

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
legaudit@legis.state.ak.us

SUMMARY OF: A Sunset Review of the Department of Natural Resources, Alaska Seismic Hazards Safety Commission, October 22, 2004.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of, and circumstances surrounding, the Alaska Seismic Hazards Safety Commission (ASHSC). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the commission should be reestablished. Currently, AS 44.66.010(a)(21) states that the commission will expire on June 30, 2005. If the legislature does not extend the termination date for the commission, ASHSC will have one year to conclude its administrative operations.

REPORT CONCLUSIONS

Under state law, the burden of demonstrating a continuing public need for a given board, commission, or agency that is subject to termination rests with the entity subject to sunset review.¹ Accordingly, since the commission has not been active since it was created in 2002, it is difficult to make the argument there is a demonstrated public need for the commission's termination date to be extended.

Since there is no functioning commission, we recommend that the legislature not extend the termination date of the commission. By not extending the termination date, the commission will have one year to administratively conclude its operations, and will cease to exist at June 30, 2006.

¹ AS 44.66.050(b) states

During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest. [emphasis added]

When the commission was created it received overwhelming support from the legislature. Additionally, other western states that are prone to earthquakes have created boards and commissions with duties similar to that of ASHSC. If there is legislative interest in continuing the commission, we offer a recommendation regarding ASHSC's composition that would enhance its operational effectiveness.

FINDINGS AND RECOMMENDATION

Recommendation No. 1

The legislature should consider, if it extends the termination date of the Alaska Seismic Hazards Safety Commission, altering the composition of the board to provide more representation of local government.

Much of the testimony heard in support of the commission's enabling legislation stressed the importance of communicating policy and possible mitigation measures that could be taken by all levels of government. A major area of concern involved the development of local community zoning ordinances and building code requirements to minimize the impact that the seismic shock would have on residential, government, and commercial buildings.

We contacted numerous local government building officials in the State regarding how the recommendations of the Alaska Seismic Hazard Safety Commission could be put in place through local building codes. Most communities have a building code advisory commission that makes recommendations about local construction codes. A modification of the code generally involves making local exceptions to the "standard" code, which most communities have adopted by reference.

The commission would benefit from additional representation by local government for two primary reasons:

- The mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. The most cited tangible mitigation measure has been modification of zoning and building codes. Accordingly, the actual implementation of many of the commission's earthquake mitigation recommendations would have to be done by local governments. Having local representatives as part of the commission may facilitate the implementation of the commission's recommendations.
- Many local governments adopted the International Building Code (IBC) and have, therefore, already been involved in deciding if they believe it is in the public's interest to update local codes in conformity with IBC changes. Having more local government members would bring, to the commission, a sense of the local concerns about adding or modifying existing local ordinances for improved earthquake mitigation factors.

November 10, 2004

Members of the Legislative Budget
and Audit Committee:

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

DEPARTMENT OF NATURAL RESOURCES
ALASKA SEISMIC HAZARDS SAFETY COMMISSION

October 22, 2004

Audit Control Number

10-20038-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 44.66.010(a)(21), the Alaska Seismic Hazards Safety Commission is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the commission would be allowed one year in which to conclude its administrative operations. Because the commission has been inactive since it was created in 2002, we recommend its termination date not be extended.

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

Pat Davidson, CPA
Legislative Auditor

TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology	1
Organization and Function	3
Background Information.....	5
Report Conclusions.....	7
Findings and Recommendations.....	9
Agency Response:	
Department of Natural Resources.....	11

OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes, we have reviewed the activities of, and circumstances surrounding, the Alaska Seismic Hazards Safety Commission (ASHSC). As required by AS 44.66.050(a), the legislative committees of reference are to consider this report during the legislative oversight process involved in determining if the commission should be reestablished. Currently, AS 44.66.010(a)(21) states that the commission will expire on June 30, 2005. If the legislature does not extend the termination date for the commission, ASHSC will have one year to conclude its administrative operations.

