

HB

130

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____
 Title: Regulation Adoption Procedures and Review

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations

Sponsor: Representative Kelly
 Requestor: _____

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
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	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: \$ _____

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.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521
 Date: _____

Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Date: 2/19/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____ Department Affected: Office of the Governor
 Title: "A Act relating to agency review of public comment on the BRU: Executive Operations
adoption, amendment, repeal of regulations; ..." Component: Office of the Lieutenant Governor
 Sponsor: Representative Kelly
 Requestor: _____ COMPONENT SERIAL NO. 0011

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	1. 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: _____

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

Prepared by: John Lindback, Chief of Staff *John Lindback* Phone: 465-4081
 Division: Office of the Lieutenant Governor Date: 2/2/95

Approved by Commissioner: Lieutenant Governor Fran Ulmer *Fran Ulmer* Date: 2/2/95
 Agency: Office of the Governor

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____ Dept. Affected: Fish and Game
 Title: An Act relating to agency review of regulations BRU: Administration and Support
 Component: Administrative Services
 Sponsor: Representative Kelly
 Requester: (H) State Affairs COMPONENT SERIAL NO. 479

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	64.5	66.6	69.0	71.4	73.9	76.5
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	3.0	3.0	3.0	3.0	3.0	3.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	5.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	78.0	75.1	77.5	79.9	82.4	85.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	78.0	75.1	77.5	79.9	82.4	85.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	78.0	75.1	77.5	79.9	82.4	85.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

HB 130 proposes to add a requirement for economic analysis by an agency prior to adopting new regulations. Since the Department of Fish and Game adopts numerous regulations annually through the Boards of Fisheries and Game for management of fish and game resources, a minimum of one additional Economist I (range 18) position and associated costs will be required. Section 6 of the bill outlines four new responsibilities for agencies prior to adoption of new regulations which are not currently done. The department currently uses a significant public process in promulgating regulations which includes 80 public advisory committees around the state as well as a call for proposals that is published and distributed statewide. The two boards meet an average of 100 days per year and deliberate on approximately 1000 proposals. The process proposed under HB 130 would add significant time to this process while the department attempted to determine the economic impact of proposed regulations. Many of the regulations passed by the boards relate to seasons and bag limits and implementation is time sensitive. Measuring the economic impact would be problematic given the nature of proposed regulations, for example, measuring the impact of a fishery closure due to inadequate stocks.

Prepared by: Kevin Brooks *Kevin Brooks* Phone: 465-5999
 Division: Administrative Services Date: 3/14/95
 Approved by Commissioner: Frank Rue *Frank Rue* Date: 3/14/95
 Agency: Fish and Game

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Alaska State Legislature

REPRESENTATIVE

PETER KELLY

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While in Juneau

State Capitol

Juneau, Alaska

99801-1182

(907) 465-2327

House District 31

House Of Representatives

February 14, 1995

House State Affairs
The Honorable
Jeannette James, Chairman

Fiscal Note Summary:

<u>Department</u>	<u>Dollars</u>
Administration	0
Governor - Lieutenant Governor	73.7
Governor - Office of Management & Budget	38.4
Governor - Human Rights Commission	40.0
Governor - Elections	0
Health and Social Services	74.2
Department of Law	0
Public Safety	10
Natural Resources	0
Total	226.3

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____
Title: "An Act relating to agency review of public comment..."

Department Affected: Administration
BRU: Various
Component: Various

Sponsor: Rep. Kelly
Requestor: Rep. Kelly

COMPONENT SERIAL NO. 45

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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 EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 95) cost: \$ -0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There is no fiscal impact to the Department of Administration.

Prepared by: Sharon Barton
Division: Administrative Services

Phone: 465-2277
Date: _____

Approved by Commissioner: Mark Bover
Agency: Department of Administration

Date: 2/13/95

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REVISED
FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: 2/13/95 Department Affected: Office of the Governor
 Title: "A Act relating to agency review of public comment on the BRU: Executive Operations
adoption, amendment, repeal of regulations; ..." Component: Office of the Lieutenant Governor
 Sponsor: Representative Kelly
 Requestor: _____ COMPONENT SERIAL NO. 0011

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	68.0	70.4	72.4	74.8	77.0	79.6
TRAVEL						
CONTRACTUAL	.9	.9	.9	.9	.9	.9
SUPPLIES	.2	.2	.2	.2	.2	.2
EQUIPMENT	4.6	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	73.7	71.5	73.5	75.9	78.1	80.7

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	73.7	71.5	73.5	75.9	78.1	80.7
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	73.7	71.5	73.5	75.9	78.1	80.7

POSITIONS	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	1	1	1	1	1	1
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: 0

ANALYSIS: (Attach a separate page if necessary.)
See attached

Prepared by: John Lindback, Chief of Staff *John Lindback* Phone: 465-4081
 Division: Office of the Lieutenant Governor Date: _____

Approved by Commissioner: Lieutenant Governor, Frank Miller *Frank Miller*
 Agency: Office of the Governor Date: 2/13/95

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HB130 Analysis:

HB130 expands the existing "ministerial and mandatory" role of the Lieutenant Governor in the regulation process. HB130 requires the Lieutenant Governor to determine which regulations will be accepted for filing and which will be returned to the agencies. The expanded responsibilities will necessitate an additional staff position. The position, staff assistant rg. 21, will be responsible for the related research and analysis pertaining to each regulatory proposal.

Fiscal note assumes merit increases with each fiscal year.

Personal Services:		68.0
Contractual:		
Communication, postage, courier		.9
Supplies:		.2
Equipment:		4.6
Phone	.5	
Work station set-up	1.2	
IBM PC/Monitor, token ring	2.9	

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB130

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: Relating to the review of proposed regulations BRU: Office of Management and Budget
 Component: Governmental Coordination
 Sponsor: Representative Kelly
 Requester: _____ COMPONENT SERIAL NO. 18

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
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	38.4	38.6	38.6	38.6	38.6	38.7
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	38.4	38.6	38.6	38.6	38.6	38.7

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	38.4	38.6	38.6	38.6	38.6	38.7
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	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	38.4	38.6	38.6	38.6	38.6	38.7

Estimate of any current year (FY95) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary)

Section 6 of the proposed legislation (AS 44.62) would place new regulatory requirements on the Division of Governmental Coordination, including evaluation of the economic effects of the proposed regulatory change. The Division does not have an economist on staff and has determined the most efficient way to meet the new requirements would be to contract with an economic consultant. The consultant would prepare a written review of the proposed regulatory change and address the four items identified in AS 44.62.215. The fiscal impact to the Division is based on the average of three regulatory projects per year that would require one month of a consultant's time per project. The inflation rate is based on current revenue forecasts.

Prepared by: Kerry Howard, Acting *Kerry Howard*
 Division: Governmental Coordination

Phone: 465-3562
 Date: 2/2/95

Approved by Commissioner: *[Signature]*
 Agency: _____

Date: 2/6/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB130

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: Regulation Changes/Public Comment BRU: Human Rights Commission
 Sponsor: Kelly Component: _____
 Requester: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	40.0	-0-	42.0	-0-	44.0	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	40.0	-0-	42.0	-0-	44.0	-0-

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 GF	40.0	-0-	42.0	-0-	44.0	-0-
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	40.0	-0-	42.0	-0-	44.0	-0-

Estimate of any current year (FY95) cost: \$ -0-

POSITIONS	NONE					
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Commission periodically enacts regulations. Section 44.62.215(b) will require the agency to reach a determination on issues for which it does not have the expertise. The Commission would need the contractual services of an accountant, survey taker, and economist for one month to assist it in providing the written determination required in this subsection.

