

HB

426

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 426

Publication of Proposed Regulatory Action

Received March 14, 1990
by Rep. Jacko, Foster, Zawacki

Heard April 5, 1990
Heard April 17, 1990

Adopted CSHB 426 (SA) April 17, 1990

Passed Out of Committee April 17, 1990
3 Do Pass
1 No Recommendation

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FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: An Act relating to the notice requirements fo BRU: _____
adopting, amending, . . .
 Sponsor: Representative Jacko Components: _____
 Requestor: House State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY92	FY93	FY94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)
FY 90 fiscal impact is "0".

Prepared by: Joy Livey, Special Assistant
 Division: Office of the Commissioner

Phone: 465-3030
 Date: _____

Approved by Commissioner: Myra M. Munson
 Agency: Department of Health and Social Services

Date: 5-2-90

Distribution (by preparer):

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

ADMIN NOTICE - C&RA
ALSO, RESPONSIBILITY
OF AGENCIES -

Original sponsor(s): REP. JACKO, Foster, Zawacki

- public notice issue

Reg Review Committee (1976 created)
SO MUCH PAPER/NOTICE

1 IN THE HOUSE

BY THE C&RA COMMITTEE

2

CS FOR HOUSE BILL NO. 426 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the notice requirements for adopting, amending, or repealing a regulation."

8

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

9

* Section 1. AS 44.62.190(a) is amended to read:

10

(a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

12

(1) published in the newspaper of general circulation, or

13

trade or industry publication, that the state agency prescribes and in

14

the Alaska Administrative Journal; if the state agency proposing the

15

adoption, amendment, or repeal determines that the proposed action is

16

reasonably expected to have a significant effect on a community or on

17

a substantial number of the members of a community, and if there is a

18

regional newspaper that is distributed on a regular basis in the

19

community, notice of the proposed action shall also be published in

20

the regional newspaper; in this paragraph,

21

(A) "community" means

22

(i) a municipality; and

23

(ii) an area that is not a municipality and in

24

(which 25 or more adult persons permanently reside within one

25

mile of a designated point or structure;

26

(B) "effect" includes an effect that may also be

27

experienced by other communities;

28

(2) mailed to every person who has filed a request for

29

notice of proposed action with the state agency;

PROBLEM: DUPLICATION - DONE IN AN INEFFICIENT WAY - COST

NOT TALKING ABOUT PUBLIC EFFECT

PUBLICLY EVERY PAPER DUPLICATION ISSUE

Mailing list - receive notification of
Regs - NOTICE

Develop: STANDARDS UNIT, Utility, Council
-> cheaper to mail? / cost effective?

- 1 (3) if the agency is within a department, mailed or de-
- 2 livered to the commissioner of the department;
- 3 (4) when appropriate in the judgment of the agency,
- 4 (A) mailed to a person or group of persons whom the
- 5 agency believes is interested in the proposed action, and
- 6 (B) published in the additional form and manner the
- 7 state agency prescribes;
- 8 (5) furnished the Department of Law together with a copy of
- 9 the proposed regulation, amendment, or order of repeal for the depart-
- 10 ment's use in preparing the opinion required after adoption and before
- 11 filing by AS 44.62.060;
- 12 (6) furnished to all incumbent State of Alaska legislators
- 13 and the Legislative Affairs Agency;
- 14 (7) furnished to the standing committee of each house of
- 15 the legislature having legislative jurisdiction over the subject
- 16 matter treated by the regulation under the Uniform Rules of the Alaska
- 17 State Legislature, together with a copy of the proposed regulation,
- 18 amendment, or order of repeal for the committee's use in conducting
- 19 the review authorized by AS 24.05.182;
- 20 (8) furnished to the staff of the Administrative Regulation
- 21 Review Committee.

shall provide 100 (10) of other
REG FOR NEEDS APP - MARR
- pure toward needs?

ART - RECOMMENDATIONS - COST NOT JUSTIFIED -
NOW IS THE BALL -

less expensive & more releases will be to
that - ? *

Any other questions in Bill or other than
costs?

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 14, 1990

FURTHER REFERRALS:

FINANCE

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 426

HOUSE BILL NO. 426

PUBLICATION OF PROPOSED REGULATORY ACTION

"An Act relating to the notice requirements for adopting, amending, or repealing a regulation."

RECOMMENDATIONS:

- be replaced with CSHB426(SA) the same title
 have attached amendment(s) a new title
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____ [10] fiscal note(s) _____
 zero fiscal note _____ [5] zero fiscal note(s) _____
 zero with analysis _____ [1] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>David Finkelstein</u> Finkelstein		<input checked="" type="checkbox"/>	
<u>Richard P. MacLean</u> MacLean			
<u>D. A. Boscher</u> Boscher			

D. A. Boscher
Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to notice requirements..."
Sponsor: Rep. Jacko
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	42.0	42.0	42.0	42.0	42.0	42.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	42.0	42.0	42.0	42.0	42.0	42.0
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	42.0	42.0	42.0	42.0	42.0	42.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
Division: Administrative Services

Phone: 465-3376
Date: 03-07-90

Approved by Commissioner: S. Humphrey-Barnett
Agency: Department of Corrections

Date: 03-07-90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
 Title: Notice requirements for adopting, amending or repealing a regulation BRU: All
 Sponsor: Representative Jacko Components: _____
 Requestor: House C&RA

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	78.8	78.8	78.8	78.8	78.8	78.8
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	78.8	78.8	78.8	78.8	78.8	78.8
FEDER/L FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Fiscal impact is based on an estimate of 30 adoptions, amendments or repeals of regulations having statewide impact each year, each published for one day in a total of 35 additional local publications with an average cost per publication of \$75.00 (30 x 35 x 1 x \$75.00 = \$78.8).

Prepared by: Guy Bell, Director Phone: 465-2505
 Division: Administrative Services Date: 3/5/90

Approved by Commissioner: Larry Merculieff Date: 3/6/90
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

GB/dg16217D/3590c

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 426 (CRA)

PUBLISH DATE: 2/20/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Environ. Conservation
 Title: An Act relating to notice of BRU: _____
requirements for adopting, amending, or repealing regs.
 Sponsor: Rep. Jacko, Foster, Zawacki Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND&STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS,CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Amy D. Kyle
 Division: Commissioner's Office

Phone: 465-2600
 Date: 3/6/90

Approved by Commissioner: *AD Kyle*
 Agency: Environmental Conservation

Date: 3/6/90

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Notice for adopting, amending
or repealing a regulation
Sponsor: Rep. Jacko
Requestor: House C&RA

Agency Affected: Public Safety
BRU: DPS Statewide Support
Component: Commissioner's Office

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	21.0	21.0	21.0	21.0	21.0	21.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	21.0	21.0	21.0	21.0	21.0	21.0

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	21.0	21.0	21.0	21.0	21.0	21.0
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	21.0	21.0	21.0	21.0	21.0	21.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Fiscal Impact is based on an estimate of 8 adoptions, amendment or repeals of regulations having statewide impact each year, each published for one day in a total of 35 local publications with an average cost per publication of \$ 75.00 (8 X 35 X 1 X \$ 75.00 = \$ 21.0)

Prepared by: Kenneth Bischoff
Division: Administrative Services

Phone: 465-4336
Date: 2/23/90

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 2/23/90

Page 1 of 1

JML
2/26/90

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CSHB 426 (C&RA)
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to the notice
requirements for adoptin, ... a regulation. BRU: Labor Standards & Safety
Sponsor: Jacko, Foster, Zawacki Components: Wage & Hour,
Requestor: House C&RA Occupational Safety & Health,
Mechanical Inspection

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Note: There will be no impact on FY 90.

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 2/26/90
Approved by Commissioner: Jim Sampson Date: 2/26/90
Agency: Department of Labor

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

FISCAL NOTE

+56

REQUEST:

Revision Date: 2-20-90
Title: Notice requirements for regulations
Sponsor: Rep. Jacko
Requestor: Rep. MacLean

Agency Affected: Administration
BRU: All
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	37.2	37.2	37.2	37.2	37.2	37.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	37.2	37.2	37.2	37.2	37.2	37.2

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	37.2	37.2	37.2	37.2	37.2	37.2
FEDERAL FUNDS						
OTHER						
TOTAL	37.2	37.2	37.2	37.2	37.2	37.2

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Estimate is based on 16 regulation changes at average cost of \$75 per advertisement multiplied by 31 newspapers (those are in addition to current practice of publishing in 4 newspapers on average).

Prepared by: Mike Maher, Director *Mike Maher* Phone: 465-2277
Division: Administrative Services Date: 2/26/90

Approved by Commissioner: Frank S. Baxter *Frank S. Baxter* Date: 2/26/90
Agency: Administration

Distribution (by preparer) :

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

FISCAL NOTE

REQUEST:

Revision Date: February 23, 1990
Title: Publication of Proposed Regulatory Action
Sponsor: Jacko, Foster
Requestor: House C & RA

Agency Affected: Department of Revenue
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & 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: The costs related to this bill are undeterminable. The number of regulations to be noticed in the future and the communities affected are unknown at this time.

Prepared By: Gloria Birdsell *Gloria Birdsell* Phone: _____
Division: Commissioner's Office Date: February 23, 1990

Approved by Commissioner: Hugh Malone *Hugh Malone* Date: 2/23/90
Agency: Department of Revenue

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

FISCAL NOTE

REQUEST:

Revision Date: January 30, 1990
 Title: An Act relating to notice requirements for adopting a regulation.
 Sponsor: Rep. Jacko
 Requesior: House C&RA Committee
 Agency Affected: DMVA
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 This bill will have no fiscal impact on DMVA

Prepared by: Jeff Morrison, Director Phone: 465-4600
 Division: Administrative & Support Services, DMVA Date: 2/28/90
 Approved by: Commissioner John Schaeffer Date: 2/28/90
 Agency: Department of Military & Veterans Affairs

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Notice requirements for adopting
amending or repealing a regulation
 Sponsor: Jacko
 Requestor: House C&RA

Agency Affected: Education
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	88.0	88.0	88.0	88.0	88.0	88.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	88.0	88.0	88.0	88.0	88.0	88.0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	88.0	88.0	88.0	88.0	88.0	88.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This fiscal analysis is built upon the assumption that the annual legal notice costs to the Department will double under HB 426.

Prepared by: Marv Hakala
 Division: Commissioner's Office

Phone: 465-2800
 Date: 3/8/90

Approved by Commissioner: William G. Denmert
 Agency: Education

Date: 3/8/90

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: 3/12/90 Agency Affected: Office of the Governor
 Title: Relating to the notice requirements for adopting, amending, or repealing a regulation. BRU: Elections
 Sponsor: Rep. Jacko Components: I Elections
 Requestor: Rep. Jacko

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
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	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The fiscal impact for FY 90 is -0-.

Prepared by: Linda Edgeworth Phone: 465-4611
 Division: Division of Elections Date: 3/12/90
 Approved by Commissioner: Sandra Stewart Date: 3/12/90
 Agency: Division of Elections

Distribution (by preparer):

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

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION: CS HB 426
PUBLISH DATE: 2/20/90

REQUEST: FISCAL NOTE

Revision Date:
Title: An Act relating to the notice requirements for adopting, amending, or repealing a regulation.
Sponsor: Rep. JACKO, Foster, Zawacki
Requestor: C&RA Committee

Agency Affected: DOT&PF
BRU: Engineering & Operations Standards
Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	15.6	15.6	15.6	15.6	15.6	15.6
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	15.6	15.6	15.6	15.6	15.6	15.6
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	15.6	15.6	15.6	15.6	15.6	15.6
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	15.6	15.6	15.6	15.6	15.6	15.6

POSITIONS:

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

ANALYSIS: See next page.

Prepared by: Jeffery C. Ottesen
Division: Engineering and Operations Standards

Phone: 465-2951
Date: February 26, 1990

Approved by Commissioner: *Mark A. Hill*
Agency: Department of Transportation and Public Facilities

Date: 2/26/90

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

There would be no fiscal impact in FY 1990.

Analysis:

The department has responsibility for a variety of regulations which generally affect all or most communities of the state. These include such issues as:

- utilities placed within state transportation rights-of-way
- size and weight of trucks and trailers
- handicap access in public facilities
- airport leasing
- tourist oriented directional signs

We presently advertise in the larger newspapers of Alaska with regional or statewide circulation. Based upon the somewhat vague definition of "*significant effect on a community or on a substantial number of the members of the community*" we would most likely err toward more rather than less notice. Thus, to comply with this bill we would routinely increase our advertising from approximately 4 newspapers to 30. An average legal notice now costs \$200. This would raise costs for each amendment to our regulations by about \$5,200. Based upon an average of three regulatory changes per year for the department an additional expense of \$15,600 would be incurred.

We would respectfully suggest an alternative form of public notice be considered. In addition to the published public notice now required, there could be a requirement to place public notices on bulletin boards in at least two prominent locations in an affected community with a reference to the full text of the regulatory proposal provided to the town or village hall and/or community library. This would achieve very comprehensive public notice for lower cost. Further, this would result in a member of the public having access to the complete text of a regulatory proposal.

FISCAL NOTE

REQUEST:

Revision Date: March 6, 1990
Title: "An Act relating to the notice requirements for adopting... regulations."
Sponsor: House Community & Regional Affairs
Requestor: House Community & Regional Affairs

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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 the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
Division: Administrative Services Date: March 6, 1990
Approved by Commissioner: Douglas B. Baily, Attorney General Date: March 6, 1990
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. CSHB 426 (C&RA)

The committee substitute for HB 426 amends the 30 day public notice provisions of AS 44.62.190(a), before the adoption, amendment, or repeal of a regulation, to provide that if the state agency proposing the regulatory change determines that the proposed action is reasonably expected to have a significant effect on a community or on a substantial number of members of a community notice of the proposed action shall also be published in a regional newspaper, if the regional newspaper is distributed on a regular basis in the community. The bill defines "community" to mean a municipality, or an area that is not a municipality and in which 25 or more adult persons permanently reside within one mile of a designated point or structure. The term "effect" as used in the bill includes an effect that may also be experienced by other communities.

