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

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

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

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

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

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

James A. Hage, Member at Large

Nelida Irvine, Public Member

Judy Kemplen, Mortgage Banking Executive

Steven J. MacSwain, MAI, General Real Estate Appraiser

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

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

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

Alaska Statute 08.01.087 empowers the Division of Occupational Licensing with the authority to act on its own initiative or in response to a complaint. The division may:

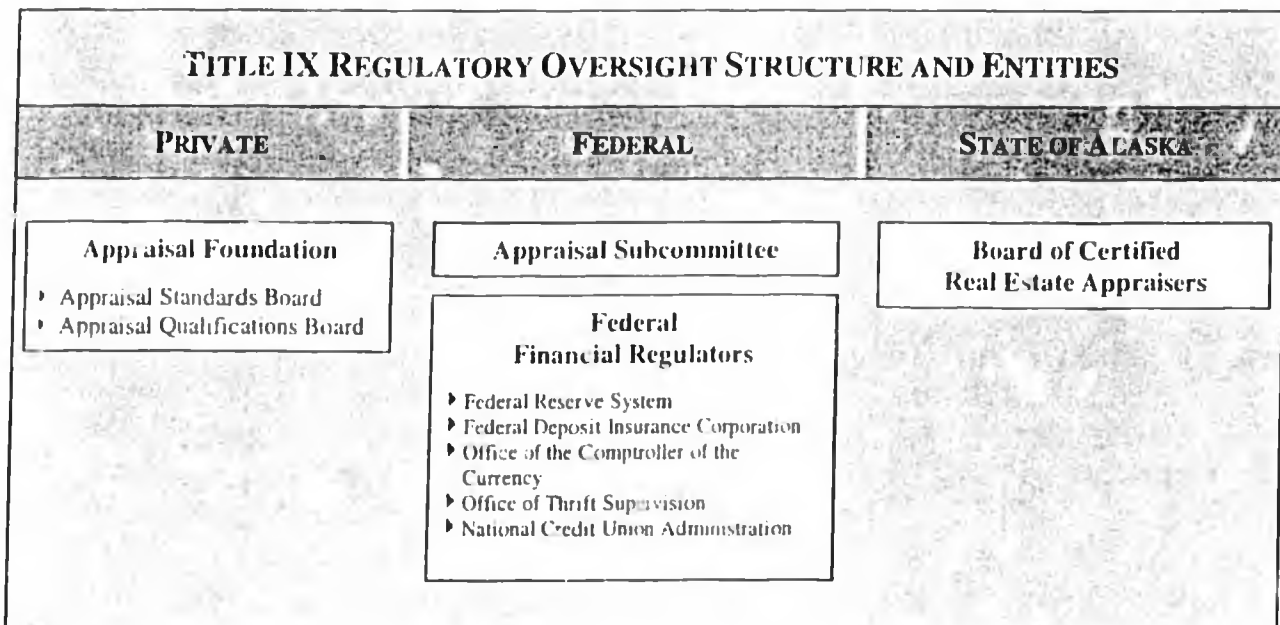
1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

## BACKGROUND INFORMATION

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

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

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



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

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

### Appraisal Foundation

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

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

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

### Appraisal Subcommittee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## REPORT CONCLUSIONS

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

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

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

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

## A 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.***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**HB**

**61**

## SENATE COMMITTEE REPORT

ATE: 3/29/05

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

abor and Commerce Committee considered CS FOR HOUSE BILL NO. 61(FIN)

### HB 61 GAMING: CALCUTTA POOLS & CRANE CLASSICS

An Act relating to Calcutta pools and crane classics as authorized forms of charitable gaming."

and recommends:

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

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

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

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>John Ellis</i>			<input checked="" type="checkbox"/>	
<i>Buttge Davis</i>				
<i>Ben Starnes</i>	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>	
<b>CHAIR:</b> <i>Keith Beckin</i>	<input checked="" type="checkbox"/>			

HB 61

Suzanne Mullen

From: Joseph Koss [jkoss@gci.net]
Sent: Tuesday, April 19, 2005 10:35 PM
To: Sen. Con Bunde
Subject: CSHB 61

