

S B

4 2 0 9

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
4/21	FINNENKUMP (3830) - ASKED FOR BACKLOG
	C&RA - (11700) JEFF SIMON / JOURNALER FATE
	COMMENCE & EC DOO - OFFICE OF ENTERPRISE
	(2504)
	DOH - MIKE MCMILLAN - (2200)
	ART PETERSON - ML - (3600)
	JOHN HULTINMAN (FILLERS) (3789)
4/24	PETERSON, HULTINMAN, MCMILLAN, DOH & EC
	FINNENKUMP, DOH - NOTIFIED OF
	MEETING TODAY

NOTIFIED OF 4/22 meeting

p 2 line 8 after testimony, delete "period"  
add

1 (b) When an action for judicial review of a regulation is in-  
2 stituted, the flexibility analysis for the regulation shall constitute  
3 part of the whole record of agency action in connection with the  
4 review.

5 ~~Sec. 44.63.090. REPORTS AND INTERVENTION RIGHTS.~~ (a) The  
6 *Reg. Review Committee* office of enterprise shall monitor agency compliance with this chapter  
7 and shall report at least annually *AS 44.63.197* [to the governor and] the legisla-  
8 ture.

9 (b) The *Committee may petition the court for permission to* office may appear as amicus curiae in an action brought *under*  
10 *AS 44.63.300* in a court to review a regulation, and may present views on the effect  
11 of the regulation on small entities.

12 (c) A court shall grant the application of the office to appear  
13 in an action under (b) of this section.

14 Sec. 44.63.200. AGENCY AMENDMENT OF DEFINITIONS. (a) An agency  
15 may amend, by regulation, the definition of "small business" or "small  
16 organization" if the amended definition is appropriate to the activi-  
17 ties of the agency. An agency shall consult with the office of enter-  
18 prise before amending "small business." An amendment to "small busi-  
19 ness" may establish a maximum number of employees or dollar volume of  
20 business for an enterprise in an industry.

21 (b) An agency may amend, by regulation, the definition of "small  
22 governmental jurisdiction" if the amendment is appropriate to the  
23 activity of the agency and is based on factors including location in  
24 rural or sparsely populated areas or an area with limited revenue due  
25 to the population of the jurisdiction.

26 (c) An agency that is not subject to AS 44.62.010 - 44.62.290 of  
27 the Administrative Procedure Act and that intends to amend a defini-  
28 tion under (a) or (b) of this section shall provide an opportunity for  
29 public comment before adopting the amendment and shall publish the

left out

add

1 amended definition in the journal.

2 Sec. 44.63.210. DEFINITIONS. In this chapter

3 (1) "agency" means an agency in the executive branch of  
4 state government;

5 (2) "journal" means the Alaska Administrative Journal under  
6 AS 44.62.175;

7 (3) "office of enterprise" means the office of enterprise  
8 in the Department of Commerce and Economic Development;

9 (4) "regulation" means a regulation adopted under AS 44.62  
10 or any other law, except a regulation of particular applicability  
11 relating to rates, wages, corporate or financial structures or reorga-  
12 nizations, prices, facilities, appliances, services or allowances or  
13 to valuations, costs, or accounting, or practices relating to the  
14 rates, wages, structures, prices, appliances, services, or allowances;

15 (5) "small business" means a small business that is  
16 independently owned and operated and is not dominant in its field;

17 (6) "small entity" means a "small business," small orga-  
18 nization, or small governmental jurisdiction;

19 (7) "small governmental jurisdiction" means a municipality,  
20 school district, or special district, with a population of less than  
21 50,000;

22 (8) "small organization" means a not-for-profit enterprise  
23 that is independently owned and operated and is not dominant in its  
24 field.

25 \* Sec. 2. Notwithstanding AS 44.63.010(a), as enacted by sec. 1 of this  
26 Act, the first publication of regulatory agendas must occur by January 31,  
27 1987.

28 \* Sec. 3. AS 44.63.020 and 44.63.030 as enacted by sec. 2 of this Act  
29 do not apply to regulations for which a notice of proposed action is issued

1 before July 1, 1986.

2 \* Sec. 4. This Act takes effect July 1, 1986.

# Alaska State Legislature

SENATOR BETTYE FAHRENKAMP  
CHAIRMAN, HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE  
515 7TH AVENUE SUITE 130  
FAIRBANKS, ALASKA 99701  
907-452-4882  
(907) 456-2899 HOME



Senate

WHILE IN JUNEAU  
PO BOX V  
JUNEAU, ALASKA 99811  
OFFICE (907) 465-3763  
HESS COMMITTEE  
(907) 465-3834  
HOME 907-760-6027

## MEMORANDUM

TO: Senator Pat Rodey, Chairman  
Senate Judiciary Committee

FROM: Senator Bettye Fahrenkamp *Bettye*

DATE: April 25, 1986

RE: Hearing request

At your earliest possible convenience, I would appreciate a hearing on SB 429, relating to regulations that affect small businesses. Thank you.

**DEPARTMENT OF LAW**

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

OFFICE OF THE ATTORNEY GENERAL

April 7, 1986

Honorable Fred Zharoff, Chairman  
Senate Labor & Commerce Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: SB 429 (regulations affecting  
small businesses, etc.)  
Our file: 66-3-86-0414

Dear Senator Zharoff:

You will find attached copies of fiscal notes by the following departments:

Department of Administration,  
Department of Commerce & Economic Development,  
Department of Community & Regional Affairs,  
Department of Corrections,  
Department of Education,  
Department of Environmental Conservation,  
Department of Health & Social Services,  
Department of Labor,  
Department of Law,  
Department of Military & Veterans' Affairs,  
Department of Public Safety, and  
Department of Transportation & Public Facilities.

