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A M E N D M E N T

#2

Offered in the

By Pignalberi

TO: SSBH 458

Page 1, lines 16 - 23, delete all material and insert a new bill section to read:

"* Sec. 2. AS 44.62 is amended by adding a new section to read:

Sec. 44.62.197. REGULATORY ANALYSIS. (a) An agency shall issue a regulatory analysis of a proposed regulation if, within 20 days after publishing the notice of proposed action, a written request is submitted to the agency by a legislator, another agency, a political subdivision of the state, the governor, as authorized by a vote of the Administrative Regulation Review Committee, or by five persons signing a single request.

(b) Upon receipt of a request under (a) of this section, the agency shall prepare the regulatory analysis. The analysis must quantify the data to the extent practicable, take into account both short-term and long-term consequences, and

(1) describe the classes of persons who probably will be directly affected by the proposed action, including the classes who will bear the costs of the proposed regulation and the classes who will benefit;

(2) describe the probable quantitative and qualitative effect of the proposed regulation, economic or otherwise, on the

classes of persons affected;

(3) set out the probable cost to the agency and any other agency for implementing and enforcing the proposed regulation and the anticipated effect on state revenue;

(4) compare the probable cost and benefits of the proposed regulation with the probable cost and benefits of inaction;

(5) determine whether there are less costly or less intrusive methods for achieving the purpose of the proposed regulation.

(c) The person or persons requesting the regulatory analysis may, by express statement in the request, waive one or more of the requirements of (b) of this section.

(d) A concise summary of the regulatory analysis shall be published in the administrative journal at least 20 days before the earliest of

(1) the end of the period for making written comments on the proposed regulation;

(2) the end of the period during which an oral public proceeding may be requested; or

(3) the date of a required oral public proceeding on the proposed regulation.

(e) The published summary must indicate where to obtain copies of the full text of the analysis and when, where, and how persons may comment on the proposed regulation.

(f) If an agency has made a good faith effort to comply with the requirements of (a) - (c) of this section, the regulation may not be invalidated on the ground that the contents of the regulatory analysis

are insufficient or inaccurate."

Page 2, lines 10 - 11, delete "and financial estimate"

Page 2, lines 13 - 14:

Delete: "Except as provided in (c) of this section, when"

Insert: "When"

Page 2, line 23, delete "each document" and insert "documents"

Page 2, line 27:

Delete: "Except as provided in (c) of this section, when"

Insert: "When"

Page 3, line 5:

Delete: "each comment or objection"

Insert: "the comments and objections"

Page 3, line 7:

Delete: "comment or objection"

Insert: "comments or objections"

Page 3, line 14:

Delete: "new subsections"

Insert: "a new subsection"

Page 3, line 15, delete "10" and insert "15"

Page 3, line 17, delete "hold" and insert "promptly schedule"

Page 3, line 18 after "action." insert:

"The agency may extend the comment period if necessary to provide at least 14 days' notice of the public hearing."

Page 3, lines 19 - 22, delete all material.

Page 4, line 13, delete "and financial estimates"

Page 4, after line 14, insert:

"(5) a regulatory analysis, if required under AS 44.62.-
197;"

Renumber remaining paragraphs.

Page 5, lines 10 - 11, delete:

"in the case of a regulation subject to AS 44.62.205(a) and (b),"

Page 5, line 16, delete "submitted to" and insert "considered by"

Page 5, line 17, delete "for consideration"

Page 5, line 20, delete "and 44.62.205(c)"

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

April 3, 1986

Honorable Marco Pignalberi
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Re: CSSSHB 458(SA) -- adoption
of regulations
Our file: 66-3-86-0343

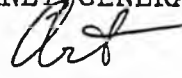
Dear Marco:

It was my understanding, from the House State Affairs Committee hearing on March 21, that, during the hearing, you had agreed to a "good faith" clause for the justifications of need requirement (sec. 4 of the bill) like the one that your amendments of that date had provided for the regulatory analysis requirement (sec. 2 of the bill). See proposed AS 44.62.197(f), at page 2 of the committee substitute. Fearing that that additional amendment might have gotten lost, I reminded the committee staff person of that point a few days after the hearing and discussed it with you in the hallway a few days after that. You said that you would check on it to be sure that it was in the committee substitute.

Despite everybody's efforts and good intentions, it appears that that provision indeed got lost. CSSSHB 458(SA), reported out of committee April 1, does not include that "good faith" protection for the justifications of need. (Including it would, of course, require deletion or amendment of the proposed AS 44.62.300(4) [page 6 of the committee substitute].) Do you know what happened?

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:md

Honorable Marco Pignalberi
Alaska House of Representatives

April 3, 1986
Page 2

cc: Hon. Katie Hurley, Chair
House State Affairs Committee
Alaska State Legislature

Hon. M. Mike Miller, Chair
House Judiciary Committee
Alaska State Legislature

EARL H. BEISTLINE
Mine Consultant

P.O. Box 80148
Fairbanks, Alaska 99708

Telephone: Area Code 907
Office: 479-6240

April 1, 1986

The Honorable M. Mike Miller, Chairman
House Judiciary Committee
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

Dear Mike:

Representative Marco Pignalberi's HB 458, "An Act Relating to the Adoption of Regulations," appears to me to be a sound and solid approach to curtail a proliferation of non essential regulations, but at the same time provide for needed and essential regulations to enhance private industry and the stature of the state of the State.

Justification and the anticipated regulations accompanied by costs projections prior to the adoption of regulations should do much to give integrity to the law involved and to legislators' intent of a specific law.

Accordingly, I endorse H.B. 458.

Sincerely,



Earl H. Beistline

EHB/jc

cc: House Judiciary Committee
Paula Easley, Executive Director, Resource Development Council of Alaska
Interior House Delegation

South-Central Timber Development, Inc.

26 March 1986

Representative Marco A. Pignalberi
P.O. Box V
Juneau, Alaska 99811

Dear Marco:

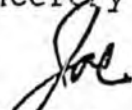
Re: H.B. 458

Thanks very much for introducing your bill to retard regulatory proliferation. As a country and as a state we have produced a vast, unfathomable array of regulations having the force of law. The sheer fact of their existence makes many, many citizens unwitting lawbreakers; this is the poorest kind of public policy, and, of course, a great shrinker of the freedom the people formerly enjoyed.

By copy of this letter to the Judiciary Committee, we are urging passage of the measure.

With thanks and kind regards, I remain,

Sincerely yours,


JOSEPH R. HENRI
President

JRH/df

cc: Representative Mike Miller, Judiciary Chair
Ms. Paula P. Easley, Resource Development Council



HB 458

April 2, 1986

Representative Mike Miller
Pouch 5
Juneau, AK 99811

Dear Representative Miller,

As you well know, Alaska regulatory policies have significant impact upon the States ability to effectively administer its vast natural resources and to serve the needs of its people. Beyond this and equally as important, is the message Alaska signals throughout the international arena, specifically our friends of the Pacific Rim, through its operating policies as to our real intentions and commitment to an orderly and effective use of our lands.

In my view, our state government thus far has shown little to no regard for the impacts current regulatory policies have on those it is charged to serve; the people. Current regulatory policy permits blatant disregard by various state agencies to the interests of the people by not requiring complete accountability of their actions. For instance regulatory adoption now requires no "justification for need", does not weigh "costs vs benefits"; and, can shoot policies through with little to no hearing.

On the other hand, our system clearly requires those dealing with the state to fully disclose all considerations of a particular venture before granting authority to proceed. It certainly stands to reason that we should at least hold our own internal system and actions with like accountability.

There is clearly a need for regulatory reform and HB 458, as drafted by Representative Marco Pignalberi, takes a giant step toward this goal.

This Bill would:

- * require agencies to prepare an estimate of the financial impact of a proposed regulation on the private sector.
- * allow 15 interested citizens to call for a public hearing on a proposed regulation.
- * require agencies to prepare a "justification of need" for all new regulation, including the factual evidence which supports the proposed regulation.

Page 2
Regulatory Reform

* require agencies to list alternatives to proposed regulations and answer each comment they receive.

* preclude agencies from adopting regulations more than a year after they released them.

If one takes the time to read the Bill, its wisdom becomes clearly one which begins to serve the people rather than a select few bureaucratic interests. It makes sense doesn't it?

I would strongly urge you and your entire House Judiciary Committee to pass this important Bill and begin to clean up our regulatory adoption process.

Regards,



Boyd J. Brownfield

cc: Members House Judiciary Committee:
Representative John Sund
Representative Don Clocksin
Representative Max Gruenberg
Representative Fritz Pettyjohn
Representative Randy Phillips
Representative Robin Taylor

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: 1907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 21, 1986

Honorable Katie Hurley, Chair
House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

MAR 21 1986

Re: SSHB 458 (adoption of
regulations)
Our file: 66-3-86-0343

Dear Representative Hurley:

Since this bill has been scheduled for another hearing before your committee today, I wanted to get the following additional information to you: some comments on Representative Pignalberi's March 10, 1986 "Peterson Memo Rebuttal" (i.e., his comments on my February 27, 1986 memo to the governor's director of legislative relations, Jim Ayers, copies of which were distributed to your committee and Representative Pignalberi), and fiscal notes, etc., from various departments.

For your convenience, here is a listing of the attachments to this letter:

Appendix 1, Department of Administration, February 25, 1986 fiscal note;

Appendix 2, Department of Community and Regional Affairs, February 20, 1986 fiscal note;

Appendix 3, Department of Education, March 20, 1986 fiscal note;

Appendix 4, Department of Environmental Conservation, March 21, 1986 fiscal note;

Appendix 5, Department of Fish and Game, March 20, 1986 fiscal note and bill analysis;

Appendix 6, Department of Health and Social Services, March 21, 1986 fiscal note;

Appendix 7, Department of Labor, March 7, 1986 fiscal note and position paper;

Appendix 8, Department of Law, February 27, 1986 fiscal note;

Appendix 9, Department of Natural Resources, Division of Oil & Gas, March 20, 1986 fiscal note, with comments in memo form;

Appendix 10, Department of Public Safety, March 18, 1986 fiscal note;

Appendix 11, draft revised version of sec. 2 of SSHB 458.

It is very likely that fiscal notes from other departments, and from other divisions within the Department of Natural Resources, will be forthcoming.

I am not really qualified to comment on the fiscal notes. As mentioned in my February 27, 1986 memo to Jim Ayers, I can only give some general clues as to fiscal impact -- no specifics. It is my opinion that the costs of SSHB 458 will be substantial. I have tried to suggest some of the reasons for that in my earlier memo.

Regarding Appendix 11, Representative Pignalberi, his assistant, Deborah Bonito, the Department of Law's legal text editor, B.J. Jordan, and I met on March 13, 1986 to discuss the bill. We got as far as sec. 2, and I believe that Appendix 11 incorporates changes that we agreed upon. This does not mean that the Administration supports even this revised sec. 2. The revised version addresses some of the problems of, and is much better than, the original; thus, it is more acceptable.

However, before supporting a change in the law, we would like to be able to identify a problem in the current law and would like to feel assured that the proposal is a good solution to that problem. Notwithstanding generalized complaints about there being "too many" regulations, I am not aware of any particular problem stemming from an absence of the financial estimate required by sec. 2. In addition, it is not at all clear that there will be one bit of public benefit derived from the information that will cost a great deal to provide.

Here are some comments on Representative Pignalberi's March 10 material:

1. Representative Pignalberi emphasizes the fact that only an "estimate" of the financial impact of a regulation is

required by sec. 2. However, even an estimate is not a guess. We are assuming that if the legislature were to pass such a requirement, it would expect the agency to do the research and make the analysis necessary to present a responsible and accurate package of information to the public -- especially since the potential for litigation is great. And the kind of information required is not readily available. Moreover, typically, it comes from the regulated entities and is not given to them.

2. Representative Pignalberi suggests that it is easy to discern entities that are "directly affected" by a regulation, because the agencies "know the territory." Certainly, they know the territory. But often they do not know the legislative intent. For example, when a regulation sets an opening date for a particular fishery, the Board of Fisheries could probably find from the Commercial Fisheries Entry Commission the number of boats, and the amount of gear and thus the number of actual fishing "entities" that would be affected, but would floating fish-processing plants be considered "directly affected"? Certainly, they are affected. Are they "directly affected"? Would sec. 2 require an analysis of the regulation's effect upon them as well as upon the people doing the fishing? How about the effect upon a shore-based processor? Or take another example: if a safety regulation were to require two fire escapes on all day care centers of more than two stories, it would be relatively easy to find the number of currently licensed day care centers, and perhaps it would be as easy to find which ones of those were taller than two stories. But is a person who has not yet begun operation as a day care center, although he plans to do so, an entity that is "directly affected"? How about someone whose application for the day care license is pending? Arguments could be made on both sides of the issue of whether such an individual's situation must be taken into account by the agency in preparing its financial estimate.
3. Representative Pignalberi's comments regarding opening and closing dates for hunting and fishing seasons are mistaken. The respective boards do indeed set such dates by the regular regulations process. See, for just one example, 5 AAC 18.310, which sets the season for taking salmon in the Kodiak area.
4. Representative Pignalberi suggests that the legislature has imposed no such requirement on itself because it, as distinct from the executive branch, is a "deliberative" body. He mentions debate and research. Clearly, those two

activities do not distinguish the legislature's processing of a bill from the executive's processing of a regulation. It goes without saying that, in addition to complying with the formal, statutory requirements for public comment, hearings, and consideration of testimony, the executive agencies engage in a substantial amount of research and debate. Consider, for example, the 109 days of meetings by the Boards of Fisheries and Game in FY 85. (See Appendix 5.)

5. With regard to sec. 4, Representative Pignalberi takes issue with my reference to the official commentary under Section 3-105 of the National Conference of Commissioners on Uniform State Laws' Model State Administrative Procedure Act. Specifically, he suggests that "informed disagreement" may be good. He may well be right. But, when that disagreement develops into litigation over whether an agency's "justification of need" is sufficiently accurate or persuasive, then we are talking about another matter. Litigation, of course, is expensive. Litigation that can shut down a popular program because of a technical, procedural defect (a debatable one at that) can be even more expensive.
6. I do not quite understand Representative Pignalberi's comments on the "retroactive application of regs." Perhaps he is referring to the paragraph that begins at the bottom of page 4 and continues on page 5 of my February 27 memo to Jim Ayers. The change from the current situation that SSHB 458 would make is the requirement that an agency's justification be set out in writing and the effect that that written justification would serve by providing a basis for litigation stemming from the application of a new regulation to an even newer problem -- one not contemplated at the time the regulation was adopted, but to which the regulation could very appropriately apply.
7. I have just learned that Representative Pignalberi is preparing a revised set of amendments to the bill. As I write this letter, I have not yet seen those amendments, but I understand that they will supersede the March 10 (and other?) amendments offered by Representative Pignalberi. Therefore, I will not comment on the earlier amendments, and cannot comment on the new ones, at this time.

SUMMARY

It is difficult to pinpoint any particular problem to which this bill is directed. It is also difficult to detect any

worthwhile information flowing to the public from the very troublesome secs. 2 and 4. Yet those very sections would impose great financial burdens on a wide range of executive-branch agencies -- especially those trying to do the most conscientious job when adopting regulations.

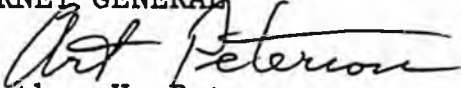
Whether my comments about costs, or whether any of the attached fiscal notes, are absolutely accurate, it should be clear that the costs to a conscientious, regulation-adopting agency will be substantial. With the state's current financial situation, this is hardly a time to be creating new procedures that will give rise to new costs with such hazy, if any, benefit to the public.

As mentioned in my February 27 memo to Jim Ayers, there are provisions in this bill that are acceptable. And, as I have indicated, we will be happy to continue working with Representative Pignalberi to try to define any problem and develop appropriate amendatory language.

Once again, thank you for this opportunity to offer our comments.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

AHP:md

cc w/out enc.: Dept. Heads

cc w/enc.: Jim Ayers, Director
Legislative Relations
Governor's Office

P.S. I have just received Representative Pignalberi's new set of amendments, and will try to comment on them at this afternoon's hearing.