> The version of the bill that passed the House, CSHB 61(FIN), is a vast
> improvement over the earlier version and looks good--as far as it
> goes. The bill sets a minimum age for competitors on whom Calcutta
> participants will bet, but it says nothing about the minimum age for
> betters, and it probably should. As it is, a two-year-old can bet in
> a Calcutta--is that what we want? Is there any intent to limit who
> can have a Calcutta pool on which events, or can any permittee have a
> Calcutta on any non-student sports event? For instance, if there is
> no limit, we could see 30 or 40 permittees, or more, having Calcuttas
> on the Iditarod. How would the Iditarod Trail Committee feel about
> that? If they didn't like it, what could they do to stop it? Or,
> without apparent limit to amateur sports, the World Series or the
> Super Bowl could be the subject of a Calcutta. In such a case, since
> the rules for a Calcutta are written by the permittee how would a
> Calcutta differ from a sports board, which is now illegal? Would
> passage of HB 61 legalize sports boards? If so, should it? Do we
> care? Should we?

> There is much grass roots support for legalizing sports boards, if
> only because there are so many of them. Even some in law enforcement
> favor legalizing them, if for no other reason than to remove another
> area of law that is not enforced. Who do they hurt? Apparently, no
> one, but for the fact that they are not legal, and a bar with an
> illegal gambling conviction for having a sports board can easily lose
> its liquor license. On the other hand, legalizing sports boards,
> while not an actual expansion of gambling because of the number of
> them already out there for all these years, would at least be a
> conceptual expansion. Is that what we want? If not, what are we
> willing and able to do to enforce the current law? After all, an
> unenforceable law is often worse than no law at all.

> One thing I've noticed about gaming over the years is that those who
> care have no power and those with the power don't care. Legal
> gambling is regulated under AS 05.15, but those who administer that
> title have no authority over illegal gambling. Those who do have
> jurisdiction have other priorities. The gap between the two is huge.
> The Anchorage Police Department, for instance, knows where all the
> after-hours joints are, but does nothing about them unless something
> else, such as a violent crime onsite, forces them to do something.
> Why is this? It is because there is [usually] no apparent victim and
> law enforcement assets are too thinly stretched to warrant
> application. For the few who are caught, there is no real penalty, so
> DAs are reluctant to prosecute--their assets are also limited. What
> message does this send to gamblers, to voters, or to criminals,
> whether organized or unorganized? Who benefits from illegal gambling?
> The public? Permittees? Maybe others, about whom we don't know
> enough?

> Thank you for listening. I have no problem with legal gambling, but I
> wonder if the expansion that I see in CSHB 61 is really intended. If
> the bill were intended to provide for Calcutta pools only at golf
> tournaments, perhaps it should say so. As it is, it appears to be
> opening the doors wide to far more than was intended.

> Joseph Koss, Voter

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 61 (FIN)  
 (1) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Charitable Gaming; Calcutta Pools RDU Taxation and Treasury  
 Component Tax  
 Sponsor Representatives McGuire, Ramras, F. Foster  
 Requester (S) L&C Component No. 2476

**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>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>

<b>CAPITAL EXPENDITURES</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>	<b>*</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</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 (Specify Type--Do not abbreviate)						
<b>TOTAL</b>						

Estimate of any current year (FY2005) cost: 0.0

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Prepared by: Larry Meyers, Deputy Director Phone 907-269-6620  
 Division Tax Division Date/Time 4/14/05 12:47 PM  
 Approved by: Jerry Burnett Date 4/14/2005  
 Agency Department of Revenue

## FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. CSHB 61 (L&C)

### ANALYSIS CONTINUATION

Please see below for a discussion of revenue and costs.