Because the Department of Law rarely adopts regulations of its own, there will not be a fiscal impact for the department. Other departments that adopt regulations affecting rural areas may, however, experience a substantial fiscal impact because of the necessity to publish notices in virtually all of the state's regional newspapers, in addition to publishing a notice in a newspaper of general circulation, if a proposed regulatory change has a statewide impact.

STATE OF ALASKA
1990 LEGISLATIVE SESSION

BILL VERSION : _____ CSHB 426
PUBLISH DATE : _____

FISCAL NOTE

REQUEST:

Revision Date: 26-Feb-90 Agency Affected: Natural Resources
Title: An Act relating to the notice require-
ments for adopting amending or repeal of regulation. BRU: Land & Water ,Parks and
Petroleum Management
Sponsor: Jacko and Foster Components: Land & Water, Parks
Requestor: C&RA & Petroleum Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	20.8	20.8	20.9	20.9	21.0	21.0
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.8	20.8	20.9	20.9	21.0	21.0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	20.8	20.8	20.9	20.9	21.0	21.0
FEDERAL FUNDS						
OTHER						
TOTAL	20.8	20.8	20.9	20.9	21.0	21.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Larry Ostrovsky Phone: 465-2400
Division: Commissioner's Office Date: 26-Feb-90
Approved by Commissioner: [Signature] Lennie Gorsuch Date: 26-Feb-90
Agency: Department of Natural Resources

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

Analysis - HB 426

The changes proposed by HB 426 would increase the number of legal notices required to change regulations in the Division of Parks, Land and Water, and Petroleum Management. At the present time all three Divisions place ads in the Juneau, Fairbanks and Anchorage newspapers and sent out packets of information to individuals or groups that express an interest in the changes. The average cost of \$290.00 per ad is a great deal higher than the average cost of placing ads in the current three locations (\$400.00) because many of the smaller publications contacted do not have legal ad capabilities and stated that costs were high to cover cost of having the ads made by another paper prior to printing.

The Division of Parks would need to place ads in an additional 7 to 10 Newspapers at a average cost of \$290.00 a newspaper. This would also create the need a undetermined amount of additional packets of information. \$3.0.

Land and Water Management would need to place ads in approximately 20 additional newspaper. They have added an inflationary cost of \$100.00 every other year. \$5.8.

Petroleum Managements feels that there regulation changes effect everyone on a statewide basis and would require placing adds in 38 different daily, weekly and/or montly publication they are aware of at this time. This does not include other printed newsletters and publications that could be found in smaller communities and villages. \$12.0.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Health & Social Services
 Title: An Act relating to the notice BRU: _____
requirements for adopting, amending,
 Sponsor: Representative Jacko Components: _____
 Requestor: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	237.5	237.5	237.5	237.5	237.5	237.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	237.5	237.5	237.5	237.5	237.5	237.5
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND	237.5	237.5	237.5	237.5	237.5	237.5
FEDERAL FUNDS						
OTHER						
TOTAL	237.5	237.5	237.5	237.5	237.5	237.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

FY 90 fiscal impact is "0".
See attached for additional analysis.

Prepared by: Jay Livey, Special Assistant Phone: 465-3030
 Division: Office of the Commissioner Date: _____
 Approved by Commissioner: Mvra M. Munson Date: _____
 Agency: Department of Health & Social Services

Distribution (by preparer):

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

Fiscal Note Analysis for HB 426

HB 426 changes current law to require each Department which is proposing regulations to publish a notice of those regulations in a local newspaper if the proposed changes will have a significant effect on the community. The Department of Health and Social Services uses the following assumptions to calculate the fiscal impact of this bill.

Assumptions:

1. The Department of Health and Social Services (DHSS) publishes approximately 50 notices of proposed regulation activity each year.
2. We are assuming that virtually all DHSS regulation have a statewide impact and so will significantly affect residents of all communities in the State. To the extent that the phrase "significantly affect a community" is further defined, the fiscal impact of the bill could possibly be reduced.
3. The Alaska Media Guide lists 28 local newspapers within which the Department could purchase a notice regarding regulations.
4. The DHSS typically publishes notices in 9 newspapers in the State.
5. The average cost of a public notice regarding regulations is \$250.00.

Cost of Publishing Notice of Regulations

19 newspapers * 50 regulation changes * 250.00 = 237.500

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Dept. of Fish & Game
 Title: Notice requirements for BRU: Division of Boards
adopting, amending, repealing regulation
 Sponsor: C&RA Committee Components: _____
 Requestor: C&RA Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	42.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	42.0					

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	42.0					
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	0					
PART-TIME	0					
TEMPORARY	0					

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Larry Jones, Deputy Director Phone: 465-4110
 Division: Division of Boards, ADF&G Date: Feb. 27, 1990

Approved by Commissioner: *William H. Gallegos* Date: 2-27-90
 Agency: _____

Distribution (by preparer):

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

FISCAL NOTE -- COMMITTEE SUBSTITUTE FOR HOUSE BILL 426

The Division of Boards of the Department of Fish and Game publishes a considerable number of legally required notices relating to the extensive regulatory actions taken by the Board of Fisheries and the Board of Game. In meeting the statutory requirements currently in effect, the standard practice of the Division of Boards is to publish these notices in the Anchorage Daily News, Fairbanks Daily News-Miner, and occasionally the Tundra Drums. The notices to be published are quite lengthy in order to incorporate all the complex regulatory issues that are considered throughout the year by the two boards.

The extension of the required publication as proposed in Committee Substitute for House Bill 426 would have consequential fiscal impact on the printing/advertising budget of the Division of Boards. Almost without exception the legally required notices for the Board of Fisheries and the Board of Game have statewide implications, and therefore would require publication in all the "regional publications" that are available in the communities of the State of Alaska.

The premise for this fiscal note is based upon the added publication of each of these notices in the following local papers:

Aleutian Advocate	Valley Sun
Barrow Sun	Nome Nugget
Borough Post	Cordova Times
Delta Paper	Bristol Bay News
Aleutian Eagle	Copper Valley Views
Haines Sentinel	Juneau Empire
Homer News	Peninsula Clarion
Ketchikan Daily News	Kodiak Daily Mirror
Arctic Sounder (Kotz)	Petersburg Pilot
Skagway News	Sitka Sentinel
Tundra Times	Mukluk News
Valdez Vanguard	Wrangell Sentinel

With the average cost of each of these notices appearing in newspapers being \$175, and publication occurring 10 times annually, the cost for each notice is \$1,750. With the addition of the above noted 24 newspapers for required publication, the multiplication factor results in increased costs to the Division of Boards of \$42,000 in order to meet the proposed legislative requirements.

I would note that the Division of Boards maintains a mailing list of all persons who have indicated interest in the regulations promulgated by the Board of Fisheries and Game. Currently, mailings are made to approximately 2,500 persons each time that a notice is required regarding regulatory change. Also, the boards operate in a very high public profile when taking their actions, and are often covered by the mass media of the state as news items.

PREPARED BY: Larry Jones, Deputy Director, Division of Boards

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act..notice requirements for adopting, amending..regulation."
 Sponsor: Reps Jacko, Foster, Zawacki
 Requestor: _____

Agency Affected: Community & Regional Affairs
 BRU: Administration & Support
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	12.5	12.5	12.5	12.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.5	12.5	12.5	12.5	12.5	12.5
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	12.5	12.5	12.5	12.5	12.5	12.5
FEDERAL FUNDS						
OTHER						
TOTAL	12.5	12.5	12.5	12.5	12.5	12.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

There is no fiscal effect for FY 90.

Please see attachment.

Prepared by: *Carol Carroll*
 Division: Administrative Services

Phone: 465-4708
 Date: 3/5/90

Approved by Commissioner: *Wade B. Hoffman*
 Agency: Community & Regional Affairs

Date: 3-5-90

Distribution (by preparer):

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

STATE OF ALASKA 1990 - 16TH LEGISLATURE
SECOND SESSION
FISCAL NOTE

Bill Number: CS for House Bill 426

Title: "An Act relating to the notice requirements for adopting, amending, or repealing a regulation."

This requirement would require notice of most of the department's regulation changes to be published in almost every newspaper in the state because of the statewide effect of departmental programs. Excluding multiple publications serving the same community (e.g. either the Anchorage Daily News or Anchorage Times), the Alaska Media Directory lists 29 publications. However, the Directory is not complete (for example, it doesn't include the "Nenanan" or the "Healy Valley Courier", so there are several more than those listed. Assuming there are 40 such publications in the state, and that that the cost of each notice will run about \$50, and that the cost for administration (preparing AO's, postage, copies, accounting, etc.) is about \$500, the impact is on the order of \$2,500 for each regulatory change. Assuming there to be five regulatory changes a year, the total impact on the department would be \$12,500.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Item 3

STEVE COWPER, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701-4679

February 8, 1990

P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600

Honorable Eileen Maclean, Chair
Community and Regional Affairs Committee
Alaska House of Representatives
P.O. Box V
Juneau, Alaska 99811

Re: HB 426, notice requirements for
regulations

Dear Representative Maclean:

As I testified at your committee's February 1 hearing on this bill, the original version raised several interpretation problems. Those problems would either cause something of a paralysis in regulations adopting or would significantly increase costs. While we wholeheartedly endorse the idea of providing adequate notice of proposed regulations adoption, and we welcome Representative Jacko's interest in this matter, that bill causes us serious concern.

Following the meeting, I talked with your staff assistant, Rena Bukovich, regarding the interpretation problems and possible language to solve them. I have since reviewed the draft committee substitute that she furnished me February 5, and, while I find it an improvement in a couple of respects, it does not totally solve the problems, and it introduces a couple of new ones. Rena and I briefly discussed the draft CS on the telephone.

While I hate to sound so negative about the bill, I thought that you might like to have my written comments on the draft committee substitute. Here they are:

1. To further reduce the ambiguity inherent in the reference to "community," at page 1, line 17, it might be helpful to insert after the words "portion of" the words "the members of." I do not know whether that reflects the intent of the original sponsor of the bill, but it makes clear that we are talking about the people of the community and not the community as an organizational or governmental entity. While this additional wording removes that particular ambiguity, it does not

necessarily make the provision easy to administer.

2. One of the main problems with the reference to the "significant effect" on the community is that we do not know whether that effect is supposed to be a peculiar effect on that community. In other words, does this additional notice requirement kick in only when community "A" will be affected in a way that community "B" will not experience, or is it applicable in every instance when community "A" will be affected in much the same way that community "B" and all others will be affected? Again, I do not know the intent of the bill's sponsor.
3. Proposed AS 44.62.190(a)(1)(b) retains the troublesome reference to "social unit," without making clear what that term or the term "a place" on page 1, line 22, means. As I questioned at the hearing, is the "place" that we are talking about a quarter-mile stretch along a river or road, or is it a five-mile stretch, or a twenty-mile stretch? What is "a place"? Former AS 29.25, Village Incorporation Act, repealed when the municipal code was revised in 1972, contained a provision that described the areas authorized to incorporate as a village, in part, as follows: an area that "has at least 25 permanent inhabitants 19 years of age or older residing within a radius of 3 miles of a designated centrally located point or structure." See former AS 29.25.030(2). While there are technical flaws in that wording, it conveys the idea of a set of objective criteria for determining the kind of "place" the statute would be talking about.
4. In that the committee substitute assigns to the commissioner of community and regional affairs the responsibility for adopting regulations setting criteria for determining the existence of a "social unit," it creates a rather awkward situation of one commissioner establishing, in his or her own department's regulations, criteria that will apply to all other departments. While that could be done, it would appear to be more troublesome in the area of regulations adoption than, say, in the area of state procurement.
5. Also, in that the committee substitute would put in the Administrative Procedure Act a specific regulations-adoption authority provision, it runs counter to the entire scheme of the Administrative Procedure Act, as expressed in AS 44.62.020: ". . . AS 44.62.010 --

44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation." The Administrative Procedure Act is merely the set of specifications for how an agency exercises whatever regulations-adoption authority it has under other statutes.

6. The Department of Community and Regional Affairs has adopted 19 AAC 30.093, "Determination of Social Unit," for the purposes of revenue sharing under AS 29.60.140. That regulation, a valiant effort to pinpoint a very vague term, uses a number of terms that provide factors for consideration, but, in doing so, leaves many issues to be resolved by subjective judgment. It simply is not feasible for every regulations-adopting agency to gather the facts to make all of those judgments every time it wants to adopt, amend, or repeal a regulation.

In the packet furnished to your committee by Representative Jacko in connection with House Bill 426, is an article entitled "Rural Alaskans Hurt by Legal Loophole." I understand that that was written by John Lindauer, publisher of several regional Alaskan newspapers. Representative Jacko's aide, Ingrid, mentioned that that article motivated this bill. Since that is the case, your committee might be interested in the following comments on that article:

- A. The article mentions four incidents in which some kind of notice was inadequate: an Aleut baby who was adopted by a couple in Boston, a shipwreck which caused oil spill damage, a "theft" problem related to some borough contracts, and borough tax foreclosures. The facts of each of these incidents are not set out in this article. One would like to ask the author of the article many questions. Nevertheless, we can probably all agree that, in each instance, the notice should have been better.
- B. However, the article implies that each of these incidents reflects the same problem stemming from the same faulty notice statute. That simply is not accurate, and it should be noted that not one of the examples pertains to the adoption of administrative regulations -- the subject of HB 426.
- C. Adoptions of children are governed by AS 25.23, Alaska's Adoption Act, and the relevant court rules. The statutes and the rules contain notice provisions. I don't know the facts involved in the assertion that this Aleut child

was "stolen," but, as I mentioned at your committee hearing, if the adoption were taking place in Boston, the law of Massachusetts would govern. I am confident that that state, too, has fairly comprehensive notice requirements. In addition, the federal Indian Child Welfare Act has provisions concerning notice when an adoption involves an Indian child. If the child in Mr. Lindauer's article was indeed stolen, and if she was indeed lied to as to her ethnic background, we certainly can sympathize with her plight. But Alaska law is not at fault.

