

SB

24

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 2/23/99

FURTHER: 3/31/99

DATE TURNED IN TO OFFICE: 1 April 99

Finance Committee considered SENATE BILL NO. 24

"An Act relating to the adoption, amendment, repeal, legislative review, and judicial review of regulations; and amending Rule 202, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS SB 24 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s) Forth coming
- adopt Letter of Intent by _____ CS
- further referral to the _____

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	✓	TIONS	NR	DNP	AM
<u>John L. ...</u>	✓	<u>John L. ...</u>	✓		
		<u>Mike Kelly</u>	✓		
		<u>John ...</u>	✓		
		<u>Gary ...</u>	✓		
Co-Chair: <u>John L...</u>	✓	Co-Chair:			
Co-Chair: <u>John ...</u>	✓	Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<u>Forth coming</u>			
<u>FINS</u>			
<u>DEC</u>			
<u>DFG</u>			
<u>LAW</u>			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE FINANCE COMMITTEE REPORT

DATE: 2/23/99

FURTHER: 3/31/99

DATE TURNED
IN TO OFFICE: 1 April 99

Finance Committee considered

SENATE BILL NO. 24

"An Act relating to the adoption, amendment, repeal, legislative review, and judicial review of regulations; and amending Rule 202, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS SB 24 (FIN)
- adopt previous _____ CS _____
- attached amendment(s) forth coming CS
- adopt Letter of Intent by _____
- further referral to the _____

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS		IONS	NR	DNP	AM
<u>done only</u>	<input checked="" type="checkbox"/>	<u>John L. ...</u>	<input checked="" type="checkbox"/>		
		<u>Mike ...</u>	<input checked="" type="checkbox"/>		
		<u>John ...</u>	<input checked="" type="checkbox"/>		
		<u>George ...</u>	<input checked="" type="checkbox"/>		
Co-Chair: <u>John L. ...</u>	<input checked="" type="checkbox"/>	Co-Chair:			
Co-Chair: <u>John ...</u>	<input checked="" type="checkbox"/>	Co-Chair:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<u>forth coming</u>			
<u>FINS</u>			
<u>DEC</u>			
<u>DFG</u>			
<u>LAW</u>			

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

S.0 3/31/99

STATE OF ALASKA
1999 Legislative Session

BILL NO. CSSB 24(FIN)

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

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

Sponsor: Senator Donley
Requester: _____

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					
TOTAL OPERATING	0.0	82.1	27.5	27.5	27.5	27.5

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	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					
TOTAL	0.0	82.1	27.5	27.5	27.5	27.5

Estimate of any current year (FY99) costs: 0.0


POSITIONS						
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

3/31/99

STATE OF ALASKA
1999 Legislative Session

BILL NO. CSSB 24(FIN)

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

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

Sponsor: Senator Donley
Requester: _____

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					
TOTAL OPERATING	0.0	40.8	39.8	39.8	39.8	39.8

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					
TOTAL	0.0	40.8	39.8	39.8	39.8	39.8

Estimate of any current year (FY99) costs: 0.0

POSITIONS

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

3/31/99

STATE OF ALASKA
1999 Legislative Session

BILL NO. CSSB 24(FIN)

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

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

Sponsor: Senator Donley
Requester: _____

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					
TOTAL OPERATING	0.0	2.0	2.0	2.0	2.0	2.0

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	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					
TOTAL	0.0	2.0	2.0	2.0	2.0	2.0

Estimate of any current year (FY99) costs: 0.0

POSITIONS

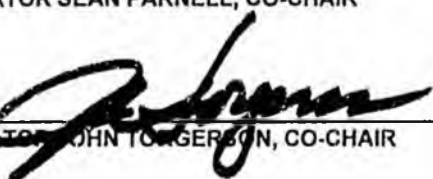
Full-time						
Part-time						
Temporary						

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

3/31/99

STATE OF ALASKA
1999 Legislative Session

BILL NO. CSSB 24(FIN)

Revision Date: 04/01/99
 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 _____
 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
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	0.0	72.3	65.8	65.8	65.8	65.8

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	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
TOTAL	0.0	72.3	65.8	65.8	65.8	65.8

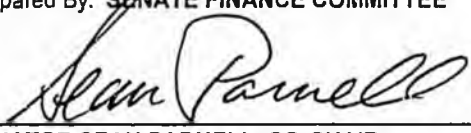
Estimate of any current year (FY99) costs: 0.0

