

**SB**

**24**

**HFIN**

**FILE**

# FISCAL NOTE

No: 49

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HCS CSSB 24 (JUD)  
(H) Publish Date: 4/12/00

Revision Date/Time (Note if correction)	01/25/00	11:00 AM	Dept. Affected	Environmental Conservation
Title	The Alaska Regulations Reform Act		BRU	Administration
Sponsor	Senators Donley, Taylor		Component	Commissioner's Office
Requester	House Judiciary		Component No.	633

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	148.9	148.9	148.9	148.9	148.9	148.9
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	50.6	49.6	49.6	49.6	49.6	49.6
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	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
<b>TOTAL OPERATING</b>	<b>242.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	242.5	223.5	223.5	223.5	223.5	223.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>242.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>

Estimate of any current year (FY2000) cost: 0.0

**POSITIONS**

Full-time	3	3	3	3	3	3
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

See attached.

Prepared by: Janice Adair, Director  
 Division: Environmental Health  
 Approved by: Commissioner *K. J. ...*  
 Agency: Department of Environmental Conservation

Phone: 269-7644  
 Date/Time: 1/25/00 11:34 AM  
 Date: 1-26-00

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As passed by the Senate Finance Committee, CSSB 24(FIN) contains several sections that are of concern to DEC, which, taken together will result in significant costs to the department that are not reflected in the fiscal notes adopted by the Committee.

Section 3 requires that a regulation take a "reasonable approach within the intent of the statute." This is a difficult if not impossible thing to measure: what is reasonable to one person may be completely unreasonable to another. This is particularly true in natural resource management where regulatory requirements are often compromises. This section will also require the department to research legislative intent for old statutes. Many of DEC's public health statutes have been on the books since 1948. This section, coupled with Sections 10 and 14, will require a paralegal and an administrative clerk, and associated costs such as supplies, travel, and equipment.

Section 4 requires we do a cost-benefit analysis. The analysis is to calculate all the costs and all the benefits to the public of a regulatory proposal. Without any parameters as to what costs and what benefits must be considered, the department will be tasked with trying to come up with a comprehensive list. To the extent the department fails to consider some cost or some benefit, parties will seek judicial relief and regulatory projects will be stopped until the department recalculates the cost-benefit analysis. Some projects that may need DEC regulatory action, like site-specific criteria for a water quality standard, could have national significance and thus the "public" cost-benefit analysis would include national costs and national benefits. Thus, groups from outside Alaska could easily weigh in on our regulatory programs.

Many costs and benefits that are aesthetic are quantifiable but at a great cost. As part of the Exxon Valdez Natural Resource Damage Assessment, \$3 million was spent to do a "loss of passive use" benefit study, and that was only one of the benefits that was calculated for the damage assessment.

This section also requires that we "weigh" the costs and the benefits before adopting a regulation. Because the costs and benefits do not have to have dollar amounts attached to them, it is unclear how we would weigh and compare those non-quantified costs and benefits.

Many of the exemptions provided in this section would not cover several DEC regulations, particularly those that deal with public health, e.g. food, seafood processing, public sanitation. In addition, we do not believe any of the oil spill response and prevention regulations will be exempted from the cost-benefit analysis requirement.

This section will require the department employ an economist to prepare the cost-benefit analyses. Additional costs include travel, supplies, and equipment associated with the position.

Section 10 was changed by the Senate Finance Committee to make it clear that regulations would need to be public noticed again only if the changes "substantially" changed the substance of the regulations. We believe this clarification was an important

amendment to make, and should reduce, though not eliminate, the need for successive public comment periods and associated advertising costs. We remain concerned however that the interplay between this section and Section 14, which establishes a two-year deadline on regulatory adoption will result in significant conflicts.

Section 14 will also preclude DEC from using the negotiated rule making process that was adopted into statute last session. Regulations cannot be quickly written by committee.

Section 15 is the other very problematic and very expensive section of this bill. Regulations cannot be held valid unless they cause the least necessary intrusion on the rights and property of persons affected by the regulation. This is a very broad statement – many, many people may be affected by a regulation. Given that natural resource regulations are compromise regulations, there will always be some side that feels the regulation is not the “least necessary intrusion”. For example, most of DEC’s regulations allow for activities that disrupt a person’s enjoyment of the water, air, or land of the state and they could likely successfully argue that the regulations are therefore not the “least intrusion necessary.” Likewise, the public health regulations adopted by the department “intrude” on some groups in order to protect the health of others.

The state has the burden to prove that its regulations are the least intrusive. The fact is that the department’s regulations will be intrusive to one group and not intrusive to another. That is the nature of environmental regulation. This will cause the department to be involved in a great deal of litigation on the intrusiveness of our regulations. Ultimately, the courts will determine our regulatory programs. This section will result in increased costs for the Department of Law.

**Personal Services New Position Detail**

DRAFT

Department of Environmental Conservation

Scenario: FY2001 Legislative Fiscal Note Info  
 Component: Office of the Commissioner (633)  
 BRU Name: Administration

PCN	Job Class Title	Time Status	Relire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Sa'ary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#001	Economist I	FT	A	GG	Juneau	2A	18 B / C	12.0		45,796	0	0	14,999	60,797
Justification: No justification provided.										Funding Detail:				
										1004	General Fund Receipts	100.00%	60,797	
										Total Funding:		100.00%	60,797	
18-#002	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B / C	12.0		23,802	0	0	10,665	34,467
Justification: No justification provided.										Funding Detail:				
										1004	General Fund Receipts	100.00%	34,467	
										Total Funding:		100.00%	34,467	
18-#003	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B / C	12.0		39,792	0	0	13,816	53,608
Justification: No justification provided.										Funding Detail:				
										1004	General Fund Receipts	100.00%	53,608	
										Total Funding:		100.00%	53,608	