- D. The article states the bald generalization that for giving notice "The public place most often chosen is a bulletin board in a public building. But the public building can be in Anchorage or Seattle or Houston" That simply is not the case. As mentioned above, several different kinds of notice, and several different notice statutes and rules, are involved in the various situations referred to in the article. There is no chance that the only notice of an Alaskan child's adoption in Boston would be posted in a public building in Houston.
- E. The article says that since "[a]ll newspapers in the United States are legally in general circulation," legal notice "about adopting a village baby or setting a deadline to file oil spill claims might be published in Anchorage or Boston or someplace else where rural relatives and fishermen are almost certain never to see it." Again, it simply is not the case that notice requirements would be fulfilled simply by publishing in some newspaper not likely to reach the target audience. Regarding the Alaska rule on "general circulation," please see the Alaska Supreme Court's decision in Moore v. State, 553 P.2d 8, 21 -- 22 (Alaska 1976).
- F. Regarding the advertisement for bids for borough contracts, alluded to in the article, that is generally a matter of municipal ordinance, not state law. (Again, the article does not give sufficient facts to accurately analyze the problem.)
- G. The description of the oil spill shipwreck claims is confusing. The article says that a lawyer for the ship company "filed a notice in federal court." It's difficult to tell from that statement just what the procedure was or at what stage of normal proceedings that

procedure was occurring. Statutes set the period of limitations for filing legal actions. The court rules then provide for notice to litigants, including class action litigants. In this situation, it would appear that federal maritime law is applicable.

- H. With each of these illustrations, the article either expressly or, by innuendo, takes a stab at either the legislature (always a popular target) or the lawyers (another popular target). The legislature evidently did not enact laws that the author of the article believes should be on the books, and the lawyers evidently applied the current law. The article presents insufficient factual background for each of the situations, lumps them all together as though they all presented the same problem, and obscures the fact that the author of the article would make quite a lot of money through the implementation of additional legislation requiring publication of notices in his newspapers. Again, not one of the examples in the article pertains to administrative regulation.

Well, that's all for now. I hope that you find these comments helpful. I have promised Rena to continue mulling over the general question of how to provide the rural areas of Alaska with better notice of proposed regulations adoption. Duplicate publication in the same communities and confronting administrators with a statute imposing additional costs and several additional issues upon them, as this bill does, is not a solution.

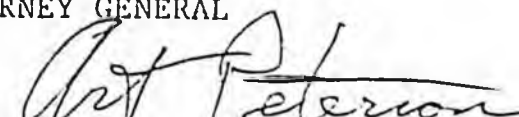
It would help if we had a clearer statement, with some examples, of just what constitutes the problem. A general answer to that question will not give us the information upon which to base a finely crafted statute that actually does some good for the people of rural Alaska.

Please feel free to call upon me if you have any questions on this subject.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Arthur H. Peterson
Assistant Attorney General

Hon. Eileen Maclean, Chair
Community and Regional Affairs Committee

February 8, 1990
Page 6

AHP:cl

cc: Hon. George G. Jacko
Alaska House of Representatives

Bruce Scandling, Special Assistant
Commissioner's Office
Department of Administration

Jim Plasman, Deputy Director
Division of Municipal and Regional Assistance
Department of Community and Regional Affairs

Bob Evans, Legislative Liaison
Office of the Governor

Item 4

House of Representatives

While in Session:
Box V
Juneau, Alaska 99811
(907) 465-4942

P.O. Box 47001
Pedro Bay, Alaska 99647
(907) 850-2208



Chair
Special Committee on Foreign Trade
Vice Chair
Resources Committee
Member
Health, Education &
Social Services Committee

Rep. George Jacko, Jr.

MEMORANDUM

TO: Representative H.A. "Red" Boucher
Chair of the State Affairs Committee

FROM: Representative *George Jacko, Jr.*

DATE: February 28, 1990

SUBJECT: Request for Hearing for House Bill 426

I respectfully request a hearing be scheduled for House Bill 426, "An Act Relating to notice requirements for adopting, amending, or repealing a regulation." The legislation addresses a current and ongoing problem with the distribution of public notices. If the notices will have a significant impact on the municipalities or on a significant number of people residing in the municipalities, it mandates that they be published in a locally distributed paper. It does not limit current efforts regarding distribution of public notices.

House Bill 426 was drafted in response to some constituent concerns, A discrepancy in the current system allows Public Notices to be published in a paper of general circulation, but not necessarily in the locally distributed paper of the community affected. House Bill 426 mandates a change, making the distribution of public notices more equitable.

Thank you for your consideration.

GJ/eij

Please respond by fax to 583-0208 by Monday noon with your comments for quotation. (you may recall that this is the matter you were asked to do something about last year)

Rural Alaskans Hurt by Legal Loophole

What do a stolen Aleut child, a shipwreck which releases oil that fouls set net sites, the theft of money from a rural borough, and foreclosures in rural Alaska that no one hears about until their land is lost all have in common? The answer is that each was a story in rural Alaska recently and each occurred as a result of big city lawyers using a gaping loophole in Alaska's public notice requirements to take advantage of the residents of rural Alaska.

Alaska law requires that public notice be given before children can be adopted, property foreclosed, contracts let, and damage claims settled. But, unlike most states, Alaska merely requires that the notice be posted in a public place and published in a newspaper of general circulation. It does not require that the notices reach the people whom they will affect.

The public place most often chosen is a bulletin board in a public building. But the public building can be in Anchorage or Seattle or Houston or some other place where there is little or no chance of any rural resident ever seeing it. The same is true of a newspaper of "general circulation". All newspapers in the United States are legally in general circulation so all newspapers in the United States qualify as a place to publish legal notices related to rural Alaska. Thus the required legal notice about adopting a village baby or setting a deadline to file oil spill claims might be published in Anchorage or Boston or someplace elsewhere where rural relatives and fishermen are almost certain never to see it.

Many rural newspapers, of course, pursue such information and see that the rural public gets it. But the lawyers are presently able to get around that also. Consider the case of the the AOYAGI MARU which went aground at Lost Harbor (near Akutan) on November 16, 1988. On the 29th of June of this year the ship's attorney filed a notice in Federal Court giving Akutan residents and anyone else who says they were damaged by the grounding and resulting spill until Wednesday August 2 to file claims. But they did not publish the required public notice in the back pages of the classified section of the Anchorage Daily News until Friday July 28, five days before the deadline to file claims.

Anyone familiar with rural Alaska will note that the local newspaper, in this case the Aleutian Eagle, is a weekly as are most rural Alaska papers. It comes out on Friday. Thus the lawyers hired by the ship owners to minimize the claims from rural Alaska just happened to publish the notice both where no rural residents would see it and when it would be too late for the local newspaper to find it and warn its readers.

Similar obscure events come to mind such as the Bristol Bay Borough's recent tax foreclosure notices being published in Anchorage because our attorney "has always done it that way" to the successful defense of some of the North Slope Borough indictments on the basis that the contracts were not secret and illegal even though no one in the Borough knew about them because public notices were published in Seattle.

This has been going on for a long time. A few weeks ago a poignant reunion occurred between a young native woman and the surviving members of her family. She had been taken from her village as an infant and finally ended up with a non-native family thousands of miles away. They published an adoption notice, apparently in Boston, which her family never saw or heard about. Then her adopted parents led her to believe that she was an Athabascan instead of an Aleut in order to keep her from finding her brothers and sisters. Years later, someone finally admitted she was an Aleut and she began the long search of finding her native family, and succeeded. "We have been searching for you for twenty five years," said an emotional uncle.

Legislators and former legislators say they are appalled that Alaska's anti-rural public notice practices have been allowed to continue. They say that Alaska should require that the notices be given locally as is required in most other states and promised to do something about during the next legislative session.

Said

Papers: Aleutian Eagle, Bristol Bay News, East Aleutian Advocate, Borough Post, Valdez Pioneer, Barrow Sun, All Alaska Weekly (not in Alaska Commercial Fisherman)

JAN 15 1990

Alaska



Newspaper Association

FOUNDING MEMBERS
Incorporated Dec. 6, 1980

ROBERT B. ATWOOD
The Anchorage Times

KATHERINE FANNING
Anchorage Daily News

LOREN STEWART
Chitchee News, Kenai

MAX SWEARINGEN
Peninsula Clarion, Kenai

OLEN COBB
The Frontiersman, Palmer

TOM GIBBONEY
Homer News

JIM C. MARTIN
Alaska Journal of Commerce

G. KENT STURGIS
Fairbanks Daily News-Miner

LEW WILLIAMS
Ketchikan Daily News

CARL SAMPSON
Juneau Empire

TOM SNAPP
AN Alaska Weekly

c/o P.O. Box 798
Wrangell, AK 99929
907/874-2301
FAX: 907/874-2303

Honorable Rep George Jacko Jr. ¹¹²
Box V
Juneau, Alaska 99811

Dear Representative Jacko:

As president of the Alaska Newspaper Association I wanted to comment on your proposed House bill concerning published notices for agency actions. I am pleased to see that someone is putting such a requirement into law. Too often our members find that actions are not announced to the public affected by those actions. In addition, we find that statewide actions (which affect everyone) are noticed in only one or two large daily newspapers (Juneau and Anchorage) and the rest of the state doesn't hear about the plan until it begins affecting their lives.

When your proposed bill says that an action "significantly affecting a community" must be subject to public notice, does that include statewide actions? For example, if a department promulgates a regulation that applies statewide, does a public notice have to be published in every single newspaper statewide? Or, does your requirement apply only when a proposed action applies just to one town? Unless statewide public notices are required, I imagine your requirement would have limited application. For example, I think it would be extremely rare that the Department of health and Social Services would promulgate a regulation that applies only to Wrangell.

Thank you for seeking our opinion on your proposed legislation.

Sincerely yours,

Ann D. Kirkwood, President

THE



TriDelta, Inc.

DELTA

PAPER



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P.O. Box 988
Delta Junction
Alaska 99737

January 31, 1990

Rep. George Jacko Jr.
House of Representatives
Juneau, Alaska

FAX #463-5661

Dear Rep. Jacko,

We apologize for the delay in replying to your FAX message of January 11.

The Delta Paper would like to go on record as favoring your proposed change in statute (Section 1. AS 44.62.190).

We have long felt that publication of notices in major cities' newspapers is not always the best way to get the information to the general public.

For instance, DCRA is currently proposing changes in regulations governing day care assistance. Our LIO sent us a copy of the notice and asked that we cut or edit the information and publish what we could in re: the upcoming teleconference. The information I got from the LIO indicates that the notice is being advertised in an Anchorage paper, the Fairbanks paper, the Juneau Empire, one other I've forgotten, and the Tundra Drums. None of these is circulated widely in this community, though some people do get the Fairbanks paper. I called DCRA, was told (politely) that they could not afford to publish in all papers (it would probably cost millions) and that notices had been sent to those in this community who would be affected. The local LIO staff person says interested locals have not received personal notification.

Generally ad rates are less costly in smaller, community newspapers. I think it could be done for less than "millions".

Please keep us posted on the progress of your bill. (And thanks for asking our opinion!)

Cordially,

Loretta Nistler
Editor
The Delta Paper

(Serving the entire Delta Junction - Port Greely area)

At the End of the Alaska Highway

Item 6

Article 4. Committees.

Section

180. Committees

182. Review of administrative regulations by standing committees of the legislature

Section

184. Termination of interim committee membership

Sec. 24.05.180. Committees. (a) Each house shall have standing committees to facilitate the transaction of business in accordance with the rules of the legislature. The rules may provide for the appointment of special committees, as needed, by the presiding officer of each house. The legislature shall provide for the use of joint committees to facilitate and expedite business.

(b) Repealed by § 7 ch 100 SLA 1963. (§ 20 ch 157 SLA 1959; am § 1 ch 143 SLA 1961; am § 7 ch 100 SLA 1963)

Collateral references. — 72 Am. Jur. 81A C.J.S., § 55.
2d, States, Territories, and Dependencies,
§§ 50-54.

Sec. 24.05.182. Review of administrative regulations by standing committees of the legislature. (a) A standing committee of the legislature furnished notice of a proposed action under AS 44.62.190 shall review the proposed regulation, amendment of a regulation, or repeal of a regulation before the date the regulation is scheduled by the department or agency to be adopted, amended, or repealed.

(b) A standing committee conducting a review of a regulation under (a) of this section shall determine whether the regulation properly implements legislative intent.

(c) A standing committee shall conduct preliminary reviews under this section while the legislature is in session and during the interim between legislative sessions.

(d) If a standing committee determines that a regulation, amendment to a regulation, or repeal of a regulation does not properly implement legislative intent, the standing committee's findings shall be transmitted to the Administrative Regulation Review Committee. (§ 4 ch 1 SLA 1982)

Revisor's notes. — Enacted as AS 24.99.001. Renumbered as AS 24.37.010 in 1982. Renumbered again in 1985.

