

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 3, 2012

1:01 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

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

01/30/12 (H) Heard & Held
01/30/12 (H) MINUTE(JUD)
02/03/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE PEGGY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of HB 216.

DEBORAH BEHR, Chief Assistant Attorney General - Statewide
Section Supervisor
Legislation & Regulations Section
Civil Division (Juneau)
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Expressed concerns and responded to questions during discussion of HB 216.

ARNOLD LIEBELT, Policy Analyst
Office of the Director
Office of Management & Budget (OMB)
Office of the Governor
Juneau, Alaska

POSITION STATEMENT: Expressed concerns and responded to questions during discussion of HB 216.

ACTION NARRATIVE

[1:01:50 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:01 p.m. Representatives Gatto, Lynn, Keller, and Thompson were present at the call to order. Representatives Holmes, Pruitt, and Gruenberg arrived as the meeting was in progress.

HB 216 - REGULATIONS: INFORMATIVE SUMMARY/BILLS

[1:02:11 PM](#)

CHAIR GATTO 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), and

adopted as the work draft on 1/30/12 was a proposed committee substitute (CS) for HB 216, Version 27-LS0701\E, Bannister, 1/28/12.)

1:03:01 PM

REPRESENTATIVE THOMPSON moved to adopt a new proposed committee substitute (CS) for HB 216, Version 27-LS0701\T, Bannister, 2/2/12, as the working document. There being no objection, Version T was then before the committee.

1:03:47 PM

REPRESENTATIVE PEGGY WILSON, Alaska State Legislature - after recapping that HB 216 is intended to ensure that proposed regulatory changes are completed in a timely manner, and that the associated notices are accompanied by a brief description of the proposed changes written in clear, easily-readable language - relayed that Version T addresses the concerns raised during HB 216's last hearing. Specifically, Section 1 - now proposing to add new subsections (f) and (g) to AS 24.08.035 - would require a deadline to be set in a bill's accompanying fiscal notes, rather than in the bill itself, and reporting to the Administrative Regulation Review Committee if the initial deadline is not met, and lists specific entities that are not exempt from these requirements; Section 2 - still proposing to add a new subsection (d) to AS 44.62.200 - now stipulates that the required brief description must accompany the notices, rather than be included in them, and now uses the term, "cross-referencing" instead of the phrase, "following Internet links to"; and the title has been changed to conform with Section 1's new focus on fiscal notes.

REPRESENTATIVE P. WILSON relayed that the specific entities listed in Section 1's proposed subsection (g) not exempted from the requirements of proposed subsection (f) are the Alaska Housing Finance Corporation (AHFC), the Alaska Industrial Development and Export Authority (AIDEA), the Alaska Public Offices Commission (APOC), and the Alaska Oil and Gas Conservation Commission (AOGCC). She mentioned that she is still willing to consider adding other such entities to that list. In conclusion, she offered her belief that HB 216 will help both the legislature and the public better understand proposed regulatory changes, particularly in terms of determining whether they really would implement legislative intent.

REPRESENTATIVE HOLMES relayed that with the changes incorporated into Version T, she now agrees with the mandatory nature of Section 1's proposed subsection (f).

REPRESENTATIVE GRUENBERG opined that the public, too, should be informed of any new deadlines and the reasons for the anticipated delay, and recommended that that issue be given further consideration.

[1:12:46 PM](#)

CHAIR GATTO characterized the language of Section 1's proposed subsection (g) as confusing because it stipulates that the requirements of subsection (f) would not apply to regulatory changes proposed by a state board or commission, but then specifically lists certain entities that would be excluded from this exemption.

REPRESENTATIVE GRUENBERG concurred, and, characterizing HB 216 as a good bill, remarked on the importance of ensuring that it applies to all the entities that it should.

REPRESENTATIVE KELLER expressed support for HB 216, but questioned whether the term, "the Alaska Administrative Code" - currently listed in Section 2 as something that a person without a legal background shouldn't have to cross-reference - could be replaced with a more general term, particularly given that the goal is to provide for a description that a person can understand without doing a lot of research, not necessarily to ensure that a person won't have to do any research.

CHAIR GATTO concurred.

REPRESENTATIVE GRUENBERG, referring to the language in Section 2's proposed subsection (d) that would limit the liability of a state agency if it failed to comply with subsection (d)'s description requirements, questioned whether that language should be amended to allow for certain kinds of actions to be brought, such as those that could result in an agency being required by the court to comply with subsection (d)'s requirements. He then suggested that perhaps the Alaska Redistricting Board and the University of Alaska Board of Regents should be added to Section 1's list of entities that would not be excluded from Section 1's proposed deadline/reporting requirements.