These fiscal notes are based on the original SB 429. I did not receive the draft committee substitute until Friday, April 4, and I believe that the various state agencies directly affected by this bill have not yet seen that draft. I am forwarding these fiscal notes to you so that your committee will have everything available as it considers the bill. The draft should substantially reduce the costs.

On March 24, following your committee's last hearing on this bill, Senator Fahrenkamp, the bill's sponsor, and I met with her staff, your staff, and David Dougherty (from the federal Small Business Administration) to discuss the bill. On the following day, I prepared for Senator Fahrenkamp a draft revision. It was understood that, although I was trying to help the senator address some of the problems identified as being in the original version of the bill, my efforts did not mean that the

Honorable Fred Zharoff  
Re: SB 429

April 7, 1986  
Page 2

Administration or the Department of Law endorsed either the original version or the draft substitute. It was also understood that the senator would send a copy to Mr. Dougherty for his comments.

I believe that your committee has been furnished copies of my March 25 letter to Senator Fahrenkamp and of the draft substitute. So I will not repeat the content of that letter here.

It appears that the April 4 draft CS prepared in the Legislative Affairs Agency is very similar to my draft, with, however, some significant changes.

The gist of the attached fiscal notes is that the bill is unnecessary, too burdensome, costly, and without sufficient (if any) benefit to the public. The draft substitute bill, which the various agencies have not yet seen and have not commented upon, will substantially reduce those costs and burdens, but it is not clear that it will produce anything of great value to the public. This time of severe fiscal constraints and reduced staffs is not the best one for imposing new functions and duties on a broad range of state agencies.

Here are some general and specific comments:

1. While commending Senator Fahrenkamp's long-standing interest in regulatory reform, I have not been able to identify a particular problem for which this bill is the solution. I have read the senator's written statement which she presented to your committee on March 24, 1986, and I have no quarrel with her objective of making state agencies more "sensitive to new regulatory burdens." However, most agencies are indeed aware of that now, and the duties imposed by the bill seem unnecessary to achieve any greater sensitivity.

2. A bill such as this appears to be inspired by a particular problem pertaining to a particular function of the state government, implemented, in part, by administrative regulations. But the bill speaks in broad terms, thus affecting all agencies and all functions.

3. If there is a particular function of the state government, being performed by some identified state agency, a simple amendment to the statutes specifically affecting that function would be a better way to achieve the senator's objective.

4. Some agencies, such as the Department of Environmental Conservation and the Department of Health and Social Services, administer programs closely associated with federal agencies and subject to federal requirements. For many of these, it is simply not feasible to undertake some special "flexibility analysis" for small businesses when preparing and adopting regulations.

5. Some agencies, such as the Department of Corrections and the Department of Military and Veterans' Affairs, do not adopt regulations affecting small businesses and a broadly sweeping statute such as in this bill (and the draft committee substitute) is simply unnecessary.

6. Section 1 of the draft committee substitute merely adds to the duties of the legislature's Administrative Regulation Review Committee. In doing so, it relies on the new requirement in the proposed AS 44.62.197 (economic analysis for small entities). While we do not support the new statutory requirement in the proposed AS 44.62.197, we do not object to the committee performing an oversight function. The current standard for regulation validity is "reasonable necessity." AS 44.62.030. The language of the amendment proposed in sec. 1 could be made to refer simply to the existing standard.

7. Section 2 of the draft committee substitute will require each agency to prepare a "regulatory agenda" twice a year. The need for this is certainly questionable, especially since an agency is not bound by it (see the proposed AS 44.62.177(b)). Under the current AS 44.62.190, an agency is required to give a broad distribution to the notice of proposed regulation adoption, at least 30 days before the adoption. It is not clear that, in addition to the currently required saturation notice, this regulatory agenda would provide anything more than a time-consuming irritant to each regulation-adopting agency.

8. Section 2 also relies on the terms "significant economic impact," "substantial number," and "small entities." Although the last of these three terms is defined, the first two are not. This leaves a great deal of vagueness which would make accurate compliance with the requirement very difficult.

9. Section 3 of the draft committee substitute is, of course, the heart of the bill. Although this version would be much more administratively feasible than the version in

Honorable Fred Zharoff  
Re: SB 429

April 7, 1986  
Page 4

the original bill, it still imposes requirements that select one kind of member of the public -- "small entities" -- for special treatment. It thus imposes a burden on all agencies that will produce little benefit, if any, to the general public.

10. The definitions of "small business" and "small municipality," in the proposed subsec. (f) (page 4 of the draft CS), raise some questions. Although the approach taken is that offered in the draft that I did for Senator Fahrenkamp on March 25, the numbers of employees and the amount of annual gross sales, in the definition of "small business," and the size of the population of "small municipalities," have been made much larger. Although I am not qualified to state firmly just what those numbers should be, it appears that the draft CS uses numbers that are far too large for the Alaska context.

Thank you for this opportunity to comment, and I would be happy to continue working with Senator Fahrenkamp and her and your staff on this matter.