#### REVENUE

There are three U.S. states which expressly allow calcutta pools: Montana, Wyoming, and North Dakota. Of these, the only state that maintains statistics on its calcutta pools is North Dakota. North Dakota's statutes regarding calcutta pools are very similar to CSHB 61. For instance, both North Dakota and CSHB 61 regulate calcutta pools as games of chance; both stipulate an age requirement of 18 or over; both limit calcutta pools to amateur and professional sporting events held in the state; and both disallow calcuttas for youth events or academic sporting events. Calcuttas also compete with bingo and pull tabs in both states. In addition, Alaska's adult population (18+) of 467,206 is very close to North Dakota's 495,411 adults.

Although there are many similarities between the structure of the calcutta games and the potential gaming population in both states, there is one significant difference. North Dakota has at least five Indian casinos in addition to bingo, pull-tabs and calcuttas, and is bordered by three states (Minnesota, South Dakota and Montana) with casino gambling or video lottery terminals; Alaska has none. For this reason, we believe the introduction of calcutta gambling has the potential to have the biggest impact on charitable gaming since the legalization of pull-tabs in 1988. For instance, it is theoretically possible to have as many calcuttas on a single major Alaskan sporting event such as the Iditarod, as there are organizations holding gaming permits (approximately 1,250).

In FY 2004, gross proceeds from North Dakota's calcuttas were \$204,679. If we assume the same level of calcutta pools in Alaska, calcutta net proceeds going to qualified organizations would be  $(\$204,679 \times 30\%)$  \$61,404. New revenue to Alaska would be \$614 (the 1% of net proceeds fee). Clearly, even if calcutta pools were significantly more popular in Alaska than in North Dakota, revenue to the state would still be very small. For every million dollars wagered on a calcutta, Alaska's revenue would increase by \$3,000. However, the same amount of wagers would increase the net proceeds of qualified organizations by \$300,000.

#### EXPENSES

Initially, we expect that the passage of this legislation will generate great interest in its fundraising potential and result in the issuance of approximately 700 additional permits, considerable staff time dealing with numerous inquiries regarding licensing, accounting issues, and game rules, as well as, audits, complaints, and on site inspections.

If Calcuttas are as popular as projected, we will need to add an Administrative Clerk III, at an annual cost of \$48,900 for personal services, \$1,000 for supplies, and \$3,567 for contractual services.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 61(L&C)  
 (H) Publish Date: 2/2/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue 04  
 Title Charitable Gaming; Calcutta Pools RDU Revenue Programs & Services 509  
 Component Tax Division  
 Sponsor Representatives McGuire and Ramras  
 Requester (H) L&C Component No. 2476

**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 ( )</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)

\* We do not know how many Calcutta pools may be conducted by qualifying organizations as a result of passage of this bill. Consequently, it is not possible for us to estimate the revenue effects with any degree of accuracy. However, it is likely that the revenue amount would be relatively small. For Calendar year 2003, the estimated revenue to the state from all game types, except for pulltabs and bingo, was less than \$50,000. This does not include revenue from licenses and permits because in most cases Calcutta games would be offered by qualifying organizations that already have gaming licenses and permits. There are at least three states that define Calcuttas as legal gambling: Wyoming, North Dakota and Montana. North Dakota limits the Calcuttas to amateur and professional sports. Total after-prize income in North Dakota for Calcuttas was \$33,916 for FY 2004. This is prior to any deductions for expenses. The other two states do not collect revenue from the Calcuttas.

Prepared by: Larry Meyers Phone 269-1011  
 Division: Tax Division Date/Time 1/28/05 3:33 PM  
 Approved by: Jerry Burnett, Special Assistant to the Commissioner Date 1/28/2005  
 Agency: Department of Revenue

# ALASKA STATE LEGISLATURE

Session  
State Capitol Building, Room 118  
Juneau, Alaska 99801-1182  
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Fax (907) 465-6592

Interim  
716 West Fourth Avenue, Suite 430  
Anchorage, Alaska 99501  
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REPRESENTATIVE LESLIE MCGUIRE  
HOUSE DISTRICT 28

Chair  
Judiciary Committee

Member  
House Leadership  
Rules Committee  
Health, Education  
& Social Services  
Committee  
Oil & Gas Committee  
Military & Veterans'  
Affairs Committee

## SPONSOR STATEMENT

### HB 61

*"An Act relating to Calcutta pools and crane classics as authorized forms of charitable gaming."*

Alaska State law authorizes the Department of Revenue to issue permits to a municipality or qualified organization to conduct games of chance for charitable purposes. This bill would simply add "Calcutta pool" to the to the list of games of chance and give eligible organizations the opportunity to hold such events as a method of charitable fundraising.

