

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

March 15, 2016

8:04 a.m.

MEMBERS PRESENT

Representative Bob Lynn, Chair
Representative Wes Keller, Vice Chair
Representative Louise Stutes
Representative David Talerico
Representative Liz Vazquez
Representative Jonathan Kreiss-Tomkins
Representative Ivy Spohnholz

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 273

"An Act relating to the transfer of the title to a vehicle, including certain manufactured homes and trailers, on the death of the owner; and providing for an effective date."

- MOVED CSHB 273 (STA) OUT OF COMMITTEE

HOUSE BILL NO. 229

"An Act relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee."

- HEARD & HELD

HOUSE BILL NO. 162

"An Act relating to administrative revocation of a driver's license; and repealing Rule 603(a)(3), Alaska Rules of Appellate Procedure."

- MOVED HB 162 OUT OF COMMITTEE

HOUSE CONCURRENT RESOLUTION NO. 15

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to the jurisdiction of standing committees.

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 273

SHORT TITLE: VEHICLES: TRANSFER ON DEATH TITLE

SPONSOR(s): STATE AFFAIRS

01/22/16	(H)	READ THE FIRST TIME - REFERRALS
01/22/16	(H)	STA
02/04/16	(H)	STA AT 8:00 AM CAPITOL 106
02/04/16	(H)	Heard & Held
02/04/16	(H)	MINUTE(STA)
02/09/16	(H)	STA AT 8:00 AM CAPITOL 106
02/09/16	(H)	-- MEETING CANCELED --
03/15/16	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 229

SHORT TITLE: REPEAL ADMIN. REG. REVIEW COMMITTEE

SPONSOR(s): CHENAULT

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	STA, FIN
02/04/16	(H)	STA AT 8:00 AM CAPITOL 106
02/04/16	(H)	Heard & Held
02/04/16	(H)	MINUTE(STA)
02/11/16	(H)	STA AT 8:00 AM CAPITOL 106
02/11/16	(H)	-- MEETING CANCELED --
03/15/16	(H)	STA AT 8:00 AM CAPITOL 106

BILL: HB 162

SHORT TITLE: DMV REVOCATION OF DRIVER'S LICENSE

SPONSOR(s): WILSON

03/23/15	(H)	READ THE FIRST TIME - REFERRALS
03/23/15	(H)	STA, JUD
02/09/16	(H)	STA AT 8:00 AM CAPITOL 106
02/09/16	(H)	-- MEETING CANCELED --
03/15/16	(H)	STA AT 8:00 AM CAPITOL 106

WITNESS REGISTER

DENEEN TUCK, Staff
Representative Bob Lynn
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 273 on behalf of the House State Affairs Standing Committee, sponsor, on which Representative Lynn serves as chair.

REPRESENTATIVE MIKE CHENAULT
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 229, as prime sponsor.

TOM WRIGHT, Staff
Representative Mike Chenault
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Answered questions on behalf of Representative Chenault, prime sponsor of HB 229.

JIM POUND, Staff
Representative Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Testified on HB 229.

SUSAN POLLARD, Chief Assistant
Legislation & Regulations Section
Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Answered questions on Amendment 2 to HB 229.

REPRESENTATIVE TAMMY WILSON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 162, as prime sponsor.

NICOLE THAM, Driver Services Manager
Division of Motor Vehicles (DMV)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Testified on HB 162.

NANCY MEADE, General Counsel
Administrative Staff
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions on HB 162.

ACTION NARRATIVE

8:04:04 AM

CHAIR BOB LYNN called the House State Affairs Standing Committee meeting to order at 8:04 a.m. Representatives Spohnholz, Kreiss-Tomkins, Talerico, Stutes, Keller, and Lynn were present at the call to order. Representative Vazquez arrived as the meeting was in progress.

HB 273-VEHICLES: TRANSFER ON DEATH TITLE

8:04:56 AM

CHAIR LYNN announced that the first order of business would be HOUSE BILL NO. 273, "An Act relating to the transfer of the title to a vehicle, including certain manufactured homes and trailers, on the death of the owner; and providing for an effective date."

8:05:08 AM

REPRESENTATIVE KELLER moved to adopt the proposed committee substitute (CS) for HB 273, Version 29-LS0322\I, Bannister, 3/10/16, as a work draft. There being no objection, Version I was before the committee.

8:05:29 AM

DENEEN TUCK, Staff, Representative Bob Lynn, Alaska State Legislature, presented HB 273 on behalf of the House State Affairs Standing Committee, on which Representative Lynn serves as chair. She stated that the Version I has conforming language pursuant to Alaska's Uniform Rules relating to real property transfer on death, under AS 13.48.010. She added that the language in the proposed legislation was changed to be consistent with all Alaska transfer on death statutes, as a result of discussions with Beth Chapman, a probate attorney. Ms. Tuck listed the changes as follows: the title was changed to reflect the language of the statute; a new Section 2 was added; the old Section 2 was renamed Section 3; page 3, line 25 through page 4, line 10, reflects the new conforming language consistent with transfer on death statutes; and lines 5-7 on page 4 of the original bill version, previously under subsection (1), are now lines 29-31 on page 4 of Version I, under subsection (o).

REPRESENTATIVE KELLER advised that Terry Bannister from Legislative Legal and Research Services, and Nicole Tham from the Division of Motor Vehicles (DMV), are on line for questions.

[8:08:40 AM](#)

MS. TUCK explained that the proposed legislation would carry forth the concept of transfer on death by enabling Alaskans to plan their estates without the time, difficulty, and expense of a probate. She indicated that HB 273 would add the transfer of a vehicle to the other transfer on death provisions in Title XIII - namely, the transfer of bank accounts, brokerage accounts, and real estate. Ms. Tuck asserted that the transfer on death deed (TODD) process is simple and has been successful. She also mentioned that Ms. Chapman assisted with clarifying language in the current bill to address litigation concerns. She went on to say that there were 35 states with similar legislation. Ms. Tuck added that the proposed legislation was drafted through the work of Representative Gruenberg and the DMV. She stated that watercraft and snow machines would not be included under the proposed legislation, but motorcycles would be included.