Yours truly,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:   
Arthur H. Peterson  
Assistant Attorney General

AHP:md

cc w/enc.: Hon. Bettye Fahrenkamp  
Alaska State Senate

Jim Ayers, Director  
Legislative Relations  
Governor's Office

cc w/o enc.: Department Heads

**DEPARTMENT OF LAW**

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

OFFICE OF THE ATTORNEY GENERAL

April 24, 1986

Honorable Pat Rodey, Chairman  
Senate Judiciary Committee  
Alaska State Legislature  
P. O. Box V  
Juneau, Alaska 99811

Re: CSSB 429(L&C) -- regulations  
affecting small entities  
Our file: 66-3-86-0414

Dear Senator Rodey:

Senator Zharoff, chairman of the Senate Labor and Commerce Committee, said that he would be passing along to your committee my earlier correspondence on this bill, with the collection of fiscal notes on the original bill. So I will not duplicate that material here.

The committee substitute by the Labor and Commerce Committee is a vast improvement over the original bill and should cost substantially less. However, I have not polled the various executive agencies to collect their comments and fiscal notes on the committee substitute, as I did for the original bill.

Here are some questions that your committee might wish to consider as it analyzes this bill:

1. What is the exact problem toward which this bill is directed? In other words, what exactly is broken that needs fixing?
2. Is it necessary to change the entire system in order to address whatever agency program or function may have prompted the introduction of this measure?
3. Is the value of such a measure as this worth the cost?
4. At a time when most agencies will be experiencing staff cutbacks in response to the current budget crisis, is it wise to create new duties such as these for all agencies?
5. Is it helpful to require publication of a "regulatory agenda" (sec. 2 of the bill) in the Alaska Administrative Journal, when that journal is in fact in danger of being defunded? Would such a twice yearly regulatory agenda be helpful anyway?

Honorable Pat Rcdy, Chairman  
Senate Judiciary Committee

April 24, 1986  
Page 2

6. Is the economic analysis required by sec. 3 of the bill necessary in all instances? A somewhat similar provision in the Model State Administrative Procedure Act (1981), promulgated by the National Conference of Commissioners on Uniform State Laws, provides for an analysis to be prepared only when requested in writing within a specified time period by certain responsible officials (e.g., the governor, the legislature's Administrative Regulation Review Committee) or a substantial number of members of the public acting together. See, sec. 3-105 and the official commentary following that section.

7. Can such terms as "significant economic effect" and "substantial number of small entities," which appear at page 4, lines 5 and 6, be revised to give more specific direction?

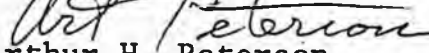
8. Are the dollar and employee numbers in the definition of "small business" (page 4, lines 19 and 22) appropriate, or are they too high for the Alaska context?

9. Is the definition of "small municipality," with its specification of 10,000 or fewer persons, appropriate for the Alaska context?

If you should have any question regarding this bill, do not hesitate to call me.

Yours truly,

HAROLD M. BROWN  
ATTORNEY GENERAL

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

AHP:md

cc: Hon. Bettye Fahrenkamp  
Alaska State Senate

Department Heads

Jim Ayers, Director  
Legislative Relations  
Governor's Office

## REGULATORY FLEXIBILITY

States are requiring their agencies to perform an analysis of the impact any proposed regulation would have on small business and adopt administrative rules which minimize the negative impact and reflect the special needs and problems of small business.

**Discussion:** Regulatory flexibility legislation seeks to make state agencies sensitive to new regulatory burdens which may have a crippling impact on the ability of small businesses to create jobs.

Regulatory Flexibility legislation requires the state regulating agency to consider the following measures for reducing impact on small business:

- (1) establish less stringent compliance or reporting requirements;
- (2) establish less stringent schedules or deadlines for compliance or reporting requirements;
- (3) consolidate or simplify compliance with the rule and regulation or reporting requirements;
- (4) establish performance standards to replace design or operational standards; or
- (5) exempt small businesses from any or all requirements of the rule and regulation.

Often small businesses have insights into the situations being regulated which affect them, and the regulators should make every effort to involve them in the deliberations on the regulation.

The Regulatory Flexibility Act of 1980 imposes this requirement on federal regulators. According to a 1983 study by the U.S. Small Business Administration's Office of Advocacy, twenty-one states have adopted legislation which would require this regulatory review, and six states currently have it under consideration.

Regulations imposed by government agencies may have a greater impact on small business than on their larger competitors. For example, while regulatory controls are necessary and appropriate in many areas, regulators must be sensitive to the needs of small business in devising regulations and the cumulative affect of regulations on a small business. This is particularly important since small business is the primary generator of new jobs -- a trend that is projected to continue according to most economists.



U.S. SMALL BUSINESS ADMINISTRATION

Region X  
2415 Fourth Avenue  
Seattle, Washington 98121

April 9, 1986

Senator Fred Zharoff, Chairman  
Senate Commerce and Labor Committee  
Alaska State Legislature  
Pouch V (MS 3100)  
Juneau, Alaska 99188

Dear Mr. Chairman:

As the Regional Advocate for small business, one of my responsibilities is to monitor federal agency compliance with the Federal Regulatory Flexibility Act. Since your committee has a similar bill under consideration, I would like to share some insights from my years of experience.

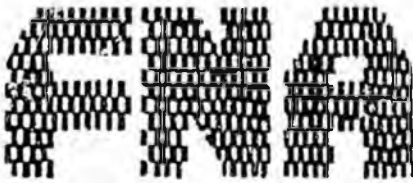
Over 28 States have adopted a "Reg Flex" bill in the past four years. This large number of States demonstrates the perceived need to have a rule making processes which will provide the most efficient rule with the least burden on small business. The only way to assure such efficiency is to insist that government rule makers analyze the impact of their proposals, I seek alternatives which will accomplish the same goal, and meet with the people affected by the proposed rule to determine if they, the regulated public, have any better ideas. The Bill before your committee, SB 429, will accomplish this worthy goal.

