

**ALASKA STATE LEGISLATURE  
HOUSE STATE AFFAIRS STANDING COMMITTEE**

March 22, 2011

8:07 a.m.

**MEMBERS PRESENT**

Representative Bob Lynn, Chair  
Representative Wes Keller, Vice Chair  
Representative Paul Seaton  
Representative Peggy Wilson  
Representative Max Gruenberg  
Representative Pete Petersen  
Representative Kyle Johansen

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 169

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

- MOVED OUT OF COMMITTEE

HOUSE BILL NO. 88

"An Act prohibiting a court, arbitrator, mediator, administrative agency, or enforcement authority from applying a law, rule, or provision of an agreement that violates an individual's right under the Constitution of the State of Alaska or the United States Constitution."

- BILL HEARING RESCHEDULED TO 3/24/11

**PREVIOUS COMMITTEE ACTION**

BILL: HB 169

SHORT TITLE: LAA REVIEW OF PROPOSED REGULATIONS

SPONSOR(S): JUDICIARY

02/23/11	(H)	READ THE FIRST TIME - REFERRALS
02/23/11	(H)	JUD
02/23/11	(H)	STA REFERRAL ADDED BEFORE JUD
03/15/11	(H)	STA AT 8:00 AM CAPITOL 106

03/15/11	(H)	Heard & Held
03/15/11	(H)	MINUTE(STA)
03/17/11	(H)	STA AT 8:00 AM CAPITOL 106
03/17/11	(H)	Scheduled But Not Heard
03/22/11	(H)	STA AT 8:00 AM CAPITOL 106

#### **WITNESS REGISTER**

SARAH MUNSON, Staff  
Representative Carl Gatto  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Presented HB 169 on behalf of the House Judiciary Committee, sponsor, on which Representative Gatto is chair.

LISA KIRSCH, Drafting Attorney  
Legislative Legal and Research Services  
Legislative Affairs Agency  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 169.

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

**POSITION STATEMENT:** Provided comment during the hearing on HB 169.

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

**POSITION STATEMENT:** Provided comment during the hearing on HB 169.

#### **ACTION NARRATIVE**

[8:07:22 AM](#)

**CHAIR BOB LYNN** called the House State Affairs Standing Committee meeting to order at 8:07 a.m. Representatives Keller, Seaton, P. Wilson, Petersen, and Lynn were present at the call to order.

Representatives Johansen and Gruenberg arrived as the meeting was in progress.

**HB 169-LAA REVIEW OF PROPOSED REGULATIONS**

8:07:33 AM

CHAIR LYNN announced that the only order of business was HOUSE BILL NO. 169, "An Act relating to the review of proposed regulations by the Legislative Affairs Agency; and providing for an effective date."

8:08:03 AM

SARAH MUNSON, Staff, Representative Carl Gatto, Alaska State Legislature, reviewed the intent of HB 169 on behalf of the House Judiciary Standing Committee, sponsor, on which Representative Gatto is chair. She said the bill would allow "legislative council" and standing committees, who are currently allowed to request a legislative review from Legislative Legal and Research Services, to receive the results of that review. The bill would also allow the prime sponsor of the legislation that instigated the need for a regulation to see the result of the regulatory review.

MS. MUNSON recollected that during the previous hearing on HB 169, Representative Seaton had expressed concern regarding the phrase "newly enacted", on page 1, line 8. She offered her understanding that Legislative Legal and Research Services is hesitant to define that term, because a "hard and fast" definition in HB 169 "may affect the other portions in the statute where it's used for their priority planning." She said the bill sponsor is willing to remove the phrase "newly enacted" from both places it appears in the bill, on page 1, line 8, and on page 2, line 3.

8:10:37 AM

MS. MUNSON said HB 169 would change statute so that Legislative Legal and Research Services is allowed to share a verdict of "no problem" upon completion of a regulatory review.

8:12:21 AM

REPRESENTATIVE SEATON said removing ["newly enacted"] from the language of the bill would broaden the legislation. He then pointed out language on page 2, lines 5-6, which would require

the assigned attorney to notify the prime sponsor, and he noted that that would only be if the proposed regulations fail to meet certain standards. He expressed concern that that requirement may burden Legislative Legal and Research Services. He said he would not be offering an amendment to remove the phrase "newly enacted".

[8:14:24 AM](#)

MS. MUNSON, in response to Representative P. Wilson, noted that a two-page document showing the text of AS 24.20.105 was available [in the committee packet].

[8:15:40 AM](#)

The committee took an at-ease from 8:15 a.m. to 8:17 a.m.

[8:18:41 AM](#)

REPRESENTATIVE GRUENBERG offered his understanding that HB 169 would allow communication with legal counsel and certain other individuals named in bill, despite a general confidentiality requirement, and he asked if that would necessitate an indirect court rule amendment and "require that that be in the title and in the body with a two-thirds vote."

[8:20:13 AM](#)

LISA KIRSCH, Drafting Attorney, Legislative Legal and Research Services, Legislative Affairs Agency, said she does not believe a court amendment would be necessary under HB 169. She indicated that the bill simply adds a previously overlooked ability for Legislative Legal and Research Services to report back to all those who are able to request reviews.

REPRESENTATIVE GRUENBERG asked Ms. Kirsch to provide a written legal opinion to that effect.

[8:22:24 AM](#)

DEBORAH BEHR, Chief Assistant Attorney General/Statewide Section Supervisor, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), concurred with Ms. Kirsch's analysis.