Prepared by: Paula M. Haley, Executive Director Phone: 276-7474 x241
 Division: Human Rights Commission Date: 2-2-95
 Approved by Commissioner: [Signature] Date: 2/6/95
 Agency: _____

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____
Title: "A Act relating to agency review of public comment on the adoption, amendment, repeal of regulations; ..."
Sponsor: Representative Kelly
Requestor: _____

Department Affected: Office of the Governor
BRU: Electivo Operations
Component: Elections
COMPONENT SERIAL NO. 0021

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
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CHANGE IN						
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FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: _____

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

Prepared by: David Koivuniemi, Acting Director
Division: Division of Elections

Phone: 465-5405
Date: 2-2-95

Approved by Commissioner: Lieutenant Governor Fran Ulmer
Agency: Office of the Governor

Date: _____

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STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____
Title: Relating to Agency Review of Regulations
Sponsor: Representative Kelly
Requestor: State Affairs

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Hlth Planning and Facilities Mgmt
COMPONENT SERIAL NO. 2020
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES	58.7	60.6	62.5	64.5	66.4	68.7
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	5.0	5.0	5.0	5.0	5.0	5.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	5.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	74.2	71.1	73.0	75.0	76.9	79.2

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	74.2	71.1	73.0	75.0	76.9	79.2
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	74.2	71.1	73.0	75.0	76.9	79.2

POSITIONS:

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

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

HB 130 would add economic analysis as a requirement prior to an agency adopting any new regulations; since DHSS adopts numerous regulations, some involving complex federal programs, an economist position will be required. Section 6 of the bill outlines four new responsibilities for agencies prior to adoption of new regulations which are not done now.

Prepared by: Janet Clark
Division: Administrative Services

Phone: 465-3082
Date: 02/08/95

Approved by Commissioner: Karen Perdue
Agency: Department of Health & Social Services

Date: 2/9/95

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 130

Revision Date: _____ Dept. Affected: Department of Law
 Title: "...relating to agency review of public comment
on the adoption, amendment and repeal of regulations..." BRU: Legal Services
 Sponsor: Representative Kelly Component: Operations
 Requester: Representative Kelly COMPONENT SERIAL NO. 0093

Expenditures/Revenues (Thousands of Dollars)

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
1002 Federal Receipts						
1003 GF Match						
1004 GF	*****	*****	*****	*****	*****	*****
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 0.0

POSITIONS

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
FULL-TIME	*****	*****	*****	*****	*****	*****
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 24.20 and AS 44.62 to substantially expand the review process for the adoption, amendment and review of administrative regulations. The Department of Law has identified certain legal problems with the bill, and the department is working with the bill's sponsor to resolve these problems. Until this is done, we cannot determine if there will be a fiscal impact.

Prepared by: Richard H. Peques, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2/6/95
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/6/95
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO: HB 130

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to agency review of public BRU: Statewide
comment on the adoption, amendment and... Component: Commissioner's Office
 Sponsor: Rep. Kelly
 Requestor: H. State Affairs COMPONENT SERIAL NO. 523

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

	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
OPERATING						
PERSONAL SERVICES	10.0	10.0	10.0	10.0	10.0	10.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	10.0	10.0	10.0	10.0	10.0
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES ()	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	10.0	10.0	10.0	10.0	10.0	10.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	10.0	10.0	10.0	10.0	10.0	10.0

Estimate of current year (FY 95) impact: \$ _____

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.)

The amount requested is an estimate, approximately 1.5 staff months of effort to develop 4 written determinations specified in Section 44.62.215 of the bill for each regulation change proposed by the department.

Prepared By: Ken Bischoff *KB* Phone: 465-4336
 Division: Administrative Services Date: 1/31/95
 Approved by Commissioner: *Ronald L. Otte* Date: 2/13/95
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA

BILL NO. HB130

1995 LEGISLATIVE SESSION

Revision Date: Original Dept Affected: Natural Resources
 Title: ARRC review of public comment on the adoption of regulations BRU: Parks & Recreation Management
 Component: Parks Management
 Sponsor: Representative Kelly
 Requestor: _____ Component Serial No. 452

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY96	FY97	FY98	FY99	FY00	FY01
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 EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Mat.						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY95) cost: \$ 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)

The preparation of regulations for public review, the conduct of the public process and submission of the regulations to the Department of Law will require some additional duties of existing staff. No additional funding needed.

Prepared by: Peter J. Panarese Phone: 762-2603
 Division: Parks & Outdoor Recreation Date: 4-Feb-95
 Approved by Commissioner: _____ Date: 2/7/95
 Agency: Natural Resources

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 14, 1995

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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Honorable Pete Kelly
Alaska House of Representatives
State Capitol, Room 513
Juneau, Alaska 99801-1182

Dear Representative Kelly:

We appreciate the opportunity to comment regarding legal issues presented by HB 130, which concerns the regulatory process. We welcome your interest and input in improving the regulatory process in this state.

The bill, though, raises constitutional or other legal issues, which I will briefly highlight. The issues are:

1. Separation of Powers - The bill would effectively preclude the lieutenant governor from filing regulations until 90 days after receiving the regulations in order to consider comments from the Administrative Regulation Review Committee. Under the bill, the time period could be extended indefinitely at the request of the committee. The result is that the executive branch cannot administer the laws through the adoption of regulations at the pace needed by the executive branch. For example, I can foresee problems when a state agency needs a regulation for this year's construction season but cannot effectively act within the time limits set in the bill. Also, since the committee can, under the bill, ask for an unlimited time to prepare its comments, the committee can effectively "pocket veto" any changes in executive-branch policy merely by asking for a time extension. This would appear to be contrary to the reasoning of State v. A.L.I.V.E. Voluntary, 605 P.2d 769 (Alaska 1980), which requires the legislature to pass laws to "veto" agency regulations.
2. Impermissible Delegation of Legislative Power to Subcommittee of the Legislature - Under the bill, the committee will review regulations while the legislature

is in session or in the interim to see if the regulations "conform" to the intent of the authorizing statute and whether other statutory requirements are met. The committee can take up to 90 days to review and may ask for unlimited additional time to complete its review. Regulations may not be filed by the lieutenant governor until the committee's comments are received. While the legislature as a whole can amend the power of an agency to adopt a regulation by passing a bill (subject to the governor's review and possible veto), we believe that it would not be valid to delegate this legislative function to a special committee. This effectively could preclude the adoption of a regulation for significant periods of time. Also, we question whether the court would view the committee's interpretation of legislative intent as an expression of intent of the legislature as a whole. In other words, the agency could follow the committee's interpretation of legislative intent only to have a regulation struck down by the court as not meeting legislative intent.