Most State agencies fear that changing the rule making process to include this activity will place an additional financial burden on them. It has been my experience (and I checked with my counterparts in other regions of the Country) that no State agency in any of the 28+ States which have a Reg Flex bill have felt any significant increase in the costs of rulemaking.

Small businesses are creating three fourths of all the new jobs in today's economy. It is incumbent on us to assure that this fragile sector of our economy is not unduly burdened with requirements that could have accomplished the same end less obtrusively.

Sincerely,

David A. Dougherty  
Regional Advocate


**FAIRBANKS NATIVE ASSOCIATION, INC.**

310½ First Avenue  
 Fairbanks, Alaska 99701  
 Phone: (907) 452-1648 / 456-5151

4/2/86

Honorable Bettye Fahrenkamp  
 Alaska Senate  
 Pouch W Juneau 99811

Dear Senator Fahrenkamp:

On behalf of FNA's Economic Development program, I would like to commend you and extend our appreciation for your bill #429, to require consideration of alternative regulatory approaches in light of the impact of proposed regulations on small businesses. This bill is a good example of the wise and helpful leadership you have long provided.

I spoke with Mr. David Dougherty, the federal representative (SBA Seattle) who handles the federal bill; he feels such laws work well and achieve important benefits. Mr. Dougherty was my first supervisor many years ago (1979); he is an insightful and productive person, who has done many things to make government more efficient and productive. His insights and positive work have earned him a good respect and regard.

With so many areas where our businesses are hurting to survive, and so many adverse impacts of regulations, this bill can be an important benefit. Thank you for your attention to this need.

Sincerely,

Robert Lee Keller

Director, Business & Manpower Development Dept.

**ADMINISTRATION/ACCOUNTING**  
 452-1648 or 456-5151

**JOHNSON O'MALLEY  
 EDUCATIONAL PROGRAM**

**"SAAKKAAYA CENTER"**  
 451-6201 or 451-6211

**BUSINESS AND MANPOWER  
 DEVELOPMENT**  
 452-1648

**WOMEN'S EDUCATION PROGRAM**  
 451-8592

**COMMUNITY SERVICES**  
 452-1648

**Counseling Services**  
 452-1648

**Child Welfare**  
 452-1648

**Family Focus**  
 452-5802

**ALCOHOL AND DRUG ABUSE SERVICES**

**Drop-In Center**  
 456-7948

**Out-Patient Services**  
 456-1041  
 456-1101

**Fairbanks Alcohol Safety  
 Action Program**  
 452-6144

**Youth Drug Abuse Preventi**  
 452-5085

**Director**  
 452-1648 Ext. 15  
**RCAOA Detox Center**  
 456-1053  
**RCAOA Treatment Center**  
 456-1045

**RCAOA Halfway House**  
 452-8761

**Substance Abuse Regional Counselor Training Progr**  
 452-7045

# CST

## CLERICAL SKILLS TRAINING

513 FIRS<sup>T</sup> AVENUE, FAIRBANKS, AK 99701 (907) 452-6541 □ 3601 "C" STREET, SUITE 260, ANCHORAGE, AK 99503 (907) 561-6088

MAR 11 1986

SB429

March 6, 1986

Mr. Danny Consenstein, Researcher  
Senate Health, Education, and  
Social Services Committee  
Pouch V  
Juneau, AK 99811

Dear Mr. Consenstein:

Subject: SB #429

Thank you for meeting with me on Friday, February 28, 1986. As the owner of a small business which happens to be a private school, this bill is important to my very existence. Many times our business comes last, but regulations and compliances are definitely the first order of the day.

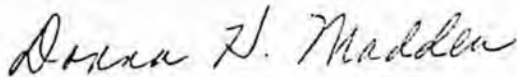
As secretary to the Alaska Private School Association, I will make certain that the members are aware of this bill. If you could contact my office a week before it is to be voted on, we will barrage the POM's to Juneau.

Please remind Ms. Fahrenkamp that SB #426 is very important too!

By the way, I met Betty at the convention center on Saturday and related to her the same information.

Sincerely,

CLERICAL SKILLS TRAINING



Mrs. Donna H. Madden  
Owner

alm/lbf6.3.6

CC: Alaska Private School Association

**DEPARTMENT OF LAW**

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

OFFICE OF THE ATTORNEY GENERAL

March 25, 1986

Honorable Bettye Fahrenkamp  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99811

Re: Attached draft revision of  
SB 429 (regulations affect-  
ing small entities)

Dear Senator Fahrenkamp:

As we discussed yesterday afternoon following the hearing on this bill by the Senate Labor and Commerce Committee, I have now drafted a revised version of the bill. The draft is attached.

As we agreed, my drafting effort is intended to help you address some of the problems that we see in the original bill. It does not mean that the Administration or the Department of Law endorses either the original version or this draft substitute.

The draft attempts to do four things, while keeping in mind the dialogue between the regulated industry and the regulating agency, which Small Business Administration Regional Advocate David A. Dougherty identified in his testimony yesterday as the heart of the bill. Those four things are:

1. removing some of the problems that we see in the original version of the bill;
2. easing some of the administrative burden and thus the costs associated with the original version of the bill;
3. integrating the new requirements with the existing requirements of our Administrative Procedure Act;
4. avoiding some of the more offensive governmental jargon.