[8:13:06 AM](#)

CHAIR LYNN, after ascertaining that no one else wished to testify, closed public testimony on HB 273.

[8:13:37 AM](#)

REPRESENTATIVE KELLER moved to report CSHB 273, Version 29-LS0322\I, Bannister, 3/10/16, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 273(STA) was reported out of the House State Affairs Standing Committee.

The committee took an at-ease from 8:14 a.m. to 8:16 a.m.

HB 229-REPEAL ADMIN. REG. REVIEW COMMITTEE

[8:16:19 AM](#)

CHAIR LYNN announced that the next order of business would be HOUSE BILL NO. 229 "An Act relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee."

[Because of their length, some amendments discussed or adopted during the meeting are found at the end of the minutes for HB 229. Shorter amendments are included in the main text.]

[Left pending from the House State Affairs Standing Committee meeting of 2/4/16, was a motion to adopt Amendment 1, labeled 29-LS1104\A.1, Gardner, 2/3/16, with an objection for the purpose of discussion by Representative Gruenberg. The pending objection to the motion to adopt Amendment 1 was treated as withdrawn and Amendment 1 was treated as adopted.]

REPRESENTATIVE KELLER moved to rescind the committee's actions on Amendment 1 [labeled 29-LS1104\A.1, Gardner, 2/3/16]. There being no objection, it was so ordered.

[8:17:20 AM](#)

REPRESENTATIVE MIKE CHENAULT, Alaska State Legislature, presented HB 229, as prime sponsor. He stated that HB 229 relates to regulation notice and review by the legislature. He cited the state's declining revenues and the need to identify ways to reduce the cost of the legislature and state government. He further offered that the Administrative Regulation Review Committee, although active and effective at times, was not always so, and HB 229 proposes to abolish the Administrative Regulation Review Committee and turn regulation review over to other committees.

[8:18:43 AM](#)

CHAIR LYNN asked the sponsor if, after a regulation is drafted by the department, it would be turned over to the committee of jurisdiction.

REPRESENTATIVE CHENAULT confirmed that the department already sends regulations to certain legislators for review; however, under the proposed legislation a regulation would be sent to the committee of jurisdiction. The committee of jurisdiction would then have the option of scheduling a committee hearing on that regulation.

[8:19:51 AM](#)

TOM WRIGHT, Staff, Representative Mike Chenault, Alaska State Legislature, testifying on behalf of Representative Chenault, prime sponsor of HB 229, said state statute requires that

regulations be forwarded to all incumbent legislators and remarked that he is not sure if that occurs.

[8:20:59 AM](#)

REPRESENTATIVE KELLER moved to adopt Amendment 2, [labeled 29-LS1104\A.4, Gardner, 3/10/16]. [Amendment 2 is provided at the end of the minutes on HB 229.]

REPRESENTATIVE STUTES objected for purpose of discussion.

REPRESENTATIVE KELLER declared his support for HB 229 and concurred with Representative Chenault's testimony. He explained that the intent of Amendment 2 was to establish a process for referring a regulation to a standing committee and to clarify the powers of the chair in this process. He further offered that the proposed amendment would give the chair the power to delay implementation of a regulation until the committee takes action on the regulation.

[8:22:43 AM](#)

CHAIR LYNN asked the sponsor how much money would be saved through the proposed legislation.

REPRESENTATIVE CHENAULT responded that the fiscal note indicates a savings of about \$53,000.

[8:23:51 AM](#)

JIM POUND, Staff, Representative Keller, Alaska State Legislature, stated that the intent of Amendment 2 was to reinstate authority to the legislature in light of the Alaska Supreme Court ruling on State v. A.L.I.V.E. Voluntary, which reads that the legislature cannot annul a regulation by resolution. He further explained that the court decision stated that in order for the legislature to repeal a regulation, it had to be done through a legislative process - that is, by an introduced bill that passes through both houses and is sent to the governor for signature. He offered that under Amendment 2, a regulation would be sent to the presiding officers of each house, who may pass it to the chair of the committee of jurisdiction to decide if that regulation needs to be reviewed. He voiced his belief that 95 percent of regulations are not problematic but about 5 percent need modification. He stated that under Amendment 2 if, after review, a committee was not satisfied with the regulation, the committee could ask the

department to amend it to comply with legislative intent. If the department refused, the committee could put the regulation on hold until the regular session when the legislature could attempt to repeal it through the legislative process. He said that if the legislature fails to repeal the regulation through legislation, implementation of the regulation would occur the day after the end of the regular session of the legislature. If the committee takes no action on a regulation within 35 days of receipt, the department could proceed with implementation.

[8:27:27 AM](#)

REPRESENTATIVE VAZQUEZ commented that the 35-day limitation for the committee response may be too short, especially considering unavailability of legislators during interim.

MR. POUND commented that the average normal comment period on a regulation is 40 days. The intent was to stay within that time period.

REPRESENTATIVE VAZQUEZ voiced her concern that the procedure as stated would suppress the legislature's ability to annul any regulation at any time and would put the legislature in a position subservient to the executive branch.

MR. POUND stated that the legislature was currently in that position. He reminded the committee members that the legislature has gone to court over regulations and lost.

[8:31:22 AM](#)

REPRESENTATIVE KELLER requested the sponsor speak to Amendment 2.

MR. WRIGHT deferred to Susan Pollard.

[8:32:55 AM](#)

SUSAN POLLARD, Chief Assistant, Legislation & Regulations Section, Department of Law (DOL), stated that DOL had concerns with the suspension provisions in Amendment 2. She paraphrased page 2, Section 4 (e), by saying that in certain instances a standing committee of the legislature could suspend a regulation for a period of time based on when the next legislative session is, and the legislature could choose to act or not act during that time. She posited that the suspension part of the amendment brings up concerns from the 1980 case, State v.

