

HB

328

(7)
Date Referred: February 13, 1992

FURTHER REFERRALS:

Finance

Date of Committee Action: 2-28-92

The JUDICIARY Committee considered:

HB 328

HOUSE BILL NO. 328

PUBLIC COMMENT ON PROPOSED REGULATIONS

"An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

RECOMMENDATIONS:

be replaced with _____

CS HB 328 (JUD)

the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

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

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact _____

fiscal note(s) DCED, Law

zero fiscal note _____

zero fiscal note(s) Law, (Overhaul, ANR, Labor, DPS, DEC, C/P, D/E)

SIGNING DO-PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<u>Donna Douley</u>	X				
<u>W. P. ...</u>					
<u>J. Ellis</u>		<u>Mark ...</u>		X	
<u>Kevin ...</u>	✓	<u>Terry ...</u>		✓	
		<u>Mike Miller</u>		✓	

Donna Douley
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: February 6, 1992
Title: "...relating to the notice and public comment requirements for...regulations"
Sponsor: House Judiciary Committee
Requestor: House State Affairs Committee

Department Affected: Community and Regional Affairs
BRU: _____
Component: _____
COMPONENT SERIAL NO.

0	0	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 * It is impossible to determine the true impact of this bill because that will depend on the amount of regulatory activity in any given year, and whether draft regulations are changed during the adoption process. Fiscal impact, as well as delay, could be considerable since any change in substance would trigger the renote requirement and the costs of readvertising.

Prepared By: Richard Hennison
Division: Administrative Services Division

Phone: 465-4708
Date: 2/11/92

Approved by Commissioner: E. J. ...
Agency: Department of Community and Regional Affairs

Date: 2-12-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: 24-Jan-92 Department Affected: Natural Resources
 Title: Notice & Public Comment BRU: Management & Administration
Requirements Components: Commissioner's Office
 Sponsor: Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 24-Jan-92

Approved by Commissioner: Harold C. Heinze Date: 24-Jan-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Public Safety
 Title: An Act relating to public BRU: DPS Statewide Support
notice of proposed regulations Component: Commissioner's Office
 Sponsor: House Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO.

5	2	3
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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 FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

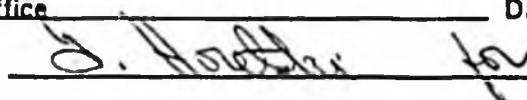
POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

It is impossible to predict how often substantive changes requiring "re-notice" of regulations under this bill would be made.

Prepared By: Gayle A. Horetski Phone: 465-4322
 Division: Commissioner's Office Date: 1/28/92
 Approved by Commissioner:  Richard L. Burton
 Agency: Department of Public Safety Date: 1/28/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

JAN 28 1992

Revision Date: _____
 Title: Notice and Public Comment
 Requirements for Regulations _____
 Sponsor: (H) Judiciary
 Requestor: (H) State Affairs

Department Affected: Environmental Conservation
 BRU: Administration
 Component: Office of the Commissioner

COMPONENT SERIAL NO.

	6	3	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS. CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
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						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050
 Division: Commissioner's Office Date: 1/27/92
 Approved by Commissioner: Janice Adair for John Sandor
 Agency: Environmental Conservation Date: 1/28/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____
 Title: Public Comment on Proposed Regulations.
 Sponsor: House Judiciary Committee
 Requestor: (H) State Affairs

Department Affected: Community and Regional Affairs
 BRU: _____
 Component: _____
 COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
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						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ronald Henderson
 Division: Administrative Services Division

Phone: 465-4708
 Date: 1/27/92

Approved by Commissioner: Ear Bethel
 Agency: Department of Community and Regional Affairs

Date: 1/27/92

Revision Date: _____ Department Affected: Education
 Title: An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations. BRU: Executive Administration
 Component: Executive Administration

Sponsor: _____
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

1	8	9
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State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.) The Department currently confers with the Attorney General's Office to determine if rewriting changed the "substance" of regulations. If the answer is yes, the public notice process renewed.

Prepared By: Mike Maher Phone: 465-2300
 Division: Commissioner's Office Date: 1/24/92
 Approved by Commissioner: *M. J. Miller* Jerry Covey
 Agency: Education Date: 1/24/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Department of Law
 Title: "...relating to the notice and public comment requirements...regulations." BRU: Legal Services
 Component: Operations

Sponsor: House Judiciary Committee

Requestor: House State Affairs Committee COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

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: January 24, 1992
 Approved by Commissioner: Richard I. Pegues / JCP
Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 24, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

This bill amends AS 44.62 to require that when an agency has proposed adoption, amendment, or repeal of a regulation, the agency must go through a second public review process if the agency made substantive changes in the regulation proposal as a result of the initial public review. We cannot predict how often this may occur if this bill is approved. To the extent that it cause extensive re-review by our legislation and regulations text editor, significant delays in the adoption of regulations changes will occur. At some point, this could result in the department having to increase its text editing staff. There will likewise be additional burdens for those departments that propose new regulations or regulations changes that could delay implementation of new legislation.