I believe that the draft covers the five points that Mr. Dougherty identified during our conversation as essential. They are:

A. every regulation or regulation project gets an analysis if the regulation affects small entities;

B. there is to be an initial analysis that covers the reasons for, alternatives to, and kinds of entities affected by the proposed action;

C. there is to be a final analysis accompanying the final version of the regulation (or regulation project) that includes a comment on the testimony, identifying the incorporation of suggested changes or giving reasons for rejecting suggested changes;

D. there is to be a role specified for the Administrative Regulation Review Committee;

E. there is to be a "look back" provision that requires agencies to review their current regulations with an eye toward the kind of analysis that will be required for their adoption of future ones.

The idea with which we concluded our conversation yesterday was that you would send to Mr. Dougherty a copy of my draft, for his comments and possible suggestions for change. (You might also want to send him a copy of this letter.) If he has any comments or suggestions, your staff and I, and perhaps the Senate Labor and Commerce Committee staff, will get together and see whether we can prepare a committee substitute to present to the committee.

Here is an item-by-item commentary on the attached draft:

BILL TITLE:

I have changed the original bill's title by deleting the reference to small organizations and by changing the reference to "small governmental jurisdictions" to read "small municipalities." This reflects changes that I have made in the text of the bill. The reason for deleting references to small organizations is that the definition of that kind of critter was just too slippery to work with. Although I do not know the exact intent of the original drafters, it would appear that most of the small organizations contemplated would be covered by the attached draft's definition of "small business." The change regarding municipalities merely tries to put the language in Alaska terms.

SECTION 1:

This adds to the list of powers of the Administrative Regulation Review Committee the power to monitor agency compliance with the new economic analysis requirement. Clearly, that committee could do this now, but this additional provision emphasizes the committee's role in that regard. This is also one of the features that Mr. Dougherty regards as essential.

SECTION 2:

This section, obviously, carries the main thrust of the bill. It places in our Administrative Procedure Act an express requirement that agencies consider the probable economic effect of proposed action on small businesses and small municipalities. The list of things that that consideration must include is taken from Section 3-105 of the Model State Administrative Procedure Act (1981), promulgated by the National Conference of Commissioners on Uniform State Laws. It includes a requirement for consideration of the reasons for a regulation in light of the probable economic effect on small entities, taken from the original version of your bill.

Subsection (a) of the new section requires that consideration before notice of proposed action is published under our existing statute. This is the initial analysis. To minimize the administrative burden and governmental paperwork, it is not required to be written in full. But see sec. 3.

Subsection (b) specifies that at the close of public proceedings under our existing statute, the agency is to prepare a final analysis; this one must be in writing and must include the agency's response to any public testimony.

In somewhat simplified form, subsecs. (c) -- (e) are taken from your original bill, with the addition (in subsec. (e)) of some language from Section 3-105(f) of the Model Act. In subsec. (c), I have used the phrase "a significant economic impact on a substantial number of small entities" from your original bill. No definition is provided. I am still concerned about the terms "significant economic impact" and "substantial number."

Subsection (f) sets out the definitions. I have completely redefined "small business" to avoid the circularity of the definition in the original bill and its maddening vagueness. My definition identifies the business as an Alaskan one and specifies a small number of employees and a small level of gross income. I do not know whether the numbers I have selected for these last two

points (employees and income) are realistic, and welcome suggestions with regard to them. My use of the term "small municipalities" and its definition attempt to put your original bill's concept into Alaskan terms. Again, whether my specification of the number 5,000 is adequate, I really have little idea, but believe that the original bill's 50,000 is much too high for Alaska. I trust that my deletion of the original bill's reference to school districts and special districts does not destroy your intent in the original bill.

SECTION 3:

This section of the bill amends the existing statute that specifies the contents of notices of proposed adoption of regulations. By adding the requirement that a brief summary of the analysis required by the proposed AS 44.62.197(a) be included, this has the effect of requiring that analysis to be in writing, although in summary form. Thus, when an agency first publishes notice, it will be including a rough equivalent of the original bill's "initial flexibility analysis." This version has the advantage of being much simpler and thus much cheaper to provide. And, again, it fits into the existing system.

SECTION 4:

With some modification, sec. 4 is the original bill's AS 44.63.-070 (pages 7 and 8 of the original bill). The two most significant changes I have made are (1) deletion of the requirement for publishing a plan for the periodic review of the regs, and (2) deletion of the requirement for periodic review. This section requires one review of existing regulations. Future regulations will be taken care of by the new procedures specified in secs. 1 -- 3 of the attached draft. Again, this simplifies the bill and goes a long way toward reducing its costs. Because of its one-time-only nature, I have made it a temporary law section rather than a statute codified in the Alaska Statutes.

SECTION 5:

This is simply an applicability section, taken from sec. 3 of the original bill.

SECTION 6:

This effective-date clause is the same as the one in sec. 4 of the original bill, specifying July 1, 1986. I wonder whether it is feasible to have such an early effective date for such a significant change from the current system.

Honorable Bettye Fahrenkamp  
Alaska State Senate

March 25, 1986  
Page 5


CONCLUSION

I hope that you find the attached draft helpful, and I trust that it appropriately sets out the points that Mr. Dougherty identified as essential. As mentioned above, he might have some comments to offer from his somewhat different perspective. I believe that there still are problems with the bill, and there are issues for which I do not know the answer.