**Component Summary:**

Total New Positions: 3

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	148,872
<b>Total Funding:</b>	<b>100.00%</b>	<b>148,872</b>

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

Page 4 of 4

# FISCAL NOTE

**STATE OF ALASKA**  
**2000 LEGISLATIVE SESSION**

**BILL NO. HCSSB 24 (JUD)**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Environmental Conservation  
 Title The Alaska Regulation Reform Act BRU Administration  
 Component Commissioner's Office  
 Sponsor Senator Donley  
 Requester House Judiciary Component No. 633

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual	60.4	60.4	60.4	60.4	60.4	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	60.4	60.4	60.4	60.4	60.4	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>60.4</b>	<b>0.0</b>

Estimate of any current year (FY2000) 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)

See attached

Prepared by: Janice Adair, Director Phone 269-7644  
 Division Environmental Health Date/Time 4/12/00 11:43 AM  
 Approved by Commissioner [Signature] Date 4-17-00  
 Agency Department of Environmental Conservation

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## Fiscal Analysis HCSSB 24 (JUD)

Section 4 of the Judiciary version of this bill will generate costs for the department during the five-year pilot project it would enact, specifically:

- the requirement for successive public notices whenever regulations are revised that “substantially change the substance of the regulation” (the Department of Law has advised that only those changes that are strictly editorial in nature will be exempt from the renoticing provisions); and
- the requirement that the Department public notice its intent to either adopt or not adopt regulations whenever a statute is amended or adopted that affects the Department.

Successive public notices: The department averages 15 regulation projects a year. Based on the advice from the Department of Law, we estimate that all of those will need to be noticed a second time; 75% or 11 will need to be renoticed a third time, and approximately 5%, or 1 will need to be renoticed a fourth time. In order to comply with the spirit of this legislation, notice would need to be published in newspapers across the state, not just in a single publication with a statewide circulation.

The publication costs associated with these renoticing requirements are estimated to be \$43.2

The bill requires we also furnish the notice to those who had previously commented. Because we would hope to use electronic means to share documents with the bulk of those commenters, postage associated with the renoticing requirement is estimated to be .2 and copying charges are estimated to be 1.0.

Notice of intent to adopt or not adopt: Each legislative session, there are a number of bills introduced that would require a change in DEC regulations, any or all of which may pass. Again, in order to comply with the spirit of this legislation, this notice would need to be published in newspapers across the state, not just in a single paper with statewide circulation. Therefore, the publication costs associated with this requirement are estimated to be \$16.0 annually.

# FISCAL NOTE

No: 51

Bill Version: HCS CSSB 24 (JUD)

(H) Publish Date: 4/12/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date: 24-Jan-00 Dept Affected: Natural Resources  
 Title: An Act relating to the adoption, amendment, BRU: Management & Administration  
repeal, legislative review, and judicial review of regulations... Component: Commissioner's Office  
 Sponsor: Senator DONLEY  
 Requestor: (H)JUD Component Serial No. #423

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	164.2	54.9	81.6	88.3	81.6	88.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>	<b>88.3</b>

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

FUND SOURCE	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
1002 Federal Receipts						
1003 GF Match						
1004 GF	164.2	54.9	81.6	88.3	81.6	88.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>	<b>88.3</b>

Estimate of any current year (FY2000) cost: \$ none

### POSITIONS

POSITIONS	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
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 Department of Natural Resources initiates regulations projects each year (in this fiscal year we have 13 projects in various stages). The projects can be highly complex or merely housekeeping. Some can be highly controversial and require multiple public notice and hearings. Many will require a cost/benefit analysis or a detailed, considered approach to waiving a cost/benefit analysis. DNR will contract for a professional cost/benefit analysis as the need arises. The department believes that it would not be able to hire an economist proficient in all of the issues involved in oil and gas, land, mining, parks, forestry, etc. We estimate that "prohibitive" cost for a cost/benefit analysis is anything over \$40,000. It is very difficult to estimate how much the required written reports, time limits, decisions on whether or not to perform a cost/benefit analysis, will add to the cost of a regulation project. We have added nothing in the fiscal note but believe the cost may be high.

Prepared by: Carol Carroll, Director Phone: 465-4730  
 Division: Support Services Date: 24-Jan-00  
 Approved by Commissioner: John Shively Date: 1-24-2000  
 Agency: Natural Resources

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# FISCAL NOTE

Bill Version: HCS CSSB 24 (JUD)  
 (H) Publish Date: 4/12/00

**STATE OF ALASKA  
 1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title "An Act relating to regulations; amending Rule BRU Civil Division  
65, Alaska Rules of Civil Procedure; and ... effective date." Component Legislation/Regulations  
 Sponsor Senator Donley  
 Requester House Judiciary Committee Component Serial No. 2209

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	114.0	114.0	114.0	114.0	114.0	114.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	45.9	45.9	45.9	45.9	45.9	45.9
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>171.3</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	171.3	164.8	164.8	164.8	164.8	164.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>171.3</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>

Estimate of any current year (FY00) cost: \_\_\_\_\_

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

CSSB 24 (FIN) AM makes a number of significant changes to the way regulations are adopted by the Departments of Natural Resources and Environmental Conservation, and parts of the Department of Fish and Game (Habitat and Restoration). These changes would take effect July 1, 2000.

