

HB

2000



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

Chair of House State Affairs Committee

Chair of Joint Admin. Regulation Review Committee

Capitol Building

(907) 465-3743 ph

Juneau, AK 99801

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SPONSOR STATEMENT

HB 200 Subpoena powers for Regulation Review Committee

By Rep. Jeannette James

April 6, 1997

HB 200 Gives the Committee the power to subpoena unwilling and or uncooperative witness to Committee hearings. If the Committee intends to sort fact from fiction we need the tool of subpoena power.

We are not a democracy as is claimed, we are a regulatory bureaucracy! "We are from the government, and we are here to help you". That statement brings chills to our constituents because the statement that follows will be one dealing with regulations. The Committee is charged with the task of regulatory oversight, the basic idea is to re-establish a democracy equally balanced between the Executive, Legislative and the Judicial branches of government.

There is no oversight of regulations by the Executive branch, former administrations have tried, but have been unsuccessful. It is up to us, the Legislative branch to be the overviewer of the regulations promulgated by the Statutes we make.

The Committee need certain tools to operate, we have the statutory power to place witnesses under oath, the power to file perjury charges, the power to require cooperation from public officials, and the power to annul regulations through statute.

Work draft B 4/4/97 is requested to be the Committee substitute. The changes reflect the suggestions by the AG's office, the AG's office will defend the Committee if sued, hence their interest. The power to arrest (Sec c) as an enforcement mechanism is replaced with superior court action. Sec. 1 (5) deletes the words or the chairs designee.

With the power of subpoena our tool kit will be complete.
If there are any questions please call me, or Walt Wilcox



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SPONSOR STATEMENT

HB 200 Subpoena powers for Regulation Review Committee

By Rep. Jeannette James

March 21, 1997

HB 200 Gives the Committee the power to subpoena unwilling and or uncooperative witness to Committee hearings. ~~Every other similar Legislative Council Committee has the power to force witnesses to testify.~~ If the Committee intends to sort fact from fiction we need the tool of subpoena power.

We are not a democracy as is claimed, we are a regulatory bureaucracy! "We are from the government, and we are here to help you". That statement brings chills to our constituents because the statement that follows will be one dealing with regulations. The Committee is charged with the task of regulatory oversight, the basic idea is to re-establish a democracy equally balanced between the Executive, Legislative and the Judicial branches of government.

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Article 2. Legislative Budget and Audit Committee.

<p>Section 151. Legislative Budget and Audit Committee established 156. Purposes 161. Membership 165. Alternate members 171. Term of membership 181. Vacancies 191. Meetings 201. Powers 206. Duties 209. Records 211. Legislative finance division</p>	<p>Section 221. Staff 231. Duties 241. Legislative audit division 251. Qualifications and appointment of legislative auditor 261. Staff 271. Powers and duties 281. Special audit 291. Conflict of interest 301. Records 311. Reports</p>
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Legislative history reports. — For statement of purpose of ch. 95, SLA 1971 (CSHB 14am), see 1971 House Journal, pp. 122-123.

Sec. 24.20.150. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.151. Legislative Budget and Audit Committee established. The Legislative Budget and Audit Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need of the legislature for full-time technical assistance in accomplishing the fiscal analysis, budget review, and post-audit functions. (§ 2 ch 95 SLA 1971)

Sec. 24.20.156. Purposes. The purposes of the Legislative Budget and Audit Committee include

- (1) monitoring and reporting
 - (A) the performance of the agencies of the state that perform lending or investment functions,
 - (B) the extent to which the performance of these agencies has contributed to the fiscal, financial, economic, and social improvement of the state and its citizens,
 - (C) the extent to which these agencies and the executive have prepared and coordinated short-term and long-term economic, fiscal, investment, and financial planning;
- (2) holding these agencies accountable to statutory intent in their performance by recommending, where appropriate, changes in policy to the agencies or changes in legislation to the legislature;
- (3) annually reviewing the extent of capitalization of the investment funds of the state and alternative investment policy for the general fund surplus and recommending needed legislation. (§ 2 ch 18 SLA 1980)

Cross references. — For legislative findings, see § 1, ch. 18, SLA 1980.