Objectives

There are two central, interrelated objectives of our report are:

1. To determine if the termination date of ASHSC should be extended.
2. To determine if ASHSC is operating in the public interest.

Scope and Methodology

The assessment of the operations and performance of the commission is to be based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the commission. However, since the Alaska Seismic Hazard Safety Commission was never actually constituted, we are unable to provide an evaluation of the commission's activities in accordance with AS 44.66.050(c).

Therefore, the major areas of our review were legislative committee minutes and various documentation developed and presented in the course of deliberations involved in the passage of legislation establishing ASHSC. Additionally, we:

- Reviewed applicable statutes related to ASHSC.
- Reviewed minutes of legislative committee hearings related to the legislation that established ASHSC.
- Reviewed Executive Order 105, issued by Governor Murkowski in January 2003.
- Reviewed the activities and publications of state organizations in the western United States with missions and objectives similar to that of ASHSC.

- Interviewed the Department of Natural Resources' commissioner and the manager responsible for activities related to the mission and objectives of ASHSC.
- Interviewed local government building officials regarding how various communities in the states deal with seismic issues through adoption and enforcement of building codes.
- Reviewed correspondence of Commissioner Irwin of the Department of Natural Resources regarding his position and comments on the public policy objectives related to both the past and the future of ASHSC.

ORGANIZATION AND FUNCTION

In 2002, the legislature established the Alaska Seismic Hazards Safety Commission (ASHSC). In committee testimony, the primary sponsor of the legislation characterized the commission as having an “umbrella status” over various state agencies that would permit it to coordinate a seismic hazard mitigation policy for the state.

To better promote intergovernmental coordination, the commission was originally established in the Office of the Governor. ASHSC was transferred to the Department of Natural Resources by Executive Order Number 105, issued by Governor Murkowski in January 2003.

ASHSC is comprised of a cross section of members from government, business, and academia

The Seismic Hazards Safety Commission was designed to be made up of individuals from a wide cross section of government and private sector representatives. The nine commission members were to be representatives from:

1. the University of Alaska;
2. local government;
3. Department of Natural Resources;
4. Department of Military and Veterans’ Affairs;
5. an appropriate federal agency;
6. the insurance industry; and,
7. three members from the general public “*who are expert in the fields of*”
 - a) geology,
 - b) seismology,
 - c) hydrology,
 - d) geotechnical engineering,
 - e) structural engineering,
 - f) emergency services, or
 - g) planning.

ASHSC was structured in such a way to address what the legislature saw as a “*pressing need to provide consistent policy framework and a means for continuing coordination of programs and public safety practices related to seismic hazards at all governmental levels and in the private sector.*”

The legislature mandated that the commission recommend goals and priorities for seismic hazard mitigation to both governmental agencies and the private sector. ASHSC was also to

recommend policies to the governor and legislature related to such things as research, mapping, and monitoring programs necessary for effective seismic mitigation.

Department of Natural Resources, Division of Geological and Geophysical Surveys

Alaska Statute 41.08.010 establishes in the Department of Natural Resources (DNR), a division of geological and geophysical surveys under the direction of the state geologist. The state geologist is appointed by the commissioner of DNR, and responsible for conducting geological and geophysical surveys to determine the potential of Alaskan land for:

1. production of metals, minerals, fuels, and geothermal resources;
2. the locations and supplies of groundwater and construction materials; and,
3. the potential geologic hazards to buildings, roads, bridges, and other installations and structures.

The state geologist is also responsible for conducting other surveys and investigations necessary to advance the geology of the State. With the approval of the commissioner, the state geologist may acquire, by gift or purchase, geological and geophysical reports, surveys, and similar information.