The intent of HB 61 is to protect this traditional game of chance, which is strongly supported by many Alaskans and the charity organizations that rely on funds raised by this event. Organizations such as CIRI held Calcutta pools during their annual CIRI Golf Classic since 1983. In 2001, the last year the CIRI Calcutta Pool operated, the CIRI Golf Classic raised \$852,000 for programs focusing on youths and education. The Boys and Girls Club and the Alaska Academic Decathlon were two organizations that benefited from the Calcutta Pool fundraisers.

The Calcutta fundraising mechanism was discontinued in 2002 when the Department of Revenue construed state law as prohibiting Calcutta events as a method of charitable giving. Calcutta pools are a time-honored method of charitable fundraising uniquely suited to golfing events. They have been employed not just by CIRI, but also by other prominent charitable organizations throughout the State. Calcutta pools raise substantial amounts of money for charitable purposes, and certainly present no more harm to the public than other charitable giving activities, including "rat races," classics, and pull tabs which are already legal under the current state law.

Sponsor Statement

# ALASKA STATE LEGISLATURE



Session  
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REPRESENTATIVE LESIL MCGUIRE  
HOUSE DISTRICT 28

Chair  
Judiciary Committee  
  
Member  
House Leadership  
Rules Committee  
Health, Education  
& Social Services  
Committee  
Oil & Gas Committee  
Military & Veterans'  
Affairs Committee

## SECTIONAL ANALYSIS HB 61

*"An Act relating to Calcutta pools and crane classics as a form of charitable gaming"*

**Section 1** – Amends AS 05.15.080(a) by adding a Calcutta pool as an exception for *not* submitting a report to the department if a Calcutta pool is, in fact, the only activity conducted by the qualified organization. (Or a Calcutta pool added to page 1, line 13 and page 2)

**Section 2** – Amends AS 05.15.080 by adding a new subsection. The purpose of this subsection is to require those holding Calcutta pools to file a report for each pool conducted on a form prescribed by the Department of Revenue.

**Section 3** – Amends AS 05.15.100(a) by adding crane classics, Calcutta pools (added to page 2, line 17) to the list of activities that are permitted by the Department of Revenue if the municipality or organization qualifies to hold such an activity.

**Section 4** – Amends AS 05.15.100(e) by clarifying that an operator's license may *not* be issued to any person to conduct a Calcutta pool. The Calcutta pool must be overseen by an individual who is directly involved with the organization holding the permit. (Other than a Calcutta pool, was added to page 2, line 21 and page 2, line 24)

**Section 5** – Amends AS 05.15.115(e) by adding crane classics, Calcutta pools (added to page 3, line 1) to distinguish the difference between these particular activities among others listed in this section.

**Section 6** – Amends AS 05.15.160(d) by adding or Calcutta pools (page 3, lines 4 & 5) to the types of activities that are not under a category a gaming activity that may not exceed 90 percent of the adjusted gross income from that activity. (this is further clarified in the next section)

**Section 7** – Amends AS 05.15.160 by adding a new subsection (e) that clarifies that the total amount of expenses that may be incurred and prizes that may be awarded in connection with a Calcutta pool may not exceed 70 percent of the pool of wagers.

## Sectional Analysis

Therefore, guaranteeing the permittee/charity receive no less than 30 percent of the pool of wagers/money raised.

**Section 8** – Amends AS 05.15.180(b) by adding **crane classics, Calcutta pools** (page 3, line 16) to the list of activities that can be licensed by the department if they were not in existence before January 1, 1959.