While the bill is undergoing this revision effort, I am trying to coordinate the executive branch's comments on the bill so that we can present the Administration position on it. Again, let me repeat that my efforts in connection with this re-draft do not mean that either the Administration or the Department of Law endorses the bill in either its original or modified form. I look forward to working with you on it.

Very truly yours,

HAROLD M. BROWN  
ATTORNEY GENERAL

By:   
Arthur H. Peterson  
Assistant Attorney General

AHP:md

cc w/enc.: Dept. Heads

Jim Ayers, Director  
Legislative Relations  
Governor's Office

UPDATES  
TO A  
PROBLEMLIST

Summary of State  
Regulatory Flexibility Statutes

STATE	CITATION	YEAR ENACTED	SUMMARY OF PROVISIONS
ARIZONA <sup>1</sup>	§41-1002.02 AZ Revised Statutes	1982	<ul style="list-style-type: none"> <li>● Requires agencies to consider prescribed methods of reducing the impact of rules on small businesses.</li> <li>● To reduce the impact on small businesses agencies shall: establish less stringent compliance and/or reporting requirements, establish less stringent deadlines, simplify compliance or reporting requirements, establish performance standards, or exempt small businesses from all or parts of a rule.</li> <li>● Applies to both new rules and amendments to existing rules.</li> </ul>
CALIFORNIA <sup>2</sup>	AB2305	1982	<ul style="list-style-type: none"> <li>● Requires agencies to evaluate the specific impact of a proposed or amended rule or regulation on small business.</li> </ul>
COLORADO <sup>3</sup>	§24-34-904	1982	<ul style="list-style-type: none"> <li>● The Office of Regulatory Reform (ORR) reviews and comments upon proposed and existing rules and compliance and reporting requirements as to their effect on small business.</li> <li>● In FY1982-83, 121 rules were reviewed and the ORR staff testified at 6 rule-making hearings.</li> </ul>
ILLINOIS <sup>1</sup>	Chapter 127, §1001-1021 Illinois Revised Statutes	1981	<ul style="list-style-type: none"> <li>● Agencies shall prepare a regulatory flexibility analysis for all proposed rules and amendments to rules.</li> <li>● To reduce the impact of any new rule or amendment to an existing rule on small business, agencies shall: establish less stringent schedules or deadlines, establish less stringent compliance and reporting requirements, simplify the compliance or reporting requirements, and exempt small businesses from any and all requirements of the rule.</li> <li>● Agencies shall provide any opportunity for small businesses in the rule making process and shall: include in any advance notice of possible rule-making a statement that the rule might affect small businesses, publish notice of rulemaking in publications likely to be obtained by small businesses, notify interested small businesses, and hold public hearings.</li> </ul>

Summary of State  
Regulatory Flexibility Statutes

STATE	CITATION	YEAR ENACTED	SUMMARY OF PROVISIONS
ILLINOIS <sup>1</sup> (cont'd.)			<ul style="list-style-type: none"> <li>● Agencies shall notify the Small Business Office (SBO) of the Department of Commerce when rules affect businesses. The SBO may advise or assist agencies in preparing regulatory flexibility analyses.</li> </ul>
KENTUCKY <sup>1</sup>	KRS Chapter 13	1982	<ul style="list-style-type: none"> <li>● Agencies are required to prepare a regulatory impact analysis on all regulations. This analysis is sent to the Legislative Research Commission.</li> <li>● Agencies, whenever possible, shall tier their regulations to reduce disproportionate impacts on certain classes of regulated entities. Tier must be based on reasonable criteria and uniformly applied to an entire class.</li> <li>● Agencies may use the following methods: reduce or eliminate substantive regulatory requirements, reduce or eliminate reporting requirements, reduce the frequency of inspections, exempt from inspection, delay compliance timetables, and reduce fines for noncompliance.</li> </ul>
MAINE <sup>4</sup>	Executive Order #11	1981	<ul style="list-style-type: none"> <li>● Agencies are directed to fit regulatory and informational requirements to the scale of business subject to regulation.</li> <li>● Agencies should encourage rule flexibility by adjusting compliance and reporting requirements, simplifying rules and exempting small business from regulations.</li> </ul>
MARYLAND <sup>4</sup>	HB573	1982	<ul style="list-style-type: none"> <li>● Agencies shall evaluate the impact of regulations on various sizes of businesses.</li> <li>● Agencies may adopt varying rules depending on the size of the businesses or adopt differing applications of a rule based upon business size.</li> </ul>