1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: Relating to the notice and public comment requirements for the adoption, amendment & repeal of regs. BRU: Occupational Licensing
 Component: Administration
 Sponsor: House Judiciary Committee
 Requestor: House State Affairs COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
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	6.5	6.5	6.5	6.5	6.5	6.5
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
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	7.7	7.7	7.7	7.7	7.7	7.7

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 - GF/PR	7.7	7.7	7.7	7.7	7.7	7.7
TOTAL	7.7	7.7	7.7	7.7	7.7	7.7

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 328 amends existing statutes (AS 44.62.200) to require that agencies provide additional notices for public comment if a regulation project is rewritten, amended or repealed and the content of the project varies from the subject matter that was originally provided in the first public notice.

Prepared By: Jennifer Strickler  Phone: 465-2144

Division: Occupational Licensing Date: 01/29/92

Approved by Commissioner: Glenn A. Olds 

Agency: Department of Commerce & Economic Development Date: 1/29/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

The Division of Occupational Licensing produces an average of eighteen (18) new regulation projects each year. Regulation projects are often amended by licensing boards at meetings held during the year. Therefore, assuming that at least half of the regulation projects will fall under this bill, at least nine (9) projects will require a second public notice. An average of 400 notices in addition to publication in major newspapers, consisting of at least 15 pages per project, will also be necessary. This fiscal note addresses the following anticipated costs:

CONTRACTUAL:

Average cost of publishing a regulations notice
in three newspapers (\$620.00) x 9 projects per year: \$5,580.00

Postage for 400 notices on interested persons list: \$580.00

Copying costs of the regulation projects: \$360.00

Sub-total: \$6,520.00

SUPPLIES: Paper, envelopes, etc.: \$1,200.00

TOTAL COSTS: \$7,720.00

New revenues are not anticipated to be collected as a result of this bill.

1992 LEGISLATIVE SESSION

Revision Date: _____ Department Affected: Revenue
 Title: An Act relating to the notice and public comment for regulations BRU: Administration and Support
 Component: Administrative Services Division
 Sponsor: Judiciary Committee
 Requestor: State Affairs COMPONENT SERIAL NO.

0	1	2	5
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) We are unable to determine the number of regulations that could be affected without further definition of "changes of substance" as stated in Sec. 44.62.215. The estimated contractual expenditures for full notice and public proceedings for new regulations in the Department of Revenue is 3.0. This does not include the additional personal services that could be required.

Prepared By: Tracy L. McGill, Director Phone: 465-2313

Division: Administrative Services Division Date: January 25, 1992

Approved by Commissioner: David Reynolds

Agency: Department of Revenue Date: 1/25/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Ofc., & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.R. 328

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to notice and comment for...regulations..." BRU: Administration and Support
 Component: Administrative Services
 Sponsor: House Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) The Department of Corrections generally adopts, amends, or appeals regulations less frequently than once per year. Public comments are generally requested in writing rather than at hearings. Therefore, anticipated fiscal impact is negligible.

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376
 Division: Administrative Services Date: 1-24-92
 Approved by Commissioner: Lloyd Hames, Commissioner *Lloyd Hames*
 Agency: Department of Corrections Date: 1-24-92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legis. Otc., & Impacted Agency(ies).

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

MEMORANDUM

TO: Representative Gene Kubina, Chair
House State Affairs Committee

FROM: Representative Dave Donley, Chair DD
House Judiciary Committee

RE: Request for hearing on HB 328, "relating to the
notice and public comment requirements for the
adoption, amendment and repeal of regulations."

DATE: January 14, 1992

On behalf of the House Judiciary Committee, I am requesting a hearing on HB 328. This bill would remedy a problem with existing provisions of the Administrative Procedure Act relating to notice of adoption, amendment, or repeal of regulations.

At the present time, an agency need only give initial public notice of the adoption, amendment, or repeal of regulations. If, after giving notice, the agency substantially rewrites the regulation, amendment or order of repeal, it need not give notice of what often amounts to major, substantive changes in that which was originally noticed.

This bill would require new public notice the first time an agency substantially rewrites a proposed regulation, amendment, or order of repeal. We feel that this bill represents good public policy and will help prevent abuses of the regulatory process, without placing an onerous burden on an agency.