**HOUSE
COMMITTEE REPORT**

(7)

Date referred: 2/10/86

FURTHER REFERRALS: JUDICIARY

DATE: 3/21/86

The STATE AFFAIRS Committee has considered SSHB 458

"An Act relating to the adoption of regulations; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CS SHB 458(SA) same title
- new title

and recommends DO PASS

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - 10 new fiscal notes
 - zero fiscal note

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

[Signature]
[Signature]
[Signature]

[Signature] ^{NO REC}
~~[Signature]~~
[Signature] No Rec

[Signature]
Chairman

Original sponsors: Pignalberi, Cato,
Marrou, et al

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 458 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the adoption of regulations; and
7 providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 44.62.190 is amended by adding a new subsection to
10 read:

11 (d) An agency may not adopt, amend, or repeal a regulation if
12 more than one year has elapsed since the first publication of notice
13 of proposed action under this section. When more than one year has
14 elapsed, an agency may revive the proposed action by republication in
15 accordance with (a) of this section.

16 * Sec. 2. AS 44.62 is amended by adding a new section to read:

17 Sec. 44.62.197. REGULATORY ANALYSIS. (a) An agency shall issue
18 a regulatory analysis of a proposed regulation if, within 20 days
19 after publishing the notice of proposed action, a written request is
20 submitted to the agency by a legislator, another agency, a political
21 subdivision of the state, the governor, as authorized by a vote of the
22 Administrative Regulation Review Committee, or by 50 persons signing a
23 single request.

24 (b) Upon receipt of a request under (a) of this section, the
25 agency shall prepare the regulatory analysis. The analysis must
26 quantify the data to the extent practicable, take into account both
27 short-term and long-term consequences, and

28 (1) describe the classes of persons who probably will be
29 directly affected by the proposed action, including the classes who

1 will bear the costs of the proposed regulation and the classes who
2 will benefit;

3 (2) describe the probable quantitative and qualitative
4 effect of the proposed regulation, economic or otherwise, on the
5 classes of persons affected;

6 (3) set out the probable cost to the agency and any other
7 agency for implementing and enforcing the proposed regulation and the
8 anticipated effect on state revenue;

9 (4) compare the probable cost and benefits of the proposed
10 regulation with the probable cost and benefits of inaction;

11 (5) determine whether there are less costly or less intru-
12 sive methods for achieving the purpose of the proposed regulation.

13 (c) The person or persons requesting the regulatory analysis
14 may, by express statement in the request, waive one or more of the
15 requirements of (b) of this section.

16 (d) A concise summary of the regulatory analysis shall be pub-
17 lished in the administrative journal at least 10 days before the
18 earliest of

19 (1) the end of the period for making written comments on
20 the proposed regulation; or

21 (2) the end of the period during which an oral public
22 proceeding may be requested.

23 (e) The published summary must indicate where to obtain copies
24 of the full text of the analysis and when, where, and how persons may
25 comment on the proposed regulation.

26 (f) If an agency has made a good faith effort to comply with the
27 requirements of (a) - (c) of this section, the regulation may not be
28 invalidated on the ground that the contents of the regulatory analysis
29 are insufficient or inaccurate.

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* Sec. 3. AS 44.62.200(a) is amended to read:

(a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action, including a summary of the initial justification of need;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required [TO BE PREPARED] under AS 44.62.195.

* Sec. 4. AS 44.62 is amended by adding a new section to read:

Sec. 44.62.205. JUSTIFICATIONS OF NEED. (a) When a state agency files a notice of proposed action under AS 44.62.190, the agency shall make available to the public an initial justification of need for the proposed action. The initial justification shall

(1) describe the problem, condition, or circumstance the regulation is intended to address;

(2) specify the purpose of the regulation and the factual basis for the agency's determination that the regulation is reasonably necessary to carry out the purpose;

(3) identify documents upon which the agency is relying in proposing the action; and

1 (4) describe practical and reasonable alternatives to the
2 proposed action.

3 (b) When a state agency submits a regulation or order of repeal
4 for filing with the lieutenant governor under AS 44.62.040, the agency
5 shall make available to the public a final justification of need con-
6 cerning the regulation or order of repeal. The final justification
7 shall include

8 (1) the complete text of a regulation that is adopted or
9 amended and a list of regulations repealed;

10 (2) a summary of the comments and objections received and
11 an explanation of changes made to the proposed regulation in response
12 to the information or the reasons for rejecting the comments or ob-
13 jections; and

14 (3) the reasons for rejecting proposed alternatives.

15 * Sec. 5. AS 44.62.210 is amended by adding a new subsection to read:

16 (c) If at least 15 interested persons submit a written request
17 for a public hearing at least 10 days before the end of the initial
18 comment period, a state agency shall promptly schedule a public hear-
19 ing on the proposed action. The agency may extend the comment period
20 if necessary to provide at least 14 days' notice of the public hear-
21 ing.

22 * Sec. 6. AS 44.62.230 is amended to read:

23 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a
24 petition requesting the adoption, amendment, or repeal of a regulation
25 under AS 44.62.180 - 44.62.290, a state agency shall, within 30 days,
26 deny the petition in writing, including the reasons for the denial, or
27 schedule the matter for public hearing under AS 44.62.190 - 44.62.210.
28 However, if the petition is for an emergency regulation [,] and the
29 agency finds that an emergency exists, the requirements of

AS 44.62.190 - 44.62.210 do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

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

Sec. 44.62.275. RECORDS OF PROPOSED ACTIONS. (a) A state agency shall maintain a file of the proceedings concerning the adoption, amendment, or repeal of a regulation. The file shall include

- (1) petitions received under AS 44.62.220;
- (2) published notices of proposed action under AS 44.62.-190;
- (3) justifications of need required by AS 44.62.205;
- (4) fiscal information under AS 44.62.195;
- (5) a regulatory analysis, if required under AS 44.62.197;
- (6) each document submitted in connection with the proposed action;
- (7) each document upon which the agency is relying for the proposed action;
- (8) a transcript, recording, or minutes of each public hearing connected with the proposed action; and
- (9) other information that the state agency is required by law to consider or prepare in connection with the proposed action.

(b) The agency shall maintain a log that identifies each item contained in the file and the date on which the item was received. The file shall include an affidavit by the employee responsible for maintaining the file stating that the file contains all of the documents required by this section and the date the file was completed.

(c) The file is a public record.

* Sec. 8. AS 44.62.300 is amended to read:

Sec. 44.62.300. COURT REVIEW. An interested person may get a

1 judicial declaration on the validity of a regulation by bringing an
2 action for declaratory relief in the superior court. In addition to
3 any other ground the court may declare the regulation invalid

4 (1) for a substantial failure to comply with AS 44.62.010 -
5 44.62.320; [, OR]

6 (2) in the case of an emergency regulation or order of
7 repeal, upon the ground that the facts recited in the statement do not
8 constitute an emergency under AS 44.62.250;

9 (3) for failure to comply with AS 44.62.205; or

10 (4) if the justification of need fails to present
11 sufficient facts to establish by a preponderance of the evidence the
12 need for the regulation.

13 * Sec. 9. AS 44.62.640(a) is amended by adding a new paragraph to read:

14 (5) "document" means a written or electronic communication
15 of any kind, except a telephone communication, considered by an agency
16 during the adoption, amendment, or repeal of a regulation.

17 * Sec. 10. AS 44.62.190 as enacted by sec. 1 of this Act, AS 44.62.-
18 205(b) as enacted by sec. 4 of this Act, and the amendments made by secs. 5
19 and 9 of this Act apply to proposed regulations, amendments, and orders of
20 repeal that have not been submitted to the lieutenant governor for filing
21 before the effective date of this Act. The amendment made by sec. 6 of
22 this Act applies to petitions that have not been scheduled for public
23 hearing or denied before the effective date of this Act.

24 * Sec. 11. The amendments made by secs. 2, 3, 7, and 8 of this Act, and
25 AS 44.62.205(a) enacted by sec. 4 of this Act do not apply to proposed
26 regulations, amendments, or orders of repeal for which a notice of proposed
27 action has been published before the effective date of this Act.

28 * Sec. 12. This Act takes effect July 1, 1986.
29

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : CSSSHB 458 (SA)
 Title : "An Act relating to the adoption of regulations; and providing for an effective date."
 Sponsor : Rep. Pignalberi
 Requestor : House Judiciary
 Date of Request : 10/3/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : DPS Administration
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------------|-------------|-------------|-------------|-------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL SUPPLIES | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------------|-------------|-------------|-------------|-------------|
| GENERAL FUND | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |

POSITIONS :

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

This Department's Divisions of Motor Vehicles, Fire Prevention and Alaska State Troopers are affected by this bill. The Alaska Police Standards Council and the council on Domestic Violence and Sexual Assault would also be affected.

(continued on page 2)

Prepared by : Frank R. Gorham Phone : 465-4322
 Division : Commissioner's Office Date : 4/03/86

Approved by Commissioner : [Signature] Date : 4/11/86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSSSHB 458 (SA)

The Department's approach to the requirements of the Act would be to contract research/analytical expertise to develop impact statements as well as flexibility analysis as related to small entities, and to make periodic review assessments of regulations as would be indicated by the Department's plan published in the Alaska Administrative Journal. The contractual expertise time necessary to meet the requirements found in this piece of legislation would be estimated at 90 days per year.

Since the costs would be spread out amongst the various entities of the Department, the contractual costs would be placed in the Commissioner's Office and dispersed as necessary.

A 5% inflation factor is added beginning FY88.

| | |
|---|--------|
| <u>300 Contractual</u> | \$62.0 |
| Research/analysis | |
| 90 days @ \$100/day for 6 hours per day | \$54.0 |
| Incidental computer use | 5.0 |
| Incidental travel related to above | 3.0 |

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title: Adoption of regulations

Sponsor : Pignalberi, Cato, Marrou, Shultz
 Requestor : State Affairs
 Date of Request : 3/21/86

FISCAL DETAIL

Agency Affected: ADEC
 BRU: Commissioner's Office

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 82.5 | 83.0 | 83.5 | 84.0 | 84.5 |
| TRAVEL | | 1.5 | 1.5 | 1.5 | 1.5 | 1.5 |
| CONTRACTUAL | | 80.0 | 75.0 | 75.0 | 75.0 | 80.0 |
| SUPPLIES | | 1.5 | 1.6 | 1.7 | 1.8 | 1.9 |
| EQUIPMENT | | 2.6 | .5 | .5 | .5 | .5 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 169.1 | 161.6 | 162.2 | 162.8 | 168.4 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 169.1 | 161.6 | 162.2 | 162.8 | 168.4 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 169.1 | 161.6 | 162.2 | 162.8 | 168.4 |

POSITIONS :

| | | | | | | |
|-----------|--|---|--|--|--|--|
| FULL-TIME | | 2 | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

See attached.

Prepared by: Billie Trent
 Division: Commissioner's Office

Phone: 465-2600
 Date: 3/21/86

Approved by Commissioner: Bill Ross
 Agency: Environmental Conservation

Date: 3/21/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 4
 Page 1 of 4

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

For this department to comply with the provisions of this bill, it will be necessary to add two new positions as reflected in the attached requests. The additional research, analyses, and documentation cannot be done with present staff; and this agency lacks the expertise necessary to accomplish the economic impact/justification of need aspects of the legislation.

Contractual services are based on an estimate of 20 contracts per year, 10 of which would be of major proportions (such as the tri-ennial review of Water Quality Standards mandated by federal law).

APPENDIX 4
Page 2 of 4

| | | | | | | | | | |
|--|--------------------|-----------|--|-------------------|-------------------|------|---------|---------|--------|
| Position Title Research Analyst III | | | No. of Positions 1 | Range/Step 18A | Barg. Unit UGU | Gov. | Approv. | Disapp. | |
| Time Status PFT | Staff Months 12 | RP Number | Location Juneau | | Election District | Leg. | | | |
| Type of Expenditure | | | Justification | | | | | | |
| Amount | | | <p>Because of the complex nature of this agency's programs, and the wide variety of entities and individuals affected by those programs, this position's expertise would be required to provide the justifications of need and to incorporate economic data gathered through contractual services into a meaningful packet.</p> <p>Costs associated with this position would include average per-employee costs for contractual and commodities. Equipment expense for a desk and chair, etc. would be a one-time expenditure.</p> | | | | | | |
| 1 | 2 | 3 | | | | | | | |
| Salary | 37,596 | | | | | | | | |
| Benefits | 12,324 | | | | | | | | |
| Premium Pay | | | | | | | | | |
| Other | | | | | | | | | |
| Total Personal Services | | 49,920 | | | | | | | |
| Travel | | 1,500 | | | | | | | |
| Contractual | | 2,000 | | | | | | | |
| Commodities | | 1,000 | | | | | | | |
| Equipment | | 2,000 | | | | | | | |
| Other | | | | | | | | | |
| Total Cost | | 56,420 | | | | | | | |
| Receipt Code | Funding Source | | | | | | | | |
| | Federal Receipts | 1002 | | | | | | | |
| | G. F. Match | 1003 | | | | | | | |
| | General Funds | 1004 | | | | | | | 56,420 |
| | I-A Receipts | 1005 | | | | | | | |
| | Program Receipts | 1028 | | | | | | | |
| | CIP Receipts | 1061 | | | | | | | |
| | Other | | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | | |

APPENDIX 4, Page 3 of 4

**Request For
New Position**

Agency Environmental Conservation
 BRU Commissioner's Office
 Component Commissioner's Office

FY 87

Page 3 of 4
 Revised Date _____

| | | | | | | | | |
|--------------------------------------|-----------------------|-----------|---|-------------------|----------------|------|--------|---------|
| Position Title Clerk Typist III | | | No. of Positions 1 | Range/Step 8A | Barg. Unit CCU | Gov. | Apprv. | Disapp. |
| Time Status PFT | Staff Months 12 | RP Number | Location Juneau | Election District | LAG | | | |
| Type of Expenditure | | | Justification | | | | | |
| 1 | 2 | 3 | <p>This position would handle the clerical duties imposed by this legislation. The position would keep records of all proposed actions on all regulations in the department and assure the additional documentation requirements of this bill are met, including the integrity of the files.</p> <p>This person would make sure all correspondence was properly handled, type the justifications, file logs and other required documents.</p> <p>Costs associated with this position are average per employee costs. The equipment expense for a desk, chair, etc. would be a one-time cost.</p> <p>It is estimated that one new filing cabinet would be needed each year to meet the filing requirements of this bill.</p> | | | | | |
| Salary | 20,316 | | | | | | | |
| Benefits | 7,702 | | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 28,018 | | | | | | |
| Travel | | | | | | | | |
| Contractual | | 2,000 | | | | | | |
| Commodities | | 1,000 | | | | | | |
| Equipment | | 1,600 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 32,618 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts 1002 | | | | | | | |
| | G. F. Match 1003 | | | | | | | |
| | General Funds 1004 | | 32,618 | | | | | |
| | I-A Receipts 1005 | | | | | | | |
| | Program Receipts 1028 | | | | | | | |
| | CIP Receipts 1061 | | | | | | | |
| | Other | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | |

APPENDIX 4, Page 4 of 4

**Request For
New Position**

Agency Environmental Conservation
 BRU Commissioner's Office
 Component Commissioner's Office

Page 4 of 4
 Revised Date _____

FY 87

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 458
 Title : An Act relating to adoption
 of regulations and providing for
 an effective date
 Sponsor : Pignalberi, Cato, Marrou &
 Requestor : Shultz
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Fish and Game
 BRU : Boards
 Components : Boards of Fisheries
 and Game

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | | 635.8 | 693.6 | 756.6 | 325.4 | 334.5 |
| TRAVEL | | 66.2 | 72.8 | 80.1 | 85.3 | 90.8 |
| CONTRACTUAL | | 20.9 | 23.0 | 25.3 | 27.3 | 30.1 |
| SUPPLIES | | 6.5 | 7.1 | 7.7 | 8.3 | 8.9 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 732.4 | 796.5 | 869.7 | 946.0 | 964.3 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 732.4 | 796.5 | 869.7 | 946.8 | 964.3 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

| | | | | | | |
|-----------|--|----|----|----|----|----|
| FULL-TIME | | 11 | 11 | 11 | 11 | 11 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

See attachment.