**Section 9** – Amends AS 05.15.180 by adding a new subsection (h). This subsection clarifies that Calcutta pools may not be conducted for elementary, secondary, postsecondary, or youth organization sporting events. The organization holding the Calcutta pool may not accept a wager on a competitor unless the competitor is at least 18 years of age. And a person may not place wager on a competitor unless the competitor is 18 years of age or older. This subsection also clarifies that a Calcutta pool may not be conducted unless the rules for a Calcutta pool are publicly posted and available to all participants in the pool.

**Section 10** – Amends 05.15.690 by adding new paragraphs that clearly define a Calcutta pool and crane classic.

# Alaska State Legislature

**Session Address:**

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600 E. Railroad Avenue  
Wasilla, AK 99654  
Phone: (907) 376-2679  
Fax: (907) 376-4745

Representative.Mark.Neuman@legis.state.ak.us

## *Representative Mark A. Neuman*

*District 15*

Dear Members of the Senate Labor and Commerce Committee,

I am writing to you on behalf of HB 61, an act relating to Calcutta pools and crane classics as authorized forms of charitable gaming. This piece of legislation is a great way to raise money for charities throughout the State of Alaska.

As you have read, HB 61 allows for the community of Talkeetna to organize the "Crane Classic," a charitable game that would benefit the Talkeetna Community Radio Station (KTNA-FM) and the Saunders Crane Sanctuary. The object of the Crane Classic is to guess the exact time the first crane arrives in the field. Previously, Dale Saunders, a local pioneer that passed away two years ago, and neighbors have recorded dates of crane arrival. Each spring, at the end of April, hundreds of cranes stop at Saunders Field on their way north to feed and rest along with assorted geese and ducks.

Revenues realized through this "game" will go to support KTNA, public radio, diminishing reliance on government grants, and towards the preservation of the Saunders crane sanctuary.

I would appreciate your support of HB 61.

Since ely,

A handwritten signature in cursive script, appearing to read "Mark Neuman".

Representative Mark Neuman

*Calcutta's  
(for future  
legislative change)*

State of Alaska  
Department of Revenue  
Tax-Division-Gaming Group  
State Office Building  
PO Box 110420  
Juneau, Alaska 99811-0420

July 15, 2004

To: Vicki Otto  
ANCSA Regional CEOs  
Fax: 907-265-4528

From: Jeff Prather  
Fax: 907-465-3098

I am writing in response to your fax of this morning

A Calcutta is not an authorized gaming activity under AS 05.15.

It is my understanding that a Calcutta is an illegal gambling activity in Alaska (unless the Calcutta can be structured to meet certain criteria - see the attached copy of an Attorney General Memorandum regarding the fundamental characteristics of gambling dated April 2, 2004).

Please be advised that it is a violation of AS 05.15 for a permitted organization to conduct an unauthorized gaming activity.

cc: Gary Dodson, Chief of Investigations

## MEMORANDUM

State of Alaska  
Department of Law

To: Scott Nordstrand  
Deputy Attorney General  
Department of Law  
Office of the Attorney General

Date: April 22, 2004

File No:

Tel. No.: (907) 465-3600

Fax: (907) 465-2539

From: Michael A. Barnhill MB  
Assistant Attorney General  
Commercial and Fair Business Section

Subject: Fundamental characteristics  
of gambling

The purpose of this memo is to identify the fundamental characteristics of gambling. The definition of gambling in Alaska is found in the criminal code, but this statutory definition both relies upon and is informed by the common law of gambling. Thus, this memo will discuss both the statutory and common law definitions of gambling.

Gambling has long been held to exist at common law when one "pays for a chance to obtain a prize." *State v. Pinball Machines*, 404 P.2d 923, 925 (Alaska 1965). In 1978, the legislature relied upon this common law definition of gambling to craft a new definition of gambling for purposes of the criminal code. See Commentary on the Alaska Revised Criminal Code, SCS HB 661 at 112 (June 12, 1978). Gambling is currently defined in statute to mean:

that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under the person's control or influence, upon an agreement or understanding that that person or someone else will receive something of value in the event of a certain outcome. . . .