POSITIONS

Full-time	FY 00	FY01	FY02	FY03	FY04	FY05
Part-time		1	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 TORGERSON, CO-CHAIR

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



SENATE FINANCE
COMMITTEE

Amendment Number: 1
Bill Number: CSSB 24(1-LS0274)N
Sponsor: Donley Date: 3/9/99
Logged In By: goltane

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

AMENDMENTS TO CS SB 24 (1-LS0274N)

TO BE INCLUDED IF THE COMMITTEE ADOPTS CSSB 24 (1-LS0274N)

1. **Page 7, line 30**—insert the word “necessary” before “intrusion”
2. **Page 8, line 19**—after the word “board” insert “in which case the state board or state commission will have 30 days after their next meeting to arrive at a final administrative order.”
3. **Page 9, line 30**—insert after the word “conduct” language that states: “until the criminal case has been resolved.”

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

SENATE FINANCE
COMMITTEE

Amendment Number: #2
Bill Number: CSSB 24(FIN)
Sponsor: Torgerson Date: 3/22/99
Logged In By: Baltane

AMENDMENT

OFFERED IN Senate Finance

BY Torgerson

TO: CSSB 24(FIN) (1-LS0274/V)

TECHNICAL AMENDMENTS

1. **ISSUE:** No division of habitat and restoration established by statute.

AMENDMENT:

Page 11, lines 19 - 20:

Delete "the division of habitat and restoration of"

Page 11, line 20, following "Department of Fish and Game":

Insert "for habitat and restoration programs"

2. **ISSUE:** Uses a new term "designated state entity" - defined term is "designated state agency".

AMENDMENT:

Page 9, line 2:

Delete "designated state entity"

Insert "designated state agency"

Amendments
2, 3 & 4
replaced by
5, 6 & 7

SENATE FINANCE
COMMITTEE

Amendment Number: 3
Bill Number: CSSB24(FIN)
Sponsor: Adams Date: 3/22/99
Logged In By: Joltani

AMENDMENT

OFFERED IN SFIN

BY Adams

TO: CSSB 24(FIN) (1-LS0274/V)

1 Page ⁹~~11~~, line ¹⁹~~18~~, following "the Department of Environmental Conservation":

2 Delete "s"

3 Insert "for domestic wastewater disposal under AS 46.03.100 or 46.03.720, food
4 service programs under AS 17.20.180, and solid waste management program under
5 AS 46.03.100:"

6 Page 11, line 19, following "Natural Resources":

7 Delete "s"

8 Insert "s"

9 Page 11, lines 19 - 20:

10 Delete "the division of habitat and restoration of"

11 Page 11, line 20, following "Game":

12 Insert "for habitat and restoration programs"

SENATE FINANCE
COMMITTEE

Amendment Number: 4
Bill Number: CSSB 24 (FIN)
Sponsor: Adams Date: 3/22/99
Logged In By: Goltane

AMENDMENT

OFFERED IN SPIN

BY Adams

TO: CSSB 24(FIN) (1-LS0274/W)

1 Page 5, lines 17 - 30:

2 Delete all material

3 Renumber the following bill sections accordingly.

4 Page 6, line 12 through page 7, line 7:

5 Delete all material

6 Renumber the following bill sections accordingly.

7 Page ~~11~~⁹, following line ~~29~~²⁸:

8 Insert a new bill section to read:

9 **** Sec. 15. PILOT PROJECT ON CERTAIN SUPPLEMENTAL REGULATORY**

10 INFORMATION. (a) Notwithstanding AS 44.62.010 - 44.62.300, a designated state agency
11 shall provide an additional opportunity in accordance with this section for the public to provide
12 additional information on certain regulations to be adopted under AS 44.62 (Administrative
13 Procedure Act).

14 (b) If, after notice of a proposed regulatory action has been given under AS 44.62.190
15 by a designated state agency, the agency makes a substantive change in the proposed regulations

1 for which re-notice would not be required under AS 44.62.190(b), the designated state agency
2 shall do the following:

3 (1) place the changed regulations on the Internet at the time that the regulations
4 are delivered to the Department of Law for approval or disapproval under AS 44.62.060(b);

5 (2) furnish a copy of the changed regulations to

6 (A) each person who provided comment under AS 44.62.210 on the
7 proposed regulations;

8 (B) each person who requests a copy;

9 (C) the staff of the Administrative Regulation Review Committee
10 established under AS 24.20.400;

11 (3) with the changed regulations placed on the Internet under (1) of this
12 subsection and furnished under (2) of this subsection, provide notice of one opportunity for the
13 public to provide additional information on the changed regulations to the designated state
14 agency; the commissioner of the designated state agency shall establish the length of time for the
15 opportunity to provide information under this paragraph, but the time period may not be less than
16 14 days;

17 (4) consider any information provided under (3) of this subsection and make any
18 appropriate additional changes to the regulations before the regulations are approved for filing
19 under AS 44.62.060.