Prepared by : Beth Stewart, Director
 Division : Boards

Phone : 465-4110
 Date : March 20, 1986

Approved by Commissioner : *[Signature]*
 Agency : Department of Fish and Game

Date : *[Signature]*

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 5
 Page 1 of 9

HB 453--Fiscal Note Analysis

This funding would allow two teams to conduct economic surveys and analyze fisheries and game economic data. One team would be based in Juneau, the other in Anchorage. Each team would consist of an Economist III, two Economist I's, a Systems Analyst II, Systems Programmer I, and a Clerk Typist III. The teams would undertake economic research regarding the effect of proposed fishing regulations on sport and commercial fishermen, and hunting and trapping, as well as on communities affected by the regulation. Information would be gathered from all available sources, processed and synthesized by computer, and provided to the Board of Fisheries and the Board of Game. Thereafter, the board would be able to make allocative decisions on competing demands for finite fishery and wildlife resources consistent with the proposed legislation.

| | | | | | | | | |
|---|--------------------------|--------------------------|---|--------------------|-------------------|------|---------|---------|
| Position Title Systems Analyst II | | | No. of Positions 2 | Range/Step 20 A | Base Unit GGU | Gov. | Approv. | Disapp. |
| Time Status | Staff Months 12 (x 2) | RP Number | Location Jnu/Anch | | Election District | Leg. | | |
| Type of Expenditure per /mo. | | | Justification | | | | | |
| | | | Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note. | | | | | |
| 1 | | 2 | 3 | | | | | |
| Salary | | 3,564.0 | | | | | | |
| Benefits | | 608.0 | | | | | | |
| Premium Pay | | 218.5 | | | | | | |
| Other | | 227.2 | | | | | | |
| Total Personal Services | | 55.4x2 | 110.8 | | | | | |
| Travel | | | | | | | | |
| Contractual | | | | | | | | |
| Commodities | | 0.5x2 | 1.0 | | | | | |
| Equipment | | 7.4x2 | 14.8 | | | | | |
| Other | | | | | | | | |
| Total Cost | | | 126.6 | | | | | |
| Receipt Code | | Funding Source | | | | | | |
| | | Federal Receipts 1002 | | | | | | |
| | | G. F. Match 1003 | | | | | | |
| | | General Funds 1004 126.6 | | | | | | |
| | | I-A Receipts 1005 | | | | | | |
| | | Program Receipts 1028 | | | | | | |
| | | CIP Receipts 1061 | | | | | | |
| | | Other | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | |

APPENDIX 5
 Page 4 of 9

**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87

| | | | | | | | | |
|---|-----------------------|-----------|-------------------------|-------------------|----------------|------|---------|---------|
| Position Title Clerk Typist III (two positions) | | | No. of Positions 2 | Range/Step 8 A | Barg. Unit GGU | Gov. | Approv. | Disapp. |
| Time Status | Staff Months 12 (x 2) | RP Number | Location Jnu/Anch | Election District | | Leg. | | |
| Justification | | | | | | | | |
| Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note. | | | | | | | | |
| Type of Expenditure | | | Amount | | | | | |
| 1 per/mo | | 2 | 3 | | | | | |
| Salary | | 1.631.0 | | | | | | |
| Benefits | | 278.3 | | | | | | |
| Premium Pay | | 100.0 | | | | | | |
| Other | | 227.2 | | | | | | |
| Total Personal Services | | 26.8x2 | 53.6 | | | | | |
| Travel | | | | | | | | |
| Contractual | | | | | | | | |
| Commodities | | 0.5x2 | 1.0 | | | | | |
| Equipment | | 0.5x2 | 1.0 | | | | | |
| Other | | | | | | | | |
| Total Cost | | | 55.6 | | | | | |
| Receipt Code | | | Funding Source | | | | | |
| | | | Federal Receipts 1002 | | | | | |
| | | | G. F. Match 1003 | | | | | |
| | | | General Funds 1004 55.6 | | | | | |
| | | | I-A Receipts 1005 | | | | | |
| | | | Program Receipts 1028 | | | | | |
| | | | CIP Receipts 1061 | | | | | |
| | | | Other | | | | | |
| For B&M Use Only | | | | | | | | |
| Key Number _____ | | | | | | | | |

APPENDIX 5
Page 5 of 9

**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87

| | | | | | | | | | |
|--------------------------------------|---------------------------------|---------------|------------------------------|---------------------------|--------------------------|------|---------|---------|-------|
| Position Title Economist I | | | No. of Positions 3 | Range/Step 18 A | Barq. Unit CCU | Gov. | Approv. | Disapp. | |
| Time Status PFT | Staff Months 12 (x 3) | RP Number | Location Jnu/Anch | Election District | | Leg. | | | |
| Type of Expenditure | | | Justification | | | | | | |
| 1 | 2 | Amount | | | | | | | |
| Salary | 4,969.5 | | | | | | | | |
| Benefits | 847.8 | | | | | | | | |
| Premium Pay | 304.7 | | | | | | | | |
| Other | 340.8 | | | | | | | | |
| Total Personal Services | | 155.1 | | | | | | | |
| Travel | | 12.1 | | | | | | | |
| Contractual | | 1.5 | | | | | | | |
| Commodities | | 4.8 | | | | | | | |
| Equipment | | | | | | | | | |
| Other | | | | | | | | | |
| Total Cost | | 173.4 | | | | | | | |
| Receipt Code | Funding Source | | | | | | | | |
| | Federal Receipts | 1002 | | | | | | | |
| | G. F. Match | 1003 | | | | | | | |
| | General Funds | 1004 | | | | | | | 173.4 |
| | I-A Receipts | 1005 | | | | | | | |
| | Program Receipts | 1028 | | | | | | | |
| | CIP Receipts | 1061 | | | | | | | |
| | Other | | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | | |

APPENDIX 5
Page 6 of 9

**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date

FY 87

| | | | | | | | | |
|---|--------------------------|-----------|---|--------------------|----------------------|------|---------|---------|
| Position Title Economist III (two positions) | | | No. of Positions 2 | Range/Step 21 A | Barg. Unit C.G.U. | Gov. | Approx. | Disapp. |
| Time Status | Staff Months 12 (x 2) | RP Number | Location Jnu/Anch | | Electon District | Leg. | | |
| Type of Expenditure | | | Justification | | | | | |
| Amount | | | Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note. | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 3,812.0 | | | | | | | |
| Benefits | 650.3 | | | | | | | |
| Premium Pay | 233.7 | | | | | | | |
| Other | 227.2 | | | | | | | |
| Total Personal Services | 5,913.2 | 118.2 | | | | | | |
| Travel | 4.0x2 | 8.0 | | | | | | |
| Contractual | 9.5x2 | 19.0 | | | | | | |
| Commodities | 1.0x2 | 2.0 | | | | | | |
| Equipment | 1.2x2 | 2.4 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 149.6 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts | 1002 | | | | | | |
| | G. F. Match | 1003 | | | | | | |
| | General Funds | 1004 | 149.6 | | | | | |
| | I-A Receipts | 1005 | | | | | | |
| | Program Receipts | 1028 | | | | | | |
| | CIP Receipts | 1061 | | | | | | |
| | Other | | | | | | | |
| For B&M Use Only | | | | | | | | |
| Key Number | | | | | | | | |

APPENDIX 5
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**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

| | | | |
|--------------------------------|--------------------|--|--|
| DEPARTMENT Fish and Game | DIVISION Boards | BILL NUMBER HB 458 | SPONSOR Pignalberi, Cato, Marrou, and Shultz |
| DEPARTMENT POSITION Neutral | | | |
| PREPARED BY Beth Stewart | DATE 3/20/86 | COMMISSIONER'S SIGNATURE <i>[Signature]</i> | DATE 3/20/86 |

SUMMARY

| | |
|---|--|
| OTHER AGENCIES AFFECTED BY BILL DNR, DEC, CED, CRA, HSS, DOL, DOR, DOT/PF | CONSTITUENT GROUPS AFFECTED BY BILL Fishermen and Hunters |
| ORGANIZATIONAL SUPPORT FOR BILL Unknown | ORGANIZATIONAL OPPOSITION TO BILL Unknown |

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
Introduced in 1936 by Pignalberi, Cato, Marrou and Shultz.

ANALYSIS OF BILL/PROGRAM EFFECTS
Currently, the Board of Fisheries meets at least five times annually to hold extensive public hearings and make decisions on proposed changes to its regulations. The Board of Game meets at least twice annually for the same purposes. During FY 35, the two boards considered 1,246 proposals and 39 petitions for regulatory change. By far, the majority of these changes were allocative in nature. In order to conduct business during FY 35, if the proposed legislation had been in effect, the boards would have undertaken over 300 economic impact analyses and summaries for everyone concerned (individuals, communities, businesses and the state as a whole) and written summaries for each of the 1,235 issues, and reconstructed the current boards filing system. This undertaking would not only require increased staffing (estimate 11 permanent, fulltime positions), but would vastly extend the length of time the boards meet. During FY 35, the boards met 109 days.

Under the bill, the boards would determine the economic effect a regulation would have on individuals and other entities directly affected by the proposed action. Such analyses would necessarily have to occur before the

AMENDMENTS PROPOSED (CONTINUED)

boards would decide on a regulation to become effective. We estimate a six-month delay for a regulation to become effective from introducing economic procedural requirements to the existing administrative process.

In the absence of the funding necessary to implement this legislation, the department and board staff would be unable to provide the information necessary for the boards to allocate resources among competing demands.

In addition to the boards' regulations for fish , hunting, and trapping, the Commissioner has limited regulatory authorities for protection of fish and wildlife. Costs comparable to those incurred in the board process could be anticipated.

For this analysis, we have assumed that in-season openings and closures under the Commissioner's emergency order (EO) authority would not be subject to the requirements of the bill. These uses of EO authority occur within the management plans, seasons, and other regulatory measures adopted by the boards. If these EO openings and closures must be accompanied by economic analyses, EO in-season management would not be feasible. This EO authority is essential to the maintenance and proper utilization of fish and wildlife resources given the annual fluctuation in resource availability.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHR 458
 Title : An Act relating to the adoption
 of regulations
 Sponsor : Pignalheri, Cain, Marrou, Shultz
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Health & Soc. Services
 BRU : DHSS Administrative Services
 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 113.6 | 117.6 | 121.7 | 126.0 | 130.4 |
| TRAVEL | | 9.5 | 9.8 | 10.2 | 10.6 | 11.0 |
| CONTRACTUAL | | 8.3 | 8.6 | 8.9 | 9.2 | 9.5 |
| SUPPLIES | | .6 | .7 | .8 | .9 | 1.0 |
| EQUIPMENT | | 14.9 | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 146.9 | 136.7 | 141.6 | 146.7 | 151.9 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 146.9 | 136.7 | 141.6 | 146.7 | 151.9 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 146.9 | 136.7 | 141.6 | 146.7 | 151.9 |

POSITIONS :

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL-TIME | | 3 | 3 | 3 | 3 | 3 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

See Attached.

Prepared by : Joanne C. Clark *JCC* Phone : 465-3082
 Division : Budget & Finance Date : 3/20/86

Approved by Commissioner : *John R. Poy* Date : 3/21/86
 Agency : Health & Social Services

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 6
Page 1 of 5

An assumption is made that the Department has an average of 10 major new regulations or regulations amendment projects yearly and 20 smaller or emergency regulations projects yearly.

A team of three new staff persons would be needed to work with the Special Assistant to the Commissioner for Legal Affairs. This team would aid staff of the divisions promulgating regulations in preparing the financial estimates required in section 2 of the bill and the initial and final justification required in section 4.

Summary of Costs--FY 87

| | |
|--|-------------|
| Personal Services - salary, benefits, overtime for 3 staff | 113.6 |
| Travel - for hearings, meeting with affected public | 9.5 |
| Contractual - communications, risk management, equipment maint. | 8.6 |
| Supplies - office supplies | .3 |
| Equipment - 3 desks, 3 chairs, 3 calculators, 1 IBM Displaywriter, 1 bookcase, 1 file cabinet | <u>14.9</u> |
| Total | 146.9 |

Costs for years beyond FY 87 are adjusted by 3.5% yearly. Equipment costs are one time only.

| | | | | | | | | | |
|---|--------------------|-----------|--|-------------------|-------------------|------|---------|---------|------|
| Position Title Management Analyst III | | | No. of Positions 1 | Range/Step 18A | Barg. Unit CCU | Gov. | Approv. | Disapp. | |
| Time Status PET | Start Months 12 | RP Number | Location AWA | | Election District | Leg. | | | |
| Type of Expenditure | | | Justification | | | | | | |
| Amount | | | <p>This position would work with the Special Assistant and division staff to determine financial effect of regulations on the population. This person would have to attend hearings, talk to persons potentially affected by regulations, and work with the Program Budget Analyst to cost out impacts. This person would also work on preparation of initial and final justification.</p> | | | | | | |
| 1 | 2 | 3 | | | | | | | |
| Salary | 37,356 | | | | | | | | |
| Benefits | 9,182 | | | | | | | | |
| Premium Pay | | | | | | | | | |
| Other | | | | | | | | | |
| Total Personal Services | | 46.5 | | | | | | | |
| Travel | | 7.0 | | | | | | | |
| Contractual | | 3.5 | | | | | | | |
| Commodities | | 2 | | | | | | | |
| Equipment | | 1.6 | | | | | | | |
| Other | | | | | | | | | |
| Total Cost | | 58.8 | | | | | | | |
| Receipt Code | Funding Source | | | | | | | | |
| | Federal Receipts | 1002 | | | | | | | |
| | G. F. Match | 1003 | | | | | | | |
| | General Funds | 1004 | | | | | | | 58.8 |
| | I-A Receipts | 1005 | | | | | | | |
| | Program Receipts | 1028 | | | | | | | |
| | CIP Receipts | 1061 | | | | | | | |
| | Other | | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | | |

APPENDIX 6, Page 4 of 5

**Request For
New Position**

Agency Health & Social Services
 BRU DHSS Admin. Services
 Component Commissioner's Office

Page _____ of _____
 Revised Date _____

FY 87

| | | | | | | | | |
|--|--------------------|-----------|---|--------------------|-------------------|------|---------|---------|
| Position Title Program Budget Analyst II | | | No. of Positions 1 | Range/Step 16 A | Barg. Unit GGU | Gov. | Approv. | Disapp. |
| Time Status PFT | Staff Months 12 | RP Number | Location AWA | Election District | | Leg. | | |
| Type of Expenditure | | | Justification | | | | | |
| | | Amount | <p>This position would work with the Special Assistant and division staff to determine financial impact of regulations on the population. This person would attend some hearings and would have the main responsibility for costing out impacts, along with division staff.</p> | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 32,424 | | | | | | | |
| Benefits | 8,002 | | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 40.4 | | | | | | |
| Travel | | 2.5 | | | | | | |
| Contractual | | 2.5 | | | | | | |
| Commodities | | .2 | | | | | | |
| Equipment | | 1.8 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 47.4 | | | | | | |
| Receipt Code | | | Funding Source | | | | | |
| | | | Federal Receipts 1002 | | | | | |
| | | | G. F. Match 1003 | | | | | |
| | | | General Funds 1004 47.4 | | | | | |
| | | | I-A Receipts 1005 | | | | | |
| | | | Program Receipts 1028 | | | | | |
| | | | CIP Receipts 1061 | | | | | |
| | | | Other | | | | | |
| For B&M Use Only | | | | | | | | |
| Key Number | | | | | | | | |

APPENDIX 6, Page 5 of 5

**Request For
New Position**

Agency Health & Social Services
 BRU DHSS Admin. Services
 Component Commissioner's Office

Page _____ of _____
 Revised Date _____

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SSHB 458
 Title: Adoption of regulations

Sponsor: Ronald Heri, Cato, Marrow, Shultz
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
 BRU: Oil & Gas

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | 0 | 21.4 | 21.4 | 21.4 | 21.4 | 21.4 |
| TRAVEL | 0 | 36.0 | 36.0 | 36.0 | 36.0 | 36.0 |
| CONTRACTUAL SUPPLIES | 0 | 15.9 | 15.9 | 15.9 | 15.9 | 15.9 |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | | | | | |

| | | | | | | |
|----------------|---|------|------|------|------|------|
| CAPITAL | 0 | 73.3 | 73.3 | 73.3 | 73.3 | 73.3 |
|----------------|---|------|------|------|------|------|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|---|------|------|------|------|------|
| GENERAL FUND | 0 | 73.3 | 73.3 | 73.3 | 73.3 | 73.3 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | | | | | | |
| PART-TIME | 0 | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary DD&G anticipates promulgating/revising 3 packages of regulations per year. The above cost are VERY TENTATIVE. Actual costs would vary with the actual number of regulations packages, number of hearings requested and the location of the hearings.

These estimates do not include any inflation allowances.