AS 11.66.280(2). According to the Commentary, "the definition includes any activity that brings a profit based on chance and includes ordinary lotteries." Commentary on the Alaska Revised Criminal Code, SCS HB 661 at 113 (June 12, 1978). The statutory elements of gaming are therefore as follows:

1. the staking or risking of something of value
2. upon a contest of chance

Scott Nordstrand  
Re: Fundamental characteristics of gambling

April 2, 2004  
Page 2

3. with the agreement or understanding
4. that someone will get something of value as profit

Where the Alaska definition requires an "agreement or understanding," the cases at common law often require similar concepts of a *purpose*, reason or inducement. In other words, the purpose, reason or inducement for payment must be to obtain a prize. If the reason for paying is something other than getting a prize, then the activity is not gambling.<sup>1</sup>

An appellate court in Illinois discussed this purpose element in a case from 1939:

The controlling fact in the determination of whether a given scheme or business is a lottery is determined by the nature of the appeal which the business makes to secure the patronage of its customers. If the controlling inducement is the lure of an uncertain prize, then the business is a lottery.

*Kent v. City of Chicago*, 22 N.E.2d 799 (Ill. App. 1939) (emphasis added), quoted by *G.A. Carney, Ltd. v. Brzeczek*, 453 N.E.2d 756, 760 (Ill. App. 1983). This opinion has been cited with approval in past opinions of this office. See Inf. Op. Att'y Gen. at 4 (663-00-0212, Oct. 17, 2000); Inf. Op. Att'y Gen. at 11 (663-93-0004, Sept. 2, 1992).

Moreover, the cases suggest that the purpose must be to win something more than what is placed at risk: "It may be true that the player receives the value of the money he deposits in the slot, but he stands a chance to get twenty times its value, and it is the pressure of this chance that continues the progress of the game and makes it a game of chance." *Alexander v. City of Atlanta*, 179 S.E.177, 178 (Ga. 1905), quoted by Inf. Op. Att'y Gen. at 9 (663-93-0004, Sep. 2, 1992). According to Am. Jur. 2d, "The vice of various gambling games or projects lies in the payment of money for the opportunity to win more money by a scheme of chance." 38 Am. Jur. 2d *Gambling* § 245 (1999) (emphasis added). In other words, it is not gaming unless the participant "has a chance of gain and takes a risk of loss." *Id.* This concept is echoed in the legislative history to the current definition of gambling: "the definition includes any activity that brings a profit based on chance and includes ordinary lotteries." Commentary on the Alaska Revised Criminal Code, SCS HB 607 at 113 (June 12, 1978) (emphasis added).

<sup>1</sup> Although this memorandum discusses the concept of "purpose," it is not intended to express an opinion on the specific culpable mental state required for any criminal offense—a topic governed by statute and Alaska case law. Later in this memorandum is a discussion of the concept of inducement in terms of what can be subjectively or objectively determined. This, too, it is not intended to express an opinion on whether a subjective or objective standard is required for any criminal offense.

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In summary, if the purpose, understanding or agreement with respect to an activity is to pay for the chance to make a profit, then the activity is gambling under Alaska law. If any of the required elements is lacking, the activity is not gambling.

Accordingly, we can conceive of a variety of activities that do not constitute gambling under Alaska law. For instance, many charitable organizations host fundraising dinners at which door prizes are given away. For most participants, the purpose or controlling inducement for attendance at such a function is to contribute to a worthy cause—not to win a door prize. But the concept of controlling inducement or purpose is often subjective, and may depend on the varying motivations of individual participants. However, from an objective standpoint, if the ticket to get into the dinner costs \$20, the fair market value of the dinner is \$10 and the maximum value of any door prize is \$10, there is no possibility of profit to the participant in this scenario—regardless of the motivation or expectation of the participants that they may win a door prize. In such a case, we do not think the activity meets the definition of gambling under Alaska law.

Other kinds of fundraising events in Alaska have other inducements in addition to contributing to a worthy cause. For example, there may be entertainment and refreshments, or the participants may have the opportunity to meet a person of some prominence. It is difficult or impossible to place a value on these types of inducements. If, in addition, the fundraising event also awards door prizes equal to or less than the price of admission, we do not think such events fall into the category of gambling.