Sec. 24.20.160. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.161. Membership. The Legislative Budget and Audit Committee is composed of 10 members: the chairmen of the senate and house finance committees; one member selected from each of the senate and house finance committees and appointed by the president of the senate and the speaker of the house, respectively; and three members appointed from each house by the respective presiding officer. The chairman of the finance committee may choose not to serve on the committee. If this occurs, the presiding

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officer of the appropriate house shall appoint a replacement from the finance committee. The membership from each house shall include at least one member from each of the two major political parties. The committee shall select its own chairman. (§ 2 ch 95 SLA 1971)

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Sec. 24.20.165. Alternate members. The Legislative Budget and Audit Committee shall have two alternate members in addition to the members designated in AS 24.20.161. The president of the senate shall appoint one alternate member from the senate finance committee and the speaker of the house shall appoint one alternate member from the house finance committee. The alternate members shall serve on the committee when a meeting of the committee has been called and the chairman determines that there will not be enough members in attendance at the meeting to provide a quorum. While serving as alternates, the alternate members have the same duties and responsibilities as committee members appointed under AS 24.20.161, and they are entitled to the same travel and per diem allowances. (§ 1 ch 57 SLA 1979)

Sec. 24.20.170. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.171. Term of membership. (a) The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed.

(b) When a member of the committee files a declaration of candidacy for an elective office other than that of member of either house of the legislature, and the member has not resigned from membership on the committee, the member's committee membership terminates on the date of filing. (§ 2 ch 95 SLA 1971; am § 3 ch 11 SLA 1975; am § 2 ch 146 SLA 1984)

Sec. 24.20.180. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.181. Vacancies. When a vacancy occurs in the statutory or appointive membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 2 ch 95 SLA 1971; am § 4 ch 11 SLA 1975)

Sec. 24.20.190. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.191. Meetings. The budget and audit committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 2 ch 95 SLA 1971)

Sec. 24.20.200. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.201. Powers. (a) The Legislative Budget and Audit Committee has the power to

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the comprehensive fiscal analysis, budget review, and post-audit functions;

(2) hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents, and testimony, and have the deposition of witnesses taken in a manner prescribed by court rule or law for taking depositions in civil actions;

(3) require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) review revenue projections, state agency appropriation requests, the expenditure of state funds, including the relationship between state agency program accomplishments and legislative intent, and the fiscal policies and procedures of state government;

(5) review and approve proposed changes to agency authorized budgets as provided in AS 37.07 (Executive Budget Act);

(6) make recommendations concerning appropriations, their expenditure, and the fiscal policies and procedures of state government to the governor when appropriate, and to the legislature;

(7) prepare and distribute reports, memoranda, or other necessary materials;

(8) sue in the name of the legislature during the interim between sessions if authorized by majority vote of the full membership of the committee;

(9) hold public hearings on the confirmation of the members of the Board of Trustees of the Alaska Permanent Fund Corporation;

(10) make recommendations to the legislature and to agencies of the state that perform lending or investment functions concerning the structure and operating practices of the agencies;

(11) enter into and enforce all contracts necessary or desirable for the functions of the committee;

(12) provide for annual post audits of the Alaska Housing Finance Corporation, the Alaska Aerospace Development Corporation, and the Alaska Industrial Development and Export Authority.

(b) Nothing in this chapter authorizes the referral by the presiding officer of legislation to the committee at regular or special sessions of the legislature. (§ 2 ch 95 SLA 1971; am § 1 ch 74 SLA 1977; am § 2 ch 57 SLA 1979; am § 3 ch 18 SLA 1980; am § 32 ch 106 SLA 1980; am § 29 ch 142 SLA 1982; am § 3 ch 88 SLA 1991)

Revisor's notes. — In 1987, "Alaska Industrial Development and Export Authority" was substituted for "Alaska Industrial Development Authority" under § 43, ch. 42, SLA 1987.

Effect of amendments. — The 1991 amendment,

effective July 2, 1991, in subsection (a), inserted "the Alaska Aerospace Development Corporation," in paragraph (12) and made punctuation changes and a stylistic change.

