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SENATE COMMITTEE REPORT

FURTHER

4/21/88

DATE TURNED INTO OFFICE 4/25/88

Mr. President:

Finance Committee considered SB 384

adoption of regulations and the presumption of validity of regulations and recommended

[] replace with _____ CS _____) [] same title
[x] or adopt _____ CS SB 384 (Jud)) [x] new title

[] attached amendment(s) and

[x] do pass

[] do not pass

[] no recommendation

[] individual recommendations

[] further referral to _____

[] letter of intent adopted _____

Committee [] attached or [] adopted fiscal note(s)

[x] new [] updated or [] previous
[x] zero [] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Handwritten signatures]

Rick Halford do pass
Chairman signature and recommendation

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Act relating to adoption
of regulations
Sponsor: Rules/Reg. Review
Requestor: Senate Finance Committee

Agency Affected: Office of the Governor
BRU: Executive Operations
Components: Executive Office

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: *Rick Halford*
Division: Senator Rick Halford, Co-chairman
Senate Finance Committee

Phone: 465-3753
Date: April 25, 1988

Approved by Commissioner: _____
Agency: _____

Date: _____

Distribution (by preparer):

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

Original sponsor: Rules/Administrative
Regulation Review Committee

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 384 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption of regulations."

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

8 * Section 1. AS 44.62.040(b) is amended to read:

9 (b) Citation of the general statutory authority under which a
10 regulation is adopted, as well as citation of specific statutory
11 sections being implemented, interpreted or made clear, shall follow
12 the text of each regulation submitted under (a) of this section. The
13 signature of the governor approving adoption of the regulation or
14 order of repeal as required by AS 44.62.065 must accompany the regu-
15 lation or order of repeal.

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

17 Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of
18 repeal is not valid unless the governor has approved its adoption in
19 writing. The lieutenant governor may not accept a regulation or order
20 of repeal for filing under AS 44.62.040 unless it is accompanied by
21 the governor's approval of adoption. This section also applies to
22 regulations and orders of repeal exempted from submission to the
23 lieutenant governor under AS 44.62.040(a). This section does not
24 apply to emergency regulations, emergency orders of repeal, or to
25 regulations or orders of repeal of the

26 (1) Alaska Permanent Fund Corporation;

27 (2) Alaska Public Offices Commission;

28 (3) Board of Fisheries and Board of Game, including regu-
29 lations adopted under AS 16.05.270; and

1 (4) ombudsman.

2 * Sec. 3. 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 and of the action's intended effect on persons subject
13 to the action; the summary must include a description of the substance
14 of each repealed regulation or group of related regulations and a
15 description of the intended effect of the repeal;

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

18 (5) a summary of the fiscal information required to be
19 prepared under AS 44.62.195.

20 * Sec. 4. The amendments made to AS 44.62.040 by sec. 1 of this Act and
21 AS 44.62.065, enacted by sec. 2 of this Act, apply to regulations and
22 orders of repeal adopted on or after the effective date of this Act. The
23 amendments made to AS 44.62.200 by sec. 3 of this Act apply to notices of
24 proposed action published on or after the effective date of this Act.

Alaska State Senate

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Senate Finance Committee
State Affairs Committee
Vice-Chair, Rules Committee
Chair, Administrative Regulation Review

William L. Hensley

Sectional Analysis of CS for SB 384 (Jud)

Sections 1 and 2 require that, under the Administrative Procedure Act, the governor approve a regulation before it becomes valid. The requirement extends to regulations that currently do not have to be submitted to the lieutenant governor under AS 44.62.040(a). That subsection exempts from filing with the lieutenant governor a regulation that:

- (1) establishes or fixes rates, prices or tariffs;
- (2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs and signals; or
- (3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

Specifically exempted from the requirement of the governor's approval are emergency regulations and regulations of the Alaska Permanent Fund Corporation, the Alaska Public Offices Commission, the Ombudsman and the Boards of Fish and Game.