We note the possibility, however, that there may be events (either fundraising events or commercial operations) in which contests of chance are bundled with lodging, hunting, fishing or other activities that ordinarily come at some cost and the value of the possible prize is quite high. Thus, the purpose of the participants may not be able to be objectively determined, and the contests of chance could constitute gambling. But if the maximum value derived by the participants is necessarily less than the fee to participate, the definition of gambling has not been met. For example, if a participant pays \$2000 to attend a fundraising event at a ski resort, the actual value of the food, lodging and entertainment of the event is \$1500 and the maximum amount of prizes that can be awarded to the participant is \$400, then the event is probably not gambling. The operators of such games of chance would be well-advised to maintain careful records, and to be prepared to demonstrate to state or municipal officials that the value of the inducements provided does not exceed the cost of participating.

We recognize that the variation in fact patterns are infinite. Thus, this memorandum should be treated as a general enforcement guideline only. Where the inducements to participating in an event are substantial, and thus the purpose in participating may be unclear, the facts should be reviewed on a case-by-case basis before enforcement action is begun. However, as was noted in a previous opinion, it has been

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the longstanding policy of the Department of Law not to provide legal advice to private persons or businesses, and this is especially important in areas that may implicate criminal law such as gambling. See Inf. Op. Att'y Gen. at 1 (663-01-0183, May 22, 2001). When existing contests of chance are changed or new contests developed, the operators frequently contact government officials seeking legal opinions as to whether the contests are illegal gambling. Despite the best efforts of investigators and government attorneys, the advice provided in these situations often leaves a question unanswered and is sometimes imprecise. We do not wish to become so involved with structuring contests of chance that we become, in essence, legal advisors to the gaming industry.

MAB:mi

## North Dakota State Legislature

53-06.1-07.3. *Calcuttas.* A *Calcutta* may only be conducted for a professional or amateur sporting event held in this state but not for elementary, secondary, or postsecondary education sports events. Only one wager per competitor may be allowed in a *Calcutta* pool. The amount of prizes may not exceed ninety percent of the gross proceeds. A player may not place a wager on a competitor in a *Calcutta* sporting event unless the competitor is eighteen years of age or older.

# Montana Code Annotated 2003

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**23-5-221. Definition.** As used in this part, "Calcutta pool" means a form of auction pool conducted by an organization authorized by the department. The Calcutta pool must be an auction pool in which:

- (1) a person's wager is equal to his bid;
- (2) the proceeds from the pool, minus administrative costs and prizes paid, are contributed to a charitable or nonprofit corporation, association, or cause;
- (3) the rules of the pool are publicly posted;
- (4) no more than one wager for each competitor is allowed;
- (5) at least 50% of the total pool is paid out in prizes;
- (6) persons may not bid or wager money on any elementary school or high school sports event; and
- (7) the underlying event has more than two entrants.

**History:** En. Sec. 1, Ch. 550, L. 1987; amd. Sec. 60, Ch. 642, L. 1989; Sec. , MCA 1987; redes. by Code Commissioner, 1989.

# Wyoming State Legislature

## Wyoming Statutes

### 6-7-101. Definitions.

(a) As used in this article:

(i) "Calcutta wagering" means wagering on the outcome of amateur contests, cutter horse racing, dog sled racing, professional rodeo events or professional golf tournament in which those who wager bid at auction for the exclusive right to "purchase" or wager upon a particular contestant or entrant in the event and when the outcome of the event has been decided the total wagers comprising the pool, less a percentage "take-out" by the event's sponsor, is distributed to those who "purchased" or wagered upon the winning contestants or entrants;

(ii) "Gain" means the direct realization of winnings;

(iii) "Gambling" means risking any property for gain contingent in whole or in part upon lot, chance, the operation of a gambling device or the happening or outcome of an event, including a sporting event, over which the person taking a risk has no control, but does not include:

(A) Bona fide contests of skill, speed, strength or endurance in which awards are made only to entrants or the owners of entries;

(B) Bona fide business transactions which are valid under the law of contracts;

(C) Other acts or transactions now or hereafter expressly authorized by law;

(D) Raffles or bingo conducted, or pull tabs sold, by charitable or nonprofit organizations where the tickets for the raffle or bingo are sold only in this state and the pull tabs are sold only on the premises owned or occupied by the charitable or nonprofit organization;

(E) Any game, wager or transaction which is incidental to a bona fide social relationship, is participated in by natural persons only, and in which no person is participating, directly or indirectly, in professional gambling; or

(F) Calcutta wagering on contests or events conducted by a bona fide nationally chartered veterans', religious, charitable, educational or fraternal organization or nonprofit local civic or service club organized or incorporated under the laws of this state, provided that:

(I) The contest or event is conducted solely in this state;

(II) Any rules affecting the contest or requirements for participants are clearly posted;

(III) The total prizes or prize money paid out in any one (1) contest or event does not exceed ninety percent (90%) of the total wagers;

(IV) A minimum of ten percent (10%) of the total wagers on each contest or event is donated within one (1) year by the sponsoring organization to a bona fide charitable or benevolent purpose;

(V) No separate organization or professional person is employed to conduct the contest or event or assist therein;

(VI) The sponsoring organization before conducting the contest or event gives thirty (30) days written notice of the time and place thereof to the governing body of the county or municipality in which it intends to conduct the contest or event and the governing body does not pass a resolution objecting thereto;

(VII) The sponsoring organization has complied with the relevant sections of the internal revenue code of 1954, as amended, relating to taxes on wagering.

(G) Display or private use of antique gambling devices in the owner's residence.

(iv) "Gambling device" means any device, machine, paraphernalia or equipment except an antique gambling device that is used or usable in the playing phases of any professional gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine;

(v) "Gambling premise" means any building, room, enclosure, vehicle, vessel or other place, whether open or enclosed, used or intended to be used for professional gambling. Any place where a gambling device is found is presumed to be intended to be used for professional gambling;

(vi) "Gambling proceed" means all money or property at stake or displayed in or in connection with professional gambling;

(vii) "Gambling record" means any record, receipt, ticket, certificate, token, slip or notation given, made, used or intended to be used in connection with professional gambling;

(viii) "Professional gambling" means:

(A) Aiding or inducing another to engage in gambling, with the intent to derive a profit therefrom; or

(B) Participating in gambling and having, other than by virtue of skill or luck, a lesser chance of losing or a greater chance of winning than one (1) or more of the other participants; and

(ix) "Profit" means benefit other than a gain, which is realized or unrealized and direct or indirect, including benefits from proprietorship, management or unequal advantage in a series of transactions;

(x) "Antique gambling device" means a mechanically or electronically operated slot machine that is at least twenty-five (25) years old and used only for display or personal amusement in the owner's residence, in public and private museums, in possession of a dealer or distributor of lawful gaming equipment or displayed at state or local historic sites.

**6-7-102. Gambling; professional gambling; penalties.**

(a) A person who engages in gambling commits a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both.

(b) A person who engages in professional gambling commits a felony punishable by imprisonment for not more than three (3) years, a fine of not more than three thousand dollars (\$3,000.00), or both.

**6-7-103. Gambling devices, gambling records, gambling proceeds subject to seizure; disposition thereof; antique gambling devices protected.**

All gambling devices, gambling records and gambling proceeds are subject to seizure by any peace officer and shall be disposed of in accordance with law. An antique gambling device as defined by W.S. 6-7-101(a)(x) shall not be subject to seizure unless it is used in any way in violation of this article.

**6-7-104. Advertising of allowable gambling activities or events.**

Nothing in this chapter prohibits the advertising of any gambling activity or event excluded from gambling under W.S. 6-7-101(a)(iii) and conducted by or for any charitable or nonprofit organization or conducted as a promotional activity by a private business entity which is clearly occasional and ancillary to the primary business of that entity.