3. Governor as Chief Executive Officer - Art. III, secs. 1, 16, and 24 of the Alaska Constitution, vest the executive power of the state in the governor. The bill, though, allows the lieutenant governor to refuse to file regulations that have been adopted by a department and legally approved for filing by the Department of Law, and to return regulations to an agency without stating a reason for not filing them. Because regulations are essential for the lawful function of the executive branch, assigning this power to the lieutenant governor could arguably violate art. III, secs. 1, 16, and 24 of the Alaska Constitution.
4. Changes Role of Regulatory Boards and Commissions - Presently several citizen boards and commissions play key roles in the executive branch in setting policy through the adoption of regulations. Some examples include the State Board of Education, Board of Fisheries, and Board of Game. The bill would allow the lieutenant governor to return the regulations from these bodies without filing and without stating a reason for the return. This could frustrate timely implementation of policy formulated by these citizen boards and commissions.

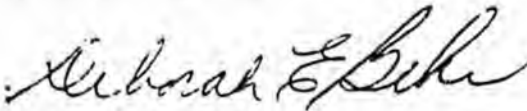
5. Precludes Agency Consideration of Public Policy Concerns Offered in Public Comment - The bill precludes the agency from considering public policy concerns offered in public comment. See proposed AS 44.62.215. The adoption of regulations is the creation of law. It is important for agencies to be fully informed on all aspects of an issue, including policy, before regulations are adopted to resolve that issue. Precluding an agency from considering policy considerations raised by public comment will create additional controversy and likely result in more litigation.

6. Additional Steps to Regulation Process are Likely to Require Additional Appropriations and Open New Areas for Litigation - Proposed AS 44.62.215 requires state agencies to prepare express written findings on the use made of public comment information and to issue certain determinations. These are new duties under the Administrative Procedure Act. Proposed AS 44.62.215 requires the development of written estimates of costs of compliance for a person affected by the proposed regulation and requires analysis of the benefits to the public. Development of costs defensible to a court challenge will take time, as they may vary from individual to individual. Expert information may be necessary, which will require additional appropriations. Finally, since the bill does not define benefits to be received from the proposed regulatory action, the state will likely face additional litigation to further clarify the term.

I hope this answers your questions. Please contact me if you need further information.

Sincerely,

BRUCE M. BOTELHO
ATTORNEY GENERAL

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

DEB:cl

Hon. Pete Kelly, House of Representatives

February 14, 1995

Page 4

cc: John Lindback, Chief of Staff
Office of the Lieutenant Governor

Pat Pourchot, Legislative Director
Office of the Governor

Bruce Botelho, Attorney General
Dept. of Law

Alaska State Legislature

REPRESENTATIVE

PETER KELLY

Mailing Address:

119 N. Cushman, Suite 203

Fairbanks, Alaska 99701

(907) 456-8161

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State Capitol

Juneau, Alaska

99801-1182

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House District 31

House Of Representatives

HB 130 Sponsor Statement

The creation of regulations heretofore have been carried out within the bureaus of state government beyond the light of public scrutiny. Though public input has always been a part of the regulation process, the system is inherently flawed. Regulations have the force of law, but in our form of government law must emanate from the people through their elected officials, and therein lies the flaw. In the current system the unelected regulation writers have the last word in the process, not the people. HB 130 attempts to remedy this by bringin elected officials back into the loop and making them politically accountable to the people for the regulations that impact their lives.

HB 130 slows the regulation process and enables the lieutenant governor to return regulations to agencies, by law. The lieutenant governor will no longer have a "ministerial and mandatory" role in regulations. With the authority to return regulations, the lieutenant governor will also bear the spotlight of public opinion for regulations.

AS 44.62.040 (f) "After receiving comments [from the legislature's review committee] the lieutenant governor **may return the proposed regulation** . . . without . . . filing."

The lieutenant governor is also required to provide the Legislature's "Administrative Regulation Review Committee" with copies of draft regulations. The Committee will be able to identify controversial regulations and bring recommendations back to the lieutenant governor prior to a regulation being filed. Reviewing proposed regulations brings elected officials further into the regulation process.

AS 44.62.040 (d) requires the lieutenant governor to submit **proposed** regulations, the agencies written determinations following public comment, and the Department of Law's findings, to the Legislature's Administrative **Regulation Review Committee**.

AS 44.62.040 (e) The Committee has 90 days to **review the proposed regulations**, discuss them with experts and provide comments to the lieutenant governor.

The response from the regulation review committee, as well as the findings of the lieutenant governor can lead him/her to file the regulations or return them to the agency without filing. The importance of placing this responsibility in the hands of the single individual in the lieutenant governor's office cannot be underestimated. This is the one individual in the executive branch of government who cannot be fired by the governor, who is not beholden to any agency of the bureaucracy, who can add a "common sense review" to the regulation, and yet is responsible for his/her job to the entire population of the state.

Sponsor Statement HB 130

Page 2.

Individuals impacted by regulations often feel their comments and input to agencies is ignored. At present, agencies are only required to hold public hearings. Once a hearing is held the proposed regulation is re absorbed into the bowels of the bureaucracy only to reappear in its "final" form at the lieutenant governor's office. The Department of Law's review, as well as the agencies internal review is not, of course, open to the public, nor should it be. The addition of the lieutenant governor and the Legislature's Regulation Review Committee to the review loop allows elected officials to review the regulation in its final form, but before it is filed.

Equally important is the need for the public to be able to see how an agency accommodates or responds to their comments. Did the agency understand and address the concerns expressed by the public in the public comment period?

HB 130 adds guidance and direction for agency review and response to public comments. Statutory guidance allows agencies to demonstrate their accommodation and response to public comment. It reveals an agencies thought process, and it allows the public to see into the inner workings of the administrative rule makers.

AS 44.62.215 requires an agency to utilize or reply to **factual, substantive and relevant** public comment. It also prohibits an agency from "**weighing**" public sentiment or other non-factual comment, making the regulatory process less "legislative" in nature.

The impact of regulations also needs to be explained by the agency. HB 130 requires an agency to submit a written determination of the proposed regulations impact to the State, and to the affected individuals. A clear means of attaining, or complying with the regulation is also necessary. If an agency is able to promulgate regulations or standards that are not achievable then the agency may be "taking" or virtually outlawing the endeavor it is supposed to be regulating.

AS 44.62.215(b): Before adopting a regulation an agency must estimate the **cost of compliance, the public benefits, the economic effect** of the regulation, and determine that there is an **economically achievable means of complying** with the regulation.

The goal of HB 130 is to focus agencies efforts and talents to the execution and administration of the laws, leaving the measuring or weighing of public will or public interest to the legislature.

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 31, 1995

SUBJECT: Sectional summary of HB 130 (Work Order No. 9-LS0130\G)

TO: Representative Pete Kelly
Attn: Bruce

FROM: *TB*
Theresa Bannister
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.

Section 1 gives the Administrative Regulation Review Committee (ARRC) the power to examine proposed regulations, amendments, and orders of repeal submitted to it by the lieutenant governor under sec. 44.62.040(c).

Section 2 adds new subsections to sec. 44.62.040.

Sec. 44.62.040(c) requires an agency submitting regulations, amendments, or orders of repeal to the lieutenant governor to include the agency's written determinations made under sec. 44.62.215(b) and the Department of Law statement prepared under sec. 44.62.060(b).

Sec. 44.62.040(d) requires the lieutenant governor, within 30 days of receipt, to submit proposed regulations, amendments, and orders of repeal, the agency's required determinations, and the Department of Law statement to the ARRC for its comments on whether the proposed regulatory actions conform to the intent of the authorizing statute and whether the agency complied with sec. 44.62.215.