State law further specifies that the Division of Geological and Geophysical Surveys shall:

1. *collect, record, evaluate, and distribute data on the quantity, quality, and location of underground, surface, and coastal water of the state;*
2. *publish or have published data on the water of the state;*
3. *require the filing with it of the results and findings of surveys of water quality, quantity, and location;*
4. *require of water well contractors, the filing with it of basic water and aquifer data normally obtained, including but not limited to well location, estimated elevation, well driller's logs, pumping tests and flow measurements, and water quality determinations;*
5. *accept and spend funds for the purposes of this section, AS 41.08.017, and 41.08.035 and enter into agreements with individuals, public or private agencies, communities, private industry, state agencies, and agencies of the federal government;*
6. *collect, evaluate, and distribute geologic data on seismic events and engineering geology of the state;*
7. *identify potential seismic hazards that might affect development in the state;*
8. *inform public officials and industry about potential seismic hazards that might affect development in the state.*

BACKGROUND INFORMATION

Mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. Accordingly, seismic hazards mitigation can involve everything from considering where earthquakes are most likely to strike to how buildings, bridges, other infrastructure, and even topography can be built or modified to reduce damage.

Mitigation involves studying seismic risks and coordinating action to minimize damage

Similar organizations in other states have taken such actions as studying earthquake-prone areas and evaluating infrastructure and topography in regions that have been identified as being at highest risk. These other state commissions work with local, state, and federal governments in addition to private sector interests to construct or modify buildings, bridges, highways, and power lines to reduce the damage earthquakes may cause. Such commissions also coordinate activities such as the evaluation of the topography of high risk areas. From such evaluations the organization considers what measures could be taken to avoid such things as flood damage from rivers and lakes or other damage from landslides or avalanches that may be precipitated by an earthquake.

Mitigation is distinguished from response because it involves trying to anticipate earthquake damage and taking steps to reduce or avoid damage and loss of human life. Response, in contrast, involves actions taken after an earthquake strike, which are necessary to restore and protect public health and safety. Response stems from preparedness, and the legislature made a formal finding in the enabling legislation that

[A]lthough the state has made significant improvements in disaster preparedness since the great earthquake of 1964, there has been little corresponding improvement in measures to reduce the disaster potential of major earthquakes and, consequently, to reduce the dependence on disaster relief.

Legislation establishing the Alaska Seismic Hazards Safety Commission (ASHSC) had extensive legislative support

The legislation setting up ASHSC passed with overwhelming support. In April 2001 the bill, HB 53, was adopted by the House of Representatives by a vote of 36-2. In May 2002 the legislation was adopted by the Senate by a vote of 17-3. The measure was signed into law by Governor Knowles in August 2002 – with an effective date of September 29, 2002. The 2002 legislature also made an FY 03 appropriation of \$33,500 for commission operations.

Outgoing Governor Knowles did not make any appointments to the commission prior to the November 2002 elections. In March 2003, Governor Murkowski issued an executive order transferring ASHSC from the Office of the Governor to the Department of Natural Resources (DNR). Governor Murkowski, however, made no appointments and, at the end of FY 03, the

commission's entire appropriation lapsed unspent and was swept into the state's Insurance Catastrophe Reserve Fund.¹

In FY 04, the \$28,900 in funding for ASHSC was transferred to DNR and included in the general fund base budget for the Geological Development allocation. While there was no financial activity related to ASHSC, the Geological Development general fund allocation is lapsing just under \$10,000 which is less than \$28,900 intended for ASHSC. In FY 05, there were no budgetary transactions specifically related to the commission that either increased or decreased the portion of the Geological Development allocation related to ASHSC.

It is likely no appointments were made because DNR Commissioner Irwin recommended ASHSC statutes be repealed. The commissioner's recommendation was based on his belief that the cost of ASHSC was too high. In correspondence with Legislative Audit, the commissioner stated that after receiving further information regarding ASHSC – and satisfying himself that the annual operating costs could be kept to \$10,000 rather than a previous budget projection of \$28,000 – he had changed his opinion and recommendation with regard to continuance of the commission.