A.L.I.V.E. Voluntary. She explained that in the cited court case, the Alaska Supreme Court considered a now repealed regulation related to the power of the legislature to repeal a regulation by way of concurrent resolution. She conceded that the issue of that case was slightly different from the language in the proposed amendment; however, she claimed that in State v. A.L.I.V.E. Voluntary, the court considered the instances in which the legislature can act to effectuate something which affects the public and determined that moving by concurrent resolution to suspend a regulation was not sustainable under the Alaska Constitution. She noted that Amendment 2 attempts to sidestep the State v. A.L.I.V.E. Voluntary ruling by including a suspension provision as opposed to an annulment provision, but does not, however, remove legal questions or the possibility of litigation, depending on the situation.

[8:37:03 AM](#)

REPRESENTATIVE KELLER offered two comments for Ms. Pollard's response: one, the process has yet to be established; and two, the suspension in the proposed amendment would be for a time specific and not an annulment.

MS. POLLARD responded that it is unknown at this point if the proposed amendment's suspension of regulation would run afoul of State v. A.L.I.V.E. Voluntary. She offered that currently the legislature has the power to review and annul regulations by changing statute.

[8:38:53 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Ms. Pollard to state again the defendant in the case that she cited.

MS. POLLARD answered that it was a non-profit group referred to by the acronym A.L.I.V.E.

REPRESENTATIVE KREISS-TOMKINS asked Ms. Pollard if the concern was that suspension of a regulation until the end of the next legislative session would effectively put the regulation in limbo for 11 months and may have an adverse effect on the public.

MS. POLLARD said DOL's concern is that whenever the legislature acts outside of the legislative enactment process and the constitutional requirements considered in the State v. A.L.I.V.E. Voluntary court case, it runs the risk of a legal

challenge to that action. She conceded that there may be a practical effect, alluded to by Representative Kreiss-Tomkins, of regulations in long-term suspension and public perception regarding those regulations; however, she contended that was not the concern to which she referred.

[8:41:37 AM](#)

REPRESENTATIVE KREISS-TOMKINS offered that there are two concerns to be addressed in consideration of Amendment 2: one, the constitutional concern; and two, the pragmatic concern of regulations in limbo impacting the public. He related it to a hypothetical situation - a regulation passed by the Board of Fisheries and suspended by the House Resources Standing Committee, which would essentially put the regulation in limbo until the adjournment of the next legislative session.

MS. POLLARD agreed that his example reflects the procedure described in Section 4 of Amendment 2.

[8:42:56 AM](#)

REPRESENTATIVE KELLER asked if the concern was regarding a possible lawsuit due to the delay in implementing regulations and, if so, what the basis of that lawsuit would be.

MS. POLLARD opined that it is difficult to speculate. In State v. A.L.I.V.E. Voluntary the Department of Revenue (DOR) was enforcing a regulation against the plaintiff in the case.

REPRESENTATIVE KELLER asked Ms. Pollard to explain the enforcement aspect - that is, if the legislature could delay the enforcement of an existing regulation through suspension.

MS. POLLARD claimed that the issue of the status of the regulation during suspension, including enforcement of the regulation, is a question not yet answered and is the basis of the hearing.

[8:45:24 AM](#)

REPRESENTATIVE KELLER attested that proposed regulation is not law. He stated his belief that Alaskans have the right to the process and the legislature is uniquely positioned to hear concerns about regulations. He further contended that the Department of Health & Social Service (DHSS) regulation - disallowing guns in private care homes - raises constitutional

concerns, and when confronted DHSS's response was to extend approval time for that regulation to outside of session time. He recommended that the legislature have input into the regulation process before a regulation takes effect.

MR. WRIGHT suggested that in the example Representative Keller mentioned, the legislature has the prerogative to write statute to nullify the regulation. In regard to Representative Kreiss-Tomkins' concern, Mr. Wright recommended that the Board of Game and the Board of Fisheries be exempt from the proposed amendment because, in his opinion, regulations coming from end-of-season decisions cannot wait a whole season for implementation. He cautioned that there may be unknown consequences to Amendment 2 and careful thought and more work is needed before adoption.

[8:49:20 AM](#)

MR. WRIGHT, in response to Chair Lynn, stated that he has concerns about Amendment 2, but supports the bill moving out of committee.

REPRESENTATIVE KELLER stated that he supports Amendment 2 and fears that HB 229 without it further distances the legislature from the regulatory process.

[8:52:08 AM](#)

The committee took an at-ease from 8:52 a.m. to 8:55 a.m.

[8:55:27 AM](#)

MR. WRIGHT requested that the agencies look at Amendment 2 to determine any fiscal impacts.

REPRESENTATIVE KELLER requested the chair schedule HB 229 for the next House State Affairs Standing Committee meeting and promised to consult with the agencies.

CHAIR LYNN announced that HB 229 was held over.

AMENDMENTS

The following amendments to HB 229 were either discussed or adopted during the hearing. [Shorter amendments are provided in the main text only.]

Amendment 2 [29-LS1104\A.4, Gardner, 3/10/16] (pending):

Page 1, line 1, following "legislature;":

Insert "providing for legislative review, amendment, approval, disapproval, annulment, and delay of proposed agency regulations;"

Page 1, lines 4 - 6:

Delete all material.

Page 1, line 7:

Delete "Sec. 2"

Insert "Section 1"

Renumber the following bill sections accordingly.

Page 2, lines 1 - 8:

Delete all material and insert:

"* Sec. 2. AS 24.05.182(a) is amended to read:

(a) A standing committee of the legislature furnished notice of a proposed action under AS 44.62.190 or 44.62.320(d) shall, consistent with the committee's jurisdiction as provided in the uniform rules of the legislature, review the proposed regulation, amendment of a regulation, or repeal of a regulation before the date the regulation is scheduled by the department or agency to be adopted, amended, or repealed.