Sec. 44.62.040(e) directs the ARRC to provide its comments to the lieutenant governor within 90 days after receipt. Requires the committee to notify the lieutenant governor within 30 days if the committee needs more time. Authorizes the committee to consult with experts when preparing its comments.

Sec. 44.62.040(f) allows the lieutenant governor to return the proposed regulations, amendments, or orders of repeal to the proposing agency after receiving the ARRC comments and without finalizing the proposed regulatory actions.

Representative Pete Kelly

January 31, 1995

Page 2

Section 3 clarifies that the regulation drafting manual prepared by the Department of Law is not meant to cover the style and forms of the proposed regulations submitted by the lieutenant governor to the ARRC under sec. 44.62.040(d).

Section 4 prohibits the lieutenant governor from finalizing regulations, amendments, or orders of repeal unless they are accompanied by the agency determinations under sec. 44.62.215(b) and the Department of Law statement of approval.

Section 5 requires the Department of Law to prepare its statement of approval or disapproval within 60 days unless it notifies the lieutenant governor and the agency that it needs more time.

Section 6 adds a new section.

Sec. 44.62.215(a) establishes how an agency is to handle different types of public comment on proposed regulations, amendments, and orders of repeal. Prohibits an agency from weighing, evaluating, or otherwise using comment that is nonfactual or an expression of preference about the need for, coverage, or policy of the proposed regulatory action. Requires an agency to weigh, evaluate, or otherwise use public comment that consists of facts or other substantive information that is relevant to the accuracy, coverage, or contents of the proposed regulatory action. Directs an agency to provide a written explanation of its use or rejection of the relevant factual or substantive public comment.

Sec. 44.62.215(b) requires an agency to make certain written determinations before adopting a regulation, an amendment, or an order of repeal. The subsection lists these determinations.

Sec. 44.62.215(c) clarifies that an agency's written explanations and determinations required by the section are public records. Requires the agency to provide a copy upon request.

Section 7 exempts emergency regulations from certain requirements of the bill.

Section 8 makes some technical changes to indicate the relationship between the duration of emergency regulations and certain requirements of the bill.

If I may be of further assistance, please advise.

TLB:glc
95-106.glc



Regional Citizens' Advisory Council / 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523

"Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

**Testimony to the House State Affairs Committee on
House Bills 130 and 163: Regulatory Reform
March 16, 1995**

My name is Michelle O'Leary. I am vice president of the Prince William Sound Regional Advisory Committee. The RCAC's mission is "citizens promoting the environmentally safe operation of the Alyeska terminal and associated tankers." RCAC is certified as an alternative council under Section 5002 of the Oil Pollution Act of 1990. The work of the RCAC is guided by its contract with the Alyeska Pipeline Service Company and the Oil Pollution Act of 1990. RCAC has 18 member organizations representing communities and boroughs impacted by the 1989 *Exxon Valdez* oil spill, as well as commercial fishing groups, Alaska Native interests, and environmental, aquaculture and business organizations. I thank you for the opportunity to testify on HB 130 and HB 163. First, I have some general comments regarding these bills and regulatory reform. These will be followed by specific comments on each bill.

We commend the legislature's efforts to ensure that regulations are clearly written and provide a "user-friendly" mechanism for consistently implementing state laws through the regulatory process. We agree also that the burden of laws and their implementing regulations should aim to minimize the burdens of regulation while maximizing the public welfare. Finding that balancing point is at best a difficult process.

Both HB 130 and 163 contain provisions that require the private costs imposed by regulations be analyzed and agencies stipulate in writing that there is an economically feasible method for complying with the regulatory action. We question whether agencies will be able to make these determinations. One of results of the last 30 years of environmental regulation is a large and thriving environmental compliance industry. The technological growth of this industry has been astounding and the result, not the cause, of environmental laws and regulations.

When a new law is passed, there is usually a significant time lag (often years) before regulations are written and compliance is required. During that time, the highly competitive environmental compliance industry researches and develops methods to bring the regulated industry into compliance. It is not unusual to have compliance dates postponed to meet the requirements of complex and stringent laws. In most cases, the agencies drafting regulations would have no way of knowing what technologies will be developed or which technologies will be selected by private parties to meet compliance requirements.

In addition, each of the bills requires an analysis of private compliance costs only and not benefit-cost analyses. It is generally agreed that the role of government is to

restrict through laws and regulations private actions only if the costs to society of these private actions are excessive or pose a public risk. Therefore, if 1) laws are only passed when needed and 2) laws that impose costs on private parties are passed because there is a public cost or risk, then it makes little sense to measure only private compliance costs. At the very least, if the legislature wants to analyze the costs of regulations, the analysis should include private and public costs and benefits. We would also argue, a subjective analysis of these costs and benefits should occur before a law is passed and not be entirely the burden of the regulatory process.

There is an axiom in economic theory that it is much easier to measure costs than benefits. This would be especially true when measuring the private costs of regulations versus the public benefits. In most cases, the regulated private parties will have the resources to measure their compliance. In contrast, measurement of public benefits is likely to be more difficult and without an organized constituency.

Specific comments on each of the bills follows.

House Bill 163

- When providing public notice for regulations, HB 163 requires agencies to include the reason for a proposed action, the initial cost to the state agency of implementation, the annual costs to the state agency of implementation, and the cost of compliance for private parties. We believe the initial and annual agency costs should be reflected in the fiscal notes passed with the enabling legislation.
- HB 163 requires an agency to estimate initial private compliance costs if the regulation will increase compliance costs. As stated above, HB 163 focuses only on private costs and requires no analysis of public benefits or costs or private benefits. To provide a meaningful measurement, all benefits and costs should be measured.

House Bill 130

- When agencies send regulations to the lieutenant governor, within 30 days the regulations must be submitted by the lieutenant governor to the legislative Administrative Regulation Review committee. The committee can then consult with experts to review the regulations. Comments must be provided to the lieutenant governor within 90 days. The authority of the lieutenant governor is expanded to include regulation review. "Bad" regulations can be returned to agencies. Essentially, the lieutenant governor's office can be used as the vehicle for the return of regulations by the legislature. We question whether the legislature would also be acting as a judiciary body in its determination of a "bad" regulation. Nothing in HB 130 requires that actions or regulatory changes proposed to the lieutenant governor's office by the legislative regulation review committee be submitted to the public for review. The public could go through the

regulation public review process only to have the regulations modified with no apparent recourse for this action.

- Before adopting a regulation, an agency is required to provide a written estimate of the cost of compliance to affected private persons. The bill sponsor statement indicates that a benefit-cost analysis is required but as drafted, the bill requires only an estimate of private compliance costs. Similar to our comments on HB 163, both public and private benefits and cost should be analyzed to be meaningful.
- The public testimony process is changed by requiring that agencies consider only public comments that are factual and not those that are "nonfactual or an expression of preference." Agencies are required to document in writing how public comments are incorporated or if rejected, why rejected. We believe there are numerous problems with this provision. First, determining what is factual versus nonfactual is not as easy as it sounds. Second, notices and public hearings for regulations are usually more widespread than legislative committee hearings. As a result, the public may not have had the opportunity to comment during the legislative process. Third, despite prior opportunities to comment on legislation, draft regulation public hearings are the public's first opportunity to comment on how legislation will actually be implemented. This "factual" provision would require the public to hire consultants to have their input weighed in the regulatory process.

We thank you for the opportunity to comment on this complex subject. We would be happy to answer any questions or provide additional information.