Prepared by: Kristina O'Connor
 Division: Oil and Gas

Phone: 762-4243
 Date: March 20, 1986

Approved by Commissioner: Ned Farghan
 Agency: Natural Resources

Date: 3/20/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 9
 Page 1 of 4

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Ned Farquhar
Special Asst., Commissioner's Office

DATE: March 20, 1986

FILE NO:

THRU: Kay Brown, Director

TELEPHONE NO: 561-2020

FROM: Kristina M. O'Connor
Natural Resource Manager II

SUBJECT: Fiscal Note and
Comments on SSHB 458

Division staff have reviewed this legislation and generated the following comments:

1. New AS 44.62.190 (d) proposes a one-year rule-of-thumb for staleness. This is unnecessary and redundant since AS 44.62.050 requires that when drafting regulations, the rules in the Drafting Manual for Administrative Regulations (Drafting Manual) be followed. The one-year rule of thumb for staleness is required by the Drafting Manual and has been for a number of years.
2. New AS 44.62.195 (b) proposes that a financial estimate of the total annual cost or savings that will be incurred by all individuals and entities directly affected by complying with the regulation be prepared. It would be virtually impossible to accomplish this. How can agencies know ALL of the affected parties and figure their costs/savings and also figure out how many parties/how much to figure for costs/savings for future years?
3. Amended AS 44.62.200 (a) (3) and new AS 44.62.205 will require a justification of need for the proposed regulations. AS 38.05.020 and AS 44.62 specifically allow the Commissioner to adopt necessary regulations. AS 44.62 sets forth the procedures that must be followed in order to adopt regulations. AS 44.62.220. Right to petition, specifically allows an individual or designated group to petition for amendment, adoption or repeal of a regulation if it is felt that there is sufficient need. The public does have two methods to facilitate change, one during the regulatory comment period and the other, to petition. The proposed amendment and new section are unnecessary, will cause delays and extra costs to agencies and possibly the public as well. This amended section and new subsection should not be adopted.
4. AS 44.62.210 (c) and (d) are proposed as new subsections. Will AS 44.62.210 (c) allow the use of teleconferencing for the public hearing? If so, the language should be added to the text. In case the community involved does not have teleconferencing capabilities, the agency would be required to send staff and a court reporter (since tapu recordings at meetings are often inaudible, and notes could be later contested by stating that only select information was taken down) for the hearing. Once again this will be a great expense to agencies. Written or taped comments should provide adequate means for concerns to be expressed for such groups if teleconferencing is not possible.

AS 44.62.210 (d) seems to be unclear. Is it meaning to say that the agency may not accept comments from the public after the closing date, even if they were delayed because of the postal system? Is it saying that if more information is revealed supporting the justification for need that the agency must go back to notice and begin the process all over again? Or finally, is it saying that if the agency decides to accept public comment proposals or reject them, that in their decision making process the public must be allowed to review those decisions and another comment period will be required?

5. AS 44.62.230 proposes that if a petition requesting an adoption, amendment or repeal of a regulation is denied, the reasons for denial will be included in the agency's response. This sounds like a fair and reasonable requirement.
6. AS 44.62.275 proposes to require agencies to maintain a file of the proceedings concerning the adoption, amendment or repeal of a regulation. This is already being done. Is this going to mean that each proposed regulation will have to have its own file, or if it's part of a package of changes, will it be ok to have them all together in one file?

The contents of how the files are to be maintained would more appropriately be addressed in the Drafting Manual.

If the content material and how the files are to be maintained will be in the statute, then the following changes are necessary.

AS 44.62.275 (a) (1) should add the word "any" before "petitions..."
AS 44.62.275 (a) (3) and (4) should be deleted. See earlier comments for AS 44.62.205.

AS 44.62.275 (a) (5), (6), (7) and (8) are ok.

AS 44.62.275 (b) is unnecessary because documents are date stamped in and filed in order of date received and filed in categories. To maintain a log is just extra work that doesn't seem to accomplish anything. An affidavit seems unnecessary as well since the AG's are the ones that determine that the legal process has been followed.

AS 44.62.275 (c) regulatory files are open to public inspection under the Freedom of Information Act.

6. AS 44.62.300.(3) the addition of the proposed new subsection is unnecessary and will only tie up the agency's ability to implement and meet statutory requirements and needs (see the comments under AS 44.62.205).

Language should be added to the section placing a 60-day time limit for filing a judicial declaration after adoption, amendment or repeal. This is done by the feds. and many states.

March 20, 1988
Neu Farquhar
Page 3

FISCAL NOTE BACKGROUND INFORMATION:

Our estimate is very rough. The actual costs will vary with the real number of regulation packages generated, the number of additional notices deemed necessary, and the number and location of hearings requested by the public. We really have no firm grasp on what these numbers will be. However, we estimate that, on the average, the division produces about three packages of regulations each year. The proposed legislation (SSHB 458) could require an additional permanent part-time Natural Resource Officer II (Range 16, Step A) at a cost of about \$21,400 per year. We would anticipate having to issue three additional notices per year at a cost of \$3500 each, for a total of \$10,500. We would anticipate conducting three additional bush hearings for each package for a total of nine hearings. Travel and per diem for each hearing is estimated to cost about \$4000 per bush hearing. A court reporter's time and transcript generation is estimated to cost about \$550 per hearing for a total of \$4950, and translator services will cost about \$50 per hearing for a total of \$450 per year. We have not included the possible cost of an assistant attorney general's time to assist the division in complying with the new regulation procedures. We were unable to estimate the amount of time an AAG would be needed. The grand total is \$73,300 per year. Please keep in mind that this estimate is very rough, and is based on assumptions that can vary a great deal.

KO/08610

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB-458
 Title : ... adoption of regulations.

 Sponsor : Pignalberi, et al
 Requestor : Sponsor
 Date of Request : March 20, 1986

FISCAL DETAIL

Agency Affected : Department of Education
 BRU : Executive Administration

 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | | | | | |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING : (Thousands of Dollars)

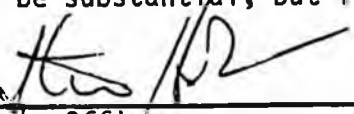
| | | | | | | |
|---------------|--|--|--|--|--|--|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

This is not a zero fiscal note. Costs associated with the bill, particularly sections 2 and 4, will be substantial, but indeterminate.

Prepared by : Steve Hole 
 Division : Commissioner's Office

Phone : 465-2800
 Date : March 20, 1986

Approved by Commissioner : Marshall L. Lind
 Agency : Department of Education

Date : March 20, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 3
 Page 1 of 1

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations; and providing for an effective date."
 Sponsor : Rep. Pignalberi
 Requestor : House State Affairs
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : DPS Administration

 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|------|------|------|------|------|
| GENERAL FUND | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | 62.0 | 65.1 | 68.4 | 71.8 | 75.4 |

POSITIONS :

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

This Department's Division of Motor Vehicles and Fire Prevention are entities that most adopt, add, modify and/or repeal regulations. The Alaska Police Standards Council and the Council on Domestic Violence and Sexual Assault also have regulations that could be affected by the bill.

Prepared by : Frank Gortam, Inspector

Phone : 465-4322

Division : Commissioner's Office

Date : 3/18/86

Approved by Commissioner : [Signature]

Date : 3/18/86

Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX : 10
 Page 1 of 2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

The Department's approach in addressing the requirements of Section 2 and Section 4 of the bill will be to contract for the expertise to do an indepth analysis of the costs or the savings that will be incurred by individuals and entities directly affected by a proposed regulation action and prepare summaries and needs justification. It is deemed that a great deal of analytical input would be needed for regulation actions which would require research, data massaging and analytical documentation. An estimate of such need would cover the need for contractual support for three months out of a year.

Since the costs would be spread out amongst the various entities of the Department, the contractual costs would be placed in the Commissioner's office and dispersed as necessary.

A 5% inflation factor is added beginning FY 88.

| | | |
|---------------------------------------|--------|--------|
| <u>300 Contractual</u> | | \$62.0 |
| Regulation Analytical Diagnosis | | |
| 90 days @ \$100/day for 6 hrs.per day | \$54.0 | |
| Incidental computer use | 5.0 | |
| Incidental travel related to above | 3.0 | |

A M E N D M E N T

Offered in the HOUSE

BY _____

TO: SSHB 458

Page 1, lines 16 -- 23:

Delete all material and substitute the following for it:

* Sec. 2. AS 44.62.195 is amended by adding new subsections to read:

(b) Except as provided in (c) of this section, if (1) the information is known or reasonably ascertainable, and (2) within 20 days after notice of a proposed regulation adoption is published, a written request is filed in the lieutenant governor's office by the governor, the Administrative Regulation Review Committee, the governing body of a political subdivision of the state, another state agency, or 300 persons signing the request, an agency planning to adopt a regulation shall prepare a financial estimate.

(c) The financial estimate required by (b) of this section must set out an estimate of (1) the cost or savings that will likely be incurred during a year by an individual or entity directly affected by the proposed regulation, in complying with that regulation, and (2) the aggregate cost or savings that will likely be incurred during a year by individuals or entities directly affected by the proposed regulation, in complying with that regulation. An estimate is not required for a proposed regulation for which no identifiable cost or savings will likely be incurred by those directly affected by the regulation.

(d) If the agency has made a good faith effort to comply with the requirements of (b) and (c) of this section, the regulation may not be invalidated on the ground that the contents of the estimate are insufficient or inaccurate.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations..."
 Sponsor : Pignalberi et, al
 Requestor : State Affairs
 Date of Request : 2/11/86

FISCAL DETAIL

Agency Affected : Labor
 BRU : Commissioner's Office
 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 83 | FY 89 | FY 90 | FY 91 |
|------------------------|----------|--------------|--------------|--------------|--------------|--------------|
| PERSONAL SERVICES | | 72.5 | 72.5 | 72.5 | 72.5 | 72.5 |
| TRAVEL | | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | | 48.5 | 50.4 | 52.4 | 54.5 | 56.7 |
| SUPPLIES | | 1.5 | 1.6 | 1.7 | 1.8 | 1.9 |
| EQUIPMENT | | 3.2 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 0 | 125.7 | 124.5 | 126.6 | 128.8 | 131.1 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|----------|--------------|--------------|--------------|--------------|--------------|
| GENERAL FUND | | 125.7 | 124.5 | 126.6 | 128.8 | 131.1 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 0 | 125.7 | 124.5 | 126.6 | 128.8 | 131.1 |

POSITIONS :

| | | | | | | |
|-----------|--|---|---|---|---|---|
| FULL-TIME | | 2 | 2 | 2 | 2 | 2 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Prepared by: ^{no} Eileen Plate Phone : 465-2700
 Division : Commissioner's Office Date : 3/7/86

Approved by Commissioner: ^{MS} Jim Robison Date : 3/7/86
 Agency : Labor

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 7
Page 1 of 6

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

In order for the department to comply with the provisions of this bill, the addition of two staff members would be necessary. A Regulations Specialist II and a Clerk Typist III, both located in Juneau, would be necessary for the additional research, analyses and documentation required by the bill. (See attached New Position Justification Forms for detail).

In addition to the new position costs, we would have to contract with economic research firms to determine the financial impact which would occur to those parties affected by the proposed regulations. Expertise does not currently exist in the department to complete this type of analysis. We estimate \$40,000 in research contracts would be required each year. (Ten contracts at an average of \$4,000 per contract).

Also required is additional published information when notices of regulations are placed in newspapers. We estimate an additional \$4,500 in advertising expenses each year to meet these requirements. (Ten regulations at an average of \$450 additional advertising cost.)

Assumptions:

1. The department would have ten regulations a year that would fall under the requirements of this bill.
2. Effective date of July 1, 1986.
3. Annual inflation of 4% on non-personal service items.

| | | | | | | | | |
|---|---------------------------|---------------|--|-------------------------|--------------------------|------|--------|---------|
| Position Title Clerk Typist III | | | No. of Positions 1 | Range/Step 8A | Barg. Unit GGU | Gov. | Apprv. | Disapp. |
| Time Status PFT | Staff Months 12 | RP Number | Location Juneau | | Election District | | Leg. | |
| Type of Expenditure | | | Justification | | | | | |
| | | Amount | <p>This position would handle the clerical duties associated with this bill. The position would keep records of all proposed actions on all regulations in the department and assure the additional documentation requirements of this bill are met. This person would make sure all correspondence was properly handled and type the justifications, file logs and other required documents.</p> <p>Costs associated with this position are average per employee costs. The equipment expense for a desk, chair, cabinets, etc. would be a one-time cost.</p> | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 20,316 | | | | | | | |
| Benefits | 7,702 | | | | | | | |
| Premium Pay | | | | | | | | |
| Other | | | | | | | | |
| Total Personal Services | | 28,018 | | | | | | |
| Travel | | 0 | | | | | | |
| Contractual | | 2,000 | | | | | | |
| Commodities | | 1,000 | | | | | | |
| Equipment | | 1,600 | | | | | | |
| Other | | | | | | | | |
| Total Cost | | 32,618 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts | 1002 | | | | | | |
| | G. F. Match | 1003 | | | | | | |
| | General Funds | 1004 | 32,618 | | | | | |
| | I-A Receipts | 1005 | | | | | | |
| | Program Receipts | 1028 | | | | | | |
| | CIP Receipts | 1061 | | | | | | |
| | Other | | | | | | | |
| For B&M Use Only | | | | | | | | |
| Key Number | | | | | | | | |

APPENDIX 7, Page 4 of 6

**Request For
New Position**

Agency Labor
 BRU Commissioner's Office
 Component Commissioner's Office

Page of
 Revised Date

FY 87

Bill No. Sponsor Substitute for House Bill No. 458 RECEIVED Date March 10, 1986
Title "An Act relating to the adoption of Department of Labor Robert W. Landau
regulations." Eileen Plate
465-2700

MAR 10 1986

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Sponsor Substitute for House Bill 458 proposes to require preparation and public notice of cost estimates and justifications with respect to the adoption of regulations. Section 1, 6 and 7 of the bill do not present any significant problems for the Department. However, other sections do contain a number of provisions which are of considerable concern to the Department of Labor, as follows:

1. Section 2 requires that a financial estimate be prepared of the costs of compliance by the persons, industries, and businesses affected by the proposed regulation. The Department presently does not have the expertise to develop sound cost proposals in this regard.

Further, it would seem that such costs could vary to an extent that meaningful information would be difficult to extract. For example, changes in reporting requirements for Workers' Compensation insurers may have relatively little financial impact on a large insurer who has sophisticated data-gathering and reporting systems, but would likely have a more significant impact on a small insurer operating without an automated data-gathering and reporting system.

It would also seem that a great deal of subjective data would have to be used to make such cost estimates. For example, if a change in the permissible level for exposure to asbestos was proposed by the Department, the total cost estimate would largely depend on the amount of asbestos abatement and maintenance work that would be undertaken during the period for which the estimate was to cover. To accurately project the number of abatement projects, and particularly the number of maintenance projects, would be nearly impossible. Accordingly, the validity of any cost estimates would be circumspect at best.

Historically, the Department of Labor has viewed the public hearing process, which is used when a regulation is promulgated, as an information/data-gathering forum; and we have looked to the public, industry, and business to use this forum to relate to the Department their concerns with respect to a specific proposal--whether the concern is from a financial, procedural, or other aspect. Indeed, the persons actually affected by a regulation are the best sources of information in this regard.

The cost estimate requirements proposed in this bill would also result in substantial delays in implementing desirable or necessary changes to programs.

- 2) Sections 3 and 4 require that justifications of need be prepared and that a notice of proposed adoption, amendment, or repeal of a regulation must include, in addition to the information currently set out, a summary of the justifications of need. Because the court's determination of the

validity of a regulation could rest on the justification, careful and complete compliance with the justification of need requirement would be required. This could involve considerable research as well as statistical testing of the methodology used in reaching conclusions.

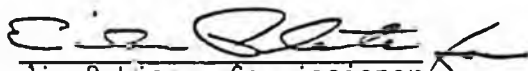
In addition, newspaper advertising costs would likely increase significantly due to the increased information that must be included in the notice. Accordingly, a careful review of this provision may be in order to assure that the increased expenditures for advertising do serve a public purpose commensurate to the cost.

Additional staff time would also be required to prepare the justifications.

- 3) Section 5 requires that a public hearing must be held if ten or more persons request a public hearing on a proposed regulation. Certainly, the Department of Labor would have no problem with bona fide requests. However, such a provision could be effectively relied upon by special interest groups that wish only to hamper or delay the promulgation process.
- 4) Section 8 provides that a regulation may be declared invalid by the court if the Department's justification of need fails to establish by a preponderance of the evidence the need for the regulation. Although the Department of Labor would rely on the Department of Law to address any legal implications of this provision, it does convey to the Department that a thorough and documented justification is contemplated.

Although the Department of Labor certainly takes the promulgation of regulations very seriously, and feels that the overall intent of this bill is commendable, on the basis of the above-described problems, as well as the costs associated with implementation, the Department is compelled to strongly oppose it.