20 (c) No later than January 1, 2004, the designated state agencies shall report to the
21 lieutenant governor and the Administrative Regulation Review Committee on the
22 implementation of the pilot project conducted under this section.

23 (d) This section

1 (1) applies only to the adoption, amendment, or repeal of a regulation by a
2 designated state agency if the original notice under AS 44.62.190 of that proposed regulatory
3 action was given on or after the effective date of this section;

4 (2) does not apply to

5 (A) an emergency regulation being made permanent under AS 44.62.260;

6 or

7 (B) regulations that the commissioner of the designated state agency
8 certifies are necessary to meet an immediate need of the state.

9 (e) In this section,

10 (1) "designated state agency" has the meaning given in AS 44.62.640(c), as
11 amended by sec. 14 of this Act;

12 (2) "regulations" has the meaning given in AS 44.62.640(a)."

13 Renumber the following bill sections accordingly.

14 Page 12, following line 11:

15 Insert a new bill section to read:

16 **"* Sec. 18.** Section 15 of this Act is repealed July 1, 2003."

17 Renumber the following bill section accordingly.

18 Make conforming section amendments in "Applicability" and "Court Rule Change" sections.

SENATE FINANCE ^{Adopted}
COMMITTEE

Amendment Number: 5
Bill Number: CS SB 24(FIN) W
Sponsor: Torgerson Date: 3/23/99
Logged In By: Mindy

AMENDMENT

OFFERED IN Senate Finance Committee

BY Senator Torgerson

TO: CSSB 24(FIN) (1-LS0274/W)

TECHNICAL AMENDMENTS

1. ISSUE: No division of habitat and restoration established by statute.

AMENDMENT:

Page 9, lines 20 - 21:

Delete "the division of habitat and restoration of"

Page 9, line 21, following "Department of Fish and Game":

Insert "for habitat and restoration programs"

2. ISSUE: Uses a new term "designated state entity" - defined term is "designated state agency".

AMENDMENT:

Page 9, line 1:

Delete "designated state entity"

Insert "designated state agency"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	#5
Motion	adopt
<u>Motion by</u>	Parnell
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	W/out objection

Amendment Number: 6
Bill Number: CSSB 24(FIN)W
Sponsor: Adams Date: 3/23/99
Logged In By: Mindy

AMENDMENT

OFFERED IN Senate Finance

BY Senator Adams

TO: CSSB 24(FIN) (1-LS0274/W)

- 1 Page 9, line 19, following "the Department of Environmental Conservation":
- 2 Delete ", "
- 3 Insert "for domestic wastewater disposal under AS 46.03.100 or 46.03.720, food service
- 4 programs under AS 17.20.180, and solid waste management program under AS 46.03.100;"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	#6
Motion	adopt
<u>Motion by</u>	Adams
<u>Objection</u>	
<u>Objection by</u>	Donley
<u>Removed</u>	C
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Lyda Green	N
Senator Randy Phillips	N
Senator Dave Donley	N
Senator Loren Leman	N
Senator Al Adams	N
Senator Gary Wilken	N
Senator Pete Kelly	N
Co-Chair Sean Parnell	N
Co-Chair John Torgerson	N
<u>Tally</u>	
Yea	0 1
Nay	0 8
Absent	0
<u>MOTION</u>	Fail

Amendment Number: 7
Bill Number: CS SB 24(FIN) W
Sponsor: Adams Date: 3/23/99
Logged In By: Mindu

AMENDMENT

OFFERED IN Senate Finance

BY Senator Adams

TO: CSSB 24(FIN) (1-LS0274/W)