DD/hk

HOUSE COMMITTEE REPORT

(7)

Date Referred: May 14, 1991

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/12/92

The STATE AFFAIRS Committee considered:

HB 328

HOUSE BILL NO. 328

PUBLIC COMMENT ON PROPOSED REGULATIONS

"An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

RECOMMENDATIONS:

be replaced with CS HB 328 (STA) [X] the same title [] a new title

[] have attached amendments(s)

[X] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S):

(Dept)

APPROVES PREVIOUS:

(Dept/Date)

X Indeterminate LAW

[X] fiscal impact DCE

[] fiscal note(s) _____

[X] zero fiscal note (REV, COER, PWR, LABR, DRS, DFC, C+RA, DOE)

[] zero fiscal note(s) _____

	SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
chair	Eugene G. Kukkon	✓				
members	Mark Mendenhall	✓				
clerk	Mike Miller	✓				
staff	Donna White	✓				
judicial	Pat Spivey	✓				
public	David McCallie	✓				
staff	Tommy	✓				

Eugene G. Kukkon
CHAIRMAN'S SIGNATURE

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- P.O. BOX K— STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 7, 1992

Hon. Dave Donley
Hon. Max Gruenberg
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley and Representative Gruenberg:

Hayden Kaden stopped by and asked me to provide comments in writing on the most recent proposed committee substitute for HB 328 (relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations).

While the proposed committee substitute is an improvement, I continue to have legal concerns which I raised at the committee meeting.

I have drafted the attached two options, which improve the proposed committee substitute. Frankly, I'm more comfortable with the existing statute, because state agencies now have the discretion to issue supplemental notices if the adopting authority believes that substantial change was made. The present system avoids a potential legal challenge for the failure to renotice if a commissioner "guesses" wrong as to whether the rewrite was a "significant" change in substance.

Also, I wanted to propose technical changes to the proposed committee substitute to acknowledge the statutory requirement that emergency regulations must be made permanent within 120 days after their filing. It would be difficult for a state agency to hold public hearings and consider public comments twice during this period, if the supplemental notice requirement for substantial rewrite were applied to them. The language in a

Hon. Dave Donley, Rep., AK State Legislature
Hon. Max Gruenberg, Rep., AK State Legislature

February 7, 1992
Page 2

prior draft was confusing to me because it arguably implied that there was a notice requirement to adopt emergency regulations. Present statutes have no preadoption notice requirement for emergency regulations. To fix this problem, I propose the following amendment:

page 2, line 9:

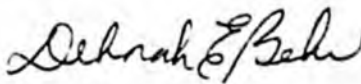
(2) regulations that are necessary to meet federal requirements; and
(3) regulations adopted to make emergency regulations permanent under AS 44.62.260.

To clarify the intended timing of the supplemental notice, I propose the following amendment:
page 2, line 4, following "agency," insert:
, before adoption,

If you have questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Deborah E. Behr
Assistant Attorney General
and Regulations Attorney

DEB:cl

cc: Hon. Gene Kubina, Chair
House State Affairs Committee

Paul Fuhs, Senior Legislative Liaison
Office of the Governor

OPTION #1

After-the-fact Notice and Right of Petition

Sec. 44.62.215. SUPPLEMENTAL NOTICE. (a) If a state agency rewrites a proposed regulation, amendment of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the rewriting is a significant change in the substance of the regulation, amendment, or order, the agency shall provide notice as provided in (b) of this section after filing of the regulation, amendment, or order under AS 44.62.080.

(b) Within 10 days after the filing, the state agency shall give public notice of a filing described in (a) of this section. The notice under this subsection shall be distributed in the same manner as the notice of proposed action was required to be distributed in AS 44.62.190(a). The notice of filing must include

(1) a statement of significant changes made in the adoption, amendment, or repeal of the regulations; and

(2) an informative summary of the regulations filed.

(c) A person aggrieved by the regulatory change may petition the agency to take action regarding the regulation under AS 44.62.220.

(d) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate a regulation adopted under AS 44.62.010 - 44.62.300.

OPTION #2

Failure to do Pre-Adoption Notice Does not Nullify Regulations

AS 44.62.215(b) and (c)

(b) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate an action taken by an agency under AS 44.62.010 - 44.62.300.

(c) If the state agency fails to provide supplemental notice and public proceedings as provided in this section, the state agency shall report the noncompliance to the legislature and the governor by the following January 20 with an explanation of the failure to comply and proposed corrective action by the department to remedy the causes of the noncompliance.