Summary of State  
Regulatory Flexibility Statutes

STATE	CITATION	YEAR ENACTED	SUMMARY OF PROVISIONS
NEW YORK <sup>1</sup>	Chapter 910 S. 5362-B A. 7091-B	1983	<ul style="list-style-type: none"> <li>• Agencies must provide a regulatory flexibility analysis for each proposed and emergency rule. This analysis must demonstrate the agencies attempt to minimize the adverse effects of the proposed rule on small businesses.</li> <li>• To alleviate any adverse effects on small businesses, agencies shall consider the following approaches: establishing different compliance and reporting requirements, using performance standards, and exempting small businesses from all or part of a rule.</li> <li>• Agencies shall provide small businesses an opportunity to participate in the rulemaking process by publishing the notice of proposed rulemaking in publications likely to be obtained by small businesses, direct notification of affected small businesses, conducting special conferences and public hearings, reducing or modifying agency procedures to make it easier for small businesses to participate in the rule-making process.</li> </ul>
OKLAHOMA <sup>4</sup>	HB1815	1982	<ul style="list-style-type: none"> <li>• Requires agencies to consider the impact of rules on various types of businesses and to modify regulations by either excluding certain entities or by tiering rules, penalties, fines.</li> <li>• Also applies to consumer groups.</li> </ul>
OREGON <sup>5</sup>	HB3274 HB2664 Ch. 755	1981	<ul style="list-style-type: none"> <li>• Agencies are required to include a statement of the economic impact on small businesses in their notice of intent to adopt, amend or repeal any rule. Agencies must also review all rules to determine whether they should be changed to minimize the economic effects on small businesses.</li> <li>• Every agency adopting a rule affecting business must report annually to the Legislative Committee on Trade and Economic Development.</li> <li>• Agencies are required to maintain certain records of their regulatory activity and report annually to the legislature.</li> </ul>

## NATIONAL CONFERENCE OF STATE LEGISLATURES

Summary of State  
Regulatory Flexibility Statutes

STATE	CITATION	YEAR ENACTED	SUMMARY OF PROVISIONS
OREGON <sup>5</sup> (cont'd.)			<ul style="list-style-type: none"> <li>● In 1982, 51 state agencies filed the reports as required by this legislation and 201 rules affecting small businesses were identified. 582 rules were identified that have no effect on small businesses.</li> </ul>
PENNSYLVANIA <sup>1</sup>	SBI Regulatory Review Act	1982	<ul style="list-style-type: none"> <li>● This law creates the Independent Regulatory Review Commission (IRRC) and requires agencies to submit certain information about all proposed regulations to the General Assembly and the IRRC.</li> <li>● Agencies are required to submit to the IRRC a regulatory analysis on all proposed regulations which impose economic costs of over \$1 million.</li> <li>● As part of the regulatory analysis, the agencies shall develop certain provisions "to meet the particular needs of affected groups and persons including, but not limited to, minorities, elderly, small businesses and farmers."</li> </ul>

NOTES REGARDING SOURCES

1 - Statute

2 - "Governor Signs Major Small Business Bill Into Law." Press Release. 9/16/82.

3 - Sunset Review. Office of Regulatory Reform. DORA. 1982.4 - Regulatory Flexibility Legislation in the States. NFIB. December 1982. (Update via telephone conversation, September 1983.)5 - Regulatory Reform and Simplification of Government Regulations. Joint Legislative Committee on Trade and Economic Development. Oregon. 1983.

\*WASHINGTON: Also has a Regulatory Flexibility Statute, but no information available.

Original sponsor: Fahrenkamp

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 429 (Judiciary)

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 regulations that affect small  
7 businesses and small municipalities; and providing  
8 for an effective date."

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

10 \* Section 1. AS 24.20.460 is amended to read:

11 Sec. 24.20.460. POWERS. The Administrative Regulation Review  
12 Committee has the following powers:

13 (1) to organize and adopt rules for the conduct of its  
14 business;

15 (2) to hold public hearings;

16 (3) to require all state officials and agencies of state  
17 government to give full cooperation to the committee or its staff in  
18 assembling and furnishing requested information;

19 (4) to examine all administrative regulations to determine  
20 if they properly implement legislative intent;

21 (5) to make recommendations for legislative annulment of  
22 administrative regulations under AS 44.62.320;

23 (6) to prepare and distribute reports, memoranda, or other  
24 materials;

25 (7) to promote needed revision or repeal of regulations  
26 that have been adopted by state departments and agencies and, when the  
27 committee determines a regulation should be repealed or amended, to  
28 introduce a bill that would enact a statute that would supersede or  
29 nullify the regulation;

1 (8) to investigate findings that are transmitted to the  
2 committee by a standing committee in accordance with AS 24.05.182 and,  
3 as appropriate, to either introduce a bill annulling the regulation or  
4 exercise the committee's power to suspend the effectiveness of the  
5 regulation in accordance with AS 24.20.445;

6 (9) to monitor agency compliance with the requirements of  
7 AS 44.62.197, make recommendations to an agency regarding the adequacy  
8 of its analyses and of its responses to public testimony, and report  
9 annually to the legislature on agency compliance with AS 44.62.197;

10 (10) to petition the court for permission to appear as  
11 amicus curiae in an action brought under AS 44.62.300 to address the  
12 effect of the regulation on small entities.

13 \* Sec. 2. AS 44.62 is amended by adding a new section to article 3 to  
14 read:

15 Sec. 44.62.177. REGULATORY AGENDA. (a) During the months of  
16 January and July of each year, each agency shall publish in the Alaska  
17 Administrative Journal a regulatory flexibility agenda that

18 (1) describes briefly the subject area of any regulation  
19 that the agency expects to propose or adopt that is likely to have a  
20 significant economic impact on a substantial number of small entities;

21 (2) summarizes the nature of any proposed regulation under  
22 each subject area listed under (1) of this subsection, the objectives  
23 and legal basis for the proposed regulation, and an approximate sched-  
24 ule for completing action on each regulation for which the agency has  
25 issued a notice of proposed regulation-making; and

26 (3) contains the name and telephone number of an agency  
27 official knowledgeable concerning the items listed in (1) of this  
28 subsection.