1 Page 5, lines 17 - 30:

2 Delete all material

3 Renumber the following bill sections accordingly.

4 Page 6, line 12 through page 7, line 6:

5 Delete all material

6 Renumber the following bill sections accordingly.

7 Page 9, following line 28:

8 Insert a new bill section to read:

9 **** Sec. 14. PILOT PROJECT ON CERTAIN SUPPLEMENTAL REGULATORY**

10 **INFORMATION. (a) Notwithstanding AS 44.62.010 - 44.62.300, a designated state agency**

11 **shall provide an additional opportunity in accordance with this section for the public to provide**

12 **additional information on certain regulations to be adopted under AS 44.62 (Administrative**

13 **Procedure Act).**

1 (b) If, after notice of a proposed regulatory action has been given under AS 44.62.190
2 by a designated state agency, the agency makes a substantive change in the proposed regulations
3 for which re-notice would not be required under AS 44.62.190(b), the designated state agency
4 shall do the following:

5 (1) place the changed regulations on the Internet at the time that the regulations
6 are delivered to the Department of Law for approval or disapproval under AS 44.62.060(b);

7 (2) furnish a copy of the changed regulations to

8 (A) each person who provided comment under AS 44.62.210 on the
9 proposed regulations;

10 (B) each person who requests a copy;

11 (C) the staff of the Administrative Regulation Review Committee
12 established under AS 24.20.400;

13 (3) with the changed regulations placed on the Internet under (1) of this
14 subsection and furnished under (2) of this subsection, provide notice of one opportunity for the
15 public to provide additional information on the changed regulations to the designated state
16 agency; the commissioner of the designated state agency shall establish the length of time for the
17 opportunity to provide information under this paragraph, but the time period may not be less than
18 14 days;

19 (4) consider any information provided under (3) of this subsection and make any
20 appropriate additional changes to the regulations before the regulations are approved for filing
21 under AS 44.62.060.

1 (c) No later than January 1, 2004, the designated state agencies shall report to the
2 lieutenant governor and the Administrative Regulation Review Committee on the
3 implementation of the pilot project conducted under this section.

4 (d) This section

5 (1) applies only to the adoption, amendment, or repeal of a regulation by a
6 designated state agency if the original notice under AS 44.62.190 of that proposed regulatory
7 action was given on or after the effective date of this section;

8 (2) does not apply to

9 (A) an emergency regulation being made permanent under AS 44.62.260;

10 or

11 (B) regulations that the commissioner of the designated state agency
12 certifies are necessary to meet an immediate need of the state.

13 (e) In this section,

14 (1) "designated state agency" has the meaning given in AS 44.62.640(c), as
15 amended by sec. 13 of this Act;

16 (2) "regulations" has the meaning given in AS 44.62.640(a)."

17 Renumber the following bill sections accordingly.

18 Page 10, following line 7:

19 Insert a new bill section to read:

20 **"* Sec. 17. Section 14 of this Act is repealed July 1, 2003."**

- 1 Renumber the following bill section accordingly.
- 2 Make conforming section number amendments in "Applicability" and "Court Rule Changes"
- 3 sections.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 23 24
Amendment	7
Motion	adopt
<u>Motion by</u>	Adams
<u>Objection</u>	
<u>Objection by</u>	Donley
<u>Removed</u>	U
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Leman	-
Senator Al Adams	Y
Senator Gary Wilken	N
Senator Pete Kelly	N
Senator Lyda Green	N
Senator Randy Phillips	N
Senator Dave Donley	N
Co-Chair Sean Parnell	N
Co-Chair John Torgerson	N
<u>Tally</u>	
Yea	0 1
Nay	0 8
Absent	0
<u>MOTION</u>	fail

Amendment Number: 8
Bill Number: CS 5374(FIN)W
Sponsor: Adams Date: 3/2/99
Logged In By: Mindy

AMENDMENT

OFFERED IN Senate Finance

BY Senator Adams

TO: CSSB 24(FIN) (1-LS0274/W)

- 1 Page 2, line 13 through page 3, line 22:
- 2 Delete all material.
- 3 Renumber the following bill sections accordingly.
- 4 Page 4, line 29 through page 5, line 16:
- 5 Delete all material.
- 6 Renumber the following bill sections accordingly.
- 7 Page 7, line 7 through page 8, line 13:
- 8 Delete all material.
- 9 Renumber the following bill sections accordingly.
- 10 Make conforming section number amendments in "Applicability" and "Court Rule Changes"
- 11 sections.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	8
Motion	adopt
<u>Motion by</u>	Adams
<u>Objection</u>	
<u>Objection by</u>	Torgerson
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Randy Phillips	N
Senator Dave Donley	N
Senator Loren Leman	N
Senator Al Adams	N
Senator Gary Wilken	N
Senator Pete Kelly	N
Senator Lyda Green	N
Co-Chair Sean Parnell	N
Co-Chair John Torgerson	N
<u>Tally</u>	
Yea	0 1
Nay	0 8
Absent	0
<u>MOTION</u>	Fail