* Sec. 3. AS 24.05.182(d) is amended to read:

(d) A standing committee that receives a copy of a proposed regulation, amendment, or order of repeal under AS 44.62.320(d) shall, within 35 days after receipt of the proposed regulation, amendment, or order of repeal, approve or disapprove the proposed regulation, amendment, or order of repeal. If the standing committee does not take action within 35 days after receipt of the proposed regulation, amendment, or order of repeal, the proposed regulation, amendment, or order of repeal shall be considered approved. If a standing committee determines that a regulation, amendment to a regulation, or repeal of a regulation does not properly implement legislative intent and disapproves or returns the proposed regulation, amendment, or order of repeal to the department or agency, the standing committee's findings shall, within 35 days after receipt of the proposed regulation, amendment, or order of repeal, be transmitted to the

(1) department or agency;
(2) regulations attorney at the Department
of Law; and
(3) senate secretary and the chief clerk of
the house of representatives [ADMINISTRATIVE
REGULATION REVIEW COMMITTEE].

* **Sec. 4.** AS 24.05.182 is amended by adding new subsections to read:

(e) A proposed regulation, amendment, or order of repeal that is disapproved under this section or that is returned to the department or agency with a proposed amendment, other than an emergency regulation adopted under AS 44.62.250, shall be suspended until the adjournment of the next regular legislative session following the date of the committee's disapproval. The notice of disapproval under this section expires upon adjournment of the regular legislative session during which the disapproval or amendment was made or, if the legislature is not in regular session, the next regular legislative session following the date of disapproval, unless the legislature enacts a law that annuls the proposed regulation or order of repeal.

(f) If the standing committee that is reviewing a proposed regulation, amendment, or order of repeal under this section disapproves the regulation, amendment, or order of repeal or proposes an amendment to the regulation, amendment, or order of repeal, the department or agency that proposed the regulation, amendment, or order of repeal may request leave of the standing committee to withdraw or amend the proposed regulation, amendment, or order of repeal.

(g) In determining whether to approve, disapprove, or amend a proposed regulation, amendment, or order of repeal under this section, the standing committee shall consider

(1) whether the absence of a regulation would significantly harm or endanger public health, safety, or welfare;

(2) whether a less restrictive regulation would address the regulatory concerns while adequately protecting the public;

(3) whether the regulation would directly or indirectly increase the cost of any goods or services;

(4) whether the increased cost of implementing and enforcing the regulation would be more detrimental than the purpose of the regulation;

(5) whether the regulation was designed solely for the purpose of the protection of the public and would have the primary effect of protecting the public; and

(6) any other factors the committee considers to be appropriate."

Renumber the following bill sections accordingly.

Page 3, lines 4 - 7:

Delete all material.

Renumber the following bill sections accordingly.

Page 3, line 24, through page 4, line 19:

Delete all material.

Renumber the following bill sections accordingly.

Page 5, following line 5:

Insert a new bill section to read:

"* **Sec. 10.** AS 44.62.180 is amended to read:

Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(5) a standing committee of the legislature disapproves the regulation or returns it to the department or agency with a proposed amendment, under AS 24.05.182, in which case, if the proposed regulation, amendment, or order of repeal takes effect, it takes effect on the later of

(A) adoption by the agency of an amendment proposed by a standing committee of the legislature; or

(B) one day following adjournment of both houses of the legislature as provided under AS 44.62.325."

Renumber the following bill sections accordingly.

Page 5, line 31, following "legislators":

Insert "and to the presiding officer of each house"

Page 6, line 4, through page 9, line 9:

Delete all material and insert:

"* **Sec. 12.** AS 44.62.190(b) is amended to read:

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute. In the notice furnished to the legislature under AS 44.62.190(a)(6), new language added to an existing regulation shall be underlined, and language deleted from an existing regulation shall be bracketed and capitalized.

* **Sec. 13.** AS 44.62.195 is amended to read:

Sec. 44.62.195. Fiscal notes on regulations. If the adoption, amendment, or repeal of a regulation has an economic effect on a department, agency, or person, the proposed regulation or order of repeal must include a fiscal note prepared by the department or agency in accordance with this section [WOULD REQUIRE INCREASED APPROPRIATIONS BY THE STATE, THE DEPARTMENT OR AGENCY AFFECTED SHALL PREPARE AN ESTIMATE OF THE APPROPRIATION INCREASE FOR THE FISCAL YEAR FOLLOWING

ADOPTION, AMENDMENT, OR REPEAL OF THE REGULATION AND FOR AT LEAST TWO SUCCEEDING FISCAL YEARS].

* **Sec. 14.** AS 44.62.195 is amended by adding a new subsection to read:

(b) A fiscal note required under this section must include, where applicable,

(1) a determination of the present need for the regulation and the expected need for the regulation;

(2) a determination of the costs and benefits of the regulation and an explanation by the department or agency of whether the proposed regulation is the most cost-effective, efficient, and feasible means of allocating public and private resources to achieve the stated purpose;

(3) the effect of the regulation on market competition;

(4) the effect of the regulation on the cost of living, employment, and doing business in the geographical regions where the regulation would have the greatest effect;

(5) the source of revenue to implement and enforce the regulation;

(6) a summary of the short-term and long-term economic effects of the regulation, including an analysis of the persons or groups that would bear the costs of the regulation and the persons or groups that would benefit directly or indirectly from the regulation;

(7) the difficulties the department or agency encountered, if any, in estimating the persons or groups that would benefit from the regulation or bear the costs of the regulation;

(8) the effect that adopting or failing to adopt the regulation would have on the environment and public health.