Of significance to the Department of Law from a cost perspective are four of the proposed changes (unless an exemption applies) for the designated state agencies in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment if rewriting substantially changes the substance in proposed regulations after initial notice and public comment has occurred; (3) a new standard for regulation challenges in court

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370  
 Division Attorney General's Office Date/Time 1/24/00, 12:42 PM  
 Approved by Commissioner *Red* Bruce M. Botelho, Attorney General Date 1/24/00  
 Agency Department of Law

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ANALYSIS CONTINUATION

based on if the proposed regulation uses an approach that causes more than the least necessary intrusion on the rights and property of the persons affected by the regulation, and if the regulation is not required by substantial state interest; and (4) a requirement that regulations be within the intent of the statute to be valid. While there are exceptions for some situations, many state regulations by the designated agencies would be covered by these provisions.

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to the designated state agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations of those designated agencies when they are challenged in court.

The Department of Law anticipates that a significant increase in the level of litigation attempting to overturn regulations would result. Quantifying costs and benefits of regulations for these designated state agencies will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least necessary intrusion possible on rights and property of affected persons would also be open to various interpretations in many cases. For example, it is difficult to determine even who might be affected in the case of many natural resources regulations, and proving a substantial state interest in using a particular scheme, would almost certainly involve extensive litigation because of the economic interests at stake in natural resource decisions of the designated state agencies. While the version that passed out of the Senate contains several exemptions, the Department of Law will still have to advise designated state agencies on whether the exemption applies in a particular case and the record necessary to support a decision made regarding an exemption, and to defend any court challenges regarding those exemptions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 20 percent increase in time for regulations-related projects for these designated agencies would result from this bill. At 20 percent, an additional 1500 hours would be required, a total of 1 full-time equivalent attorney. In addition, many of the cases in litigation would require the use of "outside" expert economists.

Based on the department's FY01 standard full-time equivalent attorney cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 1 FTE attorney is \$134,712. An additional \$5,000 is included for direct case costs, \$6,500 for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

# FISCAL NOTE

No: 51  
 Bill Version: HCS CSSB 24 (JUD)  
 (H) Publish Date: 4/12/00

## STATE OF ALASKA 2000 LEGISLATIVE SESSION

Revision Date: 24-Jan-00 Dept Affected: Natural Resources  
 Title: An Act relating to the adoption, amendment, BRU: Management & Administration  
repeal, legislative review, and judicial review of regulations... Component: Commissioner's Office  
 Sponsor: Senator DONLEY  
 Requestor: (H)JUD Component Serial No. #423

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	164.2	54.9	81.6	88.3	81.6	88.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>	<b>88.3</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES (fund code)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	164.2	54.9	81.6	88.3	81.6	88.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>	<b>88.3</b>

Estimate of any current year (FY2000) cost: \$ none

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 Department of Natural Resources initiates regulations projects each year (in this fiscal year we have 13 projects in various stages). The projects can be highly complex or merely housekeeping. Some can be highly controversial and require multiple public notice and hearings. Many will require a cost/benefit analysis or a detailed, considered approach to waiving a cost/benefit analysis. DNR will contract for a professional cost/benefit analysis as the need arises. The department believes that it would not be able to hire an economist proficient in all of the issues involved in oil and gas, land, mining, parks, forestry, etc. We estimate that "prohibitive" cost for a cost/benefit analysis is anything over \$40,000. It is very difficult to estimate how much the required written reports, time limits, decisions on whether or not to perform a cost/benefit analysis, will add to the cost of a regulation project. We have added nothing in the fiscal note but believe the cost may be high.

Prepared by: Carol Carroll, Director Phone: 465-4730  
 Division: Support Services Date: 24-Jan-00  
 Approved by Commissioner: John Shively Date: 1-24-2000  
 Agency: Natural Resources

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# FISCAL NOTE

Bill Version: HCS CSSB 24 (JUD)  
(H) Publish Date: 4/12/00

## STATE OF ALASKA 1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title "An Act relating to regulations; amending Rule 65, Alaska Rules of Civil Procedure; and ... effective date."	BRU	Civil Division
Sponsor Senator Donley	Component	Legislation/Regulations
Requester House Judiciary Committee	Component Serial No.	2209

### Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	114.0	114.0	114.0	114.0	114.0	114.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	45.9	45.9	45.9	45.9	45.9	45.9
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>171.3</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>

<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

### FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	171.3	164.8	164.8	164.8	164.8	164.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>171.3</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>	<b>164.8</b>

Estimate of any current year (FY00) cost: \_\_\_\_\_

### POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 CSSB 24 (FIN) AM makes a number of significant changes to the way regulations are adopted by the Departments of Natural Resources and Environmental Conservation, and parts of the Department of Fish and Game (Habitat and Restoration). These changes would take effect July 1, 2000.

Of significance to the Department of Law from a cost perspective are four of the proposed changes (unless an exemption applies) for the designated state agencies in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment if rewriting substantially changes the substance in proposed regulations after initial notice and public comment has occurred; (3) a new standard for regulation challenges in court

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370  
 Division Attorney General's Office Date/Time 1/24/00, 12:42 PM  
 Approved by Commissioner *Red* Bruce M. Botelho, Attorney General Date 1/24/00  
 Agency Department of Law

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COMMITTEE COPY

ANALYSIS CONTINUATION

based on if the proposed regulation uses an approach that causes more than the least necessary intrusion on the rights and property of the persons affected by the regulation, and if the regulation is not required by substantial state interest; and (4) a requirement that regulations be within the intent of the statute to be valid. While there are exceptions for some situations, many state regulations by the designated agencies would be covered by these provisions.

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to the designated state agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations of those designated agencies when they are challenged in court.