PUBLIC NOTICE

A. Procedure:

As stated in Chapter 2 of this manual, AS 44.62.190 requires that the adopting agency give notice of the proposed adoption of regulations. (It is advisable for the agency to consult the Department of Law for help in drafting the notice.) Subsection (a) of that section provides:

(a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

[(1) published in the newspaper of general circulation, or trade or industry publication, that the state agency prescribes and in the Alaska Administrative Journal;]

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency;

(7) furnished to the standing committee of each house of the legislature having legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or order of

repeal for the committee's use in conducting the review authorized by AS 24.05.182;

(8) furnished to the staff of the Administrative Regulation Review Committee.

Observe, first of all, that this statute requires notice 30 days before adoption -- not before the public hearing. (For some agencies, adoption will occur at the hearing, but, for most of them, it will not.) Nevertheless, it is recommended that, to assure adequate notice and preparation time, there be at least 30 days' notice before the hearing (or written comment deadline). This interpretation is expressly set out in the California APA; see Cal. Gov. Code sec. 11346.4(a). The shorter the amount of notice time, the more difficult it will be to defend the adoption in court if the regulation is challenged. Absent an emergency (in which case the emergency regulation procedures probably should be followed) it would be extremely difficult to defend anything less than 10 days to two weeks. Remember, the notice requirement is primarily for the benefit of the public, not merely the convenience of the agency. Since our APA does not expressly answer the question, it is necessary to determine the length of time that would be "reasonable" to allow the public time to prepare for a legislative type of hearing. Some programs might be subject to additional requirements under federal law.

Second, this statute requires in paragraph (1) that the notice be published in the newspaper or trade journal that the agency prescribes. It does not require publication in more than one. Nevertheless, it is recommended that the adopting agency not rely on this minimal requirement. See Moore v. State, 553 P.2d 8, 21 -- 22 (Alaska 1976), for discussion of "general circulation." Some newspapers in this state now have a separate heading in their classified ad section for "Regulations" or "Notices/Regulations." In addition, press releases and more eye-catching ads might be useful in trying to assure public awareness of proposed regulations. Although the Moore case provides some guidance in interpreting the statute's term, "general circulation," it is often simply good policy to include additional publicity in some of the more remote areas such as Kodiak, Bristol Bay, the Aleutians, Barrow, Petersburg, etc. Consider a press release for local papers and radio and television stations.

Third, paragraph (1) does not specify the number of times the notice must be published. Literally, one publication would suffice. But again, it is recommended that this minimal requirement not be interpreted as a maximum.

Fourth, paragraph (1) was amended by sec. 3, ch. 59, SLA 1985 to require publication in the Alaska Administrative Journal. Under AS 44.62.175(a) (enacted by sec. 2, ch. 59, SLA 1985), the lieutenant governor is to publish the journal weekly. This means that the adopting agency must anticipate the journal's

publication schedule when setting up its own adoption schedule. Contact the lieutenant governor's office for instructions.

Fifth, although paragraphs (6) -- (8) provide for some redundancy, the legislature, by its enactment of ch. 1, SLA 1982 even over the governor's veto, has clearly indicated that it wants that redundancy. Furnishing notice just to the Legislative Affairs Agency or just to each incumbent legislator is not sufficient. Notices to the Legislative Affairs Agency should be sent to its executive director, at P.O. Box Y, Juneau, Alaska 99811. During legislative sessions (January -- May of each year, plus occasional special sessions), notices to legislators should be sent to them individually, at P.O. Box V, Juneau, Alaska 99811. When the legislature is not in session, get the legislators' addresses from the Directory of State Officials, published twice a year by the Legislative Affairs Agency. To determine the appropriate standing committee of the Alaska Senate and House of Representatives, refer to Appendix Q of this manual which sets out Rule 20, Uniform Rules of the Alaska State Legislature, describing committee jurisdiction; then send notice to the chair of that committee in both the Senate and the House, using the P.O. Box V address. For the Administrative Regulation Review Committee, send notice to the staff of that committee, also using the P.O. Box V address.

Remember, the objective of publishing this notice is reasonably to assure that the public is notified. Each agency must consider the adequacy of publication on a case-by-case basis, depending upon such things as the significance of the regulation, the areas and people and industries covered by it, prior expressions of public interest, and other relevant factors.

In Kenai Peninsula Fisherman's Cooperative Ass'n, Inc. v. State, 628 P.2d 897, 908 (Alaska 1981), the Alaska Supreme Court stated that

The purpose of the notice and hearing provisions of the APA is twofold. First, it gives notice to interested parties of proposed agency actions which may affect their interests. Next, it gives the administrative agency the opportunity to receive information and comments from those interested parties on its proposed action. [Footnote omitted.]

In addition, AS 44.62.175(a)(7) requires the lieutenant governor to publish in the Alaska Administrative Journal (AAJ) "the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.-62.190(a)."

To help assure that the public is appropriately informed and is not surprised by the taking of effect of a regulation for which notice was published long ago, a one-year stale-

ness rule-of-thumb is applied. I.e., if a year or more has elapsed between the time the original notice was published and the time the regulation will take effect, a supplemental notice should be published. If a year has passed by the time the agency adopts a regulation, it should publish a supplemental notice. It should not expect that the Department of Law will be able to review and approve the project immediately upon the agency's adoption.

This one-year rule, which is not in the Alaska APA, is somewhat flexible, taking into account the nature and significance of the regulation. A shorter period possibly should apply to a controversial, important regulation affecting a great number of people. In sec. 3-106(b) of its 1981 revision of the Model State Administrative Procedure Act, the National Conference of Commissioners on Uniform State Laws has recommended a generally applicable six-month rule, measuring from the later of publication of notice or end of oral proceedings to the date of adoption. Cf. Cal. Gov. Code sec. 11346.4(b), providing a one-year rule, measuring from publication of notice to submission of the adopted regulation to the Office of Administrative Law for review (sec. 11343(a)).

Essentially, this staleness rule is part of the expression of the policy against "secret law." As Professor Arthur Bonfield has mentioned,

nothing is more pernicious than a system in which the operative principles employed to settle the rights of individuals are kept hidden from them.

Bonfield, "The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law, the Rulemaking Process," 60 Iowa L.Rev. 731 at 785 (1975). His article also briefly discusses the Iowa staleness rule; *id.* at 857 -- 858. Also see Bonfield, State Administrative Rule Making (Little, Brown and Company, 1986), sec. 6.6.2, regarding time for adoption of regulations. An unreasonable delay in adoption and effective date has the effect of masking the new law from the public. Depending upon various circumstances, such as the amount of public interest shown in or the significance of a particular project, this effect could be mitigated by a supplemental notice mentioning that the regulation was adopted and stating its effective date. The Alaska APA does not provide express direction in this situation.

Sometimes it will be necessary or advisable to publish a supplemental or corrected notice. In the text of such a notice, be sure to mention its relationship to the earlier one and make clear what the difference (i.e., the supplementation or correction) is. For example, the additional notice might extend the comment period or set a new date for an oral hearing, or it might correct an error in the original notice. Having the caption describe the notice as supplemental, etc., is also helpful. A

supplemental notice should be distributed in the same manner as the original notice. Also, if the final version of a regulation is significantly different from the version originally distributed, it is advisable to publish an additional after-the-fact notice describing the change (subject to budgeting considerations).

B. Content:

AS 44.62.200 deals with the contents of the notice. In that section, (a)(1) requires "a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation." Since most actual "adoptions" occur quietly in the office of the head of the agency, by his or her simply signing an adoption order, this statute has been interpreted as referring to the time and place of the public hearing or deadline and address for written comment.

Paragraph (a)(2) requires a reference to the statutory authority, and (a)(3) requires "an informative summary of the proposed subject of agency action." When amending AS 44.62.-200(a)(3) in 1970, the House Judiciary Committee stated in part (1970 House Jour. 916 -- 918):

* * * * *

. . . Two objectives must be borne in mind when dealing with a notice requirement for administrative regulations: (1) the need to give the public reasonable notice of agency action; and (2) the need to allow some administrative flexibility. The committee substitute attempts to meet these objectives, providing some guidance for the agencies and protection of the public.

By way of example, the committee believes that notice by an agency that it is going to consider regulations setting a limit on bear in a particular area of the state should be sufficient to support agency action setting any limit, or no limits, in that area. Similarly, notice that the agency will consider a regulation opening the fishing season on a particular date is sufficient notice to support any date, since the subject matter of the regulation (opening the season) remains the same. . . .

The committee recognizes the difficulty in maintaining the balance between generality and specificity in writing notices which give members of the public sufficient information to decide whether their interests could be affected by the agency action and thus whether to make their opinions known to the agency. It would appear that almost

any statutory language, short of a provision that omits a notice requirement altogether or one that requires the notice to contain the regulation verbatim, will necessitate an administrative decision on an issue such as the content of "reasonable notice."

* * * *

At the same time that paragraph (3) was amended, the legislature enacted AS 44.62.200(b) to read:

(b) A regulation that is adopted, amended or repealed may vary in content from the summary specified in (a)(3) of this section if the subject matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject.

The 1970 House Judiciary Committee report is consistent with and expands upon a 1959 Opinion of the Attorney General -- No. 26. However, since the statute in effect at the time that that opinion was written provided for "the express terms" or an informative summary, the portion of that opinion that discusses the appropriateness of setting out the express terms of a proposed regulation is no longer applicable. As a general rule, it is recommended that the express terms not be set out in the notice because they could be unduly restrictive if the adopting agency wants to change substantially the original proposed version after receiving public testimony at the hearing. (The California Court of Appeal rejected such a limitation on an agency, however, in applying the "express terms or an informative summary" requirement, so long as the subject of the regulation is the same. Schenley Affiliated Brands Corp. v. Kirby, App., 98 Cal. Rptr. 609, 621 [1971]. Nevertheless, it is better to avoid the argument altogether.)

The informative summary of proposed action should not just give the citation of the regulation being adopted, amended, or repealed. A citation can be helpful, but it should always be accompanied by a description. Citations of existing provisions must be used with caution, however. Depending upon the accompanying description and upon whether a member of the public could reasonably determine whether his or her interests would be affected, a citation could actually be misleading if the agency wants to amend a different provision as its final act on the matter. In other words, if the description is not adequate, the citation could be unduly restrictive. That would mean starting over.

For new regulations, the informative summary should describe their substance. For amendments of existing regulations, the summary should describe the CHANGE being made, relating it to the substance of the existing text. This applies to notices for emergency regulations as well as to regular regulations.

For repealers, describe the provisions being repealed. Don't just cite them, and don't just give a one- or two-word identifier. In 1988, the legislature passed CSSB 384(Jud), sec. 3 of which would have amended the notice requirement of AS 44.-62.200(a)(3) as follows:

(3) an informative summary of the proposed subject of agency action and of the action's intended effect on persons subject to the action; the summary must include a description of the substance of each repealed regulation or group of related regulations and a description of the intended effect of the repeal.

(The underlined wording is the material that would have been added by the 1988 amendment.) The governor vetoed the bill, but not because he objected to its sec. 3. In his June 9, 1988 veto message, he stated "I do not disagree with the intent of sec. 3 of the bill" and "I will be instructing all of my departments and agencies to begin implementing this change in the public notice process." 1988 Senate Jour. 3857.

Expanding upon the governor's statement, his chief of staff distributed to the cabinet members an August 15, 1988 memo suggesting that all agencies observe the following guidelines:

- (1) All descriptive summaries of proposed changes should include statements that describe:
 - what is being changed
 - how it is being changed
 - why it is being changed.
- (2) If a regulation is being repealed, don't simply cite the regulation number. Describe the regulation and provide a statement of why it should be repealed.
- (3) Keep your audience in mind and don't use technical jargon or other terms not generally understood by the public. Remember the purpose of these notices is to inform the public. That requires clear and effective communication.

Points (1) and (2) in the chief of staff's list are consistent with the Alaska Supreme Court's suggestion that an agency's regulation-adoption record "should at least explain the reasons for the agency's action." Johns v. Commercial Fisheries

Entry Comm'n, 758 P.2d 1256, 1261 (Alaska 1988). That part of the record assists the court in its review function.

In Kingery v. Chapple, 504 P.2d 831 (Alaska 1972), our supreme court held that a notice that included the language "other equipment -- including mirrors, windshields, . . . motorcycle and scooter requirements concerning goggles, face shields, helmets, handlebars and standards for [those items]" was a valid informative summary of regulations requiring mirrors, windshields, goggles, face shields, and helmets, setting standards for them, and specifying the height of handlebars. Id. at 834. That language appeared in a general notice of a comprehensive revision of rules of the road.

In State v. First National Bank of Anchorage, 660 P.2d 406 (Alaska 1982), the court held that a notice that identified (by number and heading) the statute being implemented and then listed the headings of the six articles of regulations being adopted was sufficient under AS 44.62.200(a)(3). In support of its ruling, the court cited the legislative history of AS 44.62.-200, including the 1970 House Judiciary Committee report quoted above. The court noted that "it is clear that the legislature intended that the 'informative summary' requirement be liberally construed." Id. at 425, n.32. However, there has been legislative objection to notices that rely on mere headings to convey the informative summary. It would be wise to write a better description than the court has held (minimally) acceptable, as indicated in the chief of staff's memo quoted above.

In addition, in the Kenai Peninsula Fisherman's Cooperative case, the court observed in a footnote that a notice that mentioned setting fishing season dates was not adequate to cover adoption of a long-term management policy for Upper Cook Inlet, even though implementation of the policy would affect fishing season dates. In other words, the policy covered more than those dates -- subjects of which the public was not reasonably notified. 628 P.2d 897, 906, n.21.