* **Sec. 15.** AS 44.62.245(c) is amended to read:

(c) The state agency shall also send the notice described in (b)(2) of this section to

(1) a person who has placed the person's name on a distribution list kept by the agency that lists persons who want to receive the notice; the agency may allow a person to request that distribution of the notice be by electronic means and shall honor that request if appropriate means are available;

(2) the regulations attorney in the Department of Law; and

(3) the presiding officer of each house of the legislature [THE MEMBERS OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE].

* **Sec. 16.** AS 44.62.320(b) is amended to read:

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the presiding officer of each house of the legislature [CHAIRMAN AND ALL MEMBERS OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE FOR REVIEW UNDER AS 24.20.400 - 24.20.460] together with the fiscal information required to be prepared under AS 44.62.195.

* **Sec. 17.** AS 44.62.320(c) is amended to read:

(c) At the same time as a regulation is submitted to the governor under AS 44.62.040(c), the state agency shall submit the regulation to the presiding officer of each house of the legislature [CHAIR AND ALL MEMBERS OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE FOR REVIEW UNDER AS 24.20.400 - 24.20.460] together with the fiscal information required to be prepared under AS 44.62.195.

* **Sec. 18.** AS 44.62.320(d) is amended to read:

(d) Within 10 days after receiving a regulation under (b) or (c) of this section or under AS 44.62.190(a)(6), the presiding officer of each house of the legislature shall provide copies of the regulation to the standing committee with jurisdiction over the subject matter of the regulation as provided in the uniform rules of the legislature for review under AS 24.05.182 [, THE CHAIR OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE MAY SUBMIT TO THE GOVERNOR, BY LEGISLATIVE MEMORANDUM OR LETTER, COMMENTS ON THE REGULATION].

* **Sec. 19.** AS 44.62 is amended by adding a new section to article 7 to read:

Sec. 44.62.325. Legislative annulment of regulations. (a) The legislature may, in the regular legislative session during which a disapproval or amendment is made or, if the legislature is not in regular session, the next regular session following the disapproval or amendment of a proposed regulation, amendment, or order of repeal by a standing committee under AS 24.05.182, annul the proposed regulation, amendment of the proposed regulation, or order of repeal by law.

(b) If the legislature, following adjournment of the regular legislative session during which a disapproval or amendment is made or, if the legislature is not in regular session, the next regular session following disapproval or amendment of a proposed regulation, amendment, or order of repeal by a standing committee under AS 24.05.182, has not enacted a law that annuls the proposed regulation, amendment of the proposed regulation, or order of repeal, the proposed regulation, amendment of the proposed regulation, or order of repeal takes effect one day after adjournment of both houses of the legislature."

Renumber the following bill sections accordingly.

Page 9, line 13:

Delete "(AS 44.62.040 - 44.62.319) [AS 44.62.040 - 44.62.320]"

Insert "(AS 44.62.040 - 44.62.320)"

Page 9, line 20:

Delete "AS 24.05.182(b), 24.05.182(c), 24.05.182(d);"

Page 9, line 22:

Delete "AS 40.25.120(a)(11); and AS 44.62.320"

Insert "and AS 40.25.120(a)(11)"

CHAIR LYNN announced that HCR 15 would be rescheduled for the next House State Affairs Standing Committee.

[HCR 15 was held over.]

HB 162-DMV REVOCATION OF DRIVER'S LICENSE

[Contains discussion of HB 205.]

[8:57:19 AM](#)

CHAIR LYNN announced that the final order of business would be HOUSE BILL NO. 162 "An Act relating to administrative revocation of a driver's license; and repealing Rule 603(a)(3), Alaska Rules of Appellate Procedure."

[8:57:32 AM](#)

REPRESENTATIVE TAMMY WILSON, Alaska State Legislature, as prime sponsor of HB 162, read the following sponsor statement [original punctuation provided]:

When you make poor choices and decide to drive under the influence you will face criminal prosecution. Upon conviction by a jury of your peers you might face a sentence of imprisonment, fines, and use of an ignition interlock device after you regain the privilege of a driver license. If you are found not guilty of all charges, the court shall grant you access to driving license privileges. However, the state of Alaska possesses two separate bodies of authority to determine the rights and privileges of Alaskan drivers.

Under AS 28.15.165, Department of Motor Vehicles (DMV) is authorized to conduct an administrative revocation of a driver's license when a chemical test of a person's breath shows an alcohol level of 0.08 or more, or the person refuses to take the chemical test. The administrative process by the DMV may occur whether or not there is a criminal charge for a court to process. If you wish to contest the administrative revocation you can schedule an administrative revocation hearing over the phone to review DMV's action. The hearing for review of action by the DMV is limited to the issue of whether the law enforcement officer had probable cause to believe that the person was operating a motor vehicle under the influence of drugs or alcohol. The DMV hearing officer will conduct the hearing, examine witnesses, review evidence, and make a final ruling on the issue. Administrative revocations by the DMV may be concurrent or in addition to any penalties applied by the courts and is at the discretion of the DMV hearing officer.

The state of Alaska possesses two separate bodies of authority to determine the rights and privileges of Alaskan drivers. The state of Alaska court system provides for a trial by a jury of your peers which will review the evidence and deliberate on criminal sentencing. In comparison, the DMV's authority to impose conditions on the issuance of a limited license is designed to promptly address public safety and does not necessarily involve the considerations of the verdicts of the courts. In the end, anyone who

presents probable cause to a law enforcement officer is considered guilty. Even if found not guilty by a jury of your peers through the Alaska Court System, the DMV has the authority to place additional burdens on the individual. HB 162 solves this dual burden of driver license revocations by repealing the DMVs independent authority to administrative revocation of a driver's license and place it solely within the court.

[9:00:35 AM](#)

REPRESENTATIVE WILSON explained that the proposed legislation does not seek to change the procedures related to driving under the influence (DUI), but rather, to allow a person charged with DUI and exonerated by the court system to have his or her license returned and not receive any further penalties from the DMV.