The Department of Law anticipates that a significant increase in the level of litigation attempting to overturn regulations would result. Quantifying costs and benefits of regulations for these designated state agencies will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least necessary intrusion possible on rights and property of affected persons would also be open to various interpretations in many cases. For example, it is difficult to determine even who might be affected in the case of many natural resources regulations, and proving a substantial state interest in using a particular scheme, would almost certainly involve extensive litigation because of the economic interests at stake in natural resource decisions of the designated state agencies. While the version that passed out of the Senate contains several exemptions, the Department of Law will still have to advise designated state agencies on whether the exemption applies in a particular case and the record necessary to support a decision made regarding an exemption, and to defend any court challenges regarding those exemptions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 20 percent increase in time for regulations-related projects for these designated agencies would result from this bill. At 20 percent, an additional 1500 hours would be required, a total of 1 full-time equivalent attorney. In addition, many of the cases in litigation would require the use of "outside" expert economists.

Based on the department's FY01 standard full-time equivalent attorney cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 1 FTE attorney is \$134,712. An additional \$5,000 is included for direct case costs, \$6,500 for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

# FISCAL NOTE

No: 49

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

Bill Version: HCS CSSB 24 (JUD)  
(H) Publish Date: 4/12/00

Revision Date/Time (Note if correction) 01/25/00 11:00 AM Dept. Affected Environmental Conservation  
 Title The Alaska Regulations Reform Act BRU Administration  
 Component Commissioner's Office  
 Sponsor Senators Donley, Taylor  
 Requester House Judiciary Component No. 633

### Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	148.9	148.9	148.9	148.9	148.9	148.9
Travel	20.0	20.0	20.0	20.0	20.0	20.0
Contractual	50.6	49.6	49.6	49.6	49.6	49.6
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	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
<b>TOTAL OPERATING</b>	<b>242.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>
<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

### FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	242.5	223.5	223.5	223.5	223.5	223.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>242.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>	<b>223.5</b>

Estimate of any current year (FY2000) cost: 0.0

#### POSITIONS

Full-time	3	3	3	3	3	3
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: Janice Adair, Director Phone 269-7644  
 Division Environmental Health Date/Time 1/25/00 11:34 AM  
 Approved by Commissioner *K. J. ...* Date 1-26-00  
 Agency Department of Environmental Conservation

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As passed by the Senate Finance Committee, CSSB 24(FIN) contains several sections that are of concern to DEC, which, taken together will result in significant costs to the department that are not reflected in the fiscal note adopted by the Committee.

Section 3 requires that a regulation take a "reasonable approach within the intent of the statute." This is a difficult if not impossible thing to measure: what is reasonable to one person may be completely unreasonable to another. This is particularly true in natural resource management where regulatory requirements are often compromises. This section will also require the department to research legislative intent for old statutes. Many of DEC's public health statutes have been on the books since 1948. This section, coupled with Sections 10 and 14, will require a paralegal and an administrative clerk, and associated costs such as supplies, travel, and equipment.

Section 4 requires we do a cost-benefit analysis. The analysis is to calculate all the costs and all the benefits to the public of a regulatory proposal. Without any parameters as to what costs and what benefits must be considered, the department will be tasked with trying to come up with a comprehensive list. To the extent the department fails to consider some cost or some benefit, parties will seek judicial relief and regulatory projects will be stopped until the department recalculates the cost-benefit analysis. Some projects that may need DEC regulatory action, like site-specific criteria for a water quality standard, could have national significance and thus the "public" cost-benefit analysis would include national costs and national benefits. Thus, groups from outside Alaska could easily weigh in on our regulatory programs.

Many costs and benefits that are aesthetic are quantifiable but at a great cost. As part of the Exxon Valdez Natural Resource Damage Assessment, \$3 million was spent to do a "loss of passive use" benefit study, and that was only one of the benefits that was calculated for the damage assessment.

This section also requires that we "weigh" the costs and the benefits before adopting a regulation. Because the costs and benefits do not have to have dollar amounts attached to them, it is unclear how we would weigh and compare those non-quantified costs and benefits.

Many of the exemptions provided in this section would not cover several DEC regulations, particularly those that deal with public health, e.g. food, seafood processing, public sanitation. In addition, we do not believe any of the oil spill response and prevention regulations will be exempted from the cost-benefit analysis requirement.

This section will require the department employ an economist to prepare the cost-benefit analyses. Additional costs include travel, supplies, and equipment associated with the position.

Section 10 was changed by the Senate Finance Committee to make it clear that regulations would need to be public noticed again only if the changes "substantially" changed the substance of the regulations. We believe this clarification was an important

amendment to make, and should reduce, though not eliminate, the need for successive public comment periods and associated advertising costs. We remain concerned however that the interplay between this section and Section 14, which establishes a two-year deadline on regulatory adoption will result in significant conflicts.

Section 14 will also preclude DEC from using the negotiated rule making process that was adopted into statute last session. Regulations cannot be quickly written by committee.

Section 15 is the other very problematic and very expensive section of this bill. Regulations cannot be held valid unless they cause the least necessary intrusion on the rights and property of persons affected by the regulation. This is a very broad statement – many, many people may be affected by a regulation. Given that natural resource regulations are compromise regulations, there will always be some side that feels the regulation is not the “least necessary intrusion”. For example, most of DEC's regulations allow for activities that disrupt a person's enjoyment of the water, air, or land of the state and they could likely successfully argue that the regulations are therefore not the “least intrusion necessary.” Likewise, the public health regulations adopted by the department “intrude” on some groups in order to protect the health of others.

The state has the burden to prove that its regulations are the least intrusive. The fact is that the department's regulations will be intrusive to one group and not intrusive to another. That is the nature of environmental regulation. This will cause the department to be involved in a great deal of litigation on the intrusiveness of our regulations. Ultimately, the courts will determine our regulatory programs. This section will result in increased costs for the Department of Law.