APPROVED:


Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2-27-86

REQUEST

Bill/Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations; and providing for an effective date."
 Sponsor : Repr. Pignalberi
 Requestor : Repr. Pignalberi
 Date of Request : February 25, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 PRU : Legal Services
 Components : Legal Services Operation

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-----|-----|-----|-----|-----|
| GENERAL FUND | | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS :

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2-27-86
 Approved by Commissioner: Harold M. Brown, Attorney General Date: 2-27-86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 8
Page 1 of 2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

Although the sponsor substitute adds new sections that will have substantial fiscal impact on other departments, we still cannot say that it will have a fiscal impact on the Department of Law, because the department adopts few regulations of its own. The department does, however, review all regulations prior to their adoption, and it sometimes assists other departments in drafting their regulations. To the extent that we are requested to advise other agencies about the sufficiency of their efforts to conform to the provisions in this bill, we can expect innumerable requests for advice. These requests will probably result in our regulations and legislative drafting staff becoming more swamped than they already are.

Because we cannot accurately predict the additional workload that will occur if this bill becomes law, we are not requesting fiscal note funds at this time. Such a request may become necessary in the future, and the potential for this additional cost should be noted while the bill is being considered.

APPENDIX 8
Page 2 of 2

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/25/86

REQUEST

Bill/Resolution No.: SSHB 458
Title: An act relating to the adoption of regulations; and providing for an effective date.

FISCAL DETAIL

Agency Affected: Department of Administration
BRU: Administrative Services

Sponsor: Pignaiberi, Cato, Marrou & Shultz Components: _____
Requestor: _____
Date of Request: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|----------|-------------|-------------|-------------|-------------|-------------|
| OPERATING | | | | | | |
| PERSONAL SERVICES | 0 | 7.4 | 7.6 | 7.8 | 8.0 | 8.2 |
| TRAVEL | 0 | 0 | 0 | 0 | 0 | 0 |
| CONTRACTUAL | 0 | 3.1 | 3.2 | 3.3 | 3.4 | 3.5 |
| SUPPLIES | 0 | 0 | 0 | 0 | 0 | 0 |
| EQUIPMENT | 0 | 0 | 0 | 0 | 0 | 0 |
| LAND & STRUCTURES | 0 | 0 | 0 | 0 | 0 | 0 |
| GRANTS, CLAIMS | 0 | 0 | 0 | 0 | 0 | 0 |
| MISCELLANEOUS | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL OPERATING | 0 | 10.5 | 10.8 | 11.1 | 11.4 | 11.7 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|----------|-------------|-------------|-------------|-------------|-------------|
| GENERAL FUND | 0 | 10.5 | 10.8 | 11.1 | 11.4 | 11.7 |
| FEDERAL FUNDS | 0 | 0 | 0 | 0 | 0 | 0 |
| OTHER | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTAL | 0 | 10.5 | 10.8 | 11.1 | 11.4 | 11.7 |

POSITIONS:

| | | | | | | |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 1 | 1 | 1 | 1 | 1 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: Gary M. Bader *Gary M. Bader*
Division: Administrative Services

Phone: 465-2277
Date: February 25, 1986

Approved by Commissioner: Eleanor Andrews *Eleanor Andrews*
Agency: Department of Administration

Date: _____

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS
For Sponsor Substitute for House Bill 458

ANALYSIS:

A. Assumptions

1. Enactment of Sponsor Substitute for House Bill No. 458 would amend AS 44.62 as it pertains to regulations. In addition to current regulatory procedures, this bill would require the completion of new tasks. The estimates which follow are based on the existence of fourteen chapters of regulations of the Department of Administration in the Alaska Administrative Code and the assumptions of at least two changes per year per chapter and five public hearings.

2. Listing of Activities

| <u>Section</u> | <u>Task Description</u> | <u>Regular Change</u> | <u>Required Hearing</u> |
|----------------|---|-----------------------|-------------------------|
| 44.62.190(d) | Age proposed action | .25 hrs | |
| 44.62.190 | If greater than 1 year, republish in accordance with 44.62.190(a) | 1.0 hrs | |
| 44.62.195(b) | Prepare financial estimate of those affected | 3.0 hrs | |
| 44.62.200(a) | Prepare summary of initial justification of need | 2.0 hrs | |
| 44.62.205 | Prepare final justification of need | 3.0 hrs | |
| 44.62.210(c) | Public Hearing | | 4.0 hrs |
| 44.62.230 | Written reason of denial | .5 hrs | |
| 44.62.275(a) | Maintain file of proposed actions | 5.0 hrs | |
| 44.62.275(b) | Log of filed items | 1.0 hrs | |
| 44.62.300 | Court review as specified by AS 44.62.205 | | 2.0 hrs |
| | | <u>15.75 hrs</u> | <u>6.0 hrs</u> |

3. Inflation is estimated at three percent per year.

B. Staff Requirements

1. Each regulation change is estimated to require 15.75 hours per year. If each chapter of the Department of Administration changes two regulations

which do not require a public hearing, $2 \times 14 \times 15.75 = 441.0$ hours per year of additional processing are required by House Bill 458. Pending legislation provides the basis for the assumption that at least five public hearings can be expected regarding regulation changes by the Alaska Public Offices Commission and the Division of General Services & Supply. A proposed regulation requiring a public hearing requires an additional six hours of additional tasks, as required by this Bill. Five of these twenty-eight regulation changes will thus require $5 \times 6 = 30$ hours.

2. $441.0 + 30 = 471.0$ emp. hours \div 47 weeks = 10.0 emp hrs/wk.

COMPUTATION APPENDAGE of FISCAL NOTE ANALYSIS
FOR SSHB 458

1. Additional Staff Requirements Analysis

a. General Government Unit (GGU)

| | | |
|------------------------------|---|------------------------|
| Hours per Year | = | 1,950 hours per year |
| Annual Leave | = | (75) |
| Five Days Sick Leave | = | (37.5) |
| Holidays (ten days) | = | <u>(75)</u> |
| Employee Annual Hours Worked | = | 1,762.5 hours per year |

1,762.5 hours per year ÷ 37.5 hours per week = 47 weeks per year

b. Staff--one part-time Administrative Assistant I, Range 12

\$17.75 per hour X 10 hours per week X 52 weeks = \$6,630.00
Benefits for less than 15 hours per week: 11.16% = \$ 739.91

TOTAL: \$7,369.91

2. Other Costs Analysis

Contractual Total: \$3,094

Copier per Duplicating--\$294

Assume 28 regulations to be published at two pages each to meet criteria as established by AS 44.62.200, mailed to 25 interested/affected parties in addition to the Legislature as required by law (AS 44.62.190)

28 regulations X 2 pages X 150 parties X \$.035 = \$294

Advertising--\$2,800

Current charges for the publishing of advertisements in Fairbanks, Anchorage, and Juneau average \$75 per day for a 2" X 2" advertisement. The size of the advertisement currently required to contain the necessary information averages 2" X 6" and costs an average of \$225. The required size would increase due to the required additional information (AS 44.62.190 and AS 44.62.200) and an average regulation advertisement would increase to 2" X 10" at an average cost of \$325.

28 regulations X (\$325 increased size - \$225 current size) = \$2,800

| | | | | | | | | |
|---|----------------------------|-----------|------------------------------|--------------------------|-------------------------------|------|---------|--------|
| Position Title Administrative Assistant I | | | No. of Positions 1 | Range/Step 12A | Barg Unit G | Gov. | Approv. | Disapp |
| Time Status Part-time | Staff Months 3.2 | RP Number | Location Juneau | | Election District 4 | Leg. | | |
| Justification | | | | | | | | |
| Duties would include, but not be limited to: | | | | | | | | |
| <ul style="list-style-type: none"> a) maintenance of file of proposed action; b) log of filed items; c) preparation of financial estimate; d) preparation of initial justification of need; e) preparation of final justification of need; f) preparation of reason of denials; and g) publishing in accordance with AS 44.62.190. | | | | | | | | |
| Type of Expenditure | | | Amount | | | | | |
| 1 | 2 | 3 | | | | | | |
| Salary | 6,630 | | | | | | | |
| Benefits | 739 | | | | | | | |
| Premium Pay | 0 | | | | | | | |
| Other | 0 | | | | | | | |
| Total Personal Services | | 7,369 | | | | | | |
| Travel | | 0 | | | | | | |
| Contractual | | 3,094 | | | | | | |
| Commodities | | 0 | | | | | | |
| Equipment | | 0 | | | | | | |
| Other | | 0 | | | | | | |
| Total Cost | | 10,463 | | | | | | |
| Receipt Code | Funding Source | | | | | | | |
| | Federal Receipts | 1002 | | | | | | |
| | G. F. Match | 1003 | | | | | | |
| | General Funds | 1004 | 10,463 | | | | | |
| | I-A Receipts | 1005 | | | | | | |
| | Program Receipts | 1028 | | | | | | |
| | CIP Receipts | 1061 | | | | | | |
| | Other | | | | | | | |
| For B&M Use Only Key Number _____ | | | | | | | | |

14/1D1/0225-01/1

**Request For
New Position**

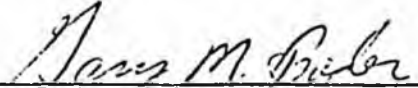
Agency Department of Administration
 BRU Administrative Services
 Component _____

Page _____ of _____
 Revised Date _____

FY 87

Position Paper
SSHB 458

This bill makes myriad changes to the establishment, abolition, or modification of regulations under the Administrative Procedures Act. The department cannot support the bill in its present form because it provides too many stumbling blocks for the efficient operation of State government. One primary objection to the bill is the matter of AS 44.62.195(b), which requires that each agency prepare a financial impact statement on all individuals and entities who will be affected by the regulations. Although the above citation allows the maker of regulations to show a typical example of the financial impact on a single individual or entity, it requires that an estimate be made with regard to the total impact on all individuals and entities. These estimates would be unreliable. It should be kept in mind that there is already a requirement that a fiscal note be prepared regarding the impact on State. One of the purposes of public input on regulations is to ascertain the financial impact on those affected. This bill requires that such an assessment be made prior to public notice on public input. Administrative regulations are similar in nature to statutes in the manner that they are passed. Both statutes and regulations require a period of public testimony at which individuals or entities have an opportunity to advise the body in question concerning the financial impact as well as other considerations that the proposed statutes/regulations will have on the individual or entity represented. I am unaware of any mandatory statement of financial impact on the public prior to passage of legislation. The Executive Branch does not require such statements prior to the amendment or abolition of regulations for the same reason. The department has no aversion to publishing or otherwise making available to the public a justification of need for the regulations as long as that justification does not require a financial impact statement.



Gary Bader, Director
Division of Administrative Services
Department of Administration

2/25/86

Date



Commissioner Eleanor Andrews
Department of Administration

2/25/86

Date

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
207-465-0800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1986

SUBJECT: Sectional analysis of SSHB 458
TO: Representative Marco Pignaiberi
FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of SSHB 458. The sponsor substitute as drafted contains a number of changes from the information provided in your work request. Please let me know if the draft needs to be rewritten.

Section 1 amends AS 44.62.190, which requires publication of notices of proposed actions in a variety of forms, to prohibit an agency from adopting a regulation if more than one year has elapsed since the first publication of the notice.

Section 2 adds a new subsection to AS 44.62.195, which requires that agencies prepare fiscal notes on regulations, to also require financial estimates of the impact of the regulation on individuals and entities.

Section 3 amends AS 44.62.200, which requires certain information to be included in the notices of proposed action, to also require summaries of the initial statement of reasons (provided for in section 4 of the draft) and financial estimates.

Section 4 requires an agency prepare an initial justification of need when it files a notice of proposed action for a regulation and a final justification of need when it submits a regulation to the lieutenant governor for filing. Subsection (c) limits the requirement for justifications by exempting regulations on laws for which the agency has not previously adopted a regulation.

Section 5 adds new subsections to AS 44.62.210, which provides for public hearings on regulation adoption. Subsection (c) requires an agency to hold a public hearing if

one is requested at least 10 days before the end of the initial comment period by at least 10 persons. Subsection (d) prohibits an agency from adding documents to the record of a proceeding after the end of the public comment period unless an opportunity for further comment is provided.

Section 6 requires an agency to explain its reasons for denying a petition for a regulation.

Section 7 requires agencies to maintain complete files on regulation-making proceedings and to also maintain a log of the items that are part of the file. Subsection (c) provides that the file is a public record. As such, its contents would be admissible in proceedings to the extent permitted by rules of evidence applicable to the proceeding.

Section 8 permits a court to invalidate a regulation if the agency has not prepared a justification of need when required or if the justification fails to present sufficient facts. It does not distinguish between initial and final justifications of need.

Section 9 defines "document."

Section 10 addresses when the sections of the bill apply to regulations that have not been submitted to the lieutenant governor for filing. The sections that apply to pending proceedings are

AS 44.62.190, requiring republication of a notice of proposed action after one year

AS 44.62.205(b) and (c), requiring an agency to prepare a final statement of reasons when a regulation is submitted for filing

AS 44.62.210(c) and (d), requiring public hearings on request and limiting addition of documents to the record

AS 44.62.640(a), defining "document"

Sec. 11 precludes application of sections of the bill to regulations for which a notice of proposed action has been published before July 1, 1986. Those sections are

Representative Pignalberi
Page 3
January 31, 1986

AS 44.62.195(b), requiring the agency to prepare a financial estimate

AS 44.62.200(a) requiring publication of the financial estimate and the initial statement of reasons

AS 44.62.205(a) requiring an agency to prepare an initial statement of reasons

AS 44.62.275, requiring an agency to maintain a file of the regulation proceedings

AS 44.62.300, concerning court review

Section 12 makes the Act effective July 1, 1986.

If I may be of further assistance, please advise.

TC:mkr
M2:118



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

February 10, 1986

Representative Katie Hurley, Chairwoman
House State Affairs Committee
Capitol, Rm 102
P.O. Box V
Juneau, AK 99811

RE: HB458 (SSHB458)

Dear Katie:

I am requesting that you calendar the above-referenced bill for hearing before your committee.

Attached is a copy of SSHB458, an act relating to adoption of regulations, along with a copy of the sectional analysis of this bill. The sponsor substitute is a more comprehensive bill than the original. It relates to the procedures required for adoption of regulations. Initially, my original bill (also attached for your reference) required that justification of need be given in the adoption process so that people would have a better understanding of why the proposed regulation was needed.

After receiving input from others, we have developed a revised bill which not only requires justification of need, but also includes the following:

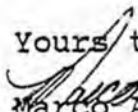
1. Puts time limits on adoption of regulations,
2. Requires a financial estimate of cost or savings that will be incurred by those directly affected,
3. Requires a hearing if at least 10 persons make a request for one,
4. Requires that records be kept of all written or electronic testimony that is received.

I feel this is a good bill since, all too often, regulations are passed without the people understanding why or without the people being assured that their testimony has even been seen or considered.

I would appreciate your consideration in hearing this.

Thank you.

Yours truly,


Marco A. Pignalberi
Representative
MAP:mep
enc.

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BILL No. SSHB 458

DATE March 21, 1986

TITLE: Adoption of Administrative Regulations

For reasons set out below, the Department of Environmental Conservation

(1) supports, and already adheres to, the concept set out in Section 1 of this bill (requiring final action within one year of publication of notice);

(2) opposes Sections 2, 3, 4, and 5 (requiring a financial estimate and a justification of need, adding nondiscretionary hearing requirements, and limiting changes after public comment);

(3) supports the amendment in Section 6 (requiring statement of the reason for denying a request for regulatory change);

(4) supports, with qualification, and already adheres to, the concept set out in Section 7 (requiring the maintenance of regulations files);

(5) opposes Section 8;

(6) seeks clarification of the definition of "document" set out in Section 9; and

(7) has no comment on the remaining sections of the bill.

COMMENTS

Section 1

This agency already adheres to the so-called "one-year rule" described in the Drafting Manual for Administrative Regulations (Department of Law, 9th ed., 1985), page 6, last paragraph, and page 30, last paragraph. We have no objection to that standard being made a part of the law. We would, however, favor the inclusion of a measure that would exempt from the re-notice requirement an agency which has made every good-faith effort to comply, but which has been hampered by deliberate "nuisance" attempts by special-interest groups or disgruntled individuals to delay or foil a project by requesting a hearing under Section 5, or pursuing litigation for failure to properly comply with Sections 2, 3, or 4.

Section 2

To produce any meaningful estimates of cost or savings that "will be incurred by individuals and entities directly affected" by a proposed action, we would require the contractual services of an economist. Even such expert, albeit costly, information is of questionable value since that information is best received from those actually affected, and provision of such information has historically been considered a vital part of the public comment process.