29 (b) An agency may consider or act on a matter not included in a

1 regulatory flexibility agenda. An agency may decline to consider or  
2 act on a matter listed in the agenda. The agency shall state why it  
3 is declining to act on the matter. An agency may not refuse to con-  
4 sider or adopt a regulation solely because the proposed regulation was  
5 not included in the agency's regulatory agenda.

6 (c) In this section, "small entity" has the meaning given in  
7 AS 44.62.197.

8 \* Sec. 3. AS 44.62 is amended by adding a new section to read:

9 Sec. 44.62.197. ECONOMIC ANALYSIS; SMALL ENTITIES. (a) Before  
10 publishing notice under AS 44.62.190, an agency planning to adopt,  
11 amend, or repeal a regulation shall analyze the probable economic  
12 effect of the proposed action on small businesses and small municipal-  
13 ities. The analysis must

14 (1) consider the types and numbers of small entities that  
15 will probably be affected by the proposed action, including the types  
16 that will bear the costs of the proposed action and those that will  
17 benefit from it;

18 (2) consider the probable economic effect of the proposed  
19 action, both as to kind and amount, upon the affected entities;

20 (3) review the reasons for the proposed action, in light of  
21 the probable economic effect on small entities;

22 (4) identify whether there are less costly or less intru-  
23 sive means of achieving the purpose of the proposed action;

24 (5) identify, to the extent practicable, relevant regula-  
25 tions that may duplicate, overlap, or conflict with the proposed  
26 regulations.

27 (b) After the close of public proceedings under AS 44.62.210,  
28 the agency shall prepare, as a final analysis for a regulation-adop-  
29 tion project, a brief summary from the analysis required by (a) of

1 this section and the agency's comment on public testimony, whether  
2 that testimony was written or oral. The agency's comment on the  
3 testimony must identify changes made in response to the testimony and  
4 must include a brief statement of the reason for rejecting a proposal,  
5 if any, that was not adopted by the agency. The agency's statement  
6 under this subsection may summarize the reasons and the testimony in  
7 aggregate form so as to avoid duplication and unnecessary detail.

8 (c) If the head of the agency certifies in writing that a regu-  
9 lation will not have a significant economic effect on a substantial  
10 number of small entities, the agency shall make a succinct statement  
11 explaining the reasons for the certification and why it is not re-  
12 quired to comply with this section. The certification must be submit-  
13 ted to the lieutenant governor for filing with the regulation.

14 (d) An agency may consider a series of closely related regula-  
15 tions as one regulation for the purposes of this section.

16 (e) Analyses under this section are not subject to judicial  
17 review. Action taken may not be invalidated on the ground that the  
18 contents of an analysis are insufficient or inaccurate.

19 (f) In this section

20 (1) "small business" means a business corporation or a  
21 nonprofit corporation, a partnership, or a sole proprietorship, that  
22 is licensed in the state and transacts business in the state, and

23 (A) employs 50 or fewer employees in the state, ex-  
24 cluding seasonal employees; or

25 (B) has annual gross sales, or value of services  
26 provided, of \$1,000,000 or less;

27 (2) "small entity" means a small business or small munic-  
28 ipality;

29 (3) "small municipality" means a municipality with a

1 population of 10,000 or fewer persons.

2 \* Sec. 4. AS 44.62.200(a) is amended to read:

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

5 (1) a statement of the time, place, and nature of proceed-  
6 ings for adoption, amendment, or repeal of the regulation;

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

11 (3) an informative summary of the proposed subject of  
12 agency action;

13 (4) other matters prescribed by a statute applicable to  
14 the specific agency or to the specific regulation or class of regula-  
15 tions;

16 (5) a summary of the fiscal information required to be  
17 prepared under AS 44.62.195;

18 (6) a summary of the analysis required by AS 44.62.197(a)  
19 and the address from which a complete copy of the analysis may be  
20 obtained.

21 \* Sec. 5. REVIEW OF EXISTING REGULATIONS. (a) Before January 1, 1991,  
22 each agency shall review the regulations adopted by that agency and in  
23 effect as of July 1, 1986, that have or will have a significant economic  
24 effect upon a substantial number of small entities. The purpose of the  
25 review is to determine whether the regulations should be continued without  
26 change, or should be amended or repealed to minimize a significant economic  
27 effect on a substantial number of the small entities. If the head of the  
28 agency determines that completion of the review of existing regulations is  
29 not feasible by January 1, 1991, the agency head shall certify that fact in

1 writing and may extend the completion date by one year.

2 (b) In reviewing regulations under (a) of this section, the agency  
3 shall consider the

4 (1) continued need for the regulation;

5 (2) nature of complaints or comments received concerning the  
6 regulation from the public;

7 (3) complexity of the regulation;

8 (4) extent to which the regulation overlaps, duplicates, or  
9 conflicts with other state regulations, and, to the extent feasible, with  
10 federal and local governmental regulations; and

11 (5) length of time since the regulation has been evaluated or  
12 the degree to which technology, economic conditions, or other factors have  
13 changed in the area affected by the regulation.

14 (c) In this section

15 (1) "agency" has the meaning given "state agency" in AS 44.62.-  
16 640(a);

17 (2) "small entity" has the meaning given in AS 44.62.197.

18 \* Sec. 6. AS 44.62.197, enacted by sec. 3 of this Act, does not apply  
19 to regulations for which a notice of proposed action is issued before  
20 July 1, 1986.

21 \* Sec. 7. This Act takes effect July 1, 1986.

Cramer  
4/23/86 ✓

Original sponsor: Fahrenkamp

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