Accordingly, he recommended that the Boards and Commission staff in the Office of the Governor proceed with appointments. In the view of the commissioner, there is a need for active coordination of earthquake-hazard mitigation activities between all levels of government and the private sector in the state. Having ASHSC in place to advise the governor, legislature, local governments, and the private sector on ways to reduce future economic losses and casualties from earthquakes is a valuable and necessary function. As of mid-October 2004, Governor Murkowski has yet to make an appointment to the commission.

¹State law, AS 37.05.289 (b), allows a sweeping of certain funds at the end of each fiscal year under the following provision:

If the amount necessary to satisfy claims or judgments for which payment may be due under the state insurance program in a fiscal year exceed the unexpended balance of the amounts allocated to the account, the department may charge an additional amount from the unencumbered balance of any appropriation that is determined by the commissioner of administration to be available for lapse at the end of the fiscal year.

REPORT CONCLUSIONS

Under state law, the burden of demonstrating a continuing public need for a given board, commission, or agency that is subject to termination rests with the entity subject to sunset review.² Accordingly, since the commission has not been active since it was created in 2002, it is difficult to make the argument there is a demonstrated public need for the commission's termination date to be extended.

Since there is no functioning commission, we recommend that the legislature not extend the termination date of the commission. By not extending the termination date the Commission will have one year to administratively conclude its operations, and will cease to exist at June 30, 2006.

We recognize when the commission was created it received overwhelming support from the legislature. Additionally, other western states that are prone to earthquakes have created boards and commissions with duties similar to that of the Alaska Seismic Hazards Safety Commission. If there is legislative interest in continuing the commission, we offer a recommendation regarding the composition of the commission that would enhance its operational effectiveness.

² AS 44.66.050(b) states

During a public hearing, the board, commission or agency shall have the burden of demonstrating a public need for its continued existence or the continuation of the program, and the extent to which any change in the manner of exercise of its functions or activities may increase efficiency of administration or operation consistent with the public interest. [emphasis added]

(Intentionally left blank)

FINDINGS AND RECOMMENDATION

Recommendation No. 1

The legislature should consider, if it extends the termination date of the Alaska Seismic Hazards Safety Commission, altering the composition of the commission to provide more representation of local government.

Much of the testimony heard in support of the commission's enabling legislation (HB 53) stressed the importance of communicating policy and possible mitigation measures that could be taken by all levels of government. A major area of concern involved the development of local community zoning ordinances and building code requirements to minimize the impact that the seismic shock would have on residential, government, and commercial buildings. Staff working with similar seismic mitigation agencies, in other western states we surveyed, often cited improvements to local planning requirements and building code restrictions as a major, if not primary, tangible benefit of their organization's accomplishments.

As mentioned in the Background Information section, it was the finding of the 2002 legislature that there had been little *"improvement in measures to reduce the disaster potential of major earthquakes..."* since the great earthquake of 1964. In many respects, at both the state and local government level this may be the case. However, the evolution of building codes as reflected in the recently developed 2003 International Building Code (IBC) has resulted in increasingly stronger seismic-related construction requirements – primarily in response to the devastating destruction of earthquakes outside of the United States in recent years.

At the present time the standard code that is increasingly being recognized and adopted by local governments is the 2003 IBC. All building officials we spoke to commented that extensive seismic-related requirements were already incorporated into the IBC and that they varied depending on a region's seismic risk rating. One local building official adamantly maintained that the IBC seismic requirements were already too stringent for his region, and any statewide policy group that would want more extensive requirements would not be welcomed.

We contacted numerous local government building officials in the State regarding how the recommendations of the Alaska Seismic Hazard Safety Commission could be put in place through local building codes. Most communities have a building code advisory commission that makes recommendations about local construction codes. A modification of the code generally involves making local exception to the "standard" code, which most communities have adopted by reference.