Section 3 changes the requirement concerning the public notice of proposed action which an agency is required to give before adopting, amending, or repealing a regulation. The section requires the agency to summarize the effect of the proposed change.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

Proposed CS for
BILL VERSION: SB 384 (Jud)
PUBLISH DATE: 2/21/88 SENATE

*4/15/88 (Jud)
No. 384 referral*

FISCAL NOTE

REQUEST:

Revision Date: 2/1/88 Agency Affected: Office of the Governor
Title: An Act relating to adoption of regulations and the presumption.. BRU: Executive Operations
Sponsor: Rules Committee Components: Executive Office
Requestor: Rules Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		72.7	75.2	77.6	80.4	83.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT		5.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		77.7	75.2	77.6	80.4	83.0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		77.7	75.2	77.6	80.4	83.0
FEDERAL FUNDS						
OTHER						
TOTAL		77.7	75.2	77.6	80.4	83.0

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Analysis is attached.

by SFC 4/25/88

Prepared by: Michael A. Nizich, Director Phone: 465-3616
Division: Division of Administrative Services Date: 4/14/88

Approved by Commissioner: [Signature] Date: 4/14/88
Agency: Office of the Governor

Distribution (by preparer):

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

RECEIVED

APR 15 1988

LEGISLATIVE FINANCE

page 1 of 2

SB 384

CONTINUATION OF FISCAL NOTE FOR PROPOSED COMMITTEE
SUBSTITUTE TO SB 384

This analysis assumes SB 384 will be amended to include identical provisions as those of CS HB 420 (State Affairs), a copy of which is attached.

Section 1 of this bill amends AS 44.62.040(b) to include the Governor's signature on regulations. "The signature of the governor approving adoption of the regulation as required by AS 44.62.065 must accompany the regulation."

The addition of the signing of regulations to the Governor's duties could result in some delays in the approval process due to scheduling conflicts.

Section 2 of this bill adds a new section to AS 44.62, "Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of repeal is not valid unless the governor has approved its adoption in writing."

The Office of the Governor will need to establish a regulatory review process, which will create the need for an additional Special Staff Assistant who will be charged with research and preparation of a policy review of each regulation referred to the Governor for approval.

Personal Services

Special Staff Assistant - Range 24

	FY 89	FY 90	FY 91	FY 92	FY 93
Salary	56.3	58.3	60.3	62.5	64.6
Benefits	12.7	13.2	13.6	14.2	14.7
Ins.	3.7	3.7	3.7	3.7	3.7
Total:	72.7	75.2	77.6	80.4	83.0

Equipment

Purchase of personal computer, printer, and software, plus required cabling for hookup to mainframe.

FY 89

Total: 5.0

Travel, contractual services, and supply requirements for this position will be absorbed by the Executive Office budget, as will any administrative or clerical support requirements.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to the adoption
of regulations..."
Sponsor: By the Rules Committee
Requestor: Governor's Office/OMB

Agency Affected: Department of Law
BRU: Legal Services

Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-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 Date: February 8, 1988
Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: February 8, 1988
Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 384

This bill amends the Administrative Procedure Act in three important respects. One, Sections 1 and 3 of the bill provide that a regulation or order of repeal would not be valid unless the Governor has approved its adoption in writing. This new requirement for the signature of the Governor approving adoption or repeal of a regulation will necessarily impose an additional administrative burden on the Office of the Governor. Because costs will be involved in complying with this section, a fiscal note analysis should be requested from the Office of the Governor.

Two, Section 5 provides that the legislature may, by special concurrent resolution, determine that a regulation is not within the procedural or substantive authority delegated to an agency and disapprove its enforcement. In such event, the burden is upon the agency in any proceeding for judicial review or for enforcement of the regulation to establish whether the regulation objected to is within the procedural and substantive authority delegated to the agency. This section will undoubtedly result in litigation to test the validity of a regulation that has been disapproved by concurrent resolution. It is not possible to quantify the extent of such litigation, given the variety and breadth of activities, public and private, that are subject to state regulation. However, to the extent that such litigation becomes extensive, or threatens to cripple a vital state program, the department may be forced to request funds at a later time.

Three, Section 6 provides that an information summary of the effect of the proposed agency action on persons subject to or affected by the proposed action be included with the notice of proposed adoption, amendment, or repeal of a regulation. The summary must include a description of the substance of each repealed regulation and a short analysis of the effect of the repeal. Although the Department of Law adopts few regulations of its own, the department reviews all regulations prior to their filing by the Lieutenant Governor, and it sometimes assists other departments in drafting their regulations. It is anticipated that the department will receive innumerable requests from other agencies for advice about the sufficiency of their efforts to comply with the requirements of this section for a substantive analysis on the effects of proposed regulatory actions. These requests will probably result in the department's regulations and legislative drafting staff, as well as the department's individual agency attorneys, becoming more swamped than they already are.

Because the workload, and resulting cost to the department, that will occur if this bill is enacted cannot be accurately predicted, fiscal note funds are not being requested at this time. Such a request may become necessary in the future, and the potential for additional Department of Law costs should be noted while the bill is being considered.