[8:22:31 AM](#)

STEVE WEAVER, Assistant Attorney General, Legislation & Regulations Section, Civil Division (Juneau), Department of Law (DOL), said he also concurs with Ms. Kirsch's analysis.

[8:23:02 AM](#)

REPRESENTATIVE SEATON, regarding confidentiality, asked for confirmation that anyone receiving the results of a regulatory review from Legislative Legal and Research Services would be free to release the information to anyone.

[8:23:49 AM](#)

MS. KIRSCH stated her belief that that is generally true, except that a person may need to be the chair of the committee or have the concurrence of the members of the committee [before releasing such information]. In response to a follow-up question, she stated her belief that HB 169 would not alter the rules regarding memorandums. She said when an individual makes a request, he/she is the holder of the confidentiality; when a committee chair makes a request, that chair's committee is the holder of the confidentiality.

[8:26:19 AM](#)

REPRESENTATIVE SEATON directed attention to language on page 2, beginning on line [5], which read as follows:

**"the assigned attorney shall also notify the prime sponsor, in writing, if the proposed regulations fail to meet the standards set out in (d) of this section."**

REPRESENTATIVE SEATON noted that subsection (d) addresses constitutionality and statutory [authority]. He said currently that information is communicated to the chair of the Joint Administrative Regulation Review Committee and may be held in confidence through a committee decision, and under HB 169, the prime sponsor of the legislation connected to the regulations will receive the feedback, and there will be no obligation for the committee to maintain the confidentiality of that legal opinion. He asked Ms. Kirsch to confirm that is what she is saying.

MS. KIRSCH answered yes, in general. She added that what she is also saying is that she does not think that is a departure from existing confidentiality rules. She reiterated that when an individual makes a request, he/she is the holder of the

confidentiality, and when a committee chair makes a request, that chair's committee is the holder of the confidentiality. She added that in general, when she gives anyone legal advice, she encourages him/her to maintain that confidentiality unless there is good reason to release a document, because the information cannot be made confidential again once it has been released.

REPRESENTATIVE SEATON clarified that he is looking for confirmation that under HB 169, those who have not requested the review, but will receive its results, would not be bound by committee standards and may release the information without any violation of terms.

MS. KIRSCH confirmed that is correct.

[8:31:02 AM](#)

MS. MUNSON, in response to Representative Gruenberg, said under HB 169, the lawyer who finds fault with a regulation during a review would have to report that finding to all the prime sponsors involved in the legislation on which the regulation was based. In response to a follow-up suggestion, she said she does not think the sponsor of HB 169 would have a problem with changing "the prime sponsor" to "each prime sponsor".

[8:37:44 AM](#)

REPRESENTATIVE JOHANSEN expressed concern about the use of the words "may" and "shall" within HB 169 and asked for further clarification regarding confidentiality.

[8:40:20 AM](#)

MS. MUNSON said reviews are conducted by Legislative Legal and Research Services all the time with or without a request. She offered her understanding that if a legislator requests a review, that request is kept confidential by Legislative Legal and Research Services, even from other legislators. She clarified that although the sponsor of the legislation would be told if there was a problem with a review, he/she would not be told the name of any other legislator who had requested the review.

[8:41:27 AM](#)

MS. KIRSCH said Ms. Munson is essentially correct, but added that it would depend on how the request "came in." She explained that if a request for an opinion was made, then the memorandum ("memo") that results would be confidential to the requester and "would not be part of this process." She continued:

If the memo comes as a product of the ordinary course of reviewing all newly enacted regulations that are proposed, then it would, in fact, go to the people on the list on page 2.

REPRESENTATIVE JOHANSEN ventured that at some point the prime sponsor of the legislation is going to be informed that another legislator had problems with how the regulations related to the legislation were being implemented.

[8:43:18 AM](#)

REPRESENTATIVE KELLER said he is ready to move the bill.

[8:43:48 AM](#)

CHAIR LYNN, after ascertaining that there was no one else who wished to testify, closed public testimony.

[8:43:57 AM](#)

REPRESENTATIVE GRUENBERG paraphrased the paragraph on applicability, [on page 2, lines 13-16], which read as follows:

APPLICABILITY. This Act applies to review of proposed regulations under AS 24.20.105 pending with the Legislative Affairs Agency on the effective date of this Act for which the public comment period has not expired, regardless of when the notice of proposed regulations was received by the Legislative Affairs Agency.

REPRESENTATIVE GRUENBERG asked Ms. Kirsch if Legislative Legal and Research Services receives regulations prior to the expiration of the public comment period.

MS. KIRSCH answered yes.

[8:44:48 AM](#)

REPRESENTATIVE SEATON said he would like the next committee of referral to carefully consider the "expansion of the confidentiality" and whether that will require any changes to "our procedures or system." He said other than that he is comfortable moving the bill out of committee.

[8:45:26 AM](#)

REPRESENTATIVE GRUENBERG requested that Representative Seaton speak with him about his concerns.

[8:45:48 AM](#)

REPRESENTATIVE KELLER asked Ms. Kirsch to clarify for the House Judiciary Standing Committee the meaning of "prime co-sponsor".

[8:46:26 AM](#)

REPRESENTATIVE JOHANSEN stated that the regulation process is frustrating for a lot of people, but said he likes the concept of contacting the sponsor of the bill when something goes wrong in relation to that bill.

[8:47:32 AM](#)

REPRESENTATIVE KELLER moved to report HB 169 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 169 was reported out of the House State Affairs Standing Committee.

[8:48:22 AM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 8:48 a.m.