9-LS04400✓

Bannister

3/17/95

CS FOR HOUSE BILL NO. 130()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the examination by the Administrative Regulation Review
2 Committee and the Department of Law of proposed regulations, amendments of
3 regulations, and orders repealing regulations; relating to the submission to,
4 acceptance by, and return by the lieutenant governor of proposed regulations,
5 amendments of regulations, and orders repealing regulations; relating to agency
6 review of public comment on the adoption, amendment, and repeal of regulations;
7 and requiring certain agencies to provide examples of compliance methods before
8 adopting regulations, amendments of regulations, or orders repealing regulations."

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

10 * Section 1. AS 24.20.460(4) is amended to read:

11 (4) to examine all administrative regulations, including proposed
12 regulations, amendments, and orders of repeal submitted to it under
13 AS 44.62.040(c), to determine if they properly implement legislative intent;

1 * Sec. 2. AS 44.62.040 is amended by adding new subsections to read:

2 (c) After an agency submits a regulation, amendment, or order of repeal to the
3 lieutenant governor under (a) of this section and before accepting the regulation,
4 amendment, or order of repeal for filing, the lieutenant governor shall submit the
5 following items to the Administrative Regulation Review Committee for the
6 committee's comments on whether the regulation, amendment, or order of repeal
7 conforms to the intent of the authorizing statute and whether the agency complied with
8 AS 44.62.215:

9 (1) the regulation, amendment, or order of repeal;

10 (2) the written record and example required by AS 44.62.215(a) - (b);

11 and

12 (3) the statement prepared by the Department of Law under
13 AS 44.62.060(b).

14 (d) The Administrative Regulation Review Committee shall provide its
15 comments under (c) of this section to the lieutenant governor within 30 days after
16 receiving the items listed in (c) of this section. When preparing its comments, the
17 committee may consult with experts in the area that is the subject of the regulation,
18 amendment, or order of repeal.

19 (e) At any time after receiving a proposed regulation, amendment, or order of
20 repeal from an agency, and whether or not the Administrative Regulation Review
21 Committee has provided comments under (c) - (d) of this section, the lieutenant
22 governor may return the proposed regulation, amendment, or order of repeal to the
23 proposing agency without accepting the regulation, amendment, or order of repeal for
24 filing if the Department of Law has submitted a statement of disapproval under
25 AS 44.62.060, or if the Administrative Regulation Review Committee has provided
26 comments under (c) - (d) of this section, in order to allow the agency to respond to the
27 specific issues raised by the Department of Law or the Administrative Regulation
28 Review Committee.

29 * Sec. 3. AS 44.62.050 is amended to read:

30 Sec. 44.62.050. **STYLE AND FORMS.** The Department of Law shall prepare
31 and shall revise when necessary a drafting manual for administrative regulations that

1 prescribes the style and forms for submitting regulations to the lieutenant governor
2 under AS 44.62.040.

3 * Sec. 4. AS 44.62.060 is amended to read:

4 Sec. 44.62.060. PREPARATION AND FILING. (a) Every state agency that
5 by statute possesses regulation-making authority shall work with the Department of
6 Law, under AS 44.62.125, in the preparation and revision of its regulations and shall
7 adhere to the drafting manual for administrative regulations prepared by the
8 Department of Law under AS 44.62.050. A state agency shall also provide the
9 Administrative Regulation Review Committee with a copy of the first draft that
10 the agency provides to the Department of Law under this subsection.

11 (b) In the performance of duties under AS 44.62.125, the Department of Law
12 shall advise the agencies on legal matters relevant to the adoption of regulations and
13 may advise the agencies on the need for and the policy involved in particular
14 regulations. In addition, the department shall prepare a written statement of approval
15 or disapproval after each regulation has been reviewed in order to determine

16 (1) its legality, constitutionality, and consistency with other regulations;
17 in this paragraph, "legality" includes compliance with AS 44.62.030;

18 (2) the existence of statutory authority and the correctness of the
19 required citation of statutory authority following each section;

20 (3) its clarity, simplicity of expression, and absence of possibility of
21 misapplication;

22 (4) compliance with the drafting manual for administrative regulations.

23 (c) The lieutenant governor may not accept for filing a regulation, amendment,
24 or order of repeal required by AS 44.62.040 unless it is accompanied by the written
25 record and example required by AS 44.62.215(a) - (b) and the written statement
26 specified in (b) of this section, and the statement approves the regulation, amendment,
27 or order of repeal.

28 * Sec. 5. AS 44.62.060 is amended by adding a new subsection to read:

29 (d) Unless the Department of Law notifies the lieutenant governor and the
30 agency that it needs more time and sets a specific date for the review of the proposed
31 regulation, amendment, or order of repeal, the Department of Law shall prepare the

1 written statement of approval or disapproval required by (b) of this section within 30
2 days after the proposed regulation, amendment, or order of repeal has been submitted
3 to it for preparation of the statement.

4 * Sec. 6. AS 44.62 is amended by adding a new section to read:

5 Sec. 44.62.215. PUBLIC COMMENT AND AGENCY ESTIMATES AND
6 DETERMINATIONS. (a) In the drafting, review, or other preparation of a proposed
7 regulation, amendment, or order of repeal, an agency shall weigh, evaluate, or
8 otherwise utilize public comment that consists of facts or other substantive information
9 that is relevant to the accuracy, coverage, or contents of the proposed regulatory
10 action. The agency shall record in writing the agency's use or rejection of factual or
11 other substantive information that is submitted as public comment and relevant to the
12 accuracy, coverage, or other aspect of the proposed regulatory action. An agency may
13 not weigh, evaluate, or otherwise utilize in the drafting, review, or other preparation
14 of the proposed regulatory action public comment that is nonfactual or an expression
15 of preference regarding the need for, coverage, or policy of the proposed regulatory
16 action.

17 (b) Before adopting a regulation, amendment, or order of repeal, an agency,
18 except the Board of Fisheries or the Board of Game established under AS 16.05.221,
19 shall provide in writing an example of an economically feasible method for complying
20 with the proposed regulatory action.

21 (c) A written explanation, estimate, or determination required by this section
22 is a public record under AS 09.25.100 - 09.25.220, and the agency producing the
23 explanation, estimate, or determination shall provide a copy to a person upon request.

24 * Sec. 7. AS 44.62.250 is amended to read:

25 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of
26 repeal may be adopted as an emergency regulation or order of repeal if a state agency
27 makes a written finding, including a statement of the facts that constitute the
28 emergency, that the adoption of the regulation or order of repeal is necessary for the
29 immediate preservation of the public peace, health, safety, or general welfare. The
30 requirements of AS 44.62.040(c) - (d), 44.62.060, [AS 44.62.060] and 44.62.190 -
31 44.62.215 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency

1 regulations; however, upon adoption of an emergency regulation the adopting agency
2 shall immediately submit a copy of it to the lieutenant governor for filing and for
3 publication in the Alaska Administrative Register, and within five days after filing by
4 the lieutenant governor the agency shall give notice of the adoption in accordance with
5 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day
6 automatically repeals the regulation.

7 * Sec. 8. AS 44.62.260 is amended to read:

8 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY
9 REGULATIONS. (a) A regulation adopted as an emergency regulation does not
10 remain in effect more than 120 days unless the adopting agency complies with
11 AS 44.62.040(c) - (d), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215
12 [44.62.190 - 44.62.210] either before submitting the regulation to the lieutenant
13 governor or during the 120-day period.

