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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: the same title
 be replaced with CS HB 328 (SFA) 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)
 Indeterminate LOW
 fiscal impact DEED fiscal note(s) _____
 zero fiscal note BY (MS, DR, LMR, DTS, DFC, CISA, DOL) zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubisa</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Chris McCord</i>	<input checked="" type="checkbox"/>				
<i>Tommy</i>	<input checked="" type="checkbox"/>				

Eugene G. Kubisa
CHAIRMAN'S SIGNATURE

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. Heine 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: _____
 Title: "An Act relating to the notice and public comment requirements for... regulations."
 Sponsor: House Judiciary Committee
 Requestor: House State Affairs

Department Affected: Labor
 BRU: All
 Component: All

COMPONENT SERIAL NO.

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:						
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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						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Arbe Williams, Special Assistant *AW* Phone: 485-2700
 Division: Commissioner's Office Date: 1/24/92
 Approved by Commissioner: John Abshire, Acting Commissioner
 Agency: Department of Labor Date: 1/24/92

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

Bill No: House Bill No. 328

Date:

January 24, 1992

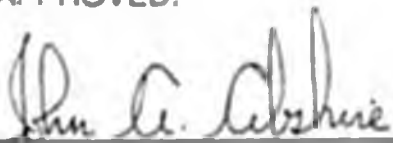
Title: "An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

Contact: Arbe Williams
465-2700

House Bill No. 328 adds a new section to AS 44.62 that if a state agency rewrites a proposed regulation, amendment of a regulation, or order of repeal that changes the substance of the regulation, amendment, or order, the agency shall provide notice and opportunity for public comment under AS 44.62.190, 44.62.220, and 44.62.210 for the rewritten regulation, amendment, or order of repeal.

HB 328 will require agencies to provide notice and opportunity for public comment if a substantive change is made to proposed regulations, amendments or orders of repeal. The Department of Labor currently follows a policy that requires notice and public comment when a substantial change is made to its proposed regulations. As changes that affect the substance of the regulation, amendment, or order are not defined, HB 328 does not provide adequate direction to the Department to revise its current practice. Therefore, HB 328 would have no apparent effect on the Department's regulation procedures.

APPROVED:



John A. Abshire, Acting Commissioner
Department of Labor

POSITION PAPER/Department of Labor

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-
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REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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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. Horetzki Phone: 465-4322
 Division: Commissioner's Office Date: 1/28/92
 Approved by Commissioner: *G. Horetzki* for Richard L. Burton
 Agency: Department of Public Safety Date: 1/28/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

JAN 28 1992

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Notice and Public Comment BRU: Administration
Requirements for Regulations Component: Office of the Commissioner
 Sponsor: (H) Judiciary
 Requestor: (H) State Affairs 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:						

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 Sender
 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:						
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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: _____

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

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
 Sponsor: _____ Component: Executive Administration
 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						
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REVENUE FUND SOURCE:						
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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: Nike Maher Phone: 465-2800
 Division: Commissioner's Office Date: 1/24/92
 Approved by Commissioner: *Jerry Covey* 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: 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.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. HB 328

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: Relating to the notice and public comment requirements for the adoption, amendment & repeal of reg. 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: Glen A. Ols

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.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

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 estimate the number of regulations that could be affected without further definition of "change 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: Jacelynn McGill, Director Phone: 465-2313
 Division: Administrative Services Division Date: JANUARY 25, 1992
 Approved by Commissioner: Donald R. ...
 Agency: Department of Revenue Date: 1/25/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.B. 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						

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

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						

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 renounce requirement and the costs of re-advertising.

Prepared By: Ronald Hennelsson
Division: Administrative Services Division

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

Approved by Commissioner: [Signature]
Agency: Department of Community and Regional Affairs

Date: 2-16-92

CS FOR HOUSE BILL NO. 328 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

4 • Section 1. LEGISLATIVE STATEMENT OF INTENT. The phrase "significant change in the
5 substance" is not defined in AS 44.62.215, enacted by sec. 3 of this Act, because under the principles
6 of administrative law the courts have deferred to the interpretation of the executive branch on what is
7 considered a significant change and have balanced this decision with the public's right to know.