**Personal Services New Position Detail**  
 Department of Environmental Conservation

DRAFT

Page 4 of 4

Scenario: FY2001 Legislative Fiscal Note Info  
 Component: Office of the Commissioner (633)  
 BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#001	Economist I	FT	A	GG	Juneau	2A	18 B / C	12.0		45,798	0	0	14,999	60,797
Justification: No justification provided.							Funding Detail: 1004 General Fund Receipts 100.00% 60,797 Total Funding: 100.00% 60,797							
18-#002	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B / C	12.0		23,802	0	0	10,665	34,467
Justification: No justification provided.							Funding Detail: 1004 General Fund Receipts 100.00% 34,467 Total Funding: 100.00% 34,467							
18-#003	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B / C	12.0		39,792	0	0	13,816	53,608
Justification: No justification provided.							Funding Detail: 1004 General Fund Receipts 100.00% 53,608 Total Funding: 100.00% 53,608							

**Component Summary:**

Total New Positions: 3

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	148,872
<b>Total Funding:</b>	<b>100.00%</b>	<b>148,872</b>

Note: If a position is split, an asterisk (\*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (\*\*) will appear in this column.

# FISCAL NOTE No. 48

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

Bill Version: CSSB 24 (FIN)

(S) Publish Date: 4-8-99

Revision Date/Time (Note if correction) _____	Dept. Affected	Office of the Governor
Title <u>Relating to regulations; relating to administrative</u>	BRU	<u>Governmental Coordination</u>
<u>adjudications; amending Rule 65, Alaska Rules of Civil</u>	Component	<u>Governmental Coordination</u>
Sponsor <u>Senator Donley</u>	_____	
Requester <u>Senate Finance</u>	Component Serial No.	<u>18</u>

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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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	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) 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)

Prepared by Gabrielle LaRoche, Acting Director Phone 465-3562

Division Governmental Coordination Date/Time 4/5/99 11:22 AM

Approved by Jim Ayers, Chief of Staff Date 4/5/99

Agency Office of the Governor

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# FISCAL NOTE No. 47

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

Bill Version: CSSB 24 (FIN)  
 (S) Publish Date: 4-8-99

Revision Date/Time (Note if correction) 4/2/99 Dept. Affected Office of the Governor  
 Title Alaska Regulations Reform Act BRU Commissions and Special Offices  
 Component Human Rights Commission  
 Sponsor Senator Donley  
 Requester Senate Finance Component Serial No. 1

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill will have no fiscal impact on this agency.

Prepared by Paula M. Haley, Executive Director *Paula M. Haley* Phone 276-7474 x241  
 Division Human Rights Commission Date/Time 4/2/99 4:27 PM  
 Approved by David R. Anderson Date \_\_\_\_\_  
 Agency Office of the Governor

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# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

No. 46  
Bill Version: CSSR 24(FIN)  
(S) Publish Date: 4-6-99

Revision Date _____	Dept. Affected <u>Alaska Court System</u>
Title <u>Regulatory Reform Act</u>	BRU <u>Alaska Court System</u>
Sponsor <u>Senator Donley</u>	Component <u>Trial Courts</u>
Requester <u>Senate Finance</u>	Component Serial No. <u>769</u>

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	•	•	•	•	•	•

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	•	•	•	•	•	•
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	•	•	•	•	•	•

Estimate of any current year (FY99) cost: None

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

See attached analysis

Prepared by:	<u>Doug Wooliver, Administrative Attorney</u>	Phone:	<u>264-8265</u>
Agency:	<u>Alaska Court System</u>	Date/Time:	<u>3/29/99 10 13 AM</u>
Approved by:	<u>Stephanie J. Cole, Administrative Director</u>	Date:	<u>3/29/99</u>
Agency:	<u>Alaska Court System</u>		

#46

Alaska Court System  
Fiscal Analysis  
CSSB 24(FIN) Work Draft 1-LS0274/X, Bannister, 3/25/99  
The Alaska Regulations Reform Act

Under current law, state agency regulations will withstand court challenges as long as they have been properly adopted and are consistent with their authorizing statutes. Because this standard is deferential to the agency, it is difficult to successfully challenge regulations in court. Section 15 of the current work draft to SB 24 changes this standard into a two-part test. (This new standard will only apply to regulations amended or adopted by the Department of Environmental Conservation, the Department of Natural Resources, and habitat and restoration programs within the Department of Fish and Game.) The first part requires that each affected regulation cause "the least necessary intrusion on the rights and property of the persons affected by the regulation." The second part requires that the regulation be "required by a substantial state interest." The substantial state interest standard is new and it is not clear how difficult the state's burden will be. What is clear, however, is that this two-part test is substantially less deferential to the state than the current standard. Because of this, it is anticipated that agency regulations will be easier to successfully challenge and that caseloads in this area will go up. However, the extent of that increase is currently too speculative to support a fiscal note. Should that increase prove significant, the court system may return to the legislature for additional funding.

FISCAL NOTE

STATE OF ALASKA  
1999 Legislative Session

No. 45  
Bill Version: CSSB 24 (FIN)  
(S) Publish Date: 4-6-99

Revision Date: 03/01/99  
Title: "An Act relating to regulations; amending Rule 65,  
Alaska Rules of Civil Procedure; and ... effective date."  
Sponsor: Senator Donley  
Requester: \_\_\_\_\_

Dept. Affected Law  
BRU Civil Division  
Component \_\_\_\_\_  
Legislation/Regulations \_\_\_\_\_  
Component Serial No. 2209