14 (b) Before the expiration of the 120-day period, the agency shall transmit to
15 the lieutenant governor for filing a certification that AS 44.62.040(c) - (d), 44.62.060,
16 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with
17 before submitting the regulation to the lieutenant governor, or that the agency complied
18 with those sections within the 120-day period. Failure to so certify repeals the
19 emergency regulation; it may not be renewed or refiled as an emergency regulation.

9-LS0410M-
Bannister
2/22/95

CS FOR HOUSE BILL NO. 130()
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to agency review of public comment on the adoption, amendment,
2 and repeal of regulations; relating to the examination of proposed regulations,
3 amendments of regulations, and orders repealing regulations by the Administrative
4 Regulation Review Committee and the Department of Law; relating to the submission
5 to, acceptance by, and return by the lieutenant governor of proposed regulations,
6 amendments of regulations, and orders repealing regulations; and requiring agencies
7 to make certain estimates and determinations before adopting regulations, amendments
8 of regulations, or orders repealing regulations."

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

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

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

- 1 (1) to organize and adopt rules for the conduct of its business;
- 2 (2) to hold public hearings;
- 3 (3) to require all state officials and agencies of state government to give
- 4 full cooperation to the committee or its staff in assembling and furnishing requested
- 5 information;
- 6 (4) to examine all administrative regulations, including proposed
- 7 regulations, amendments, and orders of repeal submitted to it under
- 8 AS 44.62.040(c), to determine if they properly implement legislative intent;
- 9 (5) to make recommendations for legislative annulment of administrative
- 10 regulations under AS 44.62.320;
- 11 (6) to prepare and distribute reports, memoranda, or other materials;
- 12 (7) to promote needed revision or repeal of regulations that have been
- 13 adopted by state departments and agencies and, when the committee determines a
- 14 regulation should be repealed or amended, to introduce a bill that would enact a statute
- 15 that would supersede or nullify the regulation;
- 16 (8) to investigate findings that are transmitted to the committee by a
- 17 standing committee in accordance with AS 24.05.182 and, as appropriate, to either
- 18 introduce a bill annulling the regulation or exercise the committee's power to suspend the
- 19 effectiveness of the regulation in accordance with AS 24.20.445.

20 * Sec. 2. AS 44.62.040 is amended by adding new subsections to read:

21 (c) Unless the lieutenant governor has returned the regulation, amendment, or

22 order of repeal to the agency under (e) of this section, within 30 days after an agency

23 submits a regulation, amendment, or order of repeal to the lieutenant governor under (a)

24 of this section and before accepting the regulation, amendment, or order of repeal for

25 filing, the lieutenant governor shall submit the following items to the Administrative

26 Regulation Review Committee for the committee's comments on whether the regulation,

27 amendment, or order of repeal conforms to the intent of the authorizing statute and

28 whether the agency complied with AS 44.62.215:

- 29 (1) the regulation, amendment, or order of repeal;
- 30 (2) the written estimate and determination made by the agency under
- 31 AS 44.62.215(b); and

1 (3) the statement prepared by the Department of Law under
2 AS 44.62.060(b).

3 (d) The Administrative Regulation Review Committee shall provide its
4 comments under (c) of this section to the lieutenant governor within 90 days after
5 receiving the items listed in (c) of this section. The committee shall notify the lieutenant
6 governor within 30 days after receipt if the committee needs more than 90 days to
7 prepare its comments and shall provide the lieutenant governor with a date when the
8 comments will be ready. When preparing its comments, the committee may consult with
9 experts in the area that is the subject of the regulation, amendment, or order of repeal.

10 (e) At any time after receiving a proposed regulation, amendment, or order of
11 repeal from an agency, and whether or not the Administrative Regulation Review
12 Committee has provided comments under (c) - (d) of this section, the lieutenant governor
13 may return the proposed regulation, amendment, or order of repeal to the proposing
14 agency without accepting the regulation, amendment, or order of repeal for filing if the
15 lieutenant governor determines that the return would be in the best interests of the state.

16 * Sec. 3. AS 44.62.050 is amended to read:

17 Sec. 44.62.050. STYLE AND FORMS. The Department of Law shall prepare
18 and shall revise when necessary a drafting manual for administrative regulations that
19 prescribes the style and forms for submitting regulations to the lieutenant governor
20 under AS 44.62.040.

21 * Sec. 4. AS 44.62.060(c) is amended to read:

22 (c) The lieutenant governor may not accept for filing a regulation, amendment,
23 or order of repeal required by AS 44.62.040 unless it is accompanied by the written
24 estimate and determination required by AS 44.62.215(b) and the written statement
25 specified in (b) of this section, and the statement approves the regulation, amendment,
26 or order of repeal.

27 * Sec. 5. AS 44.62.060 is amended by adding a new subsection to read:

28 (d) Unless the Department of Law notifies the lieutenant governor and the agency
29 that it needs more time to review the proposed regulation, amendment, or order of repeal,
30 the Department of Law shall prepare the written statement of approval or disapproval
31 required by (b) of this section within 60 days after the proposed regulation, amendment,

1 or order of repeal has been submitted to it for preparation of the statement.

2 * Sec. 6. AS 44.62 is amended by adding a new section to read:

3 Sec. 44.62.215. PUBLIC COMMENT AND AGENCY ESTIMATES AND
4 DETERMINATIONS. (a) In the drafting, review, or other preparation of a proposed
5 regulation, amendment, or order of repeal, an agency shall weigh, evaluate, or otherwise
6 utilize public comment that consists of facts or other substantive information that is
7 relevant to the accuracy, coverage, or contents of the proposed regulatory action. The
8 agency shall explain in writing the agency's use or rejection of factual or other
9 substantive information that is submitted as public comment and relevant to the accuracy,
10 coverage, or other aspect of the proposed regulatory action. An agency may not weigh,
11 evaluate, or otherwise utilize in the drafting, review, or other preparation of the proposed
12 regulatory action public comment that is nonfactual or an expression of preference
13 regarding the need for, coverage, or policy of the proposed regulatory action.

14 (b) Before adopting a regulation, amendment, or order of repeal, the agency shall
15 make a written estimate of the cost of compliance for a private person affected by the
16 proposed regulatory action, and shall determine in writing that there is an economically
17 feasible method for complying with the proposed regulatory action.

18 (c) A written explanation, estimate, or determination required by this section is
19 a public record under AS 09.25.100 - 09.25.220, and the agency producing the
20 explanation, estimate, or determination shall provide a copy to a person upon request.

21 * Sec. 7. AS 44.62.250 is amended to read:

22 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of
23 repeal may be adopted as an emergency regulation or order of repeal if a state agency
24 makes a written finding, including a statement of the facts that constitute the emergency,
25 that the adoption of the regulation or order of repeal is necessary for the immediate
26 preservation of the public peace, health, safety, or general welfare. The requirements of
27 AS 44.62.040(c) - (d), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190
28 - 44.62.210] do not apply to the initial adoption of emergency regulations: however, upon
29 adoption of an emergency regulation the adopting agency shall immediately submit a
30 copy of it to the lieutenant governor for filing and for publication in the Alaska
31 Administrative Register, and within five days after filing by the lieutenant governor the

1 agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to
2 give the required notice by the end of the 10th day automatically repeals the regulation.

