

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

January 30, 2012

1:06 p.m.

MEMBERS PRESENT

Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Carl Gatto, Chair
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 216

"An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 216

SHORT TITLE: REGULATIONS: INFORMATIVE SUMMARY/BILLS

SPONSOR(S): REPRESENTATIVE(S) P.WILSON

03/30/11	(H)	READ THE FIRST TIME - REFERRALS
03/30/11	(H)	STA, JUD
04/12/11	(H)	STA AT 8:00 AM CAPITOL 106
04/12/11	(H)	Heard & Held
04/12/11	(H)	MINUTE(STA)
01/19/12	(H)	STA AT 8:00 AM CAPITOL 106
01/19/12	(H)	Moved CSHB 216(STA) Out of Committee
01/19/12	(H)	MINUTE(STA)
01/20/12	(H)	STA RPT CS(STA) 2DP 4AM
01/20/12	(H)	DP: P.WILSON, LYNN
01/20/12	(H)	AM: KELLER, GRUENBERG, SEATON, PETERSEN
01/23/12	(H)	FIN REFERRAL ADDED AFTER JUD
01/30/12	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 216.

STEVE WEAVER, Assistant Attorney General
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of
HB 216.

KATHIE WASSERMAN, Executive Director
Alaska Municipal League (AML)
Juneau, Alaska

POSITION STATEMENT: Testified in support of HB 216.

RAYMOND GILLESPIE, Lobbyist
Alaska Municipal League (AML)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of
HB 216.

ACTION NARRATIVE

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VICE CHAIR STEVE THOMPSON called the House Judiciary Standing Committee meeting to order at 1:06 p.m. Representatives Thompson, Keller, Pruitt, Gruenberg, Holmes, and Lynn were present at the call to order. Representative Gatto was excused.

HB 216 - REGULATIONS: INFORMATIVE SUMMARY/BILLS

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VICE CHAIR THOMPSON announced that the only order of business would be HOUSE BILL NO. 216, "An Act relating to deadlines in bills directing the adoption of regulations and to the informative summary required for the proposed adoption, amendment, or repeal of a regulation." [Before the committee was CSHB 216(STA).]

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REPRESENTATIVE KELLER moved to adopt a proposed committee substitute (CS) for HB 216, Version 27-LS0701\E, Bannister, 1/28/12, as the working document.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion, and then withdrew his objection.

VICE CHAIR THOMPSON, after ascertaining that there were no further objections, announced that Version E was before the committee.

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REPRESENTATIVE PEGGY WILSON, Alaska State Legislature, sponsor, after mentioning that Version E incorporates changes suggested by the Department of Law (DOL), explained that HB 216 would ensure that regulations are [adopted] in a timely manner, and that [notifications regarding the proposed adoption, amendment, or repeal of regulations] include easily-understood descriptions of the proposed regulatory changes, thereby addressing the fact that state agencies often don't get regulation written and adopted in a timely manner - which leaves those affected by the proposed regulatory changes unable to move forward with their plans - and the fact that the legal language used for proposed regulatory changes is confusing for many. Specifically, Section 1 of HB 216 - proposed AS 24.08.045(a)-(b) - would require bills directing an agency to adopt regulations to also set a specific time by which those regulations must be adopted, and Section 2 - proposed AS 44.62.200(d) - would require notifications regarding proposed regulatory changes to include easily-understood descriptions of those changes. Such descriptions, she assured the committee, need not be lengthy - depending on the complexity of the proposed regulatory changes - and won't be legally binding.

REPRESENTATIVE P. WILSON, referring to the incorporated changes suggested by the DOL, indicated that under Version E, Section 1 would only apply to agencies in the executive branch of state government - not boards or commissions - and Section 2, now limited to only electronic forms of notification, would only apply to state agencies, with the Regulatory Commission of Alaska (RCA), the Board of Fisheries, and the Board of Game additionally being exempted because they already have their own well-defined regulatory notification requirements and deadlines. Furthermore, Section 2 now contains language that would limit

the liability of state agencies if their notices fail to comply with the requirements of Section 2. Section 3 - proposing to modify uncodified law - addresses applicability, stipulating that the provisions of the bill would only apply to [bills filed, or regulations adopted, amended, or repealed] on or after the bill's effective date. Representative P. Wilson, in conclusion, posited that HB 216's proposed changes to the regulatory process were warranted, would be helpful, and would provide clarity.