It should be remembered that environmental matters are increasingly subject to a much greater public scrutiny as awareness grows of the seriousness of environmental degradation. Regulatory actions which are vehemently opposed by some are aggressively supported by others. The other side of the regulatory/economic impact issue was expressed by a private citizen during a 1984 public comment period as follows: "The cost of doing business in Alaska should always include the cost of maintaining the quality of our environment. It's shameful to consider otherwise."

Section 3

For many of our programs, we are bound by, and in all of our efforts we subscribe to, the philosophy set out in federal public participation regulations:

[Public information, public notification, and public consultation] requirements are intended to foster public awareness and open processes of government decisionmaking. . . .

Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this process, responsible officials should make special efforts to encourage and assist participation by citizens representing

themselves and by others whose resources and access to decision-making may be relatively limited. (40 C.F.R., Part 25 -- Public Participation in Programs Under The Resource Conservation and Recovery Act, The Safe Drinking Water Act, and The Clean Water Act)

We take very seriously our responsibility to provide meaningful informative summaries of proposed agency action (see example at Attachment A). As mentioned, many of our public notices are subject to federal scrutiny, and federal funding hinges on strict adherence to federal regulations (see example at Attachment B). We do not believe that the addition of a justification of need summary or a financial estimate would provide a public benefit commensurate with the expenditure of public funds necessary to create that addition. The "reasonably necessary" requirement now contained in AS 44.62.030--and subject to judicial review under AS 44.62.300--should suffice.

Section 4

In many instances, our "justification of need" is a mandate of federal law. For example, when the U.S. Environmental Protection Agency amended its Water Quality Standards in 1983, the practical effect of that revision was to nullify Alaska's process for the reclassification of state waters. That nullification amounts to a mandate that we develop amendments to Alaska's Water Quality Standards that will be consistent with federal law and will meet EPA approval. Similarly, Alaska must amend its Air Quality regulations to make them consistent with federal regulations as is more thoroughly explained in Attachment B.

For other matters, such as requiring pull dates on milk, requiring certain standards in safe food preparation and storage, or increasing sanitation requirements for public accommodations, we would be required to hire a Research Analyst if the information required by this section is to have any real significance, and if it is to withstand a court challenge.

The description of "practical and reasonable alternatives" to a proposed action, if that description is to be accurate, could involve substantial research into very technical areas, not to mention some highly esoteric "expert" guesswork as well. Again, during the public comment period, those affected by regulatory changes often come forward with suggestions that are thereafter incorporated into the adopted version of the regulations (although such incorporation would be more difficult under subsection (d) of Section 5).

Likewise, the requirement under (a)(3) that we "identify each document upon which the agency is relying in proposing the action" would be impossible to meet in any but a general way. (See, for example, the list of documents in Attachment C which represents only one subsection of one regulation.) Background documents such as the Code of Federal Regulations, the Clean Water Act, countless technical documents, and volumes of scientific textbooks would be a mere beginning of the required list.

The requirements of (b)(2) and (b)(3) are already being substantially met by this department as a result of federal public participation requirements mentioned earlier (see the example at Attachment D).

Section 5

We generally hold a formal public hearing when the need for such a hearing is indicated by using the guidelines set out on pages 5 and 6 of the Drafting Manual for Administrative Regulations. If subsection (c) were amended to include a showing of good cause, or some other grant of discretion to the agency, we would be less concerned that this mechanism might be abused by someone who was bent on delaying or preventing the promulgation of certain regulations. Certainly controversial matters should be given a public forum. And as one commenter recently told us: "Your department is involved in things that terrify people. You have an obligation to explain why you are doing what you are doing." We agree.

We believe that subsection (d) would cripple our effectiveness to carry out the mandate of AS 46.03.010 to "conserve, improve and protect [Alaska's] natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being." (Emphasis supplied)

If regulations ultimately adopted are within the scope of the public notice, as is now required by AS 44.62.200, that should be adequate. It is not too difficult to imagine a series of public comment periods when valuable information is obtained from first one, then a subsequent comment period, requiring yet another opportunity for public comment if we wish to incorporate the information garnered.

Section 6

We do not object to the addition of a requirement to include the reasons for any denial of a petition to adopt, amend, or repeal a regulation of the department.

Section 7

With the exception of subsection (a)(6), we support the concept behind this amendment. As pointed out in our discussion of Section 4 above, we rely on a myriad of technical documents and texts. A requirement that those "documents" be kept in a file with each separate action is impractical and costly. A narrower definition of "documents" is needed. We presently retain for our own informal reference all public notices, written comments, responsiveness summaries, cassette recordings of oral hearings, and other such information. After ten years, those records are transferred as permanent files to Archives.

The more formal file maintenance envisioned by this section would require the hiring of a clerk to assure the integrity of the files.

Section 8

We strongly oppose this section in that it would encourage litigation. Furthermore, failure to meet the existing provision in AS 44.62.030 that a regulation be "reasonably necessary" ought to offer sufficient grounds for court review under the existing AS 44.62.300.

Section 9

As mentioned before, such a broad definition of "documents" would impose impossible record-keeping burdens.



Bill Ross - Commissioner

Department of Environmental Conservation

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

Telephone: (907) 465-2653
Address: Pouch 0
Juneau, Alaska 99811

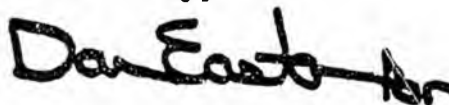
August 6, 1984

Dear Alaskan:

We are proposing two changes to the Wastewater Disposal Regulations (18 AAC 72). The changes are described in the attached public notice and development document. The public notice will soon appear in the Ketchikan, Juneau, Kenai, Anchorage and Fairbanks newspapers.

Knowing of your interest in these regulations, we hope you will take the time to comment on the proposed amendments -- either by writing us or testifying at one of the public hearings. Please note that we must receive your written comments by October 12, 1984. Thank you for your interest.

Sincerely,



Randy Bayliss
Chief
Water Quality Management

RB/DE/bb

PUBLIC NOTICE
STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Department of Environmental Conservation, under authority vested by AS 46.03.020(10), proposes to amend regulations in Title 18 of the Alaska Administrative Code, dealing with Wastewater Disposal to implement AS 46.03.050 - AS 46.03.120 as follows:

18 AAC 72 is proposed to be amended as follows:

- (1) "Primary treatment" of wastewater is currently defined in the Wastewater Disposal Regulations as removal of "substantially all floating and settleable solids." It is proposed to amend this definition to add the use of fine screens with 0.04-inch openings, or smaller, as primary treatment.
- (2) The regulations require that plans for subdivisions be reviewed by the department to ascertain whether the proposed means of wastewater disposal meet the other requirements of 18 AAC 72. Subdivisions of five or fewer lots, termed "isolated subdivisions," must comply with 18 AAC 72, but are currently exempted from the plan review requirement. The proposed amendment would remove the plan review exemption for isolated subdivisions. Plans for all subdivisions would be reviewed by the department.

This action is not expected to require an increased appropriation.

Interested persons may present oral or written statements relevant to the proposed action at hearings to be held as follows:

Ketchikan - 7:00 p.m. on September 18, 1984 at the City Assembly Chambers
Juneau - 7:00 p.m. on September 20, 1984 in the Egan Room of Centennial Hall
Anchorage - 7:00 p.m. on September 25, 1984 in the Williwaw Room of the
William A. Egan Convention Center
Soldotna - 7:00 p.m. on September 26, 1984 at the Kenai Borough Assembly
Chambers
Fairbanks - 7:00 p.m. on September 27, 1984 at the Public Library,
1215 Cowles St.

In addition, written statements or arguments may be sent to the Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, Alaska 99811 to be received no later than October 12, 1984. Copies of the proposed regulations may be obtained by writing to the address above.

The Department of Environmental Conservation upon its own motion or at the instance of any interested person, may, after the deadline stated above, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

DATE:

PROPOSED CHANGES TO THE
WASTEWATER DISPOSAL REGULATIONS
AUGUST 1984

The Alaska Department of Environmental Conservation is proposing changes to its Wastewater Disposal Regulations (18 AAC 72). The changes are two-fold: 1) Revising the definition of "primary treatment" to specifically include fine screens, and 2) removing the existing provision that excludes plans for subdivisions of five, or fewer, lots (isolated subdivisions) from the need for review by the department. Other than their concurrent proposal these two changes are unrelated. They are discussed separately below.

Definition of Primary Treatment

Engineering texts define primary treatment as the physical or chemical processes used in the preliminary treatment of wastewater. Inherent in such definitions is the assumption that primary, or preliminary, treatment is followed by secondary, or biological, treatment. In certain situations though, primary treatment may, in fact, be the final step in the treatment process.

At present, 18 AAC 72 defines "primary treatment" as removal of "substantially all floating and settleable solids." This regulation also lists situations in which primary treatment may be all that is needed prior to discharge to the receiving environment. Specifically, the department may waive requirements for higher-than-primary treatment when:

1. a domestic wastewater discharge is to marine waters;
2. a domestic wastewater discharge is to the surface of lands;
3. domestic wastewater is to be injected into subsurface waters; or
4. graywater (wastewater from laundry, kitchen, sink, shower or bath, but does not contain human or animal sewage) is discharged to fresh waters.

A relatively recent innovation in primary treatment of domestic wastewater is the use of fine screens to replace sedimentation tanks or clarifiers. These screens are usually made of stainless steel and have 0.01- to 0.10-inch openings. There are two general types, rotating drums and static inclined screens, through which the wastewater stream passes.

When primary treatment is to be followed by biological treatment, manufacturers recommend screens with 0.06-inch openings. As the opening sizes get smaller, more solids are removed. However, openings smaller than 0.04 inches collect grease, and clog. This effect, called blinding, causes water to pass over, instead of through, the screens and to be collected with the screened material. For this reason, engineers and manufacturers are now often recommending screens with 0.04-inch openings when screening is to be the final step in the treatment process.

Removal efficiencies for screens vary widely, depending on certain factors. As already noted, screen size is one factor. Others appear related to the amount of energy available to physically break down and dissolve solids. For example, in collection systems that involve a large amount of pumping, solids are more readily dissolved or broken down into sizes that will pass through a screen. Lower solids removal results. As a general rule, screens remove only a small part of the biochemical oxygen demand (BOD). This is true of most primary treatment.

For 0.06-inch screens, expected removal efficiencies are:

| | Removal Efficiency |
|------------------------|--------------------|
| Total Suspended Solids | 10-30% |
| Settleable Solids | 20-30% |
| Floating Solids | 80-100% |
| BOD | 5-25% |

Removal efficiencies for 0.04-inch screens are slightly better. With an expected settleable solids removal efficiency of 20 - 30%, fine screens may not appear to meet the existing definition of primary treatment in 18 AAC 72 calling for removal of substantially all settleable solids. However, it is the department's position that fine screens with openings of 0.04 inches or less should constitute primary treatment. The Wastewater Disposal Regulations should allow use of such screens in the five cases where less-than-secondary treatment may be appropriate (listed previously) and where screens are sufficient to protect health and the receiving environment.

To this end, the department proposes to amend the definition of primary treatment to specifically include screens with 0.04-inch openings, as follows. Wording to be added is underlined.

18 AAC 72.990 DEFINITIONS. (37) "primary treatment" means wastewater treatment where substantially all floating and settleable solids are removed, or the use of fine screens with 0.04-inch openings or smaller;

This proposed change would not affect the number of instances when less-than-secondary treatment would be appropriate. Nor would the change allow water quality standards to be violated in receiving waters.

Subdivision Plan Review

18 AAC 72 requires that plans for subdivisions be submitted to, and approved by, the department. DEC reviews these plans to ensure that the proposed means of sewage disposal meets the criteria of 18 AAC 72. Soil types, topography, location of water bodies, lot sizes, proposed sources of drinking water, and capacities of treatment systems, are some of the factors considered in these reviews.

At present, subdivisions of five or fewer lots -- termed "isolated subdivisions" in the regulations -- are exempted from the plan review requirement. The department has found that although the number of lots in an isolated subdivision may be small, the number of these small subdivisions is large. The net effect is that a large number of lots are subdivided without plan review.

Though exempted from the plan review requirement, wastewater disposal systems eventually built on lots in isolated subdivisions must still meet the requirements of 18 AAC 72 for the homes to be eligible for AHFC financing. In some cases owners of lots in isolated subdivisions that have not been reviewed by the department are unaware of restrictions that may exist to on-lot sewage disposal. It often comes as an unwelcome surprise when the department must inform a landowner that conventional means of on-lot sewage disposal won't work and that a more expensive, complex or inconvenient system is required for the home to be eligible for AHFC financing. If the subdivision plans had been reviewed earlier, restrictions to on-lot sewage disposal would have been noted on the subdivision plat for the information of prospective buyers.

To correct this, the department proposes to amend 18 AAC 72 to remove wording that exempts plans for subdivisions of five lots or less from review requirements. The specific changes are as follows. Wording to be deleted is shown with a line through it.

18 AAC 72.065. SUBDIVISION PLAN REVIEW. (a) A person proposing a subdivision, ~~except an isolated subdivision,~~ shall submit the following information to the department within five days after the submission of a proposed subdivision plat to a platting authority or, where no plat is filed, 60 days before subdividing...

18 AAC 72.990. DEFINITIONS. (27) "isolated subdivision" means the subdivision of a parcel of land into five or fewer lots which is not part of a subdivision plan or scheme involving more than five lots; a subdivision is ~~not~~ an isolated subdivision if the subdivider, or persons acting in concert with the subdivider, have, within the preceding five years, subdivided land so that the total number of lots created by the subdivision and within two miles of the subdivision exceeds five;

With adoption of these changes, plans for all subdivisions would be reviewed by the department.

NOTICE OF PROPOSED CHANGES
IN THE AIR QUALITY REGULATIONS OF THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is given that the Alaska Department of Environmental Conservation, under authority vested by AS 46.03.020 and AS 46.03.140, proposes to adopt and amend regulations in Title 18 of the Alaska Administrative Code, dealing with air quality (18 AAC 50). The subject regulations address two separate topics: guidance for industrial development in areas that are not in compliance with National Ambient Air Quality Standards, and the use of tall stacks for dispersing air pollutants instead of installing additional air pollution control equipment.

Amendments to 18 AAC 50 are proposed, including

1. The addition of new provisions as described below;
2. The repeal and readoption of 18 AAC 50.900; and
3. Any other necessary amendments to 18 AAC 50 relating to air quality which are appropriate after review of public comments.

The period during which the public is invited to comment on the proposed actions has been extended and an additional public hearing has been scheduled. A deadline of March 27, 1986, was specified in a prior notice on this action which was first published on February 25, 1986. The deadline has been extended until April 25, 1986.

INDUSTRIAL DEVELOPMENT IN NONATTAINMENT AREAS

Federal law requires that areas that have not attained compliance with National Ambient Air Quality Standards be brought into compliance by December 31, 1987, and that if construction is to be performed in these nonattainment areas, regulations be developed to provide guidance for the proposed construction. There are presently two nonattainment areas in Alaska. The Anchorage and Fairbanks-North Pole urban areas are both in nonattainment of the ambient air quality standards for carbon monoxide. An addition to the State Air Quality Control Regulations (18 AAC 50) now being proposed makes it possible to construct or modify a facility emitting over 100 tons per year of a pollutant for which the area is declared in nonattainment without increasing the pollutant levels in the area.

Sources, owners or operators will be required to submit a detailed demonstration that emissions of any nonattainment air contaminant will not exceed the applicable emissions allowance and will be controlled to a level (rate) which represents the lowest achievable emission rate. Procedures on how to perform emission calculations, apply emission offsets and exceptions are detailed in the proposed amendments.

STACK HEIGHT REGULATIONS

Federal regulations were recently amended limiting the extent to which industries can disperse pollutants into the atmosphere through tall stacks instead of installing effective control equipment to reduce emissions of the air pollutants. The State of Alaska is required to change its regulations to be consistent with the federal requirements. The regulation changes will not affect any existing industrial sources in Alaska but could affect new facilities.

The regulations continue to allow the use of stacks within guidelines established as good engineering practice but this definition is refined and clarified. Provisions are being deleted which automatically allowed sources to build stacks exceeding the good engineering practice height to avoid causing high pollution concentrations on elevated terrain such as hillsides and cliffs downwind of the source. The new rules require that stacks near these terrain features must reduce their emissions through constant controls rather than use dispersion techniques. The definition of what is a prohibited dispersion technique and terms related to good engineering practice have been expanded and clarified.