The commission would benefit from additional representation by local government for two primary reasons:

- As discussed above, the mitigation of seismic hazards refers to studying, identifying, and prioritizing actions that could be taken to reduce the impact of earthquakes. The most cited tangible mitigation measure has been modification of zoning and building codes. Accordingly, the actual implementation of many of the commission's earthquake mitigation recommendations would have to be done by local governments. Having local representatives as part of the commission may facilitate the implementation of the commission's recommendations
- Many local governments adopted the IBC and have, therefore, already been involved in deciding if they believe it is in the public's interest to update local codes in conformity with IBC changes. Having more local government members would bring, to the commission, a sense of the local concerns about adding or modifying existing local ordinances for improved earthquake mitigation factors.

The commission membership is currently defined as a nine-member commission with one representative of local government. If the legislature is considering continuation of the commission, we believe that a statutory revision or expansion to the commission membership should include at least three local government representatives from seismically different geographic areas of the state.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

FRANK H. MURKOWSKI, GOVERNOR

- 400 WILLOUGHBY AVENUE
JUNEAU, ALASKA 99801-1796
PHONE: (907) 465-2400
FAX: (907) 465-3886
- 550 WEST 7TH AVENUE, SUITE 1400
ANCHORAGE, ALASKA 99501-3650
PHONE: (907) 269-8431
FAX: (907) 269-8918

December 27, 2004

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

Re: Seismic Hazards Safety Commission Report
10-20038-05

Dear Ms. Davidson:

Thank you for the opportunity to review the Alaska Seismic Hazards Safety Commission (ASHSC) Preliminary Report to the Legislative Budget and Audit Committee. As I stated in my prior letter to Mr. Griffen the draft report is very thorough and actually emphasizes the need for the ASHSC. I disagree with the conclusion that the ASHSC has not been active and it is therefore difficult to argue that there is not a demonstrated public need. I support the ASHSC and I urge the Legislature to extend the sunset date.

Alaska is the most seismically active state in the country. The legislature approved the ASHSC because they listened to the concrete arguments provided by professionals for the need for the commission. They recognized the success of similar commissions in other states for reducing earthquake losses and they took assertive action to address the issues in Alaska.

The risk of earthquake losses is steadily increasing and it should be clear as we witness the devastation caused by the earthquake in Asia that we need to minimize the state's risk as Alaska's population and infrastructure expand. Reducing losses at reasonable cost requires public commitment at the highest levels to earthquake-conscious siting, design, and construction. I believe that the ASHSC will provide the focus for this commitment. Governor Murkowski is currently reviewing nominees for appointments.

I concur with the Report's Recommendation No. 1 to increase representation of local government. Hazard mitigation occurs primarily at the local level and I agree that local governments in diverse regions of the state should be represented on the commission. This will ensure that proposed mitigation measures are appropriate, reasonable, and effective.

The report states that it is likely that no appointments were made to the commission because I initially recommended that the enabling statutes be repealed. As recognized in the report that initial recommendation was due to the cost of the Commission. It is a sad

Ms. Davidson
December 27, 2004
Page 2 of 2

state of affairs if a commission of this type is not extended because of my intent to be fiscally responsible. I take my job as Commissioner seriously and I weigh the benefits of an issue in light of the budget and my stewardship responsibilities. To act otherwise would be irresponsible. Once I was assured that the commission could be supported with a reduced budget I fully supported the commission and I recommend that the sunset date be extended. I expect the ASHSC's future recommendations to enhance public safety in our seismically active state.

Please contact me, Rod Combellick (451-5007; rod@dnr.state.ak.us) or Janet Burleson Baxter, 465-4730, if you would like further clarification on the department's recommendation on this issue.

Sincerely,


Thomas E. Irwin
for Commissioner

cc: Rod Combellick
Janet Burleson Baxter
Marty Rutherford
Lorraine Derr
Linda Hay