In Chevron U.S.A., Inc. v. LeResche, 663 P.2d 923, 929 -- 930 (Alaska 1983), the court upheld oil and gas exploration regulations that were challenged for, among other things, differing from the draft that was available when notice of the proposed adoption was published. In addition to a chapter numbering change, the final regulations added to a requirement for submission of initially processed geophysical exploration information a requirement that subsequently processed information also be submitted. Relying in part on AS 44.62.200(b), the court held that this addition was valid. "[T]he subject matter remains the same: submission of test data." Id. at 930.

Paragraph (a)(4) of AS 44.62.200 is merely a reminder that there might be other statutes that require some additional point to be covered in the notice. Paragraph (a)(5), enacted in 1980, requires inclusion of a summary of the fiscal information

prepared under AS 44.62.195; see Chapter 18 and Appendices A and B of this manual.

Notice with regard to emergency regulations will be discussed below in Chapter 5.

When preparing a notice, the drafter should imagine standing in the shoes of a member of the public -- especially that portion of the public being regulated -- and anticipate that person's interest and concern.

SAMPLES OF NOTICE INTRODUCTIONS AND INFORMATIVE SUMMARIES, BASED ON THE FORMS IN APPENDICES A AND B, TO PROVIDE SOME GUIDANCE IN VARIOUS SITUATIONS:

I. Adoption of new material only:

- (A) Notice is given that the Alaska Public Utilities Commission, under the authority of AS 42.05.151, AS 42.05.311, and 42.05.321, proposes to adopt regulations in Title 03 of the Alaska Administrative Code, dealing with joint use of electric and telephone utility equipment and facilities by cable television (CATV) utilities,* as follows:

The proposed regulations would add a new Article 5 to 3 AAC 52, relating to CATV joint use of electrical and telephone utility facilities. The sections are made applicable to all electric, telephone, and CATV utilities in the state, regardless of whether the utilities are regulated or are exempt from the commission's general regulatory powers. The proposed regulations encourage the affected utilities to agree to terms for joint use, and indicate that the commission will generally not exercise its authority to order joint use and determine the terms of joint use, as long as the utilities appear to be acting consistent with the policies underlying AS 42.05. If the commission sets rates for joint use of utility-owned poles or conduits, the rates will equal the additional costs of modifications or additions necessitated by the joint use, and an annual rate equal to the total cost of a pole or conduit multiplied by the ratio of the space occupied by the CATV facilities to the total usable space on the pole or the conduit.

Unless the utilities submit studies indicating that other figures are appropriate, the commission will presume that the occupied space for a CATV pole attachment is one foot, and that the total usable space on a pole is 13.5 feet. The commission will consider the following elements of cost

to the owning utility: depreciation, taxes, return on investment, maintenance, and administrative expense. The owning utility's cost calculation shall be based on the investment in its pole or conduit accounts, divided by the number of poles or the number of feet of conduit in service.

The regulations also set out a procedure for resolving joint-use disputes and require final resolution within 360 days after the filing of a complaint.

* Department of Law File No. 993-86-0026;
Commission Docket No. R-85-002.

[[[Although the adopting agency will not always know the Department of Law file number at the time notice is published, it is a good idea to include it in the notice when it is known. This practice will facilitate accurate filing and responding to public inquiries.]]]

- (B) Notice is given that the State Board of Education, under the authority of AS 14.07.060, proposes to adopt a regulation in Title 4, Chapter 05, of the Alaska Administrative Code, dealing with local education, to clarify a term used in the statutes, as follows:

4 AAC 05.020 is proposed to be amended by adding a new paragraph, defining "education" to include the process of formal training at a facility that . .

- (C) Notice is given that the Department of Labor, under the authority of AS 23.10.360, proposes to adopt a regulation in Title 8 of the Alaska Administrative Code, dealing with Employment of Minors, to implement AS 23.10.325 -- AS 23.10.370 as follows:

amend 8 AAC 05 by adding a new section to prohibit the employment of children under 18 as canvassers, peddlers, solicitors for door-to-door contributions, or as "outside salesmen" (as that term is defined in 8 AAC 15.910(10)) in house-to-house sales.

This proposed prohibition would apply only where an employee-employer relationship exists, and would not affect individuals engaged in the activity of a nonprofit religious, charitable, educational, or service organization where an employee-employer relationship does not exist and where services rendered to the organization are on a volunteer basis. This prohibition is proposed to avoid the exploitation and abuse of minor

workers that has been experienced in these occupations in Alaska and across the country.

II. Adoption of new with amendment of old material:

- (D) Following notice such as in Example A, above, something like the following could be added, just above the file and docket numbers:

In addition, 3 AAC 50.100(a), dealing with the application and purpose of regulatory policy standards, is proposed to be amended to include a reference to telephone utilities, in light of the new material proposed for 3 AAC 52, as described above.

III. Repeal of old material:

- (E) Notice is given that the Department of Health and Social Services, under the authority of AS 18.07.101, proposes to repeal 7 AAC 07.080(f), dealing with the final administrative decisions for appeals under the Certificate of Need program. This subsection provides that the decision of a hearing officer will be the final administrative decision regarding the disposition of a matter concerning a certificate of need. To ensure proper program oversight, this repeal is intended to retain final decision-making in the commissioner.

IV. Repeal of old with adoption of new material:

- (F) Notice is given that the division of insurance, under the authority of AS 21.05.090, proposes to repeal and adopt the following regulations in Title 3 of the Alaska Administrative Code, dealing with agents, brokers, solicitors, and adjusters:
1. 3 AAC 23.050, PRODUCING GENERAL AGENTS, is repealed. This regulation required licensed general agents to secure an agent's license if they wished to act as a producing agent for the same or another insurer. This regulation has been superseded by the amendment of AS 21.09.280(b), which grants that authority to the general agent without having to apply for an additional license.
 2. 3 AAC 23.070 is a new section which codifies a one-year period as the length of time an insurance licensing examination score is valid. If licensure is not obtained within that one-year period, the applicant must retest.
 3. 3 AAC 23.080 is a new section which requires retesting for any applicant whose prior Alaska

insurance license was revoked for any reason, including nonpayment of annual continuation fees.

V. Miscellaneous amendments:

(G) [[[Following an appropriate introductory paragraph:]]]

Article 3 (7 AAC 50.310 -- 7 AAC 50.620), dealing with licensing of child foster homes is proposed to be amended. The proposed child foster home regulations contain the basic standards of care that foster parents must meet in order to be licensed to care for foster children. Some of the proposed changes include: more direct involvement by the foster parents in a foster child's plan of care; annual foster parent training; new time limit restrictions on emergency and provisional licenses; and a section entitled "Reports" which lists the reports and time frame in which a foster parent must submit the report to a placement agency. The effect of these changes is intended to be to facilitate placement of foster children, while assuring the protection of their best interests.

(H) Notice is given that the Medicaid Rate Commission, under authority vested by AS 47.07.073 and 47.07.180, proposes to amend regulations in 7 AAC 43, dealing with establishment of a rate-setting process for payment of services for medical assistance programs to facilities, to implement AS 47.07, as follows:

1. 7 AAC 43.675(f) is proposed to be amended to clarify commission voting procedures.
2. 7 AAC 43.679(a) is proposed to be amended to reflect Accounting Manual changes.
3. 7 AAC 43.680(j) is proposed to be added to establish a procedure for corrected reports.
4. 7 AAC 43.686(d) is proposed to be amended to further define allowable costs included in determining a prospective rate.
5. 7 AAC 43.691(c), dealing with commission waiver of year-end conformance that is otherwise required by (a) and (b) of that section, is proposed to be repealed.
6. 7 AAC 43.697(j) is proposed to be amended to require electronic recording of commission proceedings.

ette tax program, interpreting and implementing AS 14.07.020(1), AS 14.11.100(b), AS 43.50.140, and AS 43.50.150 as follows:

4 AAC 36.010, related to cigarette tax distribution, is amended by revising the requirement for a separate bank account to a requirement for separate fund accounting.

The necessary accountability requirements can be met without the added workload and expense of maintaining a separate bank account.

VI. Amendment of material adopted by reference; supplemental notice:

(K) SUPPLEMENTAL NOTICE OF PROPOSED
CHANGES IN THE REGULATIONS OF
THE ALASKA DEPARTMENT OF LABOR

Notice is given that the Alaska Department of Labor, under authority vested by AS 18.60.020, proposes to amend a regulation in Title 8 of the Alaska Administrative Code dealing with occupational safety and health standards, which are adopted by reference, and proposes to adopt and amend safety and health standards in Subchapter 03, Telecommunication Code, dealing with recordkeeping requirements in connection with required employee training, to implement AS 18.60.010 as follows:

1. 8 AAC 61.010 is proposed to be amended to reflect amendments to Subchapter 03, Telecommunication Code, adopted by reference in it.
2. Subchapter 03, Telecommunication Code, is proposed to be amended by requiring employers to prepare and maintain a certification record of all safe practices training that has been provided to employees.

The proposed changes to these regulations provide minimum safety and health requirements for employment and places of employment in the state, and are at least as effective as those promulgated by the U.S. secretary of labor.

This is a SUPPLEMENTAL NOTICE adding to the NOTICE OF PROPOSED CHANGES that was issued on January 4, 1988 concerning these proposed regulation revisions. The SUPPLEMENTAL NOTICE is being issued because the Department of Labor has decided to hold oral hearings on these proposed revisions. The hearings will be held as follows:

* * *

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

JAN 27 1990

Item 8

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

January 23, 1990

SUBJECT: Sectional summary of HB 426
TO: Representative George Jacko
FROM: Theresa L. Bannister *TLB*
Legislative Counsel

You have requested a sectional summary of the above described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 requires that a notice of the adoption, amendment, or repeal of a regulation be published in a local publication in a community, in addition to any other publication requirements, if the proposed adoption, amendment, or repeal will significantly affect the community and if there is a local publication that is distributed on a regular basis in the community. Defines "community".

If I may be of further assistance, please advise.

TLB:pl
WKP1/035

HOUSE COMMITTEE REPORT

Item 9

(5)

Date Referred: January 19, 1990

FURTHER REFERRALS:

STATE AFFAIRS

Date of Committee Action: 2/20/90

The COMMUNITY & REGIONAL AFFAIRS Committee considered:

HB 426

HOUSE BILL NO. 426

PUBLICATION OF PROPOSED REGULATORY ACTION

"An Act relating to the notice requirements for adopting, amending, or repealing a regulation."

RECOMMENDATIONS:

- be replaced with CSHB 426 (C&RA) the same title
- a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Date/Dept)

- 10 fiscal impact X
- 5 zero fiscal note _____
- 1 zero with analysis _____

- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING: _____ (Check approp. column)

Eileen P. Murhean
Richard (Dole)
Cheryl Davis
Eugene A. Kubina

	Do Not Pass	No Rec	Amend

Eileen P. Murhean
 Chairman's Signature

Н В

434

HOUSE COMMITTEE ON STATE AFFAIRS

RECAP OF
HB 434

Work Restrictions/Certain State Employees

Received March 19, 1990
by the Labor & Commerce Committee

Heard March 28, 1990

Passed Out of Committee March 28, 1990
3 Do Pass
2 No Recommendation

TABLE OF CONTENTS

HB 434: Work Restrictions/ Certain State Employees

- Item 1:** CSHB 434 (L&C) by The Labor & Commerce Committee
- Item 2:** Fiscal Note by Department of Commerce & Economic Development
- Item 3:** Position Statement by Department of Commerce & Economic Development
- Item 4:** Committee Report from L&C, March 6, 1990
- Item 5:** Backup Information

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 19, 1990

FURTHER REFERRALS:

JUDICIARY

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 434

HOUSE BILL NO. 434

WORK RESTRICTIONS/CERTAIN STATE EMPLOYEES

"An Act establishing certain restrictions on certain state employees before, during, and after state service."

RECOMMENDATIONS:

- be replaced with CSHB 434(L&C) the same title
 a new title
 have attached amendment(s)
 do pass
 do not pass
 no recommendation
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- fiscal impact _____
 zero fiscal note _____
 zero with analysis _____

- fiscal note(s) _____
 zero fiscal note(s) 3/19/90-LED
 zero fn/analysis _____

SIGNING DO PASS:

[Handwritten Signatures]

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Handwritten Signature]
Chairman's Signature

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE
2 CS FOR HOUSE BILL NO. 434 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act establishing certain restrictions on insur-
7 ance directors and acting directors before, during,
8 and after state service."

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

10 * Section 1. AS 39.52 is amended by adding a new section to read:

11 Sec. 39.52.175. RESTRICTIONS ON INSURANCE DIRECTOR. (a) A
12 person may not hold the position of director or acting director of the
13 division of insurance in the Department of Commerce and Economic
14 Development if at any time during the preceding year the person has
15 owned and controlled stock or other equity interest

16 (1) in an insurer or insurance brokerage if the value of
17 the stock or equity interest was over \$5,000; or

18 (2) in a mutual fund if more than five percent of the stock
19 or other equity interests that constitute the fund are stock or other
20 equity interests in insurers or insurance brokerages.

21 (b) While holding the position, the director or acting director
22 of the division of insurance may not knowingly own and control stock
23 or other equity interest

24 (1) in an insurer or an insurance broker if the value of
25 the stock or equity interest is over \$5,000; or

26 (2) in a mutual fund in which more than five percent of the
27 stock or other equity interests that comprise the fund are stock or
28 other equity interests in insurers or insurance brokerages.

29 (c) For one year after leaving the position a former director or

1 acting director of the division of insurance may not knowingly own and
2 control stock or other equity interest

3 (1) in an insurer or insurance brokerage if the value of
4 the stock or equity interest is over \$5,000; or

5 (2) in a mutual fund if more than five percent of the stock
6 or other equity interests that constitute the fund are stock or other
7 equity interests in insurers or insurance brokerages.