[1:22:27 PM](#)

DEBORAH BEHR, Chief Assistant Attorney General - Statewide Section Supervisor, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), referring to Section 1's proposed subsection (f) and the issue of people wanting regulations to be promulgated more quickly, remarked that generally the way to ensure that that occurs is to provide adequate funding and other resources to those agencies that have to promulgate regulations. Furthermore, because agencies generally prepare their own fiscal notes, she said she is questioning whether Section 1 now comports with the legislature's intention regarding which branch of government is to be setting deadlines, and if the preference is to have the legislature set them, then the committee should also consider how practical it's going to be for the legislature to fulfill such a duty during a 90-day session, though currently nothing precludes the legislature from setting such deadlines in proposed legislation. Other points to consider are that with some bills, several agencies are impacted, and proposed subsection (f) seems to imply that for any given bill, one deadline shall be set for all relevant agencies; and whether agencies, instead of setting and reporting a new deadline, will simply resort to pushing regulations through the process just to meet an initial deadline.

MS. BEHR, referring to Section 1's proposed subsection (g), relayed that she would be willing to assist in drafting clearer language, but noted that for the most part - perhaps with one exception, that being the APOC - the specific entities listed therein as being excluded from the proposed exemption for state boards and commissions don't engender complaints regarding the timeliness of promulgated regulations. Furthermore, most state boards and commissions don't have the authority to promulgate regulations, and whenever specific lists are provided for in legislation/statute, there are the dangers of missing certain items that should be included and of those lists not being kept up to date. She then characterized the language in Section 2's proposed subsection (d) as improved - expressing favor with the prohibition on bringing an action based on the failure of the brief description to comply with the requirements set forth in (d) - but suggested that the sentence which currently says, "The brief description shall be written in clear, easily readable language that a person without a legal background is able to understand without cross-referencing the Alaska Administrative Code." should be amended by putting the period after the word, "understand" and deleting the words, "without cross-referencing the Alaska Administrative Code".

REPRESENTATIVE P. WILSON, in response to comments, clarified that it is her intention for agencies to set the required deadlines, concurring that it's the agencies themselves that would be in a better position to know how long it's going to take to promulgate the necessary regulations.

REPRESENTATIVE GRUENBERG relayed his satisfaction, then, with the bill's current prohibition on bringing actions, and with its [new focus on] fiscal notes.

MS. BEHR offered her understanding that the Office of Management & Budget (OMB) has a problem with HB 216's proposal to use fiscal notes for setting policy.

[1:35:53 PM](#)

ARNOLD LIEBELT, Policy Analyst, Office of the Director, Office of Management & Budget (OMB), Office of the Governor, explained that fiscal notes have always and only been considered instruments for transmitting to the legislative branch of government the estimated cost-impact of proposed legislation - nothing else. Version T of HB 216 is proposing to change this by requiring fiscal notes to include information unrelated to the cost-impact, and this could open the door to policy-setting via fiscal notes. Currently, although not labeled separately as such, an agency's fiscal note pertaining to legislation requiring the promulgation of regulations already includes an estimate of the costs associated with that promulgation - including costs related to the estimated length of time and numbers of staff required for the promulgation. Furthermore, he pointed out, because fiscal notes aren't binding, any deadline set in one wouldn't be binding either. In response to questions, he clarified that the concern centers on whether fiscal notes - since they are meant to reflect monetary estimates - are the appropriate vehicle for setting deadlines, not on whether agencies are capable of estimating how long promulgating regulations might take; again, agencies already make such estimates now, and so could provide that information during committee hearings.

REPRESENTATIVE GRUENBERG pointed out, though, that only those who attend such hearings would know whether a time-estimate had been provided, and offered his belief, therefore, that fiscal notes would indeed be the appropriate vehicle for setting a deadline, and could simply be revised as agencies get a better idea of how long the promulgation of regulations might take.

MS. BEHR, in response to questions and comments, explained that the notices pertaining to proposed regulatory changes are generally produced by the agencies themselves with limited legal assistance due to DOL staffing limitations; acknowledged that such notices could perhaps be clearer, surmising that Section 2 of the bill is going to be helpful in that regard; and pointed out that the prohibition in Section 2 only addresses actions based on the failure of the brief description to comply with the requirements set forth in proposed AS 44.62.200(d), with existing law already protecting the public [against agency noncompliance with statutory direction to promulgate regulations].

REPRESENTATIVE KELLER concurred with Ms. Behr's point about the proposed prohibition, and again expressed favor with HB 216, but commented on its seeming edentulous nature.

[1:49:47 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, deleting from page 2, line 16, the words, "without cross-referencing the Alaska Administrative Code". There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG questioned whether HB 216 should provide for a specific effective date.

MS. BEHR offered to research that issue.

CHAIR GATTO relayed that HB 216 [Version T as amended] would be held over.

[1:52:29 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:52 p.m.