REPRESENTATIVE P. WILSON, in response to questions and comments, opined that the current practice of using only legal terms to describe proposed regulatory changes is insufficient to allow the general public to understand the changes, and explained that because newspapers charge by the word, Section 2's requirement that notifications contain a brief description of the proposed regulatory changes applies only to electronic forms of notification.

REPRESENTATIVE HOLMES expressed favor with the goal of the bill, acknowledging that it can be difficult to understand descriptions couched in legal terms. Referring to the language in Section 1 that says, "A bill that directs an agency in the executive branch of state government to adopt regulations", she asked whether that direction must be explicit, or whether it could simply be implied, in order for that provision to apply.

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STEVE WEAVER, Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), offering to research the issue further after the meeting, explained that ordinarily when an agency is granted the authority to adopt regulations on a subject, that authority is explicitly laid out in statute; so, presumably, if HB 216 passes, in order for Section 1 to apply, a bill would first have to provide such explicit direction.

REPRESENTATIVE HOLMES, noting that the sponsor of such a bill might not know how long it's going to take for regulations to be adopted, questioned whether HB 216 should retain its requirement - via use of the word "must" in Section 1's proposed AS 24.08.045(a) - that all applicable bills include a time by which regulations must be adopted.

REPRESENTATIVE P. WILSON ventured that any such deadline could instead just be stipulated in a fiscal note, rather than in the proposed legislation itself.

[Vice Chair Thompson turned the gavel over to Representative Keller.]

REPRESENTATIVE HOLMES pointed out, though, that as currently written, HB 216 requires any such deadline to be included in the proposed legislation itself.

MR. WEAVER concurred.

[Representative Keller returned the gavel to Vice Chair Thompson.]

REPRESENTATIVE GRUENBERG, in response to comments, suggested changing Section 1 such that it would no longer stipulate what a bill that directs an agency to adopt regulations must do, but would instead stipulate what an agency that has to adopt regulations in order to implement legislation must do, indicating a belief that to leave this aspect of Section 1 as is could engender litigation.

REPRESENTATIVE P. WILSON, expressing a preference for retaining the word, "must", characterized Representative Gruenberg's suggestion as a good idea. The rules regarding regulations should be such that the public can figure out what's occurring, she asserted.

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REPRESENTATIVE HOLMES observed that Section 1's proposed AS 24.08.045(a)(2) requires each applicable bill to also contain a provision stipulating that an agency shall report to the Administrative Regulation Review Committee the reasons for being unable to meet the stated deadline, and questioned whether HB 216 could be rewritten such that agencies would indeed be required to report noncompliance, but without requiring the inclusion of such a provision in each applicable bill.

MR. WEAVER indicated that the DOL would be willing to assist with crafting alternative language.

REPRESENTATIVE GRUENBERG suggested that perhaps language could be added to the statutes governing fiscal notes so as to mandate that accompanying fiscal notes shall contain the required

regulatory information, and then a reference to placement in fiscal notes could be added to Section 1.

REPRESENTATIVE P. WILSON, remarking that she didn't feel the need to require each applicable bill to contain such a provision, indicated a willingness to research the issue further.

REPRESENTATIVE GRUENBERG cautioned that any such mandate should be in statute in order to ensure compliance.

REPRESENTATIVE HOLMES referred to the language in Section 2's proposed AS 44.62.200(d) that says, "written in clear, easily readable language that a person without a legal background is able to understand without following Internet links to the Alaska Administrative Code", and suggested that the words, "without following Internet links to the Alaska Administrative Code" be replaced with the words, "without cross-referencing the Alaska Administrative Code or statutes". She then questioned whether the last sentence in proposed AS 44.62.200(d) was sufficiently broad enough to preclude all the types of suits that were of concern; that last sentence currently reads: "Notwithstanding AS 44.62.200, an action may not be brought for failure of the notice to comply with the requirements of this subsection relating to the description of the changes or the clarity and readability of the notice."

MR. WEAVER, characterizing the inclusion of that sentence in Version E as an improvement, agreed to research the issue further.

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REPRESENTATIVE GRUENBERG - providing an example from several years ago wherein the promulgation of necessary regulations didn't occur simply because two agencies disagreed over which of them was responsible for the promulgation - recommended that that provision also be reviewed from the perspective of ensuring that instances of such complete non-compliance are addressed.