[9:01:31 AM](#)

CHAIR LYNN asked for clarification that someone arrested for DUI, who is found not guilty of DUI by the court, could still have his/her license revoked by the DMV. He asked also if that situation constitutes double jeopardy.

REPRESENTATIVE WILSON agreed that there is an administrative review by the DMV in addition to the court proceeding; however, she added that it is not double jeopardy because it is considered to be similar to a civil case, as opposed to a criminal case subject to court procedures.

REPRESENTATIVE STUTES expressed her support for HB 162.

[9:03:19 AM](#)

REPRESENTATIVE VAZQUEZ expressed that she also supports HB 162. She asked for clarification that through the proposed legislation there would have to be a judicial process before the DMV could revoke a driver's license.

REPRESENTATIVE WILSON responded that someone who is stopped for DUI by a law enforcement officer and given a ticket must then go to court; however, as she explained further, even if the individual is found not guilty by the court, he or she is still subject to the findings and penalty of a DMV administrative review.

REPRESENTATIVE VAZQUEZ asked if the proposed legislation would affect federal funding.

REPRESENTATIVE WILSON responded that she was unable to find any evidence that HB 162 would result in loss of federal funding. She questioned why there was a zero fiscal note attached as she speculated that the proposed legislation would eliminate the need for the two administrative hearing officers within the DMV.

[9:05:27 AM](#)

REPRESENTATIVE WILSON responded to Chair Lynn's request for clarification on the issue of federal funding by saying that the federal government has, at times, linked federal funding with certain legislation, such as seat belt laws; however, she reiterated that she has found no evidence that the proposed legislation would affect any federal funding. She also emphasized that HB 162 does not change laws or consequences regarding DUI, but maintained that the DMV is not the proper place for adjudication.

[9:06:24 AM](#)

REPRESENTATIVE KELLER stated his support for HB 162 and maintained his belief that in Alaska the administrative and judicial branches are stronger than the legislative branch, in part because the governor appoints the commissioner of the Department of Law (DOL). He opined that "anything we can do to separate justice from the enforcement and the legislative process ... cleans up our act."

[9:07:14 AM](#)

NICOLE THAM, Driver Services Manager, Division of Motor Vehicles (DMV), Department of Administration (DOA), stated her concern that the committee and the public understand that it is not the DMV's duty to administratively revoke driver's licenses but that the Thirteenth Alaska State Legislature - to deal with the problem of drunk driving and increase safety on Alaska's roadways - adopted administrative license revocation. She added that one of the primary purposes of administrative license revocation was to impose swift licensing sanctions on impaired drivers to deter drunk driving.

[9:08:13 AM](#)

CHAIR LYNN asked Ms. Tham to explain why there would be an administrative revocation in the case where the court found a person not guilty of a DUI.

MS. THAM responded that there were two separate proceedings: the court proceeding to punish the criminal action and the civil proceeding - administrative revocation - to remove the drunk driver from the roadway.

CHAIR LYNN asked for further explanation as to the basis for the DMV acting as a "second" court hearing when there has been a criminal proceeding that determined the driver was not impaired.

MS. THAM explained that even if the action is dismissed in court, the two main issues - probable cause for arrest ("probable cause") and the validity of the breathalyzer test - are the only two issues that the DMV considers in its hearing.

CHAIR LYNN contended that a stop for probable cause is a judgment call by an officer that the driver is impaired, but a subsequent court finding that the driver was not impaired suggests two different court proceedings.

MS. THAM explained the process as follows: An officer will stop a driver if there is probable cause and administer a breathalyzer test. If the breathalyzer test result shows an alcohol concentration of .08 or greater, indicating that the driver is actually impaired, or if the driver refuses the breathalyzer test, the administrative proceeding is initiated. The driver is then served a notice and order of revocation which explains the process, why their driving privileges are being revoked, and serves as a seven-day temporary license. The driver has seven days to request an administrative hearing for review of the action against his/her driving privileges, and, if a hearing is not requested, the action is put on the record. She concluded by stating that often the separate court proceeding does not occur until months later.

[9:11:32 AM](#)

REPRESENTATIVE STUTES reiterated her belief that the DMV's second-guessing the court's determination appears comparable to a double jeopardy and creates more hardship for the individual who has already had to go through the court process.

[9:12:24 AM](#)

REPRESENTATIVE KELLER asked if, in Ms. Tham's opinion, the court system of Alaska is incapable of swift sanctions.

MS. THAM responded that the court proceeding is completely independent of the DMV, and that the DMV is required by statutory provision to take action against a driver for a breathalyzer test result of .08 or greater who received a notice and order of revocation. She added that Alaska is in line with 43 other states, the District of Columbia, and the two territories of the Northern Mariana Islands and the Virgin Islands, in adopting licensing sanctions to deter drunk driving and remove impaired drivers swiftly from the road. The administrative revocation of the DMV often precedes the court action, because the DMV action is taken within seven days of the notice and order being served unless the action is stayed because the driver requested an administrative hearing. In most cases the DMV action precedes court action.

[9:13:55 AM](#)

REPRESENTATIVE KELLER asked why there is a zero fiscal note attached to HB 162.

MS. THAM explained that the DMV does other hearings for motor vehicle and driver's license issues, and although the bulk of the hearings involve administrative revocation of driving privileges, there are hearings related to title disputes, personalized plate disputes, and medical cancellation.

REPRESENTATIVE KELLER reiterated his belief that the proposed legislation should have a positive fiscal note due to the stated reduction in duties.

MS. THAM responded that the full fiscal implication of HB 162 is unclear at this time.

[9:15:10 AM](#)

MS. THAM, in response to Representative Vazquez's question about when the notice of revocation is issued, relayed that it is issued at the time of arrest.

REPRESENTATIVE VAZQUEZ asked what the wait time was for an administrative hearing, if requested.