Sec. 24.20.206. Duties. The Legislative Budget and Audit Committee shall

(1) report to the legislature its recommendations relating to the confirmation of appointees to the Board of Trustees of the Alaska Permanent Fund Corporation;

(2) annually review the long-range operating plans of all agencies of the state that perform lending or investment functions;

(3) review periodic reports from all agencies of the state that perform lending or investment functions;

(4) prepare a complete report of investment programs, plans, performance, and policies of all agencies of the state that perform lending or investment functions and notify the legislature within 30 days after the convening of each regular session that the report is available;

(5) in conjunction with the finance committee of each house recommend annually to the legislature the investment policy for the general fund surplus and for the income from the permanent fund;

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(6) provide for an annual post audit and annual operational and performance evaluation of the Alaska Permanent Fund Corporation investments and investment programs;

(7) provide for an annual operational and performance evaluation of the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority; the performance evaluation must include, but is not limited to, a comparison of the effect on various sectors of the economy by public and private lending, the effect on resident and nonresident employment, the effect on real wages, and the effect on state and local operating and capital budgets of the programs of the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority;

(8) provide assistance to the trustees of the trust established in AS 37.14.400 — 37.14.450 in carrying out their duties under AS 37.14.415. (§ 2 ch 18 SLA 1980; am § 33 ch 106 SLA 1980; am § 30 ch 142 SLA 1982; am § 2 ch 1 FSSLA 1992; am § 35 ch 126 SLA 1994; am § 48 ch 21 SLA 1995)

Revisor's notes. — In 1987, "Alaska Industrial Development and Export Authority" was substituted for "Alaska Industrial Development Authority" under § 43, ch. 42, SLA 1987.

Effect of amendments. — The 1992 amendment, effective June 19, 1992, added paragraph (9).

The 1994 amendment, effective July 1, 1994, repealed paragraph (6), relating to the committee's presenting to the legislature a review of the governor's

report under AS 37.07.020(d) with recommendations for needed legislation.

The 1995 amendment, effective August 8, 1995, in paragraph (4), substituted "prepare" for "present" and "and notify the legislature" for "to the legislature" and added "that the report is available" at the end; and redesignated former paragraphs (6)-(9) as paragraphs (5)-(8).

Sec. 24.20.209. Records. The Legislative Budget and Audit Committee shall keep a complete file of all reports presented to it and all reports presented by it to the legislature or to a legislative committee. (§ 2 ch 18 SLA 1980)

Sec. 24.20.210. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.211. Legislative finance division. The legislative finance division is established as a permanent staff agency responsible to the Legislative Budget and Audit Committee for performance of fiscal analysis and budget review functions. (§ 2 ch 95 SLA 1971)

Sec. 24.20.220. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.221. Staff. (a) The committee shall hire and determine the salary of the legislative fiscal analyst who shall serve both at the direction and pleasure of the committee. The fiscal analyst shall serve as head of the finance division and, within the limits of the budget approved by the committee, shall employ and determine the compensation of the professional and clerical staff of the division.

(b) The fiscal analyst and members of the professional and clerical staff may not join or support a partisan political organization. This prohibition does not prevent the fiscal analyst or members of the staff from joining social organizations, expressing private opinion, registering as to party, or voting. (§ 2 ch 95 SLA 1971)

Sec. 24.20.230. [Repealed, § 1 ch 95 SLA 1971.]

Sec. 24.20.231. Duties. The legislative finance division shall

- (1) analyze the budget and appropriation requests of each department, institution, bureau, board, commission, or other agency of state government;
- (2) analyze the revenue requirements of the state;
- (3) provide the finance committees of the legislature with comprehensive budget review and fiscal analysis services;

ADDENDUM

Chapter 24.25. WITNESSES; SUBPOENA; CONTEMPT

Sec. 24.25.010. Issuance and form of subpoena.

(a) A subpoena requiring the attendance of a witness before either house of the legislature may be issued by the president or the speaker.

(b) A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker, or with the concurrence of the house or the senate.

(c) A subpoena requiring the attendance of a witness before an interim committee established by either house of the legislature, or by both, may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker.

(d) The subpoena is sufficient if

(1) it states before whom the proceeding is held;

(2) it is addressed to the witness;

(3) it requires the attendance of the witness at a time and place certain;

(4) it is signed

(A) by the president or the speaker under (a) of this section, or

(B) by the committee chairman with the concurrence of the president or the speaker under (b) and (c) of this section.

(e) This section does not apply to the legislative council nor to the Legislative Budget and Audit Committee.

History -

(sec. 4-4-1 ACLA 1949; am sec. 1 ch 94 SLA 1975)

Cross References -

For legislative council's power to issue subpoenas, see AS 24.20.060(2). For legislative budget and audit committee's power to issue subpoenas, see AS 24.20.201(a) (2).

Collateral Refs -

72 Am. Jur. 2d, States, Territories, and Dependencies, sec. 48.

Sec. 24.25.020. Service of subpoena.