SENATE FINANCE
COMMITTEE

Amendment Number: 9

Bill Number: SB 24 "W"

Sponsor: Donley Date: 3/24/99

Logged In By: Minda

Withdrawn

SENATE FINANCE COMMITTEE

Conceptual Amendment to CSSB 24 (Version 1-LS0274\W)

Offered By Senator Donley
3/24/99

Insert where appropriate:

“Notwithstanding any other provision of AS 44.62.330-44.62.630 to the contrary, an agency may not order a record to be reopened after the hearing officer has closed the record unless a substantial factual question exists that is necessary to the resolution of the administrative adjudication and the lieutenant governor approves reopening the record.”

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	#9
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	Fridman's
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Withdrawn

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authority to adopt regulations to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective, notwithstanding any other provision of law, unless the regulation takes a reasonable approach within the intent of the statute.

(c) In addition to the requirements of (b) of this section, a designated state agency may not adopt a regulation that changes the intent of the statute being implemented, interpreted, made specific, or otherwise carried out. When challenging a regulation under this subsection, the burden of proof is on the person challenging the regulation to prove that the regulation changes the intent of the statute. (A person may not obtain a temporary restraining order, a preliminary injunction, or a permanent injunction from a court to enjoin the operation of a regulation based on a failure to comply with this subsection.)

copy & move to pgs after line 14 Amend #10

* Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

Sec. 44.62.035. Cost-benefit requirement. (a) When adopting a regulation, an order of repeal, or an amendment to a regulation, unless the adopting state agency head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive or that the costs and benefits cannot be easily determined, a designated state agency shall prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action. The designated state agency shall consider a cost or benefit even if the cost or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state agency is not required to give the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

(b) Notwithstanding (a) of this section, a designated state agency is not required to prepare a cost-benefit analysis if the estimated cost of implementing the proposed regulatory action is equal to or not substantially greater than the cost of implementing the proposed regulatory action as estimated in the fiscal note prepared for the bill that enacted the authorizing statute.

(c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is required by this section, the designated state agency may not adopt a regulation, order of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	# 10
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u> w/out object	

to "W"

SENATE FINANCE
COMMITTEE

Not Offered

Amendment Number: # 11 1-LS0274X.1
Bill Number: CSSB 24(FIN) X Bannister /
Sponsor: Donley Date: 3/29/99 3/27/99
Logged In By: J. Seclaire

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "X"

1 Page 1, line 1, following "regulations":

2 Insert "and administrative adjudications"

3 Page 1, line 4:

4 Delete "This"

5 Insert "Sections 2 - 15 and 18 of this"

6 Page 9, following line 18:

7 Insert new bill sections to read:

8 **** Sec. 16.** AS 44.62.500(c) is repealed and reenacted to read:

9 (c) The agency may remand a case to the same or another hearing officer only
10 if the proposed decision prepared under (b) of this section fails to address an issue
11 necessary to the resolution of the case. The agency shall identify and give notice to
12 the parties of the issues being remanded and any instructions to the hearing officer.
13 After remand, the hearing officer shall prepare a proposed decision as provided in (b)
14 of this section based on the original and additional records. A copy of the proposed
15 decision shall be filed and distributed as prescribed by (b) of this section.

16 *** Sec. 17.** AS 44.62.500 is amended by adding a new subsection to read:

17 (d) An agency may not remand a case more than one time unless the
18 lieutenant governor approves the remand in writing. If the lieutenant governor does
19 not approve the remand, the agency has 90 days from the date of the hearing officer's
20 proposed decision to decide the case itself without remand to a hearing officer.
21 Notwithstanding other provisions of this chapter, if the agency does not produce a
22 final decision within the 90 days, the respondent may file an action in superior court
23 and receive a trial de novo of the case in the superior court. If the agency decides

1 the case under this subsection, the agency shall give the parties the opportunity to
2 present either oral or written argument before the agency. An agency member may
3 not vote on the decision unless that member has reviewed the evidence and record of
4 proceedings before the hearing officer and any additional evidence and arguments
5 presented before the agency."

