

## **An Example of the Importance of Regulatory Flexibility for Small Business**

### ***Shock to Small Business Short Circuited***

In March, 2005, the Illinois Department of Public Health (DPH) proposed a rule (77 Ill. Adm. Code 527) requiring indoor physical fitness facilities to have an automated external defibrillator (AED) on the premises at all times. This requirement did not pose a problem for small fitness clubs because most already had an AED on site. For those that didn't, the average cost to buy one is about \$3,000.

AED's typically come with instructions which, through voice prompts, tells the user exactly what to do. However, DPH's proposed rule also required all fitness clubs to have a trained AED staff member on the premises during open hours. This posed a problem particularly for facilities that are open 24 hours, and in larger cities, for "key clubs" where members have 24-hour access to the facility when staff may not be present.

According to statistics from the Illinois Department of Commerce and Economic Opportunity (DCEO) 1,000 physical fitness facilities would have been affected by this proposed regulation and required to either hire additional employees or pay existing employees additional hours. Using the average wage of \$14.97 per hour for a fitness facility employee, DCEO estimated that an AED trained employee on site at an additional 40 hours per week could cost upwards of \$598 per week.

Under the Illinois Administrative Procedure Act, DCEO can request that agencies analyze the impact of a proposed rule on small business and agencies are required to consider alternative methods for reducing the impact on small business. DCEO recognized that DPH's proposed rule would have an adverse impact on small businesses and sent out an e-mail regulatory alert notice to interested small entities. The agency also posted the proposed rule on its website.

Through these actions, businesses were informed and eager to comment. Indoor physical fitness facilities, small business advocacy groups and DCEO provided comments to DPH and the Illinois Joint Committee on Administrative Rules (JCAR) recommending that the agency strike the requirement that a trained AED staff member be on-site at all times.

The end result was a victory for small business and did not jeopardize the objective of the agency. Through successful outreach efforts fitness facilities that would have had to incur the most cost as a result of the rule were exempted. All other fitness facilities were no longer required to have a trained staff member on AED procedures present during all open hours but rather to have one trained member on the staff.

This example demonstrates the importance of a strong regulatory flexibility system at the state level. Illinois law requires agencies to consider the impact of regulations on small business and to consider less costly methods for achieving the purpose of the proposed rule. In addition, DCEO's small business activism was an important tool. Small business owners are the greatest source that agencies can use to understand how regulations affect small entities and what alternatives may be less burdensome.