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0	40.0	40.0	40.0	40.0	40.0
Travel	0.0	1.5	1.5	1.5	1.5	1.5
Contractual	0.0	23.5	23.5	23.5	23.5	23.5
Supplies	0.0	0.8	0.9	0.9	0.9	0.9
Equipment	0.0	6.5	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grant's & 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
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>72.3</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES [ ]						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0	28.9	26.3	26.3	26.3	26.3
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1007 Interagency Rcpts	0.0	43.4	39.5	39.5	39.5	39.5
<b>TOTAL</b>	<b>0.0</b>	<b>72.3</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>	<b>65.8</b>

Estimate of any current year (FY99) costs: 0.0

POSITIONS

Full-time					
Part-time		1	1	1	1
Temporary					

ANALYSIS: *(Attach a separate page if necessary)*

Prepared By: SENATE FINANCE COMMITTEE

  
SENATOR SEAN PARNELL, CO-CHAIR

Date: 4/1/99  
Phone: 465-2995

  
SENATOR JOHN TORCELSON, CO-CHAIR

Date: 4/1/99  
Phone: 465-2828

FISCAL NOTE

STATE OF ALASKA  
1999 Legislative Session

Revision Date: 04/01/99  
Title: Alaska Regulations Reform Act  
Sponsor: Senator Donley  
Requester: \_\_\_\_\_

No. 44  
Bill Version: CSSB 24 (FIN)  
(S) Publish Date: 4-6-99

Dept. Affected: Fish and Game  
BRU: Habitat and Restoration  
Component: Permitting/Title 16

Component Serial No. 2050

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0					
Travel	0.0					
Contractual	0.0					
Supplies	0.0	2.0	2.0	2.0	2.0	2.0
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts	0.0					
1003 GF Match	0.0	2.0	2.0	2.0	2.0	2.0
1004 GF	0.0					
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
<b>TOTAL</b>	<b>0.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>	<b>2.0</b>

Estimate of any current year (FY99) costs: 0.0

POSITIONS

POSITIONS	FY 00	FY01	FY02	FY03	FY04	FY05
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

Prepared By: SENATE FINANCE COMMITTEE

  
SENATOR SEAN PARNELL, CO-CHAIR

Date: 4/1/99  
Phone: 465-2995

  
SENATOR JOHN TORGERSON, CO-CHAIR

Date: 4/1/99  
Phone: 465-2828

FISCAL NOTE

STATE OF ALASKA  
1999 Legislative Session

Revision Date: 04/01/99  
Title: Alaska Regulations Reform Act

Sponsor: Senator Donley  
Requester: \_\_\_\_\_

No. 43  
Bill Version: CSSB 24 (FIN)  
(S) Publish Date: 4-6-99

Dept. Affected Environmental Conservation  
BRU Administration  
Component Commissioner's Office

Component Serial No. 633

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0					
Travel	0.0					
Contractual	0.0	35.8	34.8	34.8	34.8	34.8
Supplies	0.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>40.8</b>	<b>39.8</b>	<b>39.8</b>	<b>39.8</b>	<b>39.8</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0	40.8	39.8	39.8	39.8	39.8
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
<b>TOTAL</b>	<b>0.0</b>	<b>40.8</b>	<b>39.8</b>	<b>39.8</b>	<b>39.8</b>	<b>39.8</b>

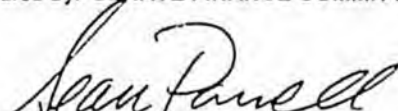
Estimate of any current year (FY99) costs: 0.0

POSITIONS

Full-time	FY 00	FY01	FY02	FY03	FY04	FY05
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared By: SENATE FINANCE COMMITTEE

  
SENATOR SEAN PARNELL, CO-CHAIR

Date: 4/1/99  
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SENATOR JOHN TORGERSON, CO-CHAIR

Date: 4/1/99  
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FISCAL NOTE

STATE OF ALASKA  
1999 Legislative Session

Revision Date: 04/01/99  
Title: Alaska Regulations Reform Act  
Sponsor: Senator Donley  
Requester: \_\_\_\_\_

No. 42  
Bill Version: CSSB 24(FIN)  
(S) Publish Date: 4-6-99

Dept. Affected Natural Resources  
BRU Management & Administration  
Component Commissioner's Office

Component Serial No. 423

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY01	FY02	FY03	FY04	FY05
Personal Services	0.0					
Travel	0.0					
Contractual	0.0	82.1	27.5	27.5	27.5	27.5
Supplies	0.0					
Equipment	0.0					
Land & Structures	0.0					
Grants & Claims	0.0					
Miscellaneous	0.0					
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>82.1</b>	<b>27.5</b>	<b>27.5</b>	<b>27.5</b>	<b>27.5</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 00	FY01	FY02	FY03	FY04	FY05
1002 Federal Receipts	0.0					
1003 GF Match	0.0					
1004 GF	0.0	82.1	27.5	27.5	27.5	27.5
1005 GF/Program Receipts	0.0					
1037 GF/Mental Health	0.0					
1091 Designated Program Receipts	0.0					
<b>TOTAL</b>	<b>0.0</b>	<b>82.1</b>	<b>27.5</b>	<b>27.5</b>	<b>27.5</b>	<b>27.5</b>


Estimate of any current year (FY99) costs: 0.0

POSITIONS

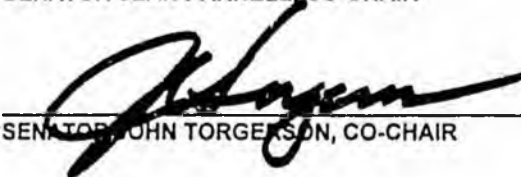
Full-time						
Part-time						
Temporary						

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## HCS CSSB 24 (JJD) - An Act relating to regulations