8 * Sec. 2. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of
9 this Act, applies to a person who assumes the position of director or
10 acting director of the division of insurance on or after the effective date
11 of this Act.

12 (b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applies to a
13 person who leaves the position of director or acting director of the divi-
14 sion of insurance on or after the effective date of this Act.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: Establishing certain restric-
tions . . . certain state employees
 Sponsor: House Labor & Commerce
 Requestor: House Labor & Commerce

Agency Affected: Commerce & Economic Dev.
 BRU: Insurance
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary) No fiscal impact for FY 90.

Prepared by: David J. Walsh, Director Phone: 465-2515
 Division: Insurance Date: 3/7/90

Approved by Commissioner: Larry Mercurieff SIM Date: 3/7/90
 Agency: Department of Commerce & Economic Development

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

Department of Commerce & Economic Development / POSITION PAPER

HB 434: "An Act establishing certain restrictions on certain state employees before, during and after state service."

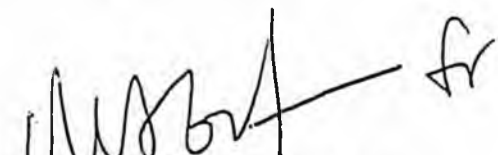
This department supports Section 1 of HB 434, if amended. The bill prohibits the Director of Insurance from holding equity ownership in an insurance company for one year before or after his or her tenure as Director. This appears to address the concern that the position not be subject to unreasonable influence or conflicts of interest potentially related to such holdings. It also addresses the "revolving door" concern.

While not covered by the proposal, similar concerns also exist for insurance agents, insurance brokers, insurance adjusters, insurance lobbyists, and attorneys with a significant insurance related practice.

An exception should be allowed for investments over which the Director has no exercise of control. Examples of this include IRA funds invested in a mutual fund which may contain insurance stock in its portfolio, or the PERS funds which could also contain such investments. To resolve this concern, we would recommend the addition of a new subsection on page 1, following line 21, to read:

"(d) As used in this section, 'stock or other equity interest' does not include investments over which the Director or Acting Director has no exercise of control."

The department takes no position on the remainder of the bill.



Larry Mercuri, Commissioner
Date: 2/2/90

LM/LW/dg16235D
2290b

HOUSE COMMITTEE REPORT

3/19 Item 4

(7)

Date Referred: January 22, 1990

FURTHER REFERRALS: STATE AFFAIRS
JUDICIARY

Date of Committee Action: 3/06/90

The LABOR & COMMERCE Committee considered:

HB 434

HOUSE BILL NO. 434

WORK RESTRICTIONS/CERTAIN STATE EMPLOYEES

"An Act establishing certain restrictions on certain state employees before, during, and after state service."

RECOMMENDATIONS:

- be replaced with CSHB 434 (L+C) the same title
- have attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): _____ APPROVES PREVIOUS: _____ (Date/Dept)
(Dept)

- fiscal impact _____
- zero fiscal note [+E]
- zero with analysis _____
- fiscal note(s) _____
- zero fiscal note(s) _____
- zero fn/analysis _____

SIGNING DO PASS:

SIGNING: (Check approp. column)

Do Not Pass No Rec Amend

<u>Mark Boyer</u>	<u>Boyer</u>	<u>Karen A. Leman</u>	<input checked="" type="checkbox"/>		
<u>Paul Finkelstein</u>	<u>Finkelstein</u>				
<u>Paul Boucher</u>	<u>Boucher</u>				
<u>Paul Greenberg</u>	<u>Greenberg</u>				
<u>David Donley</u>	<u>Donley</u>				

David Donley
Chairman's Signature

HB434
Item 5



Alaska Court System
State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

JANALEE R. STRANDBERG
Staff Counsel

303 K Street
Anchorage, AK 99501
(907) 264-8228

February 6, 1990

House Labor & Commerce Committee
Alaska State Legislature
P. O. Box Y
Juneau, AK 99811

Attn: Chairman Dave Donley

Re: HB 434 "An Act establishing certain restrictions on certain state employees before, during, and after state service."

Dear Mr. Donley:

Although the court system agrees with the restrictions on employment for state employees set forth in Sec. 39.90.030 of this bill, the court system would prefer to restrict judicial branch employees' employment by court rule. Because the judicial branch has its own personnel rules that restrict the outside employment of current employees, enactment of Sec. 39.90.030 by court rule would enable the supreme court to maintain consistency in its personnel rules.

Thank you for this opportunity to comment on HB 434. Please call me if I can answer questions about the court system's position.

Sincerely,

Jan Strandberg
Jan Strandberg
Staff Counsel

JS:gb

cc: Representative Gruenberg
Representative Boucher
Representative Boyer
Representative Spohnholz

HB434

BOYKO, BREEZE & FLANSBURG

LAW OFFICES

EDGAR PAUL BOYKO
ROBERT A. BREEZE
RONALD D. FLANSBURG
ROBERT L. BRECKENRIDGE

OF COUNSEL:
JOHN W. BREEZE
MIGUEL EIRO
JOE P. JOSEPHSON
J. JOO SHIN, PH.D.

FAX COVER SHEET

FOR: Linger
FIRM: Domeny's office
FAX NO: (463) 5061
FROM: Judi
FIRM: BOYKO, BREEZE & FLANSBURG
FAX NO: (907) 279-8944
DATE: 1-25-90
3 PAGES TO FOLLOW
TITLE: _____

IF ANY PAGES ARE NOT RECEIVED, PLEASE CALL

(907) 279-1000

SPECIAL INSTRUCTIONS:

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing certain restrictions on certain state employees before, during, and after state service."

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

* Section 1. AS 39.52 is amended by adding a new section to read:

Sec. 39.52.175. RESTRICTIONS ON INSURANCE DIRECTOR.

(a) A person may not hold the position of director of the division of insurance in the Department of Commerce and Economic Development if at any time during the preceding year the person has owned stock or other equity interest in an insurer.

(b) While holding the position, the director of the division of insurance may not own stock or other equity interest in an insurer.

(c) For one year after leaving the position a former director of the division of insurance may not own stock or other equity interest in an insurer.

* Sec. 2. AS 39.90 is amended by adding a new section to read:

Sec. 39.90.030. RESTRICTION ON EMPLOYMENT AND CONTRACTS AFTER LEAVING STATE SERVICE. (a) In addition to any other provision of law, for ~~one~~ TWO years after leaving state service, a

public officer may not be employed by or work under contract for a person OR ENTITY who was awarded a contract with the state during the officer's state service, if the public officer was directly PERSONALLY AND SUBSTANTIALLY involved in the state's procurement procedures that resulted in OR CONTRIBUTED TO THE AWARD OF the contract. In this subsection, "public officer" means

(1) an employee of a state agency; in this paragraph "state agency" means a department, institution, board, commission, division, authority, public corporation, or other administrative unit of the executive, legislative, or judicial branch, and includes the University of Alaska and the Alaska State Housing Authority;

(2) a legislator; and

(3) a member of a state board or commission.

(b) A person who violates this section is subject to a civil penalty not to exceed \$5,000 for each violation. A penalty imposed under this section is in addition to and not instead of other penalties that may be imposed according to law, including criminal penalties.

(c) A violation of this section is a Class A misdemeanor.

* Sec. 3. APPLICATION. (a) AS 39.52.175(a), as enacted by sec. 1 of this Act, applied to a person who assumes the position of director of the division of insurance on or after the effective date of this Act.

(b) AS 39.52.175(c), as enacted by sec. 1 of this Act, applied to a person who leaves the position of director of the division of insurance on or after the effective date of this Act.

(c) AS 39.90.030, as enacted by sec. 2 of this Act, applies to public officers who leave state service on or after the effective date of this Act.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



September 26, 1989

Jim Jordan, Acting Director
Division of Insurance - DCEI
3601 C Street, Suite 722
Anchorage, Alaska 99503

Dear Mr. Jordan:

As per your conversation with Ginger Baim last week, enclosed is material and draft legislation on various insurance issues from Robert Hunter at the National Insurance Consumer Organization (NICO).

The House Labor and Commerce Committee will consider introduction of some of the suggested legislation and I'd like your response and comments as to whether they are workable and appropriate for Alaska. Specific legislation we will likely pursue includes:

1. Disclosure - I've requested a draft bill mandating insurer disclosure as described in pages 6 and 7 of the enclosed material. What information would the Division have if these disclosure statutes were enacted that we do not have now? Do you have any suggestions that would make these reporting requirements easier for insurers to comply with and easier for the Division to assimilate? Do you believe that the additional information will be useful enough to justify the increased paperwork requirements on both the insurers and the Division?
2. Require experience rating - I'd appreciate your specific suggestions as to how legislation mandating that all professional and commercial risks in Alaska be experience rated should be drafted.
3. Require risk management - It seems both appropriate and necessary that we require insurance purchasers and self insureds to set up risk management programs. Can you shed some light on the reasons why Alaska statutes don't already mandate risk management programs and how we can go about drafting legislation to accomplish it?
4. Allocation of medical malpractice costs - I'm particularly interested in legislation that would limit the number of "categories" insurance companies can set for physicians licensed in the state for the purposes of setting malpractice insurance rates to no more than four (see enclosed exhibit M1). What, if any, pitfalls do you see in this approach?
5. Closing the "revolving door" - I've requested draft legislation addressing the "revolving door" issue for all state employees with

specific language that would prohibit the director of the Division of Insurance from holding any stock or equity ownership in an insurance company for one year before and after employment with the state. Comments please?

Your immediate review of the enclosed material and response to this inquiry is needed in order to have legislation drafted and ready to go for Committee consideration early in the session. I have requested Legislative Legal Services to prepare draft legislation on the above issues after further consultation with you and your staff.

In addition, and at your leisure (ha!), I'd like your comments and suggestions on the following issues: permitting banks to act as insurers, establishing interstate insurance compacts, any amendments to existing statutes that may be needed to protect consumers from arbitrary cancellations, establishing JUA's, and prohibiting the "pass through" of lobbying and other non-appropriate expenses.

Thanks for your attention to this request. I look forward to your earliest response.

Sincerely,

Representative Dave Donley, Chair
House Labor and Commerce Committee

PS: Welcome aboard!

Enclosure

dd/gbi89
c/jordan

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF INSURANCE

7th FLOOR FRONTIER BLDG.
3601 C STREET, SUITE 740
ANCHORAGE, ALASKA 99503-5934
PHONE: (907) 562-3626

November 22, 1989

Honorable Dave Donley
Chair, House Labor and Commerce Committee
State of Alaska
House of Representatives
P. O. Box Y
Juneau, AK 99811

Dear Representative Donley:

This letter is to respond to your letter dated September 26, 1989 in which you requested my comments on a number of topics for which legislation is being contemplated. I will respond to those topics as identified in your letter.

1. Disclosure

The need for more and better data is well recognized by all. The data collected needs to be "fit" to the particular purpose for which it is collected. Those purposes include insurer solvency analysis, rate approval/disapproval, market conduct (eg - unfair claim settlement practices enforcement, availability and affordability analysis, and analysis of the expected outcomes related to legislative proposals).

Generally, the information developed by the disclosure proposed by the National Insurance Consumer Organization (NICO) will not provide meaningful information to the Division of Insurance nor to the Legislature on a macro economic scale. The basic reasons for this relate to the statistical credibility of the data. We could not practically require that the surplus lines insurers report such data (Alaska has significant amount of coverage categorized by NICO as "other liability" placed in this marketplace). Additionally, large self-insurers (eg. State of Alaska, Municipality of Anchorage) would not have its data in this data base. Finally, due to the small size of our population relative to the United States as a whole, the frequency of loss will be low, and with the dollar amounts of claims being subject to a great degree of variance, the data will be statistically questionable.

Certain items identified on pages 6 and 7 of the material included with your letter would be informative and useful. Specifically items 2, 3, 4, 6, 7, 9 and 10 would be informative. However, those items would only be of use if collected nationally by all states. The appropriate mechanism for accomplishing the collection of this data would be through amendments to the annual financial statement format as developed by the National Association of Insurance Commissioners (NAIC). (Alaska Statute 21.09.200 requires the filing with the Division of an annual financial statement by all licensed insurers in a format in current use generally throughout the various states. The format accepted in Alaska has generally been that adopted by the NAIC.) Attached as Exhibit 1 is a recent letter (and attachments) from NAIC president, David Gates (Nevada's Insurance Commissioner) to National Association of Attorney General (NAAG). This letter responded to NAAG's suggested data reporting recommendations. As you can see this is a detailed analysis involving the data collection spectrum which includes comment on items similar to those in NICO's recommendation. Exhibit 1 also identifies the information that is currently available to the Division. Data submission on a nationally uniform basis is imperative. Otherwise, comparisons with other jurisdictions would be difficult, if not impossible; and the cost implications to the insurers (and ultimately to the insurance consumer) and to the division would provide for adverse consequences. Such adverse consequences would embrace the willingness of insurers to participate in Alaska's insurance marketplace and for the Division to conduct meaningful analysis with limited and, in some instances, absent resources.

Therefore, I would suggest that we work toward adopting the various NAIC model laws and regulations pertaining to the various data collection and reporting schemes in conjunction with the various states. Furthermore, I would suggest that periodic closed claim studies be performed with the data elements being specifically tailored to the line, class, and subclass of coverage. Problem classes or subclasses could be targeted for such studies. The data would come from the information collected by the Division appointed examiners and therefore would also be audited data as contrasted to data coming from required submissions from insurers which would need to be audited to assure that the information is valid. Such studies would help to target problem areas and would provide the basis for analysis of any proposed legislative changes (eg - worker's compensation benefit configuration or various "tort reforms"). Such studies would need to be performed as a contractual basis due to limited Division staff resources.