6 Renumber the following bill sections accordingly.

Amend #12

ADOPT

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 24(Fin)
workdraft X

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Fish and Game
 Title Alaska Regulations Reform Act BRU Habitat and Restoration
 Component Permitting/Title 16
 Sponsor Senator Donley
 Requester Senate Finance Component Serial No. 2050

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services		52.0	52.0	52.0	52.0	52.0
Travel		1.0	1.0	1.0	1.0	1.0
Contractual		81.1	79.2	79.2	79.2	79.2
Supplies		2.0	2.0	2.0	2.0	2.0
Equipment		3.0	3.0	3.0	3.0	3.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	139.1	137.2	137.2	137.2	137.2

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match		139.1	137.2	137.2	137.2	137.2
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	139.1	137.2	137.2	137.2	137.2

Estimate of any current year (FY99) cost:

POSITIONS

Full-time					
Part-time		2	2	2	2
Temporary					

ANALYSIS: (Attach a separate page if necessary)

See attached.

Amend #12
delete all but "supplies"

Prepared by Ken Taylor, Director
 Division Habitat and Restoration
 Approved by Commissioner Frank Rue
 Agency Fish and Game

Phone 465-4105
 Date/Time 03/26/99
 Date 3/26/99

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ADF&G Fiscal Note for CSSB 24(Finance) Work draft V

March 26, 1999

Page 2

Analysis

Maintenance and periodic update of the Anadromous Waters catalog, expressly required under AS 16.05.870(a), appears to be exempt from this bill as per Section 4 [re Sec. 44.60.035(e)(2)]. Under the auspices of the Habitat and Restoration Division, ADF&G has three other types of regulations that we believe are affected by this bill.

First are proposals to amend or adopt management plans for legislatively designated special areas (state critical habitat areas, game refuges, or game sanctuaries). In some cases, these management plans are required by statute. In other cases, public interest or controversy may become high enough to require the department to develop or amend a management plan.

Secondly, changes to regulations adopted to guide the public and the department in applying for and issuing permits for development and use activities that are compatible with the purpose for which each special area was designated would also be affected. In the past, ADF&G has needed to make infrequent technical amendments to these regulations to update listed agency addresses, correct incorrect legal citations, etc.

The third set of regulations potentially affected by this bill is 5 AAC 95.010(b), which lays out the procedures and definitions used in issuing permits under the Anadromous Fish Act (AS 16.05.870) and the Fishways Act (AS 16.05.840).

As currently written, this bill would require costly and redundant public noticing for updating existing state regulations to reflect even non-substantive changes such as those made to update contact addresses, modernize terminology and improve overall readability (including changes made by the Department of Law).

Due to state budget cuts, the staff to systematically conduct amendments or develop management plans has been eliminated. The department proposes to perform the work required under this bill by contracting for economic consulting services and adding part time staff. Our fiscal estimate also includes contractual monies for a Department of Law (51.1 in FY01; 49.2K per year thereafter) and an economics specialist. It also includes 0.6PPT clerical and 0.6 PPT habitat biologist to handle all the required in house analyses, coordinate with the department of law, and ensure the accuracy and timeliness of iterative public notices.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	#12
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	Adams
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Gary Wilken	Y
Senator Pete Kelly	Y
Senator Lyda Green	Y
Senator Randy Phillips	Y
Senator Dave Donley	Y
Senator Loren Leman	Y
Senator Al Adams	N
Co-Chair Sean Parnell	Y
Co-Chair John Torgerson	Y
<u>Tally</u>	
Yea	0 8
Nay	0 1
Absent	0
<u>MOTION</u>	adopt

F&G fiscal note

Adopted #13

Amend #13
conceptual

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the cost to the public.

(d) Consistent with this section, the adopting state agency head shall determine the type of cost-benefit analysis that is relevant to the proposed regulatory action and that is to be prepared by the designated state agency under this section.

(e) The cost-benefit analysis requirement of this section does not apply when

(1) the proposed regulatory action is necessary to implement a budgetary modification;

(2) the designated state agency is expressly required by statute to adopt the proposed regulation, order of repeal, or amendment; or

(3) the proposed regulatory action is necessary to meet federal requirements *or to exempt or revise the applicability of federal regulations*

(f) A regulation, an order of repeal, or an amendment to a regulation may not be voided because the designated state agency taking the regulatory action failed to comply with this section. A person may not obtain a temporary restraining order, a preliminary injunction, or a permanent injunction from a court to enjoin the operation of a regulation based on a failure to comply with this section.