### POSSIBLE OUTCOMES AND IMPACTS

- I. **NEW STATE LEGISLATION OR STATE BUDGET CHANGES** - As a result of new state legislation or to respond to changes in program receipt authority in the operating budget, DEC may need to revise fee regulations. Imagine a situation in which DEC notices the fee regulation, but later finds a calculation error. Even if correcting the error would decrease the fees the public would have to pay, the regulations would have to be renoticed because the fee reduction would be a substantial change. Because DEC cannot collect fees that have not been established in regulation, the requirement for additional notice would mean that the new fees would not be in effect by the start of the new fiscal year.
- II. **LEGAL ADVICE** - When the Department of Law conducts a legal review of DEC's proposed regulations, it may find a legal problem and recommend a modification to conform the regulations to state statute. Under the provisions of SB 24, DEC would have to conduct a whole new round of public comments in order to modify a regulation to conform to state statute.
- III. **LEGAL UNCERTAINTY FOR DEVELOPMENT PROJECTS** - SB 24 could easily lead to situations in which legal uncertainty would be created for development projects.

For instance, suppose that DEC wishes to adopt a site-specific criterion as part of the state water quality regulations and the new regulation is necessary for a mining company to begin operations. In public comments, scientific information is offered that requires an adjustment in the amount of the allowable contaminant. DEC makes the adjustment in the adopted regulations, but does not renotice the regulation. An environmental group (or a neighboring landholder) could sue on the basis that the slight adjustment was a substantial change in the regulation. Regardless of its outcome, the resulting litigation would delay the opening of the mine, or perhaps prevent the mine from operating at all if market conditions changed adversely during litigation.

- IV. **FEDERAL FUNDING COULD BE PLACED IN JEOPARDY** - Although SB 24 provides exemptions for regulations necessary to meet federal "requirements" we are uncertain how this would apply to the standards DEC must meet to remain eligible for continued receipt of federal money, since DEC is not required by law to maintain this eligibility. For example, in order to retain state primacy over the drinking water

program, DEC's drinking water program needs to be at least as stringent as the requirements of the Safe Drinking Water Act and related federal regulations.

In the public notice version of recent changes in regulations for the drinking water program, DEC inadvertently omitted special monitoring requirements for sodium (40 CFR 141.41). After the public comment period had ended and during the agency review, DEC inserted the special monitoring requirements for sodium required by the federal law. Although the public notice had informed the public that the regulations were being redrafted to remain as stringent as the federal EPA Safe Drinking Water regulations, this change was substantive and would have required under provisions of SB 24.

The drinking water regulations project was a large one (about 400 pages) and had a tight review timeline. If renoticing of this regulations project had been required, state primacy would have been jeopardized and the state would have lost at least 20 percent of \$7.1 million in federal funding (Alaska Drinking Water Fund) in the first year, as well as other contingent funds.

V. **CYCLICAL NATURE OF SB 24's PUBLIC NOTICE REQUIREMENT** - The cyclical nature of SB 24's public notice requirements and the requirement for continuing renoticing when changes are made could lead to delays in the implementation of new and revised regulations.

For example, in 1998, DEC went out to public comment on its revision of the domestic wastewater regulations. The public comment version of the draft regulations required engineers to submit the as-built plans of constructed wastewater disposal systems to DEC within 30 days after completion the project. Based on public comments received from engineers, DEC changed this 30-day requirement to a 90-day requirement. Under the provisions of SB 24, this single change (loosening the requirement in response to the regulated public) would have required DEC to go out to public notice for comment once again before the regulations were adopted by the commissioner.

This same regulations revision project also included changes to DEC's certified installer program, a program that allows non-engineers to install certain conventional onsite systems. DEC wanted to expand the types of sites where certified installers could install those systems to include not only single-family homes and duplexes, but also small commercial facilities. DEC also wanted to have the regulations in effect so that installers could begin installation of the onsite systems for small commercial facilities during the 1999 construction season.

In response to the Department of Law's review of the regulations, the commissioner readopted them with a number of changes that served to clarify the meaning of the regulations but that could be labeled as substantive. For example, the requirement that a homeowner could install a conventional onsite system to serve "that person's single-family residence" was changed to allow installation in "that individual's owner-occupied single-family home." SB 24 would have required DEC to go out to public notice once again before the regulations could have been readopted by the commissioner. As a result, certified installers would not have been allowed to install conventional onsite systems for small commercial facilities during the summer of 1999.

- VI. **PRACTICAL PROBLEMS** - One example of regulations that would have required renounce under the proposed language of SB 24 is the recent Underground Storage Tank (UST) regulations (18 AAC 78.017). The original notice of regulations amended the inspection schedule for USTs and provided for phased inspection dates based on the last digit in a facility's identification number. Under this proposed regulation, as well as under the regulations existing at the time, inspections could have been due as early as June 30 or as late as August 31 of the year the inspection was required.

Before it adopted the regulations, DEC became aware that the proposed schedule was going to create hardships for a number of regulated facilities, particularly those located further north, since inspections often could not take place before June 30, or even July 31, because of the frozen ground. As a result, DEC revised the language of 18 AAC 78.017 and established a new deadline of August 31. The regulations were filed on March 17, 2000, and will be effective April 16, 2000, barely in time for the regulated public to make appropriate arrangements for UST inspections during the 2000 construction season. If DEC had been required to renounce this simple regulation change prior to adoption, at least another 45 days, and more likely in excess of 60 days, would have been added to the process. The regulations would then not be effective until sometime in June, which could cause potential confusion and possibly unnecessary expense for members of the regulated public trying to comply with the regulations.



# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

### SPONSOR STATEMENT HOUSE CS FOR CS FOR SENATE BILL 24 (JUD)

Senate Bill 24 reforms how administrative regulations are adopted by the Department of Environmental Conservation (DEC) by creating a pilot program that places reasonable new limits on the power of the DEC to impose new regulations on Alaskans.