As the insurance industry either abandons or is forced out of the advisory rate system, each insurer must develop its own rates. Each licensed insurer subject to our prior approval rate law (AS 21.39) will have to support its rates in terms of its loss experience, profit margins, and expenses. The NAIC is currently considering a new model rating law which I expect to be adopted in December of this year. Attached as Exhibit 2 is the most current version of the proposed model. If enacted by Alaska, this law would provide for the meaningful disclosure of data necessary for appropriate regulatory rate analysis. However, the Division will need sufficient resources to appropriately analyze this data such as actuaries and other rate analysts. The Insurance Services Office (ISO) as of January 1, 1990, voluntarily, will no longer file fully developed rates for its member and subscriber insurance companies. It will file only aggregated loss data and each member and subscriber insurer will need to file its own fully developed rates including its own margins for expenses, profit margins, and justification for its own

loss experience being reflective or not reflective of the aggregated loss experience filed by ISO. The impact in the number of rate filings requiring detailed review by the Division is dramatic. The number of rate filings received currently is approximately 50 and has been estimated to increase to as many as 2,000 per year. I believe this serves to underscore the need for additional Division staff in the form of a qualified actuary and rate analysts.

The examinations done of NCCI and the leading Alaska writers of automobile and homeowner's coverage are completed. I am currently awaiting the examination reports (other than for NCCI which has been delivered and is expected to become a public document in early December). These examinations will, I believe, provide direction concerning these areas in which enhanced data collection efforts are needed.

The following are comments concerning specific items found on pages 6 and 7 of the NICO report.

Item 1. A practical concern is expressed at the ability to determine what portion of a claim pay-out pertains to "economic damages", particularly non verdict directed claim payments involving prospective damages (eg. future wage loss or future medical care). Such determinations tend to be very subjective and based, no doubt, on guesswork related to what a jury would award. Analytical extrapolation of underlying data based on subjective determinations would be suspect.

Item 5. Investment income is developed on the aggregated invested assets of an insurer. An allocation of that investment income to a specific claim would be arbitrary and not very meaningful. (Of interest to note is that the Alaska's proscribed pre-judgment interest rate has in the last few years exceeded the rate of interest which can be generated by an insurer through prudent investments.)

Item 8. An allocation of unallocated loss adjustment expenses (which are expenses pertaining to the general overhead associated with the adjudication all claims) by claim or claim classification would be arbitrary and would be of limited value. Different insurers would not necessarily allocate these expenses in a like manner which would limit the use of this data for comparative purposes.

Item 11. This item in its current form would be moot based on the passage of Initiative #2 last year.

2. Require Experience Ratings

The generic term, "scheduled rating plan," refers to rating mechanisms that adjust the rates for a specific insured's risk characteristics. Experience is but one of several significant elements in scheduled rating plans and can be utilized in scheduled rating plans on either a prospective or retrospective basis. In other words, good past loss experience may provide for a lower rate for a future period of time if it is predictive of future loss experience; and can provide for a retrospective rate credit or dividend if loss experience is

good and is statistically credible. Therefore, this element of scheduled rating is primarily applied by most insurers to the large commercial insureds and Alaska is no exception in this respect.

(Other elements that can provide for rate credits are risk management, and loss prevention programs.)

It is my belief that many professionals and small businesses pay a set rate without consideration of these individual characteristics. I believe this is primarily due to the small size and diversity of the typical Alaskan business, and that statistically credible loss data is not generated in Alaska. I would surmise that insurers generally feel it is not cost effective to develop rating plans that would be able to appropriately "Alaskanize" credible data from other states to form a basis to develop sophisticated scheduled rating plans for Alaska's small businesses. (Lack of appropriate, uniform existing data may also serve as an impediment.)

I would be reluctant to limit any requirement for scheduled rating plans to be limited only to one element based on claim free experience or relatively low loss experience based upon the above. It is not likely that small businesses would be entirely claim free. Additionally, physicians, like other professionals in Alaska, are relatively few in number and the circumstances of their practice vary significantly based upon the locale of the practice. This may result in unintended adverse impacts such as, in the absence of mandatory insurance coverage, increases in the number of uninsured professionals resulting in increased difficulty for an injured person to receive appropriate compensation. Those physicians located in small communities who provide a broad range of medical services would be most likely to be penalized by such a system due to the inherent increased risk (eg. providing care which in larger cities would be provided by a specialist who creates the standard of care).

An alternative would be to mandate well documented schedule rating plans. Risk management and loss elements being more significant elements than individual loss experience for the smaller risk. The Division would need to expand its market conduct examination activities to ensure that the application of such scheduled rating plans are being applied in an appropriate manner and are not unfairly discriminatory in their application. (Michigan, for example, allows scheduled rating plans for worker's compensation but establishes a rebuttable presumption that all such plans are unfairly discriminatory in their application.)

3. Require Risk Management

"Risk Management" is a developing profession and discipline. Attached as Exhibit 3 is a copy of "The Risk Management Audit" written by H. Felix Kloman, Principal and Vice President, Tillinghast, Nelson and Warren. Kloman outlines the risk management process as one that involves risk assessment, risk financing, and risk control. The process outlined, by Kloman is the classic risk management process which is time consuming, complex, and expensive--but potentially very rewarding to the client that undertakes the effort. It is only the large client that is able to utilize such a process on an economically feasible basis.

It is not practical to require that all insureds and self-insurers undertake risk management programs. Insufficient resources exist in Alaska to provide risk management services to Alaska's approximately 30,000 employers. According to testimony received at the Division's recent public hearing in regards to work place safety programs approximately 12 qualified in-state people and 6 out-of-state people are available to provide such services (and perhaps a "few" non-insurance professionals). Additionally, testimony indicated no established college curriculum exists in Alaska's universities pertaining to risk management and that the Pacific Northwest provides college degree programs graduating only 30 to 40 persons per year. Large insureds generally are able to secure risk management services. So, the problem primarily rests with Alaska's small enterprises and I believe we need to find a way to make risk management services available to them. (See Exhibits 4 and 5 for additional current articles pertaining to this subject.)

One possible alternative would be to utilize the expertise of Alaska's Department of Labor personnel to provide loss control/safety services on a fee basis. However, I would suspect that Alaska's businesses would not be receptive as the Department of Labor also is an enforcement agency -- "the fox in the henhouse".

Another possibility would be to require that all insurers be required to identify a separate element in their rate filings for risk management and loss control and require that such increment of the premium actually be spent to provide those services. Incentives could be provided such as allowing insurers to deduct from premiums the funds spent on loss control for purposes of premium tax computation. However, testimony received at the Division's public hearings on work place safety programs indicated that some insurers were curtailing their loss control and safety inspection efforts as the result of the Van Biene decision which is attached as Exhibit 6.

4. Allocation of Medical Malpractice Costs

You asked what pitfalls I see in the approach of limiting the number of rating "categories" to no more than four. I would expect, first of all, that those physicians whose premiums increase to protest loudly. Additionally, those physicians with increased premiums may be more inclined to go uninsured. It is also possible that physicians, who currently refer patients to specialists, would perform more of the services currently provided by the specialists. This is predicted on that physicians are allowed, by licensure, to perform medical care in all aspects and levels; and if a physician perceives that he or she is paying for the risk associated with the services provided by a specialist why not perform the service as long as he or she is paying premium for that risk anyway. (Under existing law AS 21.36.090(b) would provide a basis for a physician subsidizing other physicians to allege unfairly discriminatory treatment.)

Technically speaking, the rate categories should be such that they include all insureds with like risk characteristics. Limiting rating categories may be a way to accomplish other socially desirable objectives--such as to encourage specialists to practice in Alaska and in rural settings. However, I am wary that such a limitation would provide enough incentive to bring a sufficient number of specialists to rural Alaska. Other incentives may be more effective, such as a program to pay-off medical school debt in return for a certain number of years of practice in a rural setting.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

February 13, 1990

SUBJECT: Vagueness of language underlying criminal
provision (draft CSHB 434 (L&C))

TO: Representative Dave Donley
Chair, Labor & Commerce Committee

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the draft that you requested of a Labor and Commerce committee substitute for HB 434.

Please be aware that the addition of a criminal penalty to sec. 3 of the draft subjects the section to stricter scrutiny. Under this scrutiny the description of the prohibited activity may be considered vague and may not survive constitutional scrutiny under the due process provisions of the federal and state constitutions. The problem is that the conduct to be prohibited is not determined by sufficiently specific standards. The average state employee may not have adequate notice of when the employee is prohibited from working for a person after leaving state service. The use of indefinite words like "directly" and "substantially", and indefinite phrases such as "that resulted in or contributed to the award of the contract" create a vagueness in the prohibition. Vagueness would also give government officials too much discretion in the enforcement of the provision, which could result in uneven and discriminatory enforcement.

If you want to retain the criminal provision, I suggest reworking the language so as to be very specific.

If I may be of further assistance, please advise.

TLB:pl
WKP2/038

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



November 13, 1989

M E M O R A N D U M

To: Gordon Harrison, Director
Legislative Research Agency

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Research request - "Revolving door" legislation

The House Labor and Commerce Committee will be considering draft legislation dealing with the conditions under which a public employee can return to private sector work ("revolving door legislation") during a public hearing on Tuesday, November 28, 1989.

I am writing to request a Legislative Research report on other state and federal legislation concerning restrictions or conditions on public employee reemployment in the private sector including:

1. Employment with a private business by a former public employee who may have been involved with a public procurement awarded to the private business.
2. Employment with a private business where a former public employee had regulatory responsibility while serving as a public employee or may have been privy to information not generally available to the public that would be of personal monetary benefit to the employee or company for which they work.
3. Offers or acceptance of offers of private employment while a public employee.
4. Any restrictions or conditions on private employment before entering public employment. (i.e. prohibiting the Insurance Commissioner from having an ownership interest in an insurance company for one year prior to appointment as a Commissioner).

Your report should include a review of any existing state laws or regulations concerning this issue. A review of federal law regarding employment of former military personnel may be useful. In addition, the NCSL may have this information readily available.

I'll need this report by November 22 in order to include it with committee files so that members will have time to review the information prior to our hearing. Please call Ginger Baim at 561-7629 if you have any questions or need additional information.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892



November 23, 1989

MEMORANDUM

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Draft "Revolving door" legislation

Attached is a copy of proposed "revolving door" legislation governing the conditions under which a public employee may return to private sector employment.

The current draft specifically addresses two circumstances:

1. The Director of the Division of Insurance cannot own stock or hold an equity interest in an insurance company for one year before or after serving as Director or during the time that they serve as Director.
2. A public employee may not be employed by or work under contract for a person who was awarded a contract with the state during the employee's service if the employee was directly involved in the state's procurement procedures that resulted in the contract.
3. Persons who violate these sections are subject to a civil penalty not to exceed \$5,000 for each violation in addition to any other penalties that may be imposed according to law, including criminal penalties.

Included in your files is a multi-state survey and information on revolving door legislation from the National Conference of State Legislatures. Also included is a copy of a National Insurance Consumer Organization report by Robert Hunter suggesting "revolving door" conditions on state insurance commissioners and directors.

The Committee may wish to consider other circumstances where some statutory change may better protect the public interest, such as restrictions on employees who may have had regulatory responsibility for a particular industry or who may have been privy to confidential information during the course of their public employment.

dd/gbi89
b,door

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

August 29, 1989

SUBJECT: Bill restricting employment and contracts after
leaving state service (Work Order No. 6-1584)

TO: Representative Dave Donley

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the bill that you requested to restrict the employment and contracts of public officers after they leave state service. Please note the following:

1. the restriction covers contracts as well as employment; otherwise a contractual arrangement might be used to circumvent the restriction;
2. the restriction will have little practical effect unless there is a penalty; you may wish to consider imposing a criminal penalty or a civil penalty; AS 39.52.410 - 39.52.460 contain the penalty provisions for the present restrictions on post-service employment in the executive branch (AS 39.52.180); I do not believe that those penalty provisions are particularly good ones, but they will show you what has been done in the past in this area;
3. the definition of state agency includes the University of Alaska and public corporations; however, if you want it to include the Alaska Railroad Corporation or the Alaska State Housing Authority, they should be listed in the definition;
4. I have added a transition section (sec. 2) to clarify which public officers this restriction applies to.

If you have questions about the provisions I have added or about the penalty section for the bill, or if you wish to make changes, please advise.

TB:mi
wkmi4/077
Enclosure



NATIONAL INSURANCE
CONSUMER ORGANIZATION

How To

Tame the Insurance Industry Cycle

and

Make the Legal System More Efficient:

A Suggested Legislative Agenda for 1987

by

J. Robert Hunter, President
and
Jay Angoff, Counsel
National Insurance Consumer
Organization

Presented at the Annual
Meeting of the National
Conference of State
Legislatures
New Orleans, Louisiana
August 8, 1986

121 N. Payne Street
Alexandria, Virginia 22314
(703) 549-8050

them to independently recommend the appropriate level of insurance rates."

The states should pass legislation requiring insurance departments to have on staff a specified number of actuaries auditors, investigators and other professionals, and appropriating adequate funding for such positions.

5. Close the "revolving door"

While some insurance commissioners are dedicated to the public interest and do yeoman work with limited resources, others lack the will to stand up to the insurance industry. For example, the GAO study found that most regulators do not have an "arms-length relationship" with the industry, and that about half of all insurance regulators come from and return to the insurance industry.

Clearly, prior experience in the insurance industry yields expertise helpful in regulating the industry. Conversely, one can learn much about the industry from regulating it, and can use that knowledge productively within the industry after leaving the insurance department.