MS. THAM replied that the hearing requests are processed as soon as they are received, and hearings are scheduled about 30-45

days beyond that point. She added that once the hearing is granted the action is stayed and is not applied to the driver's record until an affirmed decision at the hearing. If dismissed, the action is not added to the record.

REPRESENTATIVE VAZQUEZ asked if there is notice of the right to appeal the decision in court once the administrative decision is issued.

MS. THAM responded yes and added that the decision may be appealed through the superior court within 30 days of the decision of the hearing.

[9:17:14 AM](#)

REPRESENTATIVE VAZQUEZ requested Ms. Tham explain the instances in which the DMV does not adhere to a court decision but proceeds to revoke the license of an individual even though he/she was found not guilty by a court.

MS. THAM explained that since the administrative action usually precedes the court action, the administrative action is not dependent at all on the court action. She added that the criteria for the DMV action has a lower threshold than that of the court system - the DMV criteria being probable cause and the results of the breathalyzer test.

REPRESENTATIVE VAZQUEZ asked for confirmation that the DMV has a separate basis for taking action against someone's license from that of the court system.

MS. THAM confirmed that under AS 28.15.165 that statement was correct.

REPRESENTATIVE VAZQUEZ asked if the DMV action occurred regardless of the court's decision.

MS. THAM answered in the affirmative.

[9:18:35 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked how many full-time hearing officers are tasked with the administrative hearings described.

MS. THAM responded that there are two full-time hearing officers who review DMV hearings of all types, and there are six

administrative licensing staff who perform some aspect of the administrative revocation process.

REPRESENTATIVE KREISS-TOMKINS asked what portion of staff time is spent on license revocations.

MS. THAM expressed that it would be difficult to estimate the amount of time, and she said she would provide the committee with that information.

[9:20:21 AM](#)

REPRESENTATIVE VAZQUEZ asked how many times the DMV suspended someone's license when the court determined him/her not guilty of DUI.

MS. THAM stated that the DMV has data on the number of administrative revocations and administrative hearings, but no data on criminal conviction, as that would be with the court.

REPRESENTATIVE KREISS-TOMKINS asked Ms. Tham to cite the number of administrative revocations per year and the average number of revoked licenses in Alaska at any given time.

[9:22:17 AM](#)

REPRESENTATIVE VAZQUEZ expressed that although she sees the merit of swift action by the DMV, she doesn't understand how anyone who has his/her license revoked by the DMV after a judicial action exonerates him/her is being afforded due process. She added that she did recognize the merit of an administrative process that is more responsive than the longer and more cumbersome criminal process.

REPRESENTATIVE WILSON asked rhetorically, "Aren't you innocent until proven guilty?" She further attested that a DMV action that precedes a court decision counters that principle.

[9:24:59 AM](#)

REPRESENTATIVE VAZQUEZ voiced her opinion that the matter under discussion was one of balance. She declared that public safety is an important consideration - that is, the issue of drivers suspected of DUI being allowed on the roadways. She also conceded that having one's driving privileges revoked is a serious impediment in Alaska. She opined that a long administrative process is problematic but that the judicial

system would move even slower. She expressed a desire to hear testimony from the court system.

CHAIR LYNN suggested the possibility of these issues being addressed in the House Judiciary Standing Committee, which is the next committee of referral for HB 162.

[9:27:04 AM](#)

REPRESENTATIVE KREISS-TOMKINS requested the number of license revocations annually in Alaska.

MS. THAM answered that in 2008 there were 5,902 administrative revocations for DUI, and in 2014 there were 3,563, a 40 percent reduction. She asked the committee members to consider the decrease in DUIs in light of all the deterrents to drunk driving, either singularly or in combination, namely sanctions, convictions, administrative revocations, and all the other requirements. She stressed that only 25-29 percent of people who get an administrative revocation request a review.

REPRESENTATIVE KREISS-TOMKINS asked if administrative revocations exist in other states.

MS. THAM repeated her claim from earlier that administrative revocations exist in 43 other states, the District of Columbia, and the two territories of the Northern Mariana Islands and the Virgin Islands.

[9:29:01 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Ms. Tham and the sponsor if either knew how HB 162 differs from or relates similarly to the criminal justice reform bill [HB 205, Criminal Law/Procedure; Driv Lic; Pub Aid] heard in the House Judiciary Standing Committee the previous day, and he mentioned specifically the provisions in HB 205 that relate to the revocation of driver's licenses.

REPRESENTATIVE WILSON said that she spoke with Senator Coghill's legislative aide, who asserted that the content of HB 162 was not included in HB 205 and there was no conflict between the two proposed legislations.

MS. THAM mentioned that she was aware of discussions about proposed legislation addressing the issue of limited licenses. She also noted discussions concerning the review of criminal

laws and practices within AS 28, which includes the dual system of administrative and judicial license revocation.

[9:31:09 AM](#)

REPRESENTATIVE STUTES opined that she understands that having a driver's license is a privilege. She expressed her concern that the DMV is overstepping the bounds of its expertise. She went on to give the example of a homeless man living in a non-operational truck who received a DUI for drinking in his truck. She said that the court dismissed the DUI, but the DMV required the individual get a full mental evaluation before returning his driver license to him.

[9:32:50 AM](#)

REPRESENTATIVE VAZQUEZ declared that her greatest concern is the situation in which the court has ruled and the DMV overturns the decision. She opined that she also understands the validity of the DMV removing an impaired driver from the street with swift action. She stated further that the courts are bogged down and cannot swiftly take action as can the DMV. She maintained that the issue is "when the court takes action and finds someone not guilty for whatever reason, that DMV not be able to usurp that judicial decision." She repeated her belief that there is validity to having an administrative process that is more flexible and faster than the judicial system.