8 • Sec. 2. AS 44.62.200(b) is amended to read:

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

14 • Sec. 3. AS 44.62 is amended by adding a new section to read:

1 **Sec. 44.62.215. SUPPLEMENTAL NOTICE AND PUBLIC PROCEEDINGS. (a)**
2 Notwithstanding AS 44.62.200(b), if a state agency rewrites a proposed regulation, amendment
3 of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200,
4 and 44.62.210, and if the rewriting is a significant change in the substance of the regulation,
5 amendment, or order, before adoption the agency shall provide notice and opportunity for public
6 comment under AS 44.62.190, 44.62.200, and 44.62.210 for the rewritten regulation, amendment,
7 or order of repeal.

8 (b) If a state agency does not provide the notice and opportunity for public comment
9 under (a) of this section for a rewritten proposed regulation, amendment, or order of repeal, the
10 agency shall prepare a written explanation of the reasons why the requirement of (a) of this
11 section does not apply. When the final regulation, amendment, or order of repeal is published
12 in the Alaska Administrative Journal, the lieutenant governor shall include the agency explanation
13 with the text of the regulation, amendment, or order of repeal.

14 (c) Notwithstanding AS 44.62.300, if a court determines that notice and an opportunity
15 for public comment was required under (a) of this section for the rewriting of a proposed
16 regulation, amendment, or order of repeal, and if the state agency did not provide the notice and
17 opportunity for public comment, the court may order the relief that is appropriate under the
18 circumstances, including the invalidation of the regulation, amendment, or order of repeal.

19 (d) This section does not apply to regulations

- 20 (1) adopted by the Board of Fisheries or the Board of Game;
- 21 (2) adopted under AS 44.62.260 to make emergency regulations permanent; or
- 22 (3) that are necessary to meet federal requirements.

23 • **Sec. 4.** This Act applies to the adoption, amendment, or repeal of a regulation if the initial notice
24 under AS 44.62.190 of the adoption, amendment, or repeal is given on or after the effective date of this
25 Act.

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 99701-4879
PHONE: (907) 452-1568
FAX: (907) 456-1317
- PO BOX K - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
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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*
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 92

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.

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

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: 3/6/92
 Title: An Act relating to the notice and public comment for regulations
 Sponsor: Judiciary Committee
 Requestor: House State Affairs Committee

Department Affected: Revenue
 BRU: Department wide
 Component: See attached

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	36.0	36.0	36.0	36.0	36.0	36.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	36.0	36.0	36.0	36.0	36.0	36.0

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

REVENUE FUND SOURCE						
----------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS	2.0	2.0	2.0	2.0	2.0	2.0
OTHER FUND SOURCE	9.0	9.0	9.0	9.0	9.0	9.0
TOTAL	36.0	36.0	36.0	36.0	36.0	36.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: See attached.

Prepared by: Tracy L. McGill Phone: 465-2313
 Division: Administrative Services Date: 3/6/92
 Approved by Commissioner: Darrel J. Rezwinkel
 Agency: Revenue

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

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB326

Revision Date: 3/2/92 Department Affected: Revenue
 Title: An act relating to the notice BP#1: Department-wide boats REVENUE OPS
and public comment for regulations Component: see attached TREASURY
 Sponsor: Judiciary Committee
 Requestor: State Affairs COMPONENT SERIAL NO.

0	1	2	1
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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	36.0	36.0	36.0	36.0	36.0	36.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	36.0	36.0	36.0	36.0	36.0	36.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS	2.0	2.0	2.0	2.0	2.0	2.0
OTHER	9.0	9.0	9.0	9.0	9.0	9.0
FUND SOURCE:						
TOTAL	36.0	36.0	36.0	36.0	36.0	36.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared By: Tracy L. McGill Phone: 465-2313
 Division: Administrative Services Date: 3/2/92
 Approved by Commissioner: Darrel J. Rexwinkel
 Agency: Department of Revenue Date: 3/2/92

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

HB 328 Fiscal Note Funding Analysis

Component	Component Number	Gen Fund	GF PGM	GF Match	Fed Funds	PFDF Funds	Total Funds
Child Support Enforcement	0111			1.0	2.0		3.0
Income and Excise Audit	0113	12.0					12.0
Oil and Gas Audit	0115	6.0					6.0
Alcohol Beverage Control	0100		3.0				3.0
Treasury Management	0121	3.0					3.0
Permanent Fund Dividend	0981					9.0	9.0
Total by Funding Source		21.0	3.0	1.0	2.0	9.0	36.0

CS FOR HOUSE BILL NO. 328 ()

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

4 • Section 1. AS 44.62.200(b) is amended to read:

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

10 • Sec. 2. AS 44.62 is amended by adding a new section to read:

11 Sec. 44.62.215. SUPPLEMENTAL NOTICE AND PUBLIC PROCEEDINGS.
12 Notwithstanding AS 44.62.200(b), if a state agency rewrites a proposed regulation, amendment
13 of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200,
14 and 44.62.210, and if the rewriting is a significant change in the substance of the regulation.