3 * Sec. 8. AS 44.62.260 is amended to read:

4 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY
5 REGULATIONS. (a) A regulation adopted as an emergency regulation does not remain
6 in effect more than 120 days unless the adopting agency complies with AS 44.62.040(c)
7 - (d), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210]
8 either before submitting the regulation to the lieutenant governor or during the 120-day
9 period.

10 (b) Before the expiration of the 120-day period, the agency shall transmit to the
11 lieutenant governor for filing a certification that AS 44.62.040(c) - (d), 44.62.060,
12 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with
13 before submitting the regulation to the lieutenant governor, or that the agency complied
14 with those sections within the 120-day period. Failure to so certify repeals the emergency
15 regulation: it may not be renewed or refiled as an emergency regulation.

Section 1. No change.

This section simply clarifies the obvious goals set by the legislature for the Administrative Regulation Review Committee. Title 24, Chapter 20, Article 3, sets out the "Powers" of the Administrative Regulation Review Committee. The Administrative Regulation Review Committee is lawfully authorized body or "Agency" of the Legislature. Section 1 also serves to make consistent the authority to review proposed regulations granted under AS 24.05.182.

Section 2. (c) Page 2, Lines 2 to 28. Streamlined.

Deleted the thirty day time frame for the Lieutenant Governor's office to transmit pre-filed regulations to the Administrative Regulation Review Committee.

(d) Page 2, lines 14 to 18. The Administrative Regulation Review Committee time frame is simplified and shortened to just thirty days. The comments the Committee can provide are set out in AS 44.62.215.

This section was changed in response to the concerns about the timing of the regulation process.

(e) Page 2, Line 24 to 28. Changed to specify the reasons the Lieutenant Governor may return final draft regulations to an agency. These reasons now include allowing the agency to respond to the Department of Law's comments, and Administrative Regulation Review Committee comments.

Section 3. Page 2, lines 30 to 31, and page 4 lines 1 and 2.

No Change. No contextual importance, merely janitorial.

Section 4. Page 3. New.

This section clarifies an area I believe is at the heart of the confusion over the role of the Legislature's Regulation Review Committee. It does not make a substantive addition to the bill as much as it recognizes the existing process which occurs when a Legislator or an active Administrative Regulation Review Committee wishes to participate in the regulation review process.

(b) (1) clarifies the role of the Department of Law includes the review of statutory consistency.

(c) modified to be consistent with the streamlining of Section 6.

Section 5. Page 3 and the top of page 4.

Changed to clarify the role of the Department of Law, by setting a thirty day review deadline, identical to the deadline for the Administrative Regulation Review Committee. This deadline is not a hard deadline, it can be extended by the Department of law to a future date.

The lieutenant governor can now "track" regulations in the Department of Law. It prevents the Department of Law from performing a **hidden** "pocket veto." It does not prevent the Department of Law from taking months and months to review a regulation. It just requires that they inform the elected official who the public perceives as responsible for regulations about the status and expected time frame for the Department's review of a complex regulation.

Section 6. Page 4.

Part (a) line 10. The phrase [explain in writing] has been replaced with **record in writing.**

This is not a substantive change, but responds to some of the confusion regarding the intent of this section brought up in prior discussion.

Part (b) Lines 17 to 20. The Boards of Game and Fisheries are exempted from the task of providing examples of economically feasible methods of complying with the proposed regulatory action.

Due to the speed of construction this section inadvertently omitted the reference to the cost of compliance. We simply need to amend it back into this section.

(c) No change.

Section 7 and 8 Page 4 and 5.

No change. This is just constructional language making the added requirements of Section 6 exempt from emergency regulations

Alaska State Legislature

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House District 31

House Of Representatives

Committee Substitute for HB 130 Sponsor Statement

The creation of regulations heretofore have been carried out within the bureaus of state government beyond the light of public scrutiny. Though public input has always been a part of the regulation process, the system is inherently flawed. Regulations have the force of law, but in our form of government law must emanate from the people through their elected officials, and therein lies the flaw. In the current system the unelected regulation writers have the last word in the process, not the people. HB 130 attempts to remedy this by bringing elected officials back into the loop and making them politically accountable to the people for the regulations that impact their lives.

HB 130 slows the regulation process and enables the lieutenant governor to return regulations to agencies, by law. The lieutenant governor will no longer have a "ministerial and mandatory" role in regulations. With the authority to return regulations, the lieutenant governor will also bear the spotlight of public opinion for regulations.

AS 44.62.040 (e) "Any time after receiving a proposed regulation. . . the lieutenant governor **may return the proposed regulation** . . . without . . . filing. . . if the return would be in the best interest of the state"

The lieutenant governor is also required to provide the Legislature's "Administrative Regulation Review Committee" with copies of draft regulations. The Committee will be able to identify controversial regulations and bring recommendations back to the lieutenant governor prior to a regulation being filed. Reviewing proposed regulations brings elected officials further into the regulation process.

AS 44.62.040 (c) requires the lieutenant governor to submit **proposed** regulations, the agencies written determinations following public comment, and the Department of Law's findings, to the Legislature's Administrative **Regulation Review Committee**.

AS 44.62.040 (d) The Committee has 90 days to **review the proposed regulations**, discuss them with experts and provide comments to the lieutenant governor.

The response from the regulation review committee, as well as the findings of the lieutenant governor can lead him/her to file the regulations or return them to the agency without filing. The importance of placing this responsibility in the hands of the single individual in the lieutenant governor's office cannot be underestimated. This is the one individual in the executive branch of government who cannot be fired by the governor, who is not beholden to any agency of the bureaucracy, who can add a "common sense review" to the regulation, and yet is responsible for his/her job to the entire population of the state.

Individuals impacted by regulations often feel their comments and input to agencies is ignored. At present, agencies are only required to hold public hearings. Once a hearing is held the proposed regulation is re absorbed into the bowels of the bureaucracy only to reappear in its "final" form at the lieutenant governor's office. The Department of Law's review, as well as the agencies internal review is not, of course, open to the public, nor should it be. The addition of the lieutenant governor and the Legislature's Regulation Review Committee to the review loop allows elected officials to review the regulation in its final form, but before it is filed.

Equally important is the need for the public to be able to see how an agency - accommodates or responds to their comments. Did the agency understand and address the concerns expressed by the public in the public comment period?

HB 130 adds guidance and direction for agency review and response to public comments. Statutory guidance allows agencies to demonstrate their accommodation and response to public comment. It reveals an agencies thought process, and it allows the public to see into the inner workings of the administrative rule makers.

AS 44.62.215 requires an agency to utilize or reply to **factual, substantive and relevant** public comment. It also prohibits an agency from "**weighing**" public sentiment or other non-factual comment, making the regulatory process less "legislative" in nature.

The impact of regulations also needs to be explained by the agency. HB 130 requires an agency to submit a written determination of the proposed regulations impact to the State, and to the affected individuals. A clear means of attaining, or complying with the regulation is also necessary. If an agency is able to promulgate regulations or standards that are not achievable then the agency may be "taking" or virtually outlawing the endeavor it is supposed to be regulating.

AS 44.62.215(b): Before adopting a regulation an agency must estimate the **cost of compliance**, and determine that there is an **economically achievable means of complying** with the regulation.