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE ADMINISTRATIVE
REGULATION REVIEW COMMITTEE

2

SENATE BILL NO. 384

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to adoption of regulations and the
7 presumption of validity of regulations."

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

9 * Section 1. AS 44.62.040(b) is amended to read:

10 (b) Citation of the general statutory authority under which a
11 regulation is adopted, as well as citation of specific statutory
12 sections being implemented, interpreted or made clear, shall follow
13 the text of each regulation submitted under (a) of this section. The
14 signature of the governor approving adoption of the regulation as
15 required by AS 44.62.065 must accompany the regulation.

16 * Sec. 2. AS 44.62.050 is amended to read:

17 Sec. 44.62.050. STYLE AND FORMS. The Department of Law shall
18 prepare and shall revise when necessary a drafting manual for adminis-
19 trative regulations which prescribes the style and forms for submit-
20 ting regulations under AS 44.62.040. The manual shall also provide
21 detailed instructions and examples of informative summaries of the
22 proposed actions required under AS 44.62.200(a)(3).

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

24 Sec. 44.62.065. GOVERNOR'S SIGNATURE. A regulation or order of
25 repeal is not valid unless the governor has approved its adoption in
26 writing. The lieutenant governor may not accept a regulation or order
27 of repeal for filing under AS 44.62.040 unless it is accompanied by
28 the governor's approval of adoption. This section also applies to
29 regulations exempted from submission to the lieutenant governor under

1 AS 44.62.040(a).

2 * Sec. 4. AS 44.62.100(a) is amended to read:

3 (a) Except as provided in (c) of this section, [THE] filing of a
4 certified copy of a regulation or an order of repeal by the lieutenant
5 governor raises the rebuttable presumptions that

6 (1) it was duly adopted;

7 (2) it was duly filed and made available for public in-
8 spection at the day and hour endorsed on it;

9 (3) all requirements of this chapter and the regulations
10 relative to the regulation have been complied with;

11 (4) the text of the certified copy of a regulation or order
12 of repeal is the text of the regulation or order of repeal as adopted.

13 * Sec. 5. AS 44.62.100 is amended by adding a new subsection to read:

14 (c) A presumption described under (a) of this section is not
15 applicable if the legislature has adopted a special concurrent resolu-
16 tion determining that a regulation is not within the procedural or
17 substantive authority delegated to the agency and disapproving its en-
18 forcement. The lieutenant governor shall include the resolution in
19 the permanent file of the certified copies of regulations and orders
20 of repeal under AS 44.62.080 and shall publish notice of the resolu-
21 tion in the administrative code and the administrative journal. After
22 the filing of a resolution disapproving a regulation, the burden is
23 upon the agency in any proceeding for judicial review or for enforce-
24 ment of the regulation to establish that the whole or portion of the
25 regulation objected to is within the procedural and substantive au-
26 thority delegated to the agency.

27 * Sec. 6. AS 44.62.200(a) is amended to read:

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

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

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

7 (3) an informative summary of the effect of the proposed
8 [SUBJECT OF] agency action on persons subject to or affected by the
9 proposed action; the summary must include a description of the
10 substance of each repealed regulation and a short analysis of the
11 effect of the repeal;

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

14 (5) a summary of the fiscal information required to be
15 prepared under AS 44.62.195.

16 * Sec. 7. The amendments made to AS 44.62.040 by sec. 1 of this Act and
17 AS 44.62.065 enacted by sec. 3 of this Act apply to regulations adopted on
18 or after the effective date of this Act. The amendments made to AS 44.62.-
19 200 by sec. 6 of this Act apply to notices of proposed action published on
20 or after the effective date of this Act.

SENATE COMMITTEE REPORT

5-1340B

FURTHER FINANCE

DATE TURNED INTO OFFICE _____

2/1/88
Mr. President:

Judiciary Committee considered SB 384

adoption of regulations and the presumption of validity of regulations

input
and recommended

replace with _____ CS SB 384 (Judiciary) same title
[] or adopt _____ CS _____ new title (b)

[] attached amendment(s) and

+ do pass

[] do pass

[] do not pass

[] no recommendation

individual recommendations

[] further referral to _____

FN

[] letter of intent adopted _____

Committee attached or [] adopted fiscal note(s)

[] new [] updated or [] previous

[] zero fiscal impact

MEMBERS SIGNING DO PASS

Kathleen Rodery
Janie Smith

OTHER RECOMMENDATIONS

Per Joseph... No Rec.

Kathleen Do pass
Chairman signature and recommendation

[] Committee Backup attached