Senate Bill 24 pertains only to the Department of Environmental Conservation. Its original scope has been reduced dramatically in an effort to single out a department where the measures required in SB 24 could serve as a pilot program. However, SB 24 is written in such a way so as to make it easy to broaden its applicability to other departments in the future.

SB 24 increases opportunities for public notice and comment regarding adoption of DEC regulations when there is a substantial change to previously proposed regulations. Also, SB 24 requires that the DEC, within 90 days after the effective date of the statute or amendment, must publish notice on its intent to promulgate regulations for said statute or amendment. It also sets a 2-year time limit for the adoption of regulations.

Regulations adopted by state agencies have the effect of law similar to statutes adopted by the legislature. The regulation adoption process however has very few of the safeguards and opportunities for public input that the legislative process has. Unlike statutes which require a series of public hearings in the state House and Senate, regulations can be adopted with a single notice and hearing which may or may not even reflect the actual content of the final version of the regulation.

Once adopted, state regulations can only be amended by the agency that adopted them or by the adoption of a statute that somehow directly conflicts with the regulation. This makes state regulations in Alaska very hard to amend or appeal once in place. Entrenched state bureaucrats, with little incentive to be responsive to the public, often have more real control over public policy through regulations than elected state officials.

Senate Bill 24 begins to make state regulators more accountable to the public and to elected officials by placing reasonable and needed restraints on the ever increasing number of state regulations Alaskans live with.

DD/hrn  
4/13/00

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus  
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**SENATOR DAVE DONLEY**  
ALASKA STATE LEGISLATURE

**SECTIONAL ANALYSIS**  
**HOUSE CS FOR CS FOR SENATE BILL 24 (JUD)**  
1-LSO274\L (4/13/00)

**Section 1** – Provides that this act shall be called the *Alaska Regulations Reform Act*.

**Section 2** – Amends 44.62.190(a) by recognizing the advances in technology away from broadcast medium and print to online services. It deletes reference to a broadcast notice providing the name and the date of the publication where the full text of a public notice can be found. If left in the law, this section would defeat the purpose of abbreviating public notices and allowing for the increasing use of internet capabilities. This section broadens the opportunities for the public to receive notice beyond mail or publication.

**Section 3** – Substitutes the word “furnish” for “mail” in order to conform Article 4 of the Administrative Procedure Act – dealing with the procedure for adopting regulations.

**Section 4** – AS 44.62 is amended by adding a new section—AS 44.62.213 *Additional procedural requirements for certain state agencies*. This section is the corpus of the pilot program created in this legislation. This section sets out additional procedural requirements for the DEC, but not for regulations produced by any DEC board, commission or any other organization within the DEC whose members are confirmed by the legislature (as set out in subsection (a)).

**Subsection (b)**--In addition to the notice requirements currently in statute under AS 44.62.190 (*Notice of proposed action*), SB 24 adds several more requirements:

- Furnish notice to persons who have provided comment to the state agency on the proposed adoption, amendment or repeal of a regulation;
- Publish the notice on the internet;

**Subsection (c)**— This subsection’s language mirrors the language currently in statute under AS 44.62.200(b) with the exception of the word “*original*” which is deleted from between the words “*the*” & “*notice*” on page 4, line 30. By deleting

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the word "*original*" this section's requirements apply to all subsequent notices, as well as the original.

**Subsection (d)**— If an agency to which this section applies rewrites a proposed regulation, an amendment of a regulation, or an order of repeal after complying with AS 44.62.190, 44.62.200 & 44.62.210, and if the rewriting substantially changes the content of the original regulation before adoption, the state agency shall provide notice and opportunity for public comment under AS 44.62.190(a)(2)–(8), 44.62.200, 44.62.210 and (b) of this section.

**Subsection (e)** – If an agency to which this section applies fails to meet the requirements of (d) of this section because they feel that the change is not substantial, the agency must:

- Prepare a written explanation of the reasons why the requirement of (d) of this section does not apply; and
- The lieutenant governor shall publish the state agency's explanation in the Alaska Administrative Journal with the text or a summary of the text of the regulation, amendment, or order of repeal.

**Subsection (f)**— This subsection exempts emergency regulations, regulations necessary to meet federal requirements, or regulations that reduce the regulatory burden of the public from the provisions of (d) & (e) of this section.

**Subsection (g)**— This subsection requires a state agency to which this section applies to publish a notice, as dictated in AS 44.62.190(a)(1), within 90 days after the date of enactment that the agency will or will not propose and adopt regulations to implement the statute, if it is not expressly required to prepare regulations within said statute.

**Subsection (h)**— If a state agency decides that it does not find it necessary to promulgate regulations presently, but subsequently finds that regulations are necessary, the agency shall, within 90 days of the revised finding, publish notice of the revised finding.

**Subsection (i)** -- Creates a two year time limit for the adoption of regulations for state agencies to which this section applies (the DEC).

**Subsection (j)** -- If, after 21 months, the agency (DEC) determines that the adoption of the regulations will not be completed within the two year time limit of (i), the state agency shall prepare a written report containing the reasons for the failure and will submit the report before the expiration

of the two-year time limit to the governor, president of the senate, speaker of the house, and the Administrative Regulation Review Committee.

**Subsection (K)** – a court may not hold a regulation invalid for failure to comply with (g) – (j)

**Section 5-** Repeals AS 44.62.190(d). **Should have been deleted with the changes made in House Judiciary—this is a technical oversight that needs to be corrected.**

**Section 6 – 11** — These sections of the bill set the sunset clause for sections 1 & 4 at five years (July 1, 2005) — section 4 creates the pilot program for the promulgation of regulations. These sections also set the applicability date of this legislation at July 1, of 2,000.