MR. WEAVER agreed to do so.

REPRESENTATIVE GRUENBERG, referring, then, to Section 1's proposed AS 24.08.045(a)(2), relayed that he is also questioning whether the Administrative Regulation Review Committee is the correct committee for agencies to report to, given that it meets both irregularly and infrequently. He then suggested that the

bill be amended to require an agency, when reporting the reasons for not meeting the set deadline, to also propose a new deadline.

MR. WEAVER, in response to a question, explained that the term, "state agency" - as used in Section 2 - is defined in AS 44.62.640(a)(4) as:

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

REPRESENTATIVE GRUENBERG questioned whether boards governing occupational licenses should be excluded from the requirements of HB 216, or whether such boards should be specifically provided for in the bill.

REPRESENTATIVE P. WILSON acknowledged that perhaps certain boards and commissions shouldn't be excluded from the requirements of HB 216, and expressed interest in receiving input from members with regard to which boards and commissions the bill should apply to.

REPRESENTATIVE HOLMES observed that the indeterminate fiscal note submitted by the Office of Management & Budget (OMB) is estimating that HB 216 would have an extensive fiscal impact, and surmised that the House Finance Committee would be scrutinizing that issue further.

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KATHIE WASSERMAN, Executive Director, Alaska Municipal League (AML), stated that the AML supports HB 216, and, to illustrate why, recounted a past situation in which the Alaska Public Offices Commission (APOC) had proposed extensive regulatory changes that would have affected local governments, but had refused to provide the AML with any information about what those changes entailed. Because one of the AML's duties is to make local governments aware of issues that could impact them, this refusal resulted in the AML having to hire outside counsel - at a cost of over \$8,000 - to research the proposed changes. At the time, she added, a number of legislators, as well as the governor, had expressed concern about the lack of [meaningful] information being provided about the proposed regulatory

changes. In conclusion, she reiterated that the AML is very much in favor of HB 216.

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RAYMOND GILLESPIE, Lobbyist, Alaska Municipal League (AML), remarking on the frustration experienced [by the AML] over the APOC's continued refusal to provide the requested information, pointed out that without having an understanding of what proposed regulatory changes are, no one is going to be able to provide any meaningful comments on them. Anything that can make the regulatory process more user-friendly is laudable, he said, adding that he endorses the bill's requirement that agencies provide clear, easily readable descriptions of proposed regulatory changes, and offering his belief that it shouldn't be too difficult for agencies to do so. For example, perhaps agencies could just provide something that specifies which text is new and which is being deleted, similar to how legislation is drafted.

REPRESENTATIVE GRUENBERG referred to the language in Section 2's proposed AS 44.62.200(d) that says, "must include a brief description of the changes made", and indicated a preference for having the phrase, "a brief description" changed to something more specific, something that would provide guidelines.

REPRESENTATIVE HOLMES concurred with Representative Gruenberg, but, with regard to Mr. Gillespie's suggestion, pointed out that a description that merely specifies which text is new and which is being deleted wouldn't necessarily constitute something that would be helpful to a person without a legal background.

MS. WASSERMAN, in response to a question, indicated that the issues addressed by Section 1 of the bill weren't really of concern to the AML.

REPRESENTATIVE KELLER, speaking as a former chair of the Administrative Regulation Review Committee, remarked on that committee's large workload, and on the importance, from a legislative standpoint, of keeping up with both state and federal regulations. He also mentioned that he'd recommended to the bill's sponsor that HB 216 be expanded.

MS. WASSERMAN, remarking that organizations such as hers must track all agencies' proposed regulatory changes, opined that receiving even just a little bit more help understanding such changes would be wonderful.

MR. GILLESPIE concurred.

MR. WEAVER, in response to questions, explained that the DOL does provide agencies with drafting assistance; that although it varies by agency - with some agencies contracting for drafting services - most agencies attempt an initial draft of proposed regulatory changes themselves and then sometimes seek additional drafting assistance from the DOL further on in the process; and that Version E wouldn't apply to the Alaska Court System (ACS) [or the Alaska State Legislature] because of Section 1's use of the phrase, "an agency in the executive branch of state government", and because of how the term, "state agency", as used in Section 2, is defined in AS 44.62.640(a)(4).

VICE CHAIR THOMPSON announced that public testimony on HB 216 would remain open, and that HB 216 [Version E] would be held over.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:12 p.m.