(g) The designated state agency shall make a copy of the cost-benefit analysis prepared under this section available to the public before a hearing on the proposed regulatory action, or, if a cost-benefit analysis is not required due to the operation of (b) of this section, the designated state agency shall make a copy of the fiscal note identified in (b) of this section available to the public before a hearing on the proposed regulatory action.

(h) In this section, "adopting state agency head" means the commissioner of the department within which the state agency is located.

* Sec. 5. AS 44.62.190(a) is amended to read:

(a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation or trade or industry publication that the state agency prescribes and in the Alaska Administrative Journal; in the discretion of the state agency giving the notice, the requirement of publication in a newspaper or trade or industry publication may be satisfied by using

L

3/29 10:36 am
ordered from
Terry Bannister
pages 8 & 9

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amendment, or order of repeal.

(c) A regulation, an order of repeal, or an amendment to a regulation of a designated state agency may not be voided because the designated state agency taking the regulatory action failed to comply with this section.

(d) This section does not apply to regulations

(1) adopted under AS 44.62.260 to make emergency regulations permanent; or

(2) that are necessary to meet federal requirements *or that exempt*
or revise the applicability
of federal requirements

* Sec. 11. AS 44.62.230 is amended to read:

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

* Sec. 12. AS 44.62.250 is amended to read:

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation, the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and, within five days after filing by the lieutenant governor, the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	#13
Motion	adopt
	conceptual
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Lemam	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	W/out object

FISCAL NOTE

Withdrawn

Amend #14

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 24 (FIN)

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Environmental Conservation
 Title The Alaska Regulations Reform Act BRU Administration
 Component Commissioner's Office
 Sponsor Senators Donley, Taylor
 Requester Senate Finance Component Serial No. 633

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	200.8	200.8	200.8	200.8	200.8
Travel	0.0	30.0	30.0	30.0	30.0	30.0
Contractual	0.0	71.5	69.6	69.6	69.6	69.6
Supplies	0.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	18.0	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	0.0	325.3	305.4	305.4	305.4	305.4

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	325.3	305.4	305.4	305.4	305.4
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
TOTAL	0.0	325.3	305.4	305.4	305.4	305.4

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	0	4	4	4	4	4
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 3/26/99 10:41 AM
 Approved by Commissioner Michele Brown Date 3/26/99
 Agency Department of Environmental Conservation

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Fiscal Analysis
CSSB 24 (FIN)

There are four sections in this bill that create significant costs for the department.

Section 3 states that the department may not adopt a regulation that changes the intent of the statute being implemented. In many cases, regulations are interpreting statutes that have been on the books for many years, thus the specific "intent" is not readily known. Similarly, there are no records of specific actions taken in subcommittee or conference committee meetings on legislation, again making the specific "intent" of the drafters unknown. Finally, there are often numerous and conflicting understandings amongst legislators as to the "intent" of legislation. All of these issues would need to be thoroughly researched by a paralegal before regulations were drafted.

Section 4 requires a cost-benefit analysis and provides some exemptions. In the past two years, this department has developed approximately 50 regulation projects. Only one (industrial solid waste fee increases) would have been excluded from the required analysis under the proposed exemption at page 3, lines 6-7. Nearly all of the department's regulations that are based on federal requirements include provisions to "Alaskanize" those requirements. Because those types of provisions are not "necessary to meet federal requirements", those regulations would not qualify for the exemption at page 3, lines 10-11. Mixing zones, site specific water quality criteria, many of the provisions in the solid waste regulations, and exemptions from certain drinking water monitoring requirements are some examples of where we have modified federal requirements to better fit conditions in the state. A full time economist would be necessary to research the costs of compliance for the public and costs of the benefits to the public. In addition, page 2, line 29 specifies that regulations may not be adopted unless the benefits to the public outweigh the costs to the public. Therefore, a cost-benefit analysis would have to be prepared each and every time changes were made to proposed regulations. When coupled with Section 10 of this legislation, this would result in numerous analyses being prepared.