OPPORTUNITY FOR PUBLIC PARTICIPATION

Notice is also given that any person interested may present oral or written statements or arguments relevant to the proposed action at a public hearing commencing at 4:00 p.m. and continuing until all persons have been heard at the following location on the date indicated:

| <u>CITY</u> | <u>LOCATION</u> | <u>DATE</u> | <u>TIME</u> |
|-------------|---|-------------|-------------|
| Anchorage | Dept. of Environmental Conservation 437 "E" Street, Second Floor | April 23 | 4:00 p.m. |

In addition, written statements or arguments may be sent to Leonard D. Verrelli, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, for inclusion in the record if received before 4:30 p.m. on April 25, 1986.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained at the offices of the Alaska Department of Environmental Conservation:

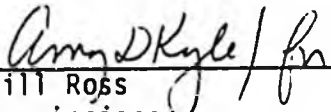
Central Office
P.O. Box 0
3220 Hospital Drive
Juneau, Alaska 99801

Southcentral Regional Office
437 "E" Street, Second Floor
Anchorage, Alaska 99501

Northern Regional Office
675 7th Avenue, Station I
Fairbanks, Alaska 99707

The Department of Environmental Conservation, upon its own motion or at the instance of any interested person, may, at the hearing or after it, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

Dated at Juneau, Alaska, this 12th day of March, 1986.



Bill Ross
Commissioner

ing and dis- ment required by 18 AAC 72.029(a)(1) must ensure that

partment re- (1) the discharger has legal authority to use the lands for the discharge;

t must show (2) the lands used for treatment are protected against public access;

to determine (3) the topography, hydrology, geology, and soil characteristics of the land treatment area are adequate to protect existing and potential water and land uses outside the defined treatment area, including subsistence, housing, education, industry, recreation, and agriculture; and

when similar (4) the method of discharge prevents disease transmission.

l conditions (i) An accurate and complete set of as-built engineering plans for sewers, disposal systems, or treatment works designed to serve 100 or more persons per day must be submitted to the department within 90 days after the project's startup date. The department will, in its discretion, waive this requirement if it has made an on-site inspection and finds that the system was built as approved.

on; (j) A person may install a package plant only if the department finds, after review of submitted data, that the plant can treat domestic wastewater for at least one year under expected conditions or that the plant meets or exceeds the National Sanitation Foundation certification criteria. (Eff. 8/10/73, Reg. 47; am 2/3/77, Reg. 61; am 3/4/78, Reg. 65; am 12/30/82, Reg. 84)
 Authority: AS 16.10.010 AS 46.03.090
 AS 46.03.020 AS 46.03.720
 AS 46.03.050

Editor's Note: The certification criteria of the National Sanitation Foundation are available from the Foundation at P.O. Box 1468, NSF Building, Ann Arbor, Michigan 48106. In reviewing plans submitted under this section, the department uses, among references, the design criteria contained in

(1) Sewage Wastewater Treatment Plant Design, Manual of Practice Number 8, 1977, and Design and Construction of Sanitary and Storm Sewers, Manual of Practice Number 9, 1976, Water Pollution Control Federation, 2626 Pennsylvania Avenue, Washington, D.C. 20037;

(2) Glossary - Water and Wastewater Control Engineering, Manual of Operation Number 22, Joint Editorial Board, American Public Health Association, American Society of Civil

Engineers, American Water Works Association, and Water Pollution Control Federation, 1969, Water Pollution Control Federation, 2626 Pennsylvania Avenue, Washington, D.C. 20037;

(3) Wastewater Engineering: Collection, Treatment, Disposal, Metcalf and Eddy, Inc., 1972, McGraw-Hill Book Company, New York, New York;

(4) Recommended Standards for Sewage Works, 1978 Edition, Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, Health Education Service, Inc., P. O. Box 7126, Albany, New York 12224;

(5) Environmental Engineering and Sanitation, Second Edition, Joseph A. Salvato, Jr., 1972, John Wiley & Sons, Inc., New York, New York;

(6) Wastewater Engineering: Treatment, Disposal, Reuse, Second Edition Metcalf & Eddy, Inc., revised by George Tchobanoglous, 1979, McGraw-Hill Book Company, New York, New York;

(7) Cold Climate Utilities Delivery Design Manual, EPA-600/8-79-027, Sept. 1979, U.S. Environmental Protection Agency, Environmental Research Laboratory; Corvallis, Oregon 97330;

(8) A 1979 State of the Art Manual of On-Site Wastewater Management, 1979, The National Environmental Health Association, 1200 Lincoln St., Suite 704, Denver, Colorado 80203;

(9) Design Manual Onsite Wastewater Treatment and Disposal Systems, Oct. 1980, U.S. Environmental Protection Agency, Office of Research and Development, Technology Transfer, Cincinnati, Ohio 45268;

(10) Mixing in Inland and Coastal Waters, H.B. Fischer, E.J. List, R.C.Y. Koh, J. Imberger, N.H. Brooks, 1979, Academic Press, Inc., 111 Fifth Ave., New York, New York 10003; and

(11) Uniform Plumbing Code, 1982 edition, Appendix I, pages 180 through 194, International Association of Plumbing and Mechanical Officials, 5032 Alhambra Ave., Los Angeles, California 90032, Library of Congress Number 78-073977.

These reference materials may be reviewed in the department's regional offices.

18 AAC 72.063. DELEGATION OF SYSTEM PLAN REVIEW. (a) A municipality may petition the department to delegate the exercise of plan review under 18 AAC 72.060 within its jurisdiction. The petition must contain a

(1) copy of ordinances governing sewers, wastewater disposal systems, and treatment works;

(2) description of pertinent administrative and judicial enforcement processes available to the municipality; and

SUMMARY RESPONSE TO PUBLIC COMMENT

ON

ALASKA WATER QUALITY STANDARDS

March 1986

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WATER POLLUTION CONTROL PROGRAM

SUMMARY RESPONSE TO PUBLIC COMMENT
ON
ALASKA WATER QUALITY STANDARDS
FEBRUARY 1986

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Summary Response to Public Comment

on

Alaska Water Quality Standards

I. INTRODUCTION.

As part of its ongoing review, the department issued a public notice requesting suggestions to improve on Alaska's water quality standards (18 AAC 70). A copy of the notice appears on the next page. The announcement was mailed to all persons on the department's water quality standard mailing list and printed in Juneau, Fairbanks, and Anchorage newspapers. A total of ten persons responded to the announcements with many excellent comments.

Following is a summary of the department's response to public comments on the water quality standards. Every comment was carefully considered. Many suggestions were embraced and proposed as amendments. Other comments were noted and may be considered for further study. A few comments were rejected, but were, nevertheless, appreciated.

For the most part, public comments and the department's responses have been grouped by the section of the water quality standards to which they apply. Those comments and responses that could not be grouped by section, are grouped under a "general" heading.

II. PUBLIC COMMENT AND RESPONSE

1. Antidegradation.

Comment: It was suggested that 18 AAC 70.010(c)(1) be modified to include criteria for determining that reducing water quality is justified because of necessary economic or social development. It was also suggested that we indicate who has the authority to make this determination.

Response: Before addressing this comment, it is important to discuss the purpose and applicability of the antidegradation clause (18 AAC 70.010), of which 18 AAC 70.010(c)(1) is a part. The antidegradation clause is required by the Clean Water Act and sets conditions that must be met before waters with natural high quality can be degraded. In Alaska, these conditions are: 1) The reduction in water quality must not harm present or potential uses. 2) All wastes must be treated before discharge. 3) And, reducing water quality must be justified because of necessary economic or social development.

PUBLIC NOTICE
STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

During the next few months, the Alaska Department of Environmental Conservation will be reviewing Sections 55 and 58 of the Alaska Water Quality Standards, 18 AAC 70. These two sections concern procedures for reclassifying water bodies for different uses. They may need to be re-written as a result of recent changes in federal water pollution laws.

In addition, federal law requires that the State begin reviewing the rest of 18 AAC 70 before 1985. The purpose will be to evaluate the scientific merit and adequacy of other sections and recommend any needed changes. We plan to start this process soon.

We'd like to get your comments on which parts of the standards need re-viewing besides the reclassification sections. Your comments will be most helpful if they:

- 1) pinpoint any parts of the standards that are hard to understand, and suggest better wording; and
- 2) identify any criteria that you think do not adequately protect water uses. Tell why you think so, and cite any scientific studies that support your comments.

Remember that the water quality criteria found in 18 AAC 70 set limits on pollutant levels. Their purpose is to protect specific uses of each water body. To be considered, all comments on criteria must relate to this legal purpose of protecting water uses. Whether or not a criterion can be met is not a factor in setting or changing water quality criteria.

Copies of the existing standards, 18 AAC 70, can be obtained from the nearest DEC office. In addition, you can request copies from the address below or by calling (907) 465-2653.

All comments will be carefully considered. Later notices will give the public ample time to comment on any changes proposed as a result of this notice or a departmental review. Your comments must be mailed by June 11, 1984. Please send them to:

Alaska Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
Attn: Ellen Fritts

Richard A. Neve'
Commissioner

It is important to note that "necessary economic or social development" is one of three conditions that must be met. It should also be noted that under the antidegradation clause, water quality can only be degraded from the very high natural quality to the high quality necessary to meet the water quality criteria and protect the uses for which a water body is designated. Thus, "necessary economic or social development" cannot be used as the sole criterion for degrading water quality, nor is it a criterion that can be used to degrade water quality to a level that would harm aquatic life or other uses for which a water body is protected.

The requirement for "necessary economic or social development" ensures that high quality waters are not degraded as a result of activities that do not have economic or social value. Such wording is found in EPA regulations (40 CFR 35.131.12(a)(2)) and guidance on water quality standards (Water Quality Standards Handbook). While "necessary economic or social development" could be further defined, the department believes that the intent of this phrase to preclude degradation from activities without social or economic value is clear. The department also believes that the existing wording requiring a person to show necessary economic or social development "to the department's satisfaction" indicates that it is the department that has the authority to make such determinations.

2. Classification

Comment: One person suggested that the classification of waters in section 50 be revised to exclude certain uses precluded by natural conditions. The comment notes that sufficient existing information is available in some areas to make such determinations.

Response: The department would like to be able to classify in detail Alaska's waters for water quality standard purposes. However, there is little information on the uses or potential uses of the vast majority of our waters. In the few cases where detailed information exists, such information must be compiled to EPA's satisfaction, and must constitute a complete use-attainability analysis before uses can be excluded. For the purposes of this review, the department decided to concentrate on developing a better classifying procedure rather than pursue detailed classification of a few water bodies.

3. Criteria

Several comments were received on the water quality criteria shown in the table of section 20(b).

Comment: One person suggested that the maximum temperature of 20°C given in the criterion for growth and propagation of fish in freshwater may be unnecessarily low. The commenter cites literature that, for anadromous salmonids, 13-15°C is optimal and 25°C is lethal.

Response: This comment is appreciated. One paper was cited as a basis for this suggestion. The department feels that a detailed study of current literature is needed before a change to this

criterion should be proposed. The study should include a review of all recent literature. Then, if on the basis of recent scientific information a change is warranted, it could be proposed. The department will pursue such a study if funds permit.

Comment: It was noted that the methods for measuring sediment as a water quality parameter are poorly defined. Along these same lines, it was also suggested that the department add water quality criteria for settleable matter and suspended matter.

Response: The Department has recently completed review of the criteria for turbidity and sediment. (Alaska Particulates Criteria Review by L. A. Peterson and Associates, November 1985). This study recommended a number of changes to the criteria. The results of the study are still under review and have not been addressed in this revision to the water quality standards. This issue will be addressed at a future date.

Comment: One person noted that criteria for toxic and deleterious substances cite the Alaska Drinking Water Standards as one of three limits on concentration. The commenter states that since the drinking water standards do not set a maximum contaminant level for aromatic hydrocarbons, they should not be referenced in these criteria.

Response: It is important to recognize that there are many other toxic and deleterious substances besides aromatic hydrocarbons. The drinking water standards set maximum contaminant levels (MCLs) for many of these. In addition, there is no disadvantage in those cases where there is no drinking water MCL for a substance. There are always two other limits that apply.

Comment: One commenter noted that aromatic hydrocarbons are limited both as toxic and deleterious substances and as petroleum hydrocarbons. The commenter goes on to suggest that the limit on aromatic hydrocarbons as petroleum hydrocarbons is far less than the limit on these compounds as toxic and deleterious substances.

Response: The department finds no problem with classifying aromatic hydrocarbons as both petroleum hydrocarbons and as a toxic and deleterious substance. A similar situation exists for particulate matter which may be considered turbidity, sediment or residue. This double limit ensures that any single aromatic hydrocarbon, like benzene, will have no detrimental effect as a toxic substance and that the combination of the aromatic hydrocarbons as petroleum hydrocarbons will have no detrimental effect.

Comment: Another comment was that aromatic hydrocarbons be defined as benzene, toluene, ethyl benzene, naphthalene, and polynuclear. It was also suggested that the limits for total aromatic hydrocarbons and the methods of determination follow EPA guidelines.

Response: The department prefers to use the definition of aromatic hydrocarbons consistent with scientific literature. This definition includes benzene, toluene, ethyl benzene, naphthalene, polynuclear aromatic hydrocarbons and other water-accommodated compounds having at least one aromatic ring.

The criteria for total aromatic hydrocarbons have been reviewed and approved by EPA. The EPA guidelines entitled Quality Criteria For Water cite lower-limit acutely toxic values for individual compounds. These limits are not appropriate as water quality standards. Water quality standards are based on lower-limit chronically toxic values.

Comment: One person urged that the water quality criteria be consistent with "criteria accepted at a National level." The criteria for total hydrocarbons and total aromatic hydrocarbons were cited as examples of state criteria more stringent than other states' and federal guidelines.

Response: The department holds that Alaska's water quality criteria are consistent with those of other states and national guidance. The department does not agree that the criteria for total hydrocarbons and total aromatic hydrocarbons are inconsistent with national guidance (EPA Quality Criteria for Water - see preceding comment and response).

Comment: One respondent suggested adding wording to the criteria for hydrocarbons to protect growth and propagation of fish in marine and fresh waters, harvesting mollusks in marine waters, and aquaculture in marine and fresh waters from the effects of hydrocarbons sorbed to organic and inorganic particulates.

Response: The department is viewing the particulates criteria at this time. (see response on page 5) The department proposes to add wording to further protect water quality for harvesting mollusks, however, this change should occur when the comprehensive review of particulates is completed.

4. Definitions

A few comments were received on the definitions of terms in the standards.

Comment: One person noted that the definition of "zones of deposit" is missing from section 110.

Response: The department considered proposing the addition of a definition for "zone of deposit," but believes that the terms as used in the water quality standards have the same meaning as found in common usage. In addition, the meaning of "zones of deposit" is clearly defined in section 33 by the context in which it is used.

Comment: One person suggested that no changes be made to the list of definitions (section 110).

Response: This comment was considered. The department reviewed the definitions on the premise that they are basically sound and that changes should be made only to correct inaccuracies or effect substantial improvements.

Comment: It was suggested that the definition of nonpoint source pollution be changed to: "Sources from which pollutants discharged are resultant from natural processes, such as precipitation, seepage, percolation, and runoff, which are not traceable to any discrete or identifiable facility."

Response: "Nonpoint source" is presently defined as "any source of pollution other than a point source." "Point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged." The Clean Water Act definition of "point source" is the same as the state's except it includes discharges from discrete fissures and concentrated animal feeding operations, and specifically excludes return flows from irrigated agriculture. "Non-point" pollution is not defined in the Clean Water Act.

The department believes the suggested definition is probably technically sound. Legally, however, there is a need to ensure that all sources of pollution are included as either point or nonpoint sources. The existing definitions clearly accomplish this. It is conceivable that by using the existing definition of point source and the suggested definition of nonpoint source that certain sources of pollution might fit neither definition--they may be neither point nor nonpoint. To avoid this, the department feels that the existing definition should be retained as the legal definition. However, the department may use the suggested definition when a technical, or more explanatory definition is called for.

Comment: It was suggested that EPA definitions for "water quality standards" "designated use" and "existing use" be added to the definitions.

Response: EPA defines water quality standards in 40 CFR 131.3 as "provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the [Clean Water] Act." The department does not feel that this definition, with its references to federal law and a generally federal perspective, is entirely applicable to state regulations. 18 AAC 70.010(b) states that "water quality standards constitute the degree of degradation which may not be exceeded in a water body." The department feels that this usage in the text of the regulations better defines the phrase than the federal definition. However, the department does

agree that further explanation of the water quality standard concept would enhance public understanding. The department will consider the inclusion of an introductory letter which would help explain the water quality standards concept.