Intent:

The goal of HB 130 is to focus agencies efforts and talents to the execution and administration of the laws, leaving the measuring or weighing of public will or public interest to the peoples representatives in the legislature.

Alaska State Legislature

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House District 31

House Of Representatives

February 22, 1995

House State Affairs
The Honorable
Jeannette James, Chairman

Fiscal Note Summary:

<u>Department</u>	<u>Dollars</u>
Administration	0
Governor - Lieutenant Governor	73.7
Governor - Office of Management & Budget	38.4
Governor - Human Rights Commission	40.0
Governor - Elections	0
Department of Commerce & Econ. Dev.	0
Department of Health and Social Services	74.2
Department of Fish and Game, limited entry.	15.0
Department of Law	0
Department of Public Safety	10
Department of Natural Resources	0
Total	281.3

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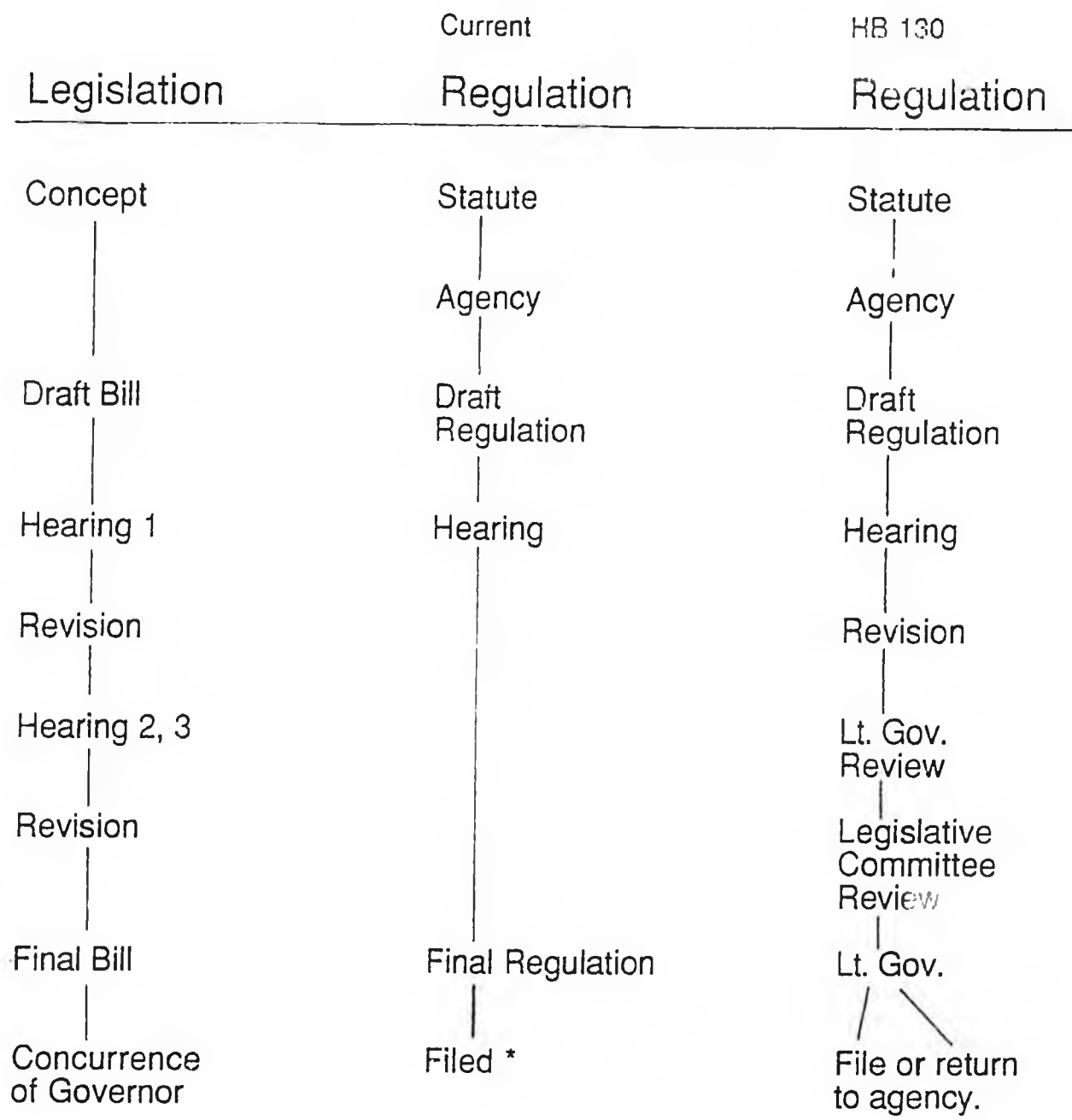
Memorandum

To: Administrative Regulation Review Committee (ARRC)

Date: February 22, 1995.

Regarding: Proposed amendments to the regulation process

-
- 1) Statutory Authority
Legislature passes statute delegating law making authority to an agency.
 - 2) Development of Regulation:
Agency has expertise to make specific regulations. (AS 44.62.050, 060, 130)
Department of Law: legal review for style, form, preparation and codification.
 - 3) Fiscal Notes = Cost to agency. (AS 44.62.195)
 - 4) HB 163 **Compliance Cost Estimate = Cost for private person.** (AS 44.62.197)
 - 5) Agency Public Notice & 30 days to Public Hearings (AS 44.62.190, 200, 210)
 - 6) HB 130 **Agency Response to Public Comment** (AS 44.62.215)
Written response to factual comment. Not a vote or "weighing" of the public will.
 - 7) HB 130 **Agency Determinations** (AS 44.62.215)
Presented to Lt. Gov. & ARRC: a) Cost of compliance.
b) Economically feasible means of compliance.
 - 8) Department of Law: Regulations Attorney approves regulations. (AS 44.62.125)
(HB 130 adds 60 day time limit to DOL review.)
 - 9) HB 130 Legislature's Regulation Review Committee (AS 44.62.040 (c) & (d))
Given 90 days to review draft regulations, provide comments to Lt. Gov.
 - 10) HB 130 **Lieutenant Governor may return draft regulation to agency.**
(AS 44.62.040 (e))
 - 11) Lieutenant Governor files regulations (AS 44.62.040)
("Mandatory and Ministerial")
 - 12) HJR 1 **Legislative Annulment of Regulations** (AS 44.62.320)



* The lieutenant governor's role in regulations is now "ministerial and mandatory." A regulation must be filed when received by the lieutenant governor. HB 130 adds review authority to the lieutenant governor's office.

03/16/95 08:17:39 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
MESSAGE FROM: LIOCJEN IN ANCHORAGL

LTN1120
JNU

RE TCN: 50418 SCHEDULED FOR:03/16/95 08:00 TO 10:00
SPONSOR: HOUSE STATE AFFAIRS PURPOSE: PUBLIC HEARING

MESSAGE TEXT: MICHELE O'LEARY ON FOR HB 130 AND 163 ,

03/16/95 LEGISLATIVE TELECONFERENCE NETWORK SYSTEM

LTN1150

08:48:52 PARTICIPANT LIST (ALL PARTICIPANTS)

BY:FBX

TCN:50418 SCHEDULED FOR:03/16/95 08:00 TO 10:00

FOR:FBX

PUBLIC HEARING HOUSE STATE AFFAIRS

LOCATION:FAIRBANKS

HB 130

MS.

BONNIE

WILLIAMS

TESTIFY