Section 10 requires the department to re-notice regulations whenever changes were made to the draft proposal. Public notice is expensive. Many of our regulation mailing lists exceed 3,000 names. To mitigate the numerous and potentially never-ending public comment periods and to meet the two year time limit in Section 14, we would need to have assistance from the Department of Law in the development of regulations. We have included \$51.1 in FY 01, and \$49.2 in succeeding fiscal years in our contractual costs for assistance. We would also need additional paralegal support in our department to meet the requirements of the Administrative Procedures Act for public notice and to quickly incorporate regulatory changes. Additional clerical assistance would also be needed to deal with the increased paperwork under these sections.

Summary:

1 Economist	Total Cost FY 01	\$82.5	Cost in succeeding FY	\$78.0
2 Paralegals	Total Cost FY 01	\$148.6	Cost in succeeding FY	\$139.6
1 Clerk	Total Cost FY01	\$43.1	Cost in succeeding FY	\$38.6
RSA with Law	Total Cost: FY01	\$51.1	Cost in succeeding FY	\$49.2

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	# 14
Motion	adopt DEC fiscal note
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	

3/29 HELD - no action taken
Withdrawn

SENATE FINANCE
COMMITTEE

Not offered

Amendment Number: #15

Bill Number: CSSB 24(FIN).Y*

I-LS0274Y.5

Sponsor: Donley Date: 3/31/99

Bannister

Logged In By: yottari

3/31/99

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "Y"

withdrawn

1 Page 3, line 9, following "amendment":

2 Delete "or"

3 Page 3, line 13, following "state":

4 Insert "; or

5 (4) the proposed regulatory action reduces the regulatory burden

6 imposed on the public"

SENATE FINANCE
COMMITTEE

Adopted

Amendment Number: # 16

Bill Number: CSSB 24(FIN), Y'

1-LS0274\Y.4

Hannister ✓

Sponsor: Donley Date: 3/31/99

3/31/99

Logged In By: J. Settau

A M E N D M E N T

OFFERED IN THE SENATE

moved BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "Y"

w/o obj. ADOPTED

1 Page 3, line 12:

2 Delete "how a"

3 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

4 the"

5 Page 7, line 12:

6 Delete "how a"

7 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

8 the"

9 Page 9, line 6:

10 Delete "how a"

11 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

12 the"

13 Page 9, line 26:

14 Delete "how a"

15 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

16 the"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number:	SB 24
Amendment:	16
Motion:	fidbpt
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Lemar	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Pandy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	W/out object

SENATE FINANCE
COMMITTEE

Adopted

Amendment Number: 17

I-LS0274\Y.1

Bill Number: SB 24-4

Bannister ✓

Sponsor: Torgerson Date: 3/31/99

3/31/99

Logged In By: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 24(FIN), Draft Version "Y"

moved by Sen. Donley
w/obj; ADOPTED

- 1 Page 2, line 25, following "estimated cost":
- 2 Insert "to the designated state agency"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	
Amendment	17
Motion	
<u>Motion by</u>	
Donley	
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parneli	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	
W/out object	

SENATE FINANCE
COMMITTEE

Adopted

Amendment Number: 18

1-LS0274\Y.3

Bill Number: SB 24 "4"

Bannister/

Sponsor: Torgerson Date: 3/31/99

3/31/99

Logged In By: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 24(FIN), Draft Version "Y"

*moved by Sen. Donley
w/o obj. ADOPTED*

- 1 Page 6, line 20, following "rewriting":
- 2 Insert "substantially"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	
Amendment	18
Motion	
Motion by	
Donley	
Objection	
Objection by	
Removed	
Second Objection by	
Committee Member	Vote
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
Tally	
Yea	0
Nay	0
Absent	0
MOTION	
Want object	

Adopted

SENATE FINANCE
COMMITTEE

Amendment Number: 19
Bill Number: SB 24 "Y"
Sponsor: ~~Torgerson~~ Date: 3/31/99
Logged In By: Mindy

I-LS0274\Y.2
Bannister ✓
3/31/99

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 24(FIN), Draft Version "Y"

BY SENATOR TORGERSON

*moved by Sen. DeaLoey
w/o obj. ADOPTED*

- 1 Page 2, line 7, following "carried out.":
- 2 Insert "(d)"

- 3 Page 2, line 8:
- 4 Delete "this subsection"
- 5 Insert "(b) or (c) of this section"

- 6 Page 2, line 9:
- 7 Delete "changes the intent of the statute"
- 8 Insert "does not comply with (b) or (c) of this section"

- