

**ALASKA STATE LEGISLATURE**  
**SENATE STATE AFFAIRS STANDING COMMITTEE**

February 10, 2004

3:30 p.m.

**TAPE (S) 04-3&4**

**MEMBERS PRESENT**

Senator Gary Stevens, Chair  
Senator John Cowdery, Vice Chair  
Senator Bert Stedman

**MEMBERS ABSENT**

Senator Gretchen Guess  
Senator Lyman Hoffman

**COMMITTEE CALENDAR**

CSHJR 30(STA) - ELIMINATE SOCIAL SECURITY OFFSET am  
Relating to supporting the repeal of the Government Pension  
Offset and the Windfall Elimination Provisions from the Social  
Security Act.

MOVED CSHJR 30(STA) am OUT OF COMMITTEE

SENATE BILL NO. 232

"An Act relating to federal requirements for governmental plan  
and other qualifications for the teachers' retirement system,  
the public employees' retirement system, and the judicial  
retirement system; and providing for an effective date."

MOVED CSSB 232(STA) OUT OF COMMITTEE

SENATE BILL NO. 287

"An Act relating to review of regulations under the  
Administrative Procedure Act by the Legislative Affairs Agency;  
and providing for an effective date."

HEARD AND HELD

**PREVIOUS ACTION**

BILL: HJR 30

SHORT TITLE: ELIMINATE SOCIAL SECURITY OFFSET

REPRESENTATIVE(S): GATTO

05/19/03	(H)	READ THE FIRST TIME - REFERRALS
05/19/03	(H)	STA
01/22/04	(H)	STA AT 8:00 AM CAPITOL 102

01/22/04 (H) Moved CSHJR 30(STA) Out of Committee  
01/22/04 (H) MINUTE (STA)  
01/23/04 (H) STA RPT CS (STA) 3DP 1NR  
01/23/04 (H) DP: GRUENBERG, SEATON, LYNN;  
01/23/04 (H) NR: WEYHRAUCH  
01/28/04 (H) TRANSMITTED TO (S)  
01/28/04 (H) VERSION: CSHJR 30(STA) AM  
01/30/04 (S) READ THE FIRST TIME - REFERRALS  
01/30/04 (S) STA, HES  
02/10/04 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 232

SHORT TITLE: RETIREMENT: TEACHERS/JUDGES/PUB EMPLOYEES  
SENATOR(s): RULES BY REQUEST OF THE GOVERNOR

05/21/03 (S) READ THE FIRST TIME - REFERRALS  
05/21/03 (S) STA, FIN  
02/10/04 (S) STA AT 3:30 PM BELTZ 211

BILL: SB 287

SHORT TITLE: REGULATION REVIEW  
SENATOR(s): THERRIAULT

01/30/04 (S) READ THE FIRST TIME - REFERRALS  
01/30/04 (S) STA, FIN  
02/10/04 (S) STA AT 3:30 PM BELTZ 211

**WITNESS REGISTER**

Representative Carl Gatto  
Alaska State Capitol  
Juneau, AK 99801-1182  
**POSITION STATEMENT:** Sponsor of HJR 30

Jerry Patterson  
NEA-Alaska Retired  
No address provided  
**POSITION STATEMENT:** Answered questions on HJR 30

Marie Darlin  
National Association of Retired Federal Employees (NARFE)  
Juneau, AK 99801  
**POSITION STATEMENT:** Supported HJR 30

Sam Trivette, representative  
Retired Public Employees of Alaska/APEA/AFT  
Juneau, AK 99801

**POSITION STATEMENT:** Supported HJR 30

Anselm Stack, chief financial officer  
Division of Retirement and Benefits  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Testified on SB 232

Melanie Millhorn, director  
Division of Retirement and Benefits  
Department of Administration  
PO Box 110200  
Juneau, AK 99811-0200

**POSITION STATEMENT:** Testified on SB 232

Senator Gene Therriault  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Sponsor SB 287

**ACTION NARRATIVE**

**TAPE 04-3, SIDE A**

**CHAIR GARY STEVENS** called the Senate State Affairs Standing Committee meeting to order at 3:30 p.m. Present were Senators Stedman, Cowdery and Chair Gary Stevens. He announced the first order of business to be HJR 30.

**CSHJR 30(STA)-ELIMINATE SOCIAL SECURITY OFFSET**

REPRESENTATIVE CARL GATTO, resolution sponsor, stated that HJR 30 pertains to Social Security and asks Congress to repeal both the Windfall Elimination Provision (WEP), and the Government Pension Offset (GPO) provision from the Social Security Act.

In the early 1980s, the State of Alaska elected to opt out of Social Security and to establish the Public Employees' Retirement System (PERS) and the Teachers' Retirement System (TRS). Sometime thereafter Social Security changed their rules and imposed a penalty on most members that retired after 1985 and qualified for both Social Security and a public pension from a job not covered by Social Security.

Few people, he warned, are aware of this penalty and are devastated when they learn about it because it's too late to

make different career decisions. For instance, he began receiving Social Security about a year ago after having paid into the system for 50 quarters, which is ten quarters more than required. He receives about \$100 per month, which is considerably less than the amount the personalized printouts Social Security sent to him indicated.

A Social Security benefit can be reduced in one of two ways.

First, the Windfall Elimination Provision (WEP) modifies the formula that is used to figure a Social Security benefit and gives a reduced benefit for those individuals who qualify for Social Security through their earnings record and have also been an Alaska public employee (PERS) or teacher (TRS). The modified benefit is used the first month you receive both a Social Security benefit and the pension from work that didn't pay into Social Security.

The other way the Social Security benefit can be reduced is the Government Pension Offset (GPO). This applies if you receive a pension from a federal, state, or local government that isn't covered by Social Security and are eligible for Social Security benefits as a spouse or widow(er). This affects both PERS and TRS retirees.

REPRESENTATIVE GATTO gave a hypothetical example of what would happen if he were to die before his wife. Assume he receives a public pension of \$3,000 per month and a Social Security payment of \$2,000 per month. As a survivor, his wife would receive just the \$3,000 pension because of the offset. Social Security would offset two-thirds of his pension or \$2,000 from his \$2,000 Social Security benefit so his spouse would receive no spousal Social Security benefit whatsoever.

HJR 30 asks the Alaska Congressional Delegation to join the 29 senators and 284 representatives who have signed as co-sponsors to repeal the provisions.

CHAIR GARY STEVENS said he assumes this would apply to states other than Alaska.

REPRESENTATIVE GATTO said there are 14 other states that opted out of Social Security. He thought Alaska was right to opt out, they just didn't know there would be a penalty applied.

CHAIR GARY STEVENS asked if all the other states opted out the same way that Alaska did.

REPRESENTATIVE GATTO said that's what he thought, but he didn't have that information.

SENATOR JOHN COWDERY asked what the other states are doing.

REPRESENTATIVE GATTO clarified the states that pay into the Social Security system aren't affected. The provisions only apply to the 15 states that opted out of Social Security.

SENATOR COWDERY asked a question about his personal situation.

REPRESENTATIVE GATTO replied he didn't believe the senator would be affected. His concern is for the people that have made career decisions based on what they have been led to believe they would receive from Social Security when, in fact, they won't. He predicted this would be a serious situation for more people than you might guess.

SENATOR COWDERY said he has been receiving a PERS retirement check since 1995 and he wondered how these provisions might affect him.

JERRY PATTERSON, NEA-Alaska Retired, explained two ways to avoid the penalty. First, individuals that paid Social Security and PERS throughout their career aren't affected. Second, the penalty is generational so people that were eligible and retired from state service in 1985 avoided the penalty.

REPRESENTATIVE GATTO noted that the House Finance Committee met with PERS and TRS retirement last night and learned a good deal about what is needed to keep that system solvent.

CHAIR GARY STEVENS said the disincentive for retired troops to become teachers in Alaska is shocking and asked for a comment.

REPRESENTATIVE GATTO replied there are two issues. First there are people who might consider moving to Alaska to teach after they retire and the other issue is those retirees who decide to leave Alaska at some time before the start the eighth year of teaching.

For instance, if a retired autoworker from Michigan is receiving Social Security and he or she moves to Alaska and teaches for seven years, everything looks fine. At the start of the eighth year, the provision to reduce the Social Security benefit kicks in. This makes it difficult for Alaska to recruit teachers who

have retired from a job outside Alaska and easy for retirees who are teaching to leave Alaska after their seventh year.

MR. PATTERSON said the troops-to-teachers program typically targets retirees from the military who have Social Security benefits so it's more advantageous to those retirees to go to a state where the penalties don't apply. The head of the troops-to-teachers program in Alaska is well aware of the penalties and has expressed concern.

CHAIR GARY STEVENS asked him to explain the troop-to-teacher penalties.

MR. PATTERSON explained that retired military personnel would become vested as a teacher in Alaska at eight years. Upon vesting, they would already be pegged for a Social Security reduction starting at something less than 60 percent and going down to zero.

SENATOR COWDERY asked which public positions are affected in addition to teachers and state employees.

MR. PATTERSON replied police, firemen, and municipalities that opted out of Social Security. Potentially, 7,000 people between the ages of 65 and 75 are impacted and some 11,000 people between 55 and 65 years old are due to be impacted.

CHAIR GARY STEVENS asked if he mentioned the University of Alaska because they are affected.

MR. PATTERSON said he considers them to be TRS.

SENATOR BERT STEDMAN remarked he ran into this in his work before he became a legislator. Some clients had no idea this existed while others knew, but didn't understand the implications. He stated he didn't think the current penalty and offset structure is fair and he'd like to see them removed. The state would benefit greatly if the teacher retention issue was resolved and removing the penalties would be fair to everyone.

CHAIR GARY STEVENS asked about the situation in which a widow receives a substantially reduced pension.

REPRESENTATIVE GATTO said he likes to use numbers because they're more descriptive.

A \$3,000 a month pension, you're entitled to \$36,000 per year. If you are subject to the provisions of Social Security here - if you also had a great amount of Social Security benefit like \$2,000 - well they could take the entire \$2,000 of your Social Security benefit because of the two-thirds. Two-thirds of \$3,000 is \$2,000. If your benefit was \$2,000 in Social Security, that's the amount that's removed. If your benefit was \$1,500 in Social Security, that's under the \$2,000 so they take 100 percent of it [the Social Security benefit]. Therefore you're left with the pension only, which wasn't part of your planning.

MR. PATTERSON pointed to the nationwide statistic that 9 out of 10 individuals lose the entire spouse survivor's benefit.

MARIE DARLIN, retired federal employees representative, testified in support of HJR 30. She said the reason the retired federal employees are concerned is because they paid into the civil service retirement system and not the Social Security system so the Social Security provisions adversely affect them. Federal employees are now part of FERS [Federal Employees Retirement System] that pays into Social Security, but it doesn't help those who retired under the old system.

She read the following:

Alaska has over 6,600 annuitants in the state of which 1,336 are survivor annuitants. They bring about \$12.5 million monthly into the economy of this state.

About 1,500 people are actually members of NARFE (National Association of Retired Federal Employees) and our Alaska federation has been active since 1987. NARFE has been working for years to get Congress to repeal these pension offsets since they began in 1982, although they didn't become effective until about 1985. They were intended to reduce the Social Security annuities of anyone who also received a government annuity. By that they meant anybody who had not paid into Social Security - as a city government, state government, or the federal government never did.

We feel this is totally unfair because those Social Security payments were made to Social Security and the employers made their portion of the payments. And the GPO reduces or eliminates the Social Security benefit

from the spouse Social Security. The other one, the WEP, reduces a person's own earned benefit by using a formula that can result in a loss of as much as 60 percent - or maybe even more - just because their career or even a part of it was with a governmental entity.

MS. DARLIN concluded the low-income widows are impacted the most, but thousands are affected. She urged members to support the resolution.

SAM TRIVETT, president of the Retired Public Employees Association of Alaska (APEA/AFT), stated he represents the retirees in the group that aren't teachers. They represent people who have retired from state government as well as the municipalities that participate in PERS. He said the association supports the resolution strongly.

The association has become involved quite recently and he acknowledged that is because they weren't aware of the provisions before. He checked on his personal situation as a retiree with a wife who is still working. If he dies before she does, she will probably get no spousal Social Security.

Social Security sent him benefits statements regularly before he retired and never informed him that his benefit would be reduced because he was also a state employee. It wasn't until after he retired and then signed up for Social Security that he learned that his Social Security benefit would be reduced by about \$500 per month. Multiply that by the number of months he expects to live and that amounts to a considerable sum of money. There are thousands of retirees in his same situation and it will have a major impact on people's lives.

The state opted out of Social Security in 1980 and it wasn't until six or seven years later that Congress passed the bill. No one was notified of the change so they didn't have any idea they should revisit their retirement decisions. The impact to the state in terms of lost income will amount to millions of dollars he warned.

A top official in the Social Security Administration admitted they didn't send notification initially; they weren't sending notification now and probably wouldn't start sending notification for several years. When he was lobbying for the repeal of these provisions he was asked why anyone should support a repeal because Social Security can't afford it. His

response is that it is a penalty to those who continued to work after the WEP and the GPO were passed. He and others paid the full amount that was required into the system so that money is in the system. "So the people that tell you the money is not there are not right."

CHAIR GARY STEVENS asked if he understood correctly that anyone who worked as a state employee, a teacher, or a university employee before 1980 paid into Social Security.

MR. TRIVETTE said that is correct and noted he paid into Social Security from the time he was in 9th grade until 1980 when the state opted out.

There was no further testimony.

CHAIR GARY STEVENS asked for a motion.

SENATOR COWDERY made a motion to move CSHJR 30(STA) from committee with individual recommendations and attached fiscal note. There being no objection, it was so ordered.

**SB 232-RETIREMENT:TEACHERS/JUDGES/PUB EMPLOYEES**

CHAIR GARY STEVENS announced SB 232 to be up for consideration.

ANSELM STAACK, Department of Administration (DOA), said he is the chief financial officer for the public employees' and the teachers' retirement systems and any others that operate within the Division of Retirement and Benefits including SBS and deferred compensation.

He explained that the Internal Revenue Service (IRS) reviewed the entire plan reviewed by the Internal Revenue Service (IRS) and the process took three years. He noted that to remain a qualified plan, the division must ensure that their plans conform to tax law, which requires modifications whenever tax laws change. More importantly, the division had to get a private letter ruling from the IRS for employees to be able to pay indebtedness to the system with pre tax dollars rather than with post tax dollars.

For the public employees' retirement system (PERS), the teachers' retirement system (TRS), the judicial retirement system (JRS), and the supplemental benefits system (SBS) the division sought a private letter ruling and a plan determination letter. The latter is an IRS letter approving the plan. As long

as the established rules are followed, monies may be paid pre tax and the plan is eligible for IRA rollovers.

The plan document or the rules for a tax-qualified plan for PERS, TRS and JRS are in statute and therefore any changes require legislative action. The original bill on this subject, SB 245, addressed the first series of changes suggested by the IRS. It was at that time that the Division of Retirement and Benefits came to realize that the process was going to take longer than initially anticipated

SBS has a separate plan document from PERS, TRS, and JRS and it contains little statutory language. Therefore, when the IRS mandates certain changes to the SBS plan, the division is able to make those changes without legislative action. He assured members that just the changes that the IRS required were made to the SBS plan.

On April 30 2003, the division received the IRS positive plan determination letters for the PERS, TRS, and JRS plans. Because the positive determination was conditioned on making all the suggested changes in statute within 210 days, the division asked that SB 232 and HB 331 be introduced. They realized there wasn't time to get the legislation passed before the end of the session, but felt this showed a good faith effort.

In August 2003, the division received the positive private letter rulings related to PERS, TRS, and JRS. At the same time they received a negative letter ruling for including village public safety officers (VPSO) in PERS. This means VPSOs must be statutorily removed from PERS. In the first session of the 22nd Legislature SB 145 placed VPSOs into PERS and required the placement by March 2002.

Mr. Staack said the division, and he in particular, did not implement the placement because IRS had not made a ruling and there were indications that IRS would question the placement. Placing VPSOs in PERS without a positive ruling from the IRS would have exposed PERS to unqualified plan status. The risk was too great to test.

MR. STAACK said he personally argued the VPSO case before the IRS in Washington D.C. but the ruling was negative. He noted a copy of the ruling was in member's packets.

CHAIR GARY STEVENS remarked that tax code reading is tedious.

MR. STAACK chuckled and admitted that he's one of the few people that enjoy it.

CHAIR GARY STEVENS announced there was a work draft CS before the committee and he asked for a motion to adopt it as the working document.

SENATOR JOHN COWDERY made a motion to adopt CSSB 232 as the working document. There being no objection, it was so ordered.

CHAIR GARY STEVENS asked Mr. Staack to outline the changes between the original bill and the CS.

A sectional analysis may be found in the bill file.

MR. STAACK noted the original bill had 19 sections and the CS has 32 sections. He pointed to page 2, lines 6-9 and read, "No amendment to this chapter provides any person with a vested right to a benefit if the Internal Revenue Service determines that the amendment will result in disqualification of the plan under the Internal Revenue Code." That addition is to prevent the general fund from being liable if a state law exists allowing benefits that cannot be paid out of plan assets because of an IRS determination.

Section 3 relates to changing any reference to "teacher(s)" to the term "member(s)." That change occurs throughout the bill and applies to PERS as well. The IRS determined that using terms other than "members" could lead to confusion and a single definition was preferable.

Sections 5 and 6 are conforming. Section 7 is to allow members to purchase permissible service credits such as military time. Section 10 adds additional sections to satisfy eligibility requirements and use service history. Sections 11 and 12 are to conform to the tax code in effect for 1980.

Section 13 was a hard fought and long negotiated addition. If a member has any reduction from the 100 percent based benefit, the actuarial factors that apply have to be specified in regulation. The IRS originally wanted the factors outlined in statute rather than regulation so to satisfy them, the division was required to prove the basis for every actuarial factor in terms of the mortality table. He emphasized there is good reason for this because members should be able to find out how their benefit is computed. He continued, "You have a right to know that yes, we

use the 1973 mortality table and we used a 2 percent interest rate." That is in regulation and not the bill.

Section 14 speaks to the interchangeability between "teacher" and "member." Section 15 defines the prescribed interest rate used for the actuarial tables.

Sections 16 - 20 relate to the JRS. Section 18 says no one is entitled to a benefit unless the code says they are. Section 20 is the actuarial assumption factors.

Sections 21 - 31 relate to PERS. Section 21 stipulates no amendment can be made if it results in a disqualification. Section 22 deletes VPSOs. Section 25 deletes a mistake in the original HB 245 relating to forcing a member to cash out their account.

Section 26 shows corrections for VPSOs for permissible service credit. Sections 27 and 28 are conforming. Section 29 is for the actuarial assumptions. Sections 30 and 31 are the last of the VPSO removal.

Sections 32 - 35 are for redesignations of some systems and outlines when certain parts are effective.

**TAPE 04-3, SIDE B**

**4:24 pm**

CHAIR GARY STEVENS thanked Mr. Staack then outlined the process by which the state passes money to village nonprofits that pay the VPSOs. He asked how that process is dissimilar to the state funding school districts that use the money to pay teachers.

MR. STAACH replied there are two issues involved. When the state gives money to a school district, the district employees may be TRS members because they are employees of a governmental entity. In contrast, VPSOs are not employees of a governmental entity; they are employees of a 501(c) (3) nonprofit corporation.

He emphasized that the division tried very hard to include VPSO and even argued that the state was leasing an employee of a regional Native corporation for the purpose of doing public safety services. The IRS didn't agree with that argument or any other. Their point is that the state is asking the IRS to rule that a small portion of the regional Native corporation, specifically the VPSOs, are government employees and are working for a government. At the same time, those employees will provide

services to villages that are members of PERS. IRS asked why the village couldn't employ those individuals. IRS said asking them to declare that part of the regional corporation is a governmental entity raises the question of whether or not the entire corporation is a governmental entity.

There is considerable tax law stating you can't be both a 501 (c)(3) nonprofit corporation and a governmental entity. If the IRS were to rule that the regional corporation is a governmental entity for purposes of the VPSOs, their nonprofit status would be jeopardized.

CHAIR GARY STENVENS referred to page 4 of the IRS letter and asked for clarification.

MR. STAACK replied the IRS letter provides background information up to page 8. He read:

Thus, we conclude that the K Corporation(s) is not an agency or instrumentality of the State or a political subdivision thereof. Accordingly, as for the first ruling requested, we find that the inclusion in Plan X of Community Officers, who are employees of a K Corporation which does not qualify as an agency...

He explained the following paragraph states that it is not legal for the plan to take contributions from VPSOs and the employer may not pick them up. He continued, "The only reason your SBS money that you pay into the supplemental benefit system or the pretax contributions you make into the Public Employees' Retirement System is pretax is because a 'fiction' of the law converts it to employer money for purposes of being picked up and deposited in the plan." With regard to VPSOs, IRS is clear in stating there is no authority to do that.

CHAIR GARY STEVENS remarked it's unfortunate that this is occurring at the same time that the Department of Public Safety is encouraging the regional Native corporations to assume responsibility for the VPSO program. In this time of budget cuts it makes it difficult for the Native corporations to continue the program.

MR. STAACK verified that all parties tried very hard to find a solution and even the tribal section of the IRS was involved.

SENATOR BERT STEDMAN questioned whether the division is actually using mortality tables from the 1970s.

MR. STAACK replied the table that is used depends on when the member was first hired in the system. Some would use those tables, but in 2000 the division switched from the 1983 tables to the 1994 mortality tables for the purposes of calculating liabilities in PERS and TRS.

SENATOR STEDMAN observed the two options are to bring the plan into compliance or not. If the latter choice is made then the entire plan becomes noncompliant thereby triggering tax consequences.

MR. STAACK replied if a plan is determined non-qualified, the pretax contributions stop immediately. It's also possible that the money that is already in the plan would become immediately taxable. The legal liability associated with an unqualified plan is tremendous.

SENATOR STEDMAN asked if changes could be expected every so often as the IRS evolves their rulings.

MR. STAACK assured him that any time the tax law changes the division is automatically required to become compliant.

SENATOR STEDMAN asked how the 457 (B) plan is handled.

MR. STAACK said the 457(B) plans are deferred compensation plans for governments and other nontaxable entities and are called eligible retirement plans. The PERS, TRS, JRS, teacher 403(B)s and the supplemental benefits system, which is a defined contribution plan are all qualified plans. For the most part, the rules for both are now identical to all other retirement plans. Previously they were not the same, but there is no need to make a change in this legislation, he said. However, just to be on the safe side, they adopted any changes that applied to SBS to deferred compensation.

CHAIR GARY STEVENS asked for the pleasure of the committee.

SENATOR JOHN COWDERY made a motion to move CSSB 232(STA) to the next committee of referral with individual recommendations and the attached fiscal note. There being no objection, it was so ordered.

**SB 287-REGULATION REVIEW**

CHAIR GARY STEVENS announced SB 287 to be up for consideration. He stated the committee was hearing the bill at the sponsor's request, but he didn't intend to take action that day. He asked Senator Therriault to step forward.

SENATOR GENE THERRIAULT, sponsor of SB 287, explained he introduced this bill as a result of his work on a different piece of legislation relating to regulations formation and the public's perception of the regulatory process. That bit of legislation deals with the standards citizens are held to when they appeal a decision made under regulation. It's the end of the process when the regulation is being implemented and is having consequences for constituents, he said.

Because of that work, he began to look at how the Legislature interacts with regulations as they are formed. He referred members to the flow chart, "Steps in the Regulation Adoption Process," and pointed out that sometimes there is a misinterpretation of the legislative intent when an agency works with legislators then proposes a regulation. It's upsetting for constituents to work on legislation only to find that the regulation has taken an unexpected turn. At that point, the Legislature has the choice of working to change the direction the regulation is headed through the public comment period or pass another piece of legislation.

He and his staff began to explore formalizing the role of the Legislature for input or notification. This is not to control the process, he quickly insisted, because regulations are an administrative function and with the separation of powers, the Legislature has no constitutional power to control the regulatory process. However, he would like to explore the early input option so that if the body that passed the underlying statute believed there was some misinterpretation, they could take corrective steps early in the process.

SB 287 would insert legislative legal attorneys into the process between step 4 and 5 in the flow chart. In step 4 the Department of Law opens the file and in step 5 the agency publishes and distributes public notice, additional notice information, and regulations.

He admitted that Lt. Governor Leman and his staff have some concerns with the separation of powers issue, but he reemphasized it isn't his intent to insert the Legislature in any controlling manner. It's an opportunity to work cooperatively with the administration to avoid difficulties.

Legitimate concerns relate to the Board of Game and the Board of Fish. If citizen groups are suggesting changes to regulations the boards oversee, the board reviews and selects the proposals they want to move forward. He clarified, "It certainly would not be in my intent that our legislative legal attorneys review all of those proposed regulations that are brought to the boards."

Specifically, he said, he was interested in addressing new legislation that is implemented through the passage of regulations. This is when the legislative attorneys would be involved.

With regard to the fiscal impact of the bill as currently structured, he said he expected to receive the same advice from the Finance Committee co-chair that he used to dispense. That is, "Great idea, cost's too much. Come back when you get the cost down."

SENATOR THERRIAULT admitted that controlling costs might involve a blend of the current system with the Administrative Regulation Review Panel and early notification or solicitation of input into the process.

SENATOR JOHN COWDERY questioned whether legislative legal has sufficient staff to handle the additional workload or is extra staff included in the fiscal note.

SENATOR THERRIAULT replied the expense of additional positions is something that needs evaluation. He noted that the legislative legal staff has slack time during the interim and perhaps this function could be performed then.

SENATOR COWDERY asked how long it would take to review the regulations and give the public time to comment.

SENATOR THERRIAULT opined the legal review could be completed in a week or two. He pointed to the practice of one department holding another hostage and stated with certainty that the Legislature doesn't have the constitutional power to hold up the process in that fashion. Ideally, the same attorney that worked with legislators in drafting the bill would look at the regulations and give an opinion as to whether they were backing up the stated legislative intent in the new law that was passed.

Although it's not necessary, it's not uncommon for legislators to solicit opinions from the Attorney General's Office (AG).

There's no requirement for legislators to follow that advice, but they certainly do take it into consideration because it doesn't make sense to take steps that would lead to certain legal challenge. If the regulation writers got a memo from our legislative legal shop saying, "You're missing the boat here." They would listen in the hope that it would save headaches down the line. It could avoid backlash from the public that thought they knew what to expect when they supported a piece of legislation, but the regulation went in a different direction.

SENATOR COWDERY asked how many regulations are established in a year.

SENATOR THERRIAULT replied Mr. Stancliff could probably answer that question.

DAVE STANCLIFF, staff to the Regulation Review Committee, reported that Senator Therriault tasked him with finding a way to bring about positive changes in the process through the regulatory reform process. A good process works well for any political persuasion and deals with the balance of power between the Executive Branch of government and the Legislative Branch of government.

MR. STANCLIFF reported that the regulatory process that Colorado employs is one of cooperation. Their legal services aren't adversarial with the Attorney General's Office and that's the model in SB 287.

He suggested that the system in Alaska doesn't have the same level of balance that other states have with regulatory review. First, it's not uncommon to hear that an agency regulator told a disgruntled citizen that if they didn't like a regulation they should speak to their legislator because that's who passed the bill that made the department establish the regulation. He admitted that is sometimes valid, but many times it's not because the regulation that's causing the heartburn has little to do with the statute that was passed.

The other imbalance is that the Attorney General's Office isn't involved until after the public comment period. Currently the public is given an opportunity to comment on an agency's proposed regulation after which it is sent to the Attorney General's Office for review. If that office finds fault with the regulation, it is remanded back to the agency for repair. After the repair, the commissioner decides whether or not to send the proposed regulation back through the public comment period.

Often the decision is to skip additional public comment so the regulation continues through the process and becomes law. The result is that the public sees a regulation that is different than the one they commented on.

In response to Senator Cowdery's questions, he said the fiscal note calls for three full time attorneys, which would be very costly if you weren't sure of a good return. He estimated that the number of regulations per year is well over 1,000.

In Colorado, regulation writers realized their work was going to be screened by the Legislative Branch. Regulations were written more carefully, there weren't as many. The process saved money from the start to the end because they didn't send as many back, they weren't adjudicated the same way because they were better quality regulations. The investment climate in Colorado changed significantly.

Using the fishing industry as an example he noted how much impact one regulation can have in a sensitive and multimillion dollar industry. Clearly, it's important to get it right the first time.

With regard to costs he thought that they would come down significantly if fish and game were left out. "I think you might eliminate one of those positions," he said

DEBORAH BEHR, regulations attorney with the Department of Law, said she and Annette Kreitzer were there to talk about regulatory reform and better interactions with the Executive Branch. She stated agreement with Senator Therriault's premise that it's necessary to cooperate for regulations to be better developed and more responsive to the public.

She expressed the opinion that everything that's in the bill could be done without a statute and she firmly believes that if a new statute isn't need, you shouldn't put a new one on the books.

She said she would be working with Senator Therriault's staff to determine whether they were looking for a policy review or a lawyer's review. She has reviewed legislation and found it to be perfectly legal, but then had to ask the commissioner which policy direction he or she wanted to take. At that point, the commissioner talks to policy experts who are usually not lawyers and selects the policy direction.

MS. BEHR suggested that the committee decide whether they want to invest expensive lawyer dollars in looking at all the regulations in the state. Certainly, she asserted, there are regulations such as local hire and complex tax regulations that would require a lawyer, but some sort of prescreening by legislative staff or other non-lawyers would make better use of your legal services dollars.

She said she would talk to staff about the standards legislative legal is supposed to be using as compared to the standards that the Department of Law is supposed to use because they don't mesh. For example, legislative legal doesn't look at compliance with drafting legal styles.

Another concern is what happens when legislative legal is busy and the provision is for a mandatory review and they don't have the staff to conduct the review in a timely fashion. An unintended consequence might be that a third party would charge that the regulations are somehow flawed because the statute says legislative legal shall review the regulations.

MS. BEHR noted that several agencies have expressed concern about regulation delays so discussions should take place to decide what to include. Certainly there's a difference in new legislation and legislation that is for cost containment and right now most of the bills she is reviewing deal with trying to get the state statutes to match a pared down budget. She said,

I don't want to have the department waiting to hear from legislative legal and then missing time - a month or two - in implementing a policy call the Legislature made to pare down a budget. This is of particular concern in the understaffed areas of health and social services. If you miss a month in Medicaid, you're talking about millions of dollars.

She advised that the Department of Law has a budget request in for a lawyer. It's much easier for the Executive Branch to garner federal dollars for legal resources than it is for the Legislative Branch. "So if you believe there is a need for more legal resources, that certainly is a possibility and at any time you found a regulation you were troubled with and wanted a legal opinion, certainly the Department of Law is the resource for you."

She then brought up a technical concern related to public records. Because the attorneys at legislative legal aren't part

of the Executive Branch, there isn't a clear attorney-client privilege. It isn't entirely clear that an opinion written by legislative legal wouldn't be a discoverable document, which could be very problematic on a complex oil regulation.

Next she brought up the applicability of regulations in process pointing out that several industries are waiting for regulations and there isn't a section in the bill to address that.

She concluded her remarks saying that it is important that the Legislature wants to better interface with the Executive Branch and she reemphasized that comments legislators make on regulations are considered strongly and evaluated seriously.

ANNETTE KREITZER, chief of staff to Lt. Governor Leman, stated that the Lt. Governor appreciates Senator Therriault's interest in reviewing how regulations are promulgated and when and how legislators have an impact on the process. That being said, she admitted that she's a bit baffled when her office doesn't hear from legislators during the public comment period because the public includes legislators. The departments would absolutely take those comments very seriously, she said.

She showed members a regulation packet and said it lists all the legislators that got the notice about the regulations being proposed in response to HB 271, which was passed last session. There was ample opportunity to comment yet there is nothing in the packet reflecting that a single legislator had a comment.

The Lt. Governor has assured Senator Therriault that if there is something about the process that doesn't work, such as more training for staff or new legislators, they're very willing to work with him to accomplish his desire to ensure that legislators are involved early on.

**TAPE 04-4, SIDE A**

**5:00 pm**

CHAIR GARY STEVENS asked Ms. Behr about her concern about delays and whether she had considered what options might be available to address the delay.

MS. BEHR clearly stated that this bill doesn't stop anyone from going forward with a project while legislative legal is reviewing. However, she said if she were commissioner of Revenue and she knew that legislative legal was looking at regulations, she'd probably wait for that legal review before proceeding.

She repeated that a screening process would help address the issue of how quickly a review could be completed. Legislative legal attorneys should neither spend time looking at minor regulations that don't require an attorney's expertise nor spend time doing legal research that the Department of Law isn't going to use.

CHAIR GARY STEVENS thanked everyone for their comments and announced SB 287 would be heard again in the future. With nothing further to come before the committee, he adjourned the meeting at 5:15 pm.