[9:35:23 AM](#)

REPRESENTATIVE KELLER asked Representative Vazquez if she would be comfortable relying on the three House State Affairs Standing Committee members, who also serve on the House Judiciary Standing Committee, to bring her issues up in the House Judiciary Standing Committee hearing. He restated her issue as the balance between the considerations for public safety against administrative authority for license revocation. He expressed that the desire for the court system to handle license revocation was not at all a reflection on the administrative review system but said that he thought it was an unnecessary duplication.

REPRESENTATIVE VAZQUEZ suggested a possible amendment to tighten the timeframe for the administrative license revocation review process.

[9:37:39 AM](#)

REPRESENTATIVE WILSON responded that she understood Representative Vazquez's concern but asserted that the court's timeframe is governed by that process and the DMV's timeframe precedes that of the court. She offered to work with committee members to consider amendments to alleviate their concerns. She reiterated her belief that the court system process should be the only process and it should precede license revocation.

REPRESENTATIVE STUTES agreed with Representative Wilson's assessment of the current license revocation procedures and said, "You don't punish somebody for something before you know they've done it." She reiterated that she supported the bill.

[9:40:39 AM](#)

REPRESENTATIVE KREISS-TOMKINS asked Nancy Meade if she knew the usual wait times and process times for someone charged with a DUI [in the court system].

[9:41:47 AM](#)

NANCY MEADE, General Council, Administrative Staff, Office of the Administrative Director, Alaska Court System, responded to the question posed by Representative Kreiss-Tomkins by stating that the average time for disposition of misdemeanor DUIs - that is, first and second DUIs - is four months, and the average time for a felony DUI is nine months. She stated that there was great variation among the times. She also reiterated Ms. Tham's assertion that the number of DUIs has decreased and the number of DUIs in 2015 was 3,650.

[9:42:59 AM](#)

REPRESENTATIVE SPOHNHOLZ asked how many of the 3,650 convictions were felony.

MS. MEADE responded that in 2015 there were 223 convictions for felony DUI and 3,371 convictions for misdemeanor DUI. She explained that these numbers referred to convictions and not charges. She added that there is a low acquittal rate for DUI charges.

[9:43:51 AM](#)

REPRESENTATIVE VAZQUEZ asked for the acquittal rate for the misdemeanor cases.

MS. MEADE replied that she didn't know but could provide that information to the committee along with the dismissal rate.

[9:44:20 AM](#)

MS. MEADE repeated the number of DUIs for Representative Spohnholz, which is about 3600. She added one point of clarification regarding HB 205. She said that although HB 205 does not have a provision similar to HB 162, it does have several provisions about giving limited licenses back to people who have had a DUI. She directed the committee's attention to Section 83 of HB 205, which says that if a court acquits someone of a DUI and their license had been revoked administratively, the court decision would stop that administrative revocation at that point in time. She added that almost always the administrative revocation takes place before the court disposition of the case.

REPRESENTATIVE SPOHNHOLZ asked the sponsor if the proposed legislation would treat felony and misdemeanor DUIs differently.

REPRESENTATIVE WILSON answered that they would be treated alike in the proposed legislation - the intent being to put jurisdiction back into the court system.

REPRESENTATIVE VAZQUEZ asked for acquittal rates for the different categories of DUI.

MS. MEADE agreed to provide that information to the committee.

[9:46:43 AM](#)

REPRESENTATIVE TALERICO asked Representative Wilson for the current procedures when someone is stopped by an officer and refuses a breathalyzer test.

REPRESENTATIVE VAZQUEZ alleged that no one with that expertise is present who can answer Representative Talerico's question.

REPRESENTATIVE WILSON responded that a person suspected of a DUI does not walk away. She contended that someone suspected of a DUI is given notice of the DMV procedures and timeline before any judicial proceeding. She stated her belief that this scenario constitutes a presumption of guilt before a person has been to court and received due process.

9:49:28 AM

REPRESENTATIVE VAZQUEZ voiced her assumption that the acquittal rate is about 5-10 percent. She offered that someone arrested for serial assault or serial murder would have to wait for judicial action. She also noted that an employee accused of serious misconduct is suspended immediately. She suggested that the balance for public safety and interest is a consideration for immediate action in those cases.

REPRESENTATIVE WILSON reiterated that a person should be innocent until proven guilty. She claimed that she knows of no other scenario where you must go through an administrative hearing and be punished before a court proceeding. She cited the example of a shoplifter.

9:51:59 AM

REPRESENTATIVE VAZQUEZ countered that in the case of suspected shoplifting and certainly more serious accusations there may be a number of pre-trial conditions set by court before the judicial process, including bail, loss of freedom of movement, a court-appointed custodian, travel restrictions, and imprisonment, all to safeguard the public interests.

REPRESENTATIVE WILSON maintained that the court determined those conditions, not the DMV.

9:54:08 AM

REPRESENTATIVE KELLER asked if the court could restrict driving as a pretrial condition in a simple but swift process.

REPRESENTATIVE VAZQUEZ expressed concern for the added burden to the court to be tasked in that way but acknowledged the possibility of the court restricting driving as a pretrial condition.

CHAIR LYNN asked Representative Vazquez to work with the sponsor to address her concerns before HB 162 was heard in the House Judiciary Standing Committee, if it moved out of the current committee.

REPRESENTATIVE SPOHNHOLZ asked if HB 162 would increase the workload of the court system.

REPRESENTATIVE WILSON responded that HB 162 would not increase the workload for the court system and relayed that the court system offered no fiscal note for the proposed legislation.

CHAIR LYNN closed public testimony on HB 162.

[9:56:28AM](#)

REPRESENTATIVE KREISS-TOMKINS stated his belief that there is room for improvement in the degree of diligence with regard to the fiscal note.

[9:57:14 AM](#)

REPRESENTATIVE KELLER moved to report HB 162 out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, HB 162 was reported out of the House State Affairs Standing Committee.

[9:58:51 AM](#)

ADJOURNMENT

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at 9:59.