A person over the age of 19 years who is competent as a witness in the state courts may serve the subpoena. The person's affidavit that the person delivered a copy to the witness is evidence of service.

History -

(sec. 4-4-2 ACLA 1949; am sec. 8 ch 245 SLA 1970)

Sec. 24.25.030. Disobeying subpoena or refusing to testify.

If a witness neglects or refuses to obey a subpoena, or neglects or refuses to testify or to produce upon reasonable notice any material and proper books, papers, or documents in the possession or under the control of the witness, the senate or house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary.

History -

(sec. 4-4-3 ACLA 1949)

Collateral Refs -

17 Am. Jur. 2d, Contempt, sec. 119, 121-124.

Perjury or false swearing as contempt, 89 ALR2d 1258.

Sec. 24.25.040. Arrest for disobedience to subpoena.

A witness who neglects or refuses to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house of representatives, as the case may be. The only warrant or authority necessary authorizing arrest is a copy of a resolution of the senate or house of representatives signed by the president of the senate or speaker of the house of representatives, as the case may be, and countersigned by the secretary of the senate or the clerk of the house of representatives, as the case may be.

History -

(sec. 4-4-4 ACLA 1949)

Sec. 24.25.050. Witness fees and mileage.

A person appearing before either house, or both, or a legislative committee in response to a subpoena is entitled to \$20 for each day's attendance, and for the time necessary in coming and returning to the person's place of residence and mileage at the rate of 15 cents a mile for the distance traveled in going to and returning from the place of attendance. The witness fee and mileage fee shall be paid out of the state treasury upon presentation of a certificate of

attendance and mileage due, signed by the presiding officer of the house that authorized issuance of subpoena.

History -

(sec. 4-4-5 ACLA 1949; am sec. 1 ch 31 SLA 1951)

Sec. 24.25.060. Oath and penalty for violation of oath.

The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who willfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.

History -

(sec. 4-4-6 ACLA 1949)

Collateral Refs -

60A Am. Jur. 2d, Perjury, sec. 1 et seq.

Perjury or false swearing as contempt, 89 ALR2d 1258.

Sec. 24.25.070. Grant of immunity on claim of privilege of self-incrimination.

(a) A person called as a witness before the senate, house of representatives, or a committee of either or both, who refuses to answer any question or to produce any book, paper, or document relating to the matter under inquiry, on the ground that the answer or the production may tend to incriminate the person, may be granted immunity from punishment for the offense to which the question or evidence relates by resolution of the house that is conducting the inquiry. The resolution shall be entered upon its journal, and the witness may then be compelled to answer the question or produce the evidence.

(b) If a witness is granted immunity and compelled to testify or produce evidence after claiming the privilege of self-incrimination, the witness may not thereafter be prosecuted in any court for the offense to which the question or evidence relates.

History -

(sec. 4-4-7 ACLA 1949)

Decisions -

Cited in *Surina v. Buckalew*, 629 P.2d 969 (Alaska 1981).

Collateral Refs -

81 Am. Jur. 2d, Witnesses, sec. 30 et seq.

Sec. 24.25.080. Punishment for disobedience to subpoena or refusal to testify.

A person subpoenaed as provided in this chapter who fails, neglects, or refuses to attend at the time and place where the person's presence is required, or fails, neglects, or refuses to produce the books, papers, or instruments or other evidence designated in the subpoena, or who having attended in response to the subpoena, or having appeared voluntarily, refuses to testify as to any material and proper matter within the power of the senate, house of representatives, or a committee to investigate, upon conviction, is punishable by a fine of not less than \$100 nor more than \$500, or by imprisonment for not less than 30 days nor more than six months.

History -

(sec. 4-4-8 ACLA 1949)

FISCAL NOTE

STATE OF ALASKA
1997 LEGISLATIVE SESSION

NO. _____
BILL VERSION: HB 200
PUBLISH DATE: _____

Revision Date: _____
Title: "An Act relating to subpoenas of the
Administrative Regulation Review Committee; and...
Sponsor: House State Affairs
Requestor: House State Affairs

Department Affected: Legislative Affairs Agency
BRU: All
Component: All

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
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	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	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	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)

Zero fiscal impact.

Prepared By: Karla Schofield, Deputy Director
Division: Administrative Services

Phone: 465-3852
Date: 3/24/97

Approved By: Pamela A. Varni, Executive Director
Agency: Legislative Affairs Agency

Pamela A. Varni

Date: 3/24/97

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