1 amendment, or order, the agency shall provide notice and opportunity for public comment under
2 AS 44.62.190, 44.62.200, and 44.62.210 for the rewritten regulation, amendment, or order of
3 repeal. This section does not apply to

4 (1) regulations adopted by the Board of Fisheries or the Board of Game;

5 (2) emergency regulations;

6 (3) regulations that must meet federally mandated deadlines.

7 • Sec. 3. This Act does not apply to the adoption, amendment, or repeal of a regulation, unless the
8 adoption, amendment, or repeal is begun under AS 44.62.180 - 44.62.290 on or after the effective date
9 of this Act.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HCR 16 - Relating to Bone Marrow Donor Week
 HB 327 - Relating to Primary Elections
 HB 301 - Relating to Regular Legislative Sessions
 HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 404
Deborah Behr	Law	Dept of Law P.O. Box K, Juneau	99801	7	465-3600	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 329
Larry Martin	Leg.					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 301
Ann Bondreant	occ. LIC.	Commerce				<input type="radio"/> Y <input checked="" type="radio"/> N	
JOAN GARVINÉ	LAW	PO BOX Y JUNO	99801		465-3600	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327 HB 327
Bob Casey	Leg. Affairs	P.O. Box Y Juneau	99801		2450	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327
						<input checked="" type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 27, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 301 - Relating to Regular Legislative Sessions
- *HB 328 - Relating to Public Comment on Proposed Regulations
- *HB 371 - Relating to Credited Service for Seasonal Employees

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Deborah Behr	Dept of LAW	P.O. Box R Juneau AK	99801		465-3600	<input checked="" type="radio"/>	<input type="radio"/>	HB 328
						<input type="radio"/>	<input checked="" type="radio"/>	
BOB STALWAKER	DIV. OF RETIREMENT	P.O. BOX CR JUNEAU		44	4470	<input checked="" type="radio"/>	<input type="radio"/>	HB 371
Laird A. Jones	ADFC- Div. of Bds	Po Box 25526 Juneau AK	99802 5526	48	4116	<input checked="" type="radio"/>	<input type="radio"/>	HB 328
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 12, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HCR 16 - Relating to Bone Marrow Donor Week
 SCR 29 - Relating to Bone Marrow Donor Week
 HB 61 - Relating to Child Care

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Rod Moline	REACH	P.O. Box 34197	99803	3-3526	9-7673	(Y) N	HB 324
Joe Ambrose	REP TAYLOR			4906		IF NEEDED (N)	HB 61
Donald Gull, Esq.	REACH	P.O. Box 34104	99803	42664	3-4441	(Y) N	HB 327
Deborah Behr	Dept of LAW	P.O. Box K, Juneau, P.E. Box 026 AK	99803		465-3300	(Y) N	HB 328
						Y N	
						Y N	
Gene Smith		lunch 99517 3710 Woodland	99517		248-4777	Y N	HB 324
Stephen Morrison		lunch 2220 Nichols St	99508		271-1667	Y N	HB 324
						Y N	
						Y N	
						Y N	

C.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 12, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 324 - Relating to Disabled Bidder Procurement
- *HCR 46 - Relating to Disabled American Veterans Day
- HB 327 - Relating to Primary Elections
- HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Tom Wright	Spec. Comm. on Military & Vet Affairs	CAPITOL, RM 405 JUNEAU	99801		4527	<input checked="" type="radio"/> Y	<input type="radio"/> N	HCR 46
Anne McLeod	DOA	7th floor, SOB	99801		2250	<input type="radio"/> Y	<input checked="" type="radio"/> N	HB 61 HB 324
V Debraan Pettv	DOA GEN SV	# 504 110210 7th floor SOB	99801		2250	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 61 if needed HB 324
Stan Ridgeway	Loc Reps	501 W 10th St Suite 200	99801		2814	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 329
Dr. Bill Stoltze	Senator	Capitol Room 11			3711	<input checked="" type="radio"/> Y	<input type="radio"/> N	SJR 29
Robert Bartholomew	DOT IPF	3132 Channel Dr			3911	<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N	HB 324
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	