EPA defines "existing uses" as those "actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." "Designated uses" are defined as "those uses specified in water quality standards for each water body or segment whether or not they are being attained." 18 AAC 70 does not use the terms "existing use" or "designated uses." Thus, the need to define them is moot. However, in proposing changes to the reclassification procedure, the department will consider the need to be consistent with such federal definitions.

5. Editorial

Several persons made suggestions pertaining to the clarity of the water quality standards without addressing their content. The focus of these comments was that editing the standards to improve readability may not be as important as supplementing them with an explanation of the where's, when's, how's, and why's of the standards. Specific comments follow.

Comment: One person suggested that the standards should not be edited because it would unnecessarily extend the review process.

Response: While editing the standards will probably extend the review process, the department feels that the benefit will justify any delays. The department can make editorial changes at any time without public review or comment. The extent of the proposed editing changes, however, make it prudent to involve the public.

The editing is proposed to benefit the public. Consequently, the public's comments on our success are of utmost importance.

Comment: One person suggested adding wording to section 20 to indicate whether the use classes are listed in order of priority.

Response: The heading above the tables in 18 AAC 70.20(b) states "the water quality criteria when used in combination with the water use designation constitute the water quality standard for a particular water body." The department will consider adding a statement that clarifies that there is no priority of use classes in the tables.

Comment: It was pointed out that the water quality standards "comprise difficult concepts and complex subject matter." And, it is for this reason that the standards may be hard to understand not because of specific wording. To enhance public understanding, it was suggested that the department publish a guide on the history and purpose of the standards, how they are used, the review procedure, and common points of confusion. Similarly, it was suggested in another set of comments that there is a need to explain the water quality standards. The department was urged to include an introduction or

preamble to the next printing of the standards. It was also recommended that the department publish a list of the most stringent criteria for each parameter as a supplement to the standards. This list would be a synopsis of the water quality standards for Alaskan waters.

Response: As a result of these comments, the department will consider drafting an introductory letter explaining how the water quality standards are used and which standards are the most stringent. This letter would accompany the standards upon distribution to the public.

Comment: One commenter proposed changes to the organization of the text to make the standards a more useable and easily understood document.

Response: Changing the organization of a set of regulations can be confusing. The process of switching one section with another is actually accomplished by deleting both sections and adding two new sections. While the organization proposed by this respondent is sensible and probably an improvement over the existing one, the end result of a number of deleted and new sections would be confusing. The comment was carefully considered, and is appreciated, but no reorganization is proposed.

6. General

Comments of a general nature are discussed below.

Comment: A general comment from one person voiced the position that the standards must remain strong and need not be changed.

Response: This comment was considered, but certainly strength lies in accuracy.

Comment: One person suggested holding workshops on specific parts of the standards under revision.

Response: The department believes that workshops are a valuable means to inform the public, solicit public input, gather technical data from experts, and generally provide a forum for exchanging information. Workshops are most appropriate and beneficial when developing changes to either technical provisions or highly controversial parts of the standards. Due to present time constraints, the department will not be able to conduct workshops at this time, but will consider holding workshops in the future.

7. Reclassification

Several persons commented on the provisions for reclassifying the state's waters. A summary of those comments and the department's response follows.

Comment: One person suggested that this review would be an excellent opportunity to reclassify some of the state's waters based on available data.

Response: While this comment was carefully considered, the department believes that reclassification under existing procedures would not necessarily meet with federal approval. The scope of the review and subsequent proposed amendments are limited to establishing a new, federally approvable reclassification procedure instead of actually reclassifying certain waters. Once a viable procedure is established, actual reclassification, where appropriate, can follow.

Comment: It was suggested that the reclassification procedure "be based on technical data, with public input for information only."

Response: Certainly the role of the public in reclassifying waters must remain a strong one. The public is a valuable source of information on various uses of water bodies and other information that might be considered technical data. If the suggestion is construed to mean that technical data would be gathered prior to reclassification, (in addition to soliciting information from the public) then the department agrees. Federal law now requires a structured scientific assessment prior to any reclassification to exclude protected uses. In this way, a requirement for technical analyses prior to reclassification now exists.

Comment: One respondent stated that the reclassification procedure can take 5 to 16 months to complete, and that this is too long. The department agrees that the existing reclassification procedure is needlessly long and complex. At the same time though, the procedure must include ample time for public review and comment as well as sufficient flexibility to extend time constraints for particularly complex or controversial situations. Partly as a result of this comment, the department proposes to amend the reclassification procedure. The department also proposes to shorten the processing time for reclassification by going to public notice and comment for amending section 50 (Classification of state waters) when the department conducts a public hearing on the corresponding use attainability analysis.

Comment: One person stated that the federal requirement for use-attainability analyses could be accomplished administratively without a change to section 55.

Response: This comment correctly points out that federal law need not necessarily be restated in state regulations. However, in this case, the department believes that it is important to reference the appropriate federal regulations to persons requesting reclassification since the federal regulation will guide the outcome of the reclassification request.

Comment: Another comment on the reclassification procedure was to change it to allow the department to initiate and conclude reclassification actions.

Response: Under the proposed regulations, the department will have the discretion to initiate reclassification procedures. EPA must give final approval to all department decisions on reclassification.

8. Reclassification Criteria

Comment: One respondent focused on the difficulty of preparing reclassification petitions to show uses such as aquaculture, seafood processing, growth and propagation of fish and harvesting of mollusks don't exist.

Response: It is difficult to use the existing reclassification criteria. These are, by necessity, very broad definitions. The thrust of the federal regulation is to require a use attainability analysis on all requests for reclassification that would eliminate uses. Since these studies determine the presence or absence of a use on a case by case basis, the department proposes to repeal the section.

9. Short-term Variance

Comment: One person pointed out that due to the nature of nonpoint sources of water pollution, best management practices (BMPs), as opposed to short-term variances, are the appropriate control.

Response: We agree that BMPs are the proper long-term control for nonpoint sources of pollution. However, for short-term activities, like constructing a bridge, a short-term variance may be the most appropriate control. The standards provide for the use of either short-term variances or BMPs to control nonpoint pollution.

10. Thermal Discharges

Comment: One person stated that section 34 on thermal discharges "instead of issuing a permit or short-term variance...automatically allows for reclassification of the waters without a public hearing."

Response: The department can not agree with this comment. Section 34 does not preclude issuing a permit or short-term variance, and, in fact, one or the other would be required for any thermal discharge. The same section also states that there must be opportunity for public hearing.

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574
Jan. 19, 1986

House State Affairs Committee ✓
House Judiciary Committee ✓
Fouch ✓

Tuneau, AK. 99811

Re: HB 452

Dear Committee Members,

This is a letter of support for HB 452
pertaining to agency justification of need
when proposing regulations.

I am enclosing some correspondence

that indicates the psychology board did

not take "need" into account when

they recently proposed new regulations.

The only question that I have at this time

concerns the word "law" in Sec.

44.62.05(b) on page 2, lines 6-9. Does

"law" refer to a complete chapter such

as Chapter 86 or also to sections,

sub-sections and paragraphs?

Sincerely yours,

Robert M. Arvidson

Robert M. Arvidson

Enc: AS stated
cc: Rep. Cato

-over-


**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH 2
JUNEAU ALASKA 99811
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

DATE: December 17, 1985

TO: Board of Psychologist and Psychological
Associate Examiners

FROM: Kevin D. Henderson 
Regulations Specialist

RE: Proposed regulations 12 AAC 60.910

I have enclosed a copy of all comments received to date concerning the proposed adoption of 12 AAC 60.910, PERSONS NOT EXEMPT FROM LICENSURE. Officially, the period for public comment ended December 13, however, because of the great interest in this proposal, I have notified several persons that I will be accepting comments through March 3, 1986, three days prior to your next meeting. The written comment received following this letter will be periodically mailed to each of you. Because of the overwhelmingly negative reaction to this proposal, the board should take no further action to adopt it until the board meets to discuss it again. Any subsequent proposal of the board should be renoticed and include a public hearing.

Please read all of these comments carefully before your next meeting. Many valid concerns and unanswered questions are addressed. It appears that the board's authority to promulgate such a regulation is still questionable in light of AS 44.62.030, which states, "No regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute" (emphasis mine). In the opinion of school psychologists and vocational rehabilitation counselors, licensing or supervision by a licensed clinical psychologist is completely unnecessary and, considering those as specialized fields, even inappropriate. If it was the board's intent that these professions continue to be exempt from licensure or supervision, then the proposed regulation is unclear and will need to be rewritten. The board needs to define work "of a psychological nature."

Of even greater concern is the fiscal impact such a regulation would have on public and private agencies alike. Education and social service agencies are commonly underfunded and the burden of adding a licensed psychologist to the staff must be adequately considered by the board. This proposal would have to be "reasonably necessary" despite the increased cost to the State and the public. I believe the burden of proof is on the board in this regard.

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574
Jan. 19, 1986

House State Affairs Committee ✓
House Judiciary Committee
Pouch ✓
Juneau, AK. 99811

Re: HB 458

Dear Committee Members,

This is a letter of support for HB 458 pertaining to agency justification of need when proposing regulations.

I am enclosing some correspondence that indicates the psychology board did not take "need" into account when they recently proposed new regulations.

The only question that I have at this time concerns the word "law" in Sec.

44.62.05 (b) on page 2, lines 6-9. Does "law" refer to a complete chapter such as Chapter 86 or also to sections, sub-sections and paragraphs?

Sincerely yours,

Robert M. Arvidson
Robert M. Arvidson

Enc: AS stated
cc: Rep. Cato

-over-

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574

Jan 17, 1986

Sen. Bettye Fahrenkamp
Chair, Senate HESS
Pouch 7
Juneau, Alaska 99811

Re: Senate Bill 251 and Public opposition to proposed psychology regulations.

Dear Senator Fahrenkamp,

I have recently reviewed the public response to regulations proposed by the psychology board that would restrict exemptions to the psychology practice act. These proposed regulations were public noticed Oct. 29, 1985. The public, including licensed psychologists, educators, state officials and concerned ~~concerned~~ citizens, is strongly opposed to the proposed regulations.

My count indicates that 61 (sixty one) letters express opposition to the proposal. Many of these letters have multiple signatures and represent organizations. Only 4 (four) letters support the psychology boards' attempt to require licensure or supervision of currently exempt agency employees (12AAC60.910 referenced to AS 08.26.130).

I believe that many of these letters can be viewed as support for SB 251, either indirectly or directly. For example, Dr. Kenneth Green, a licensed psychologist and Asst. Professor of Psychology at the University of Alaska -Fairbanks states, "Alaska has too many mental health problems to unduly restrict the practice of psychology. I think that the present Alaska Psychology Regulations are unduly restrictive and elitist, and serve to penalize the consumer by making therapy and counseling too expensive."

I am enclosing a sample of 15 of the letters (copies) opposed to the restrictive regulations. I feel that these letters support the continued delivery and development of maximum mental ~~services~~ ^{services} in the state.

I am also enclosing a proportional sample of the letters supporting the psychology board's restrictive proposal. This sample consists of a copy of one letter.

Looking to the future, I am sending a copy of the above information to the House HESS Committee and I am asking that they keep it on file for reference to SB 251.

Best wishes for the session.

Sincerely yours,



Robert M. Arvidson

Encs: As stated

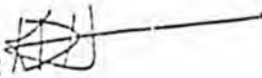
cc: Senator Kerttula
House HESS Committee

HESS

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

DATE: December 17, 1985
TO: Board of Psychologist and Psychological
Associate Examiners
FROM: Kevin D. Henderson 
Regulations Specialist
RE: Proposed regulations 12 AAC 60.910

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Please read all of these comments carefully before your next meeting. Many valid concerns and unanswered questions are addressed. It appears that the board's authority to promulgate such a regulation is still questionable in light of AS 44.62.030, which states, "No regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute" (emphasis mine). In the opinion of school psychologists and vocational rehabilitation counselors, licensing or supervision by a licensed clinical psychologist is completely unnecessary and, considering those as specialized fields, even inappropriate. If it was the board's intent that these professions continue to be exempt from licensure or supervision, then the proposed regulation is unclear and will need to be rewritten. The board needs to define work "of a psychological nature."

Of even greater concern is the fiscal impact such a regulation would have on public and private agencies alike. Education and social service agencies are commonly underfunded and the burden of adding a licensed psychologist to the staff must be adequately considered by the board. This proposal would have to be "reasonably necessary" despite the increased cost to the State and the public. I believe the burden of proof is on the board in this regard.

December 17, 1935

Finally, several sources have indicated that there is already a shortage of licensed psychologists available in this State. What effect would this regulation have on the available counseling provided to low income citizens of the State, especially those who would have to pay higher fees or who would find themselves without any service at all because the appropriate supervision of counselors or teachers was not available?

Considering the controversial nature of this proposal, a teleconference public hearing is warranted. I recommend, however, that a hearing be held only after the board has been able to meet together to evaluate the public comments received so far and to address the unanswered questions they raise. Better still would be to drop this proposal and continue to seek legislative change to the statute. While that has been unsuccessful so far, it is still the only way the board will clearly have the specific authority to require the licensure and supervision you feel necessary to protect the health and welfare of those seeking psychological help. The ramification of this proposal, however, appears more complex and far reaching than this simple regulation has adequately addressed.

Please contact me if you have further concerns regarding this or other proposed regulations.

KDH/dg13902D
121785c

cc: Loren Lounsbury, Commissioner
Richard Long, Acting Director
Senator Jay Kerttula
Senator Bettye Fahrenkamp
Representative Virginia Collins
Representative Max Gruenberg
Kay E.M. Gouwens, Assistant Attorney General
All interested parties



Resource Development Council for Alaska, Inc.

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Senator Frank Murkowski
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Governor Bill Sheffield

February 14, 1986

FEB 25 1986

Representative Katie Hurley
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Dear Katie:

The House State Affairs Committee is the first committee referral for a piece of legislation the Resource Development Council strongly supports, SSHB 458.

The goal of this legislation is to force administrative agencies to fully disclose the impacts of proposed regulations to the public. This bill will generate better public input for agencies proposing, amending or deleting regulations.

The Resource Development Council has consistently supported legislation which improves the regulatory process. One obvious element of any such program must include a positive and informative process for the adoption of new or changed regulations. SSHB 458 speaks directly to this issue.

During the last six months a group within RDC has been working on language we think would improve the Administrative Procedures Act. Following are the significant points of our proposal included in SSHB 458.

- 1) Estimates of the costs or savings which will be incurred by private persons and entities directly affected as a result of the regulatory change will be included in the public record. We want to shed light on the monetary impacts that seemingly "harmless" regulations have on the private sector. With this cost/benefit information, the merits of a regulatory change can be better evaluated.
- 2) An agency must hold a public hearing on a regulatory change if a hearing is specifically requested by at least ten individuals. This will mandate broader public involvement in regulatory issues where demonstrated concern exists.
- 3) Agencies must adopt proposed regulations within one year. At present, an agency can promulgate regulations, withdraw them, and then adopt them years later without notice. We want to limit the time between initial promulgation and adoption to one year. After a year, proposed regulations must be resubmitted for public review.

Representative Katie Hurley
February 14, 1986
page 2


- 4) If an agency chooses to deny a petition requesting a regulatory change it must defend its position with a statement of reasons for the denial.
- 5) Every agency must keep a complete record of all public comment on regulatory changes. This record will be available to the public.
- 6) An agency promulgating a proposed regulatory change must prepare a statement of the justification of need. This statement must include a description of the problem the regulation addresses, the purpose of the regulation, identification of the support material on which the regulation relies and a description of potential alternatives.
- 7) Any agency must prepare a final statement of justification of need concerning adopted regulations which would include the complete text of the regulation, a summary of each comment and objection and a defense of the adopted regulation against the proposed objections or amendments.

We are basically attempting to change the Administrative Procedures Act to insure that regulatory changes are well thought out, necessary and defensible. We feel this process needs to take place with as much public oversight as is reasonable. Our goal is not necessarily to see fewer regulations generated--although that may be the impact; we are interested in seeing better regulations.

The Resource Development Council would appreciate an opportunity to present testimony on this bill to a hearing of the House State Affairs Committee as soon as possible. A timely hearing before your committee is obviously essential to the success of the ideas contained in this bill.

Thank you for your consideration,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Paula P. Easley
Executive Director

cc: Members, House State Affairs Committee
Representative Marco Pignalberi ✓
Phil Holdsworth