Yet regulators must always hold uppermost the broad public interest, not the narrow, albeit legitimate, private interests of insurance companies, and an insurance commissioner must never allow his vigilance in guarding the public interest to be compromised by his looking toward a future job within the industry. Therefore, to eliminate the appearance of any conflict of interest, states should pass

legislation that would require state insurance commissioners to wait five years before going to work for any company they had regulated.

States should also seriously consider as candidates for insurance commissioner qualified individuals who have not worked in the insurance industry.

A bill that has gathered substantial support in Congress in the wake of the Michael Deaver scandal, which can be adapted to apply to state insurance commissioners and the insurance industry, is attached as Exhibit K.

6. Establish an Office of Insurance Consumer Advocate

Perhaps because insurance is such an arcane and seemingly boring issue, the consumer is rarely if ever represented in insurance rate hearings. This lack of consumer presence is compounded by the lack of an "arms-length relationship", as the GAO study put it, between the insurance industry and insurance regulators.

An insurance consumer advocate would represent the consumer point of view at rate hearings and ensure that the insurance department does not rubber stamp insurance company rate requests. An insurance consumer advocate might also cause insurance companies to moderate their requests for rate increases. A handful of states (South Carolina, Maine, Oklahoma and New Jersey) have already established such offices. New Jersey's is particularly effective: the cost of the consumer advocate's intervening is billed back to the insurance company seeking the rate increase, thus creating an

99TH CONGRESS
2D SESSION

H. R. 5097

To amend chapter 11 of title 18, United States Code, to prohibit the President, the Vice President, certain other former Federal civilian and military personnel, and Members of Congress from representing or advising certain foreign entities for a period of 4 years after leaving Government service, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1986

Mr. GLICKMAN (for himself, Mr. WOLPE, Ms. KAPTUR, Mr. FRANK, Mrs. SCHROEDER, and Mr. FISH) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 11 of title 18, United States Code, to prohibit the President, the Vice President, certain other former Federal civilian and military personnel, and Members of Congress from representing or advising certain foreign entities for a period of 4 years after leaving Government service, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Foreign Representation
5 Restrictions Act of 1986".

1 SEC. 2. LIMITATIONS ON REPRESENTING OR ADVISING CER-
2 TAIN FOREIGN ENTITIES.

3 (a) IN GENERAL.—Chapter 11 of title 18, United
4 States Code, is amended by inserting after section 207 the
5 following new section:

6 "§ 207a. Limitation on the representation or advising of
7 certain foreign entities by certain former
8 Federal officers and employees and members
9 of the uniformed services

10 "(a) Any person who serves as an officer or employee,
11 or a member of a uniformed service, described in subsection
12 (c), may not, during the 4-year period after that person's
13 service as such an officer or employee has ceased, in connec-
14 tion with any transaction with the United States Govern-
15 ment, act as an agent or attorney for or otherwise represent
16 or advise—

17 "(1) the government of a foreign country;

18 "(2) a foreign political party; or

19 "(3) a business enterprise the decisionmaking of
20 which is controlled, directly or indirectly, by a foreign
21 government or foreign governments.

22 "(b)(1) Any person described in subsection (c) who
23 knowingly and willfully violates subsection (a) shall be im-
24 prisoned for not more than two years and shall be subject to
25 a fine in the amount provided in this title.

1 “(2) Any person described in subsection (c) who know-
2 ingly and willfully violates subsection (a) shall be subject to a
3 civil penalty of \$50,000, or the amount of compensation
4 which the person received for the prohibited employment or
5 other activity, whichever amount is greater. The Attorney
6 General may bring an action under this paragraph in an ap-
7 propriate United States district court against any such
8 person. A violation under this paragraph must be established
9 by a preponderance of the evidence. The penalty under this
10 paragraph is in lieu of the penalty under paragraph (1).

11 “(c) The prohibitions set forth in subsection (a) apply
12 to—

13 “(1) the President of the United States;

14 “(2) the Vice President of the United States;

15 “(3) the head of each executive department as de-
16 fined in section 101 of title 5;

17 “(4) an individual who—

18 “(A) is appointed by the President under sec-
19 tion 105(a)(2)(A) of title 3;

20 “(B) is appointed by the Vice President
21 under section 106(a)(1)(A) of title 3;

22 “(C) is not described in paragraph (3) or sub-
23 paragraph (A) or (B) and serves in a position in
24 level I, level II, level III, level IV, or level V of
25 the Executive Schedule; or

1 “(D) is a member of a uniformed service in a
2 pay grade of O-7 or higher and is serving on
3 active duty; and

4 “(5) each Member of Congress.

5 “(d)(1) For purposes of subsection (c)(4)(D), the term
6 ‘uniformed services’ means the Army, Navy, Air Force,
7 Marine Corps, Coast Guard, National Oceanic and Atmos-
8 pheric Administration, and Public Health Service.

9 “(2) For purposes of this section, the service of a
10 member or former member of a uniformed service shall be
11 considered to have ceased upon such member's discharge or
12 release from active duty.

13 “(e)(1) An individual described in subsection (c) may
14 apply—

15 “(A) to the Attorney General in the case of an in-
16 dividual described in paragraph (1), (2), (3), or (4) of
17 subsection (c), or

18 “(B) to the Committee on Standards of Official
19 Conduct of the House of Representatives, or the Select
20 Committee on Ethics of the Senate, as the case may
21 be, in the case of a Member of Congress,

22 for a waiver of the applicability of the prohibition contained
23 in subsection (a) with respect to employment or another ac-
24 tivity prohibited by subsection (a).

1 “(2) The Attorney General, or the appropriate commit-
2 tee referred to in paragraph (1)(B), as the case may be, may
3 grant a waiver under paragraph (1) if the applicant can dem-
4 onstrate that the proposed employment or other activity—

5 “(A) could not harm the security, trade, or other
6 national interests of the United States; and

7 “(B) would not create an undue appearance of
8 conflict of interest.

9 “(3) An individual who applies for a waiver under para-
10 graph (1) and who does not receive a determination under
11 paragraph (2) on the waiver within 90 days after the applica-
12 tion is made may accept the employment, or engage in the
13 activity, with respect to which the application is made.

14 “(4) Upon the filing of any application for a waiver
15 under this subsection, and upon the granting of any such
16 waiver, notice of such filing or granting shall be published—

17 “(A) in the Federal Register, in the case of appli-
18 cations to, and waivers granted by, the Attorney Gen-
19 eral; or

20 “(B) in the Congressional Record, in the case of
21 applications to, and waivers granted by, a committee
22 referred to in paragraph (1)(B).

23 “(f) If the Attorney General has reason to believe that a
24 person is engaging or is about to engage in employment or
25 another activity in violation of subsection (a), the Attorney

1 General may petition an appropriate United States district
2 court for an order prohibiting that person from engaging in
3 such employment or activity. The court may issue such order
4 if it finds that such employment or activity does or would
5 violate subsection (a). The filing of a petition under this sub-
6 section does not preclude any other remedy which is avail-
7 able by law to the United States or any other person."

8 (b) TECHNICAL AMENDMENT.—The table of sections
9 for chapter 11 of title 18, United States Code, is amended by
10 inserting after the item relating to section 207 the following
11 new item:

*"207a. Limitation on the representation or advising of certain foreign entities by
certain former Federal officers and employees and members of the
uniformed services."*

12 SEC. 3. OTHER CONFLICTS OF INTEREST.

13 (a) DESIGNATION OF SEPARATE AGENCIES AND BU-
14 REAUS.—Subsection (e) of section 207 of title 18, United
15 States Code, is amended to read as follows:

16 "(e)(1) For purposes of subsection (c) and except as pro-
17 vided in paragraph (2), whenever the Director of the Office of
18 Government Ethics determines that a separate statutory
19 agency or bureau within a department or agency exercises
20 functions which are distinct and separate from the remaining
21 functions of the department or agency, the Director shall by
22 rule designate such agency or bureau as a separate depart-
23 ment or agency.

1 “(2)(A) For purposes of subsection (c), a designation of
2 an agency or bureau under paragraph (1) shall not apply with
3 respect to—

4 “(i) a former head of that designated agency or
5 bureau; or

6 “(ii) any former officer or employee of the depart-
7 ment or agency within which the designated agency or
8 bureau exists, if the official responsibilities of the offi-
9 cer or employee included supervision of that designated
10 agency or bureau.

11 “(B) For purposes of paragraph (1), the Executive
12 Office of the President shall be considered a department or
13 agency without any separate agencies or bureaus.”.

14 (b) CIVIL PENALTY; ORDERS PROHIBITING AC-
15 TIVITY.—Section 207 of title 18, United States Code, is
16 amended by adding at the end the following:

17 “(k) Any person who violates subsection (a), (b), (c), or
18 (g) shall be subject to a civil penalty of \$50,000, or the
19 amount of compensation which the person received for the
20 prohibited employment or other activity, whichever amount is
21 greater. The Attorney General may bring an action under
22 this subsection in an appropriate United States district court
23 against any such person. A violation under this subsection
24 must be established by a preponderance of the evidence. The
25 penalty under this subsection is in lieu of the penalties other-

1 wise provided in this section for violations of subsection (a),
2 (b), (c), or (g).

3 “(1) If the Attorney General has reason to believe that a
4 person is engaging or is about to engage in employment or
5 another activity in violation of subsection (a), (b), (c), or (g),
6 the Attorney General may petition an appropriate United
7 States district court for an order prohibiting that person from
8 engaging in such employment or activity. The court may
9 issue such order if it finds that such employment or activity
10 does or would violate subsection (a), (b), (c), or (g). The filing
11 of a petition under this subsection does not preclude any
12 other remedy which is available by law to the United States
13 or any other person.”.

14 SEC. 4. EFFECTIVE DATE.

15 (a) IN GENERAL.—Subject to subsections (b) and (c),
16 this Act and the amendments made by this Act take effect on
17 January 1, 1987.

18 (b) FOR SECTION 3(a).—Subject to subsection (c), the
19 amendment made by section 3(a) takes effect on the date of
20 the enactment of this Act.

21 (c) EFFECT ON EMPLOYMENT.—(1) The amendments
22 made by this Act do not, except as provided in paragraph (2),
23 apply to a person whose service as an officer or employee to
24 which such amendments apply terminated before the effective
25 date of such amendments.

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1 (2) Paragraph (1) does not preclude the application of
2 the amendments made by this Act to a person with respect to
3 service as an officer or employee by that person on or after
4 the effective date of such amendments.

○

Sec. 24.45.171. Definitions. In this chapter

(1) "administrative action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection or postponement by any state agency of any rule, regulation, order, decision, determination, or any other quasi-legislative or quasi-judicial action or proceeding whether or not governed by the Administrative Procedure Act (AS 44.62);

(2) "agency" means a state department, division, commission, board, office, bureau, institution, corporation, authority, organization, committee, council or board in the executive branch, or independent of the executive branch, of state government;

(3) "gift"

(A) means any payment to the extent that consideration of equal or greater value is not received;

(B) includes but is not limited to:

(i) a loan, loan guarantee, forgiveness of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except when full and adequate consideration is received;

(ii) the purchase of tickets for travel or for entertainment events; and

(iii) the granting of discounts or rebates for goods or services not extended to the public generally;

(C) does not include:

(i) informational or promotional materials, including but not limited to books, reports, pamphlets, calendars or periodicals; however, payments for travel or reimbursement for expenses may not be considered "informational material";

(ii) food and beverages consumed in places of public accommodation;

(4) "immediate family" means the spouse and dependent children of an individual;

(5) "individual" means a natural person;

(6) "influencing legislative or administrative action" means promoting, advocating, supporting, modifying, opposing or delaying or seeking to do the same with respect to any legislative or administrative action by means including but not limited to the provision or use of information, statistics, studies, analyses in written or oral form or format;

(7) "legislative action" means the preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, defeat or rejection of any bill, resolution, amendment, motion, report, nomination, appointment or other matter by the legislature, or by a standing, interim or special committee of the legislature, or by a member or employee of the legislature acting in an official capacity; it includes, but is not limited to, the action of the governor in approving or vetoing a bill or the action of the legislature

in considering, overriding or sustaining that veto and the action of the legislature in considering, confirming or rejecting an executive appointment of the governor;

(8) "lobbyist" means

(A) a person who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, to communicate directly or through the person's agents with any public official for the purpose of influencing legislative or administrative action if a substantial or regular portion of the activities for which the person receives consideration is for the purpose of influencing legislative or administrative action; or

(B) a person who represents oneself as engaging in the influencing of legislative or administrative action as a business, occupation or profession;

(9) "payment" means the disbursement, distribution, transfer, loan, advance, deposit, gift or other rendering or tendering of money, property, goods or services or anything else of value;

(10) "payment to influence legislative or administrative action" means any of the following:

(A) a direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing, retaining or contracting for the services of the lobbyist separately or jointly with other persons;

(B) a payment in support of or assistance to a lobbyist or the lobbyist's activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(C) a payment which directly benefits a public official or a member of the immediate family of that official;

(D) a payment, including compensation, payment or reimbursement for the services, time or expenses of an employee for or in connection with direct communication with a public official;

(E) a payment for or in connection with soliciting or urging other persons to enter into direct communication with a public official;

(F) a payment or reimbursement for expenses in the categories set out in AS 24.45.051(2);

(11) "person", in addition to the terms set out in AS 01.10.060(7) includes a labor union; and

(12) "public official" or "public office" means a public official or public office as defined in AS 39.50.200(a); however, it does not include a judicial officer or an elected or appointed municipal officer. (§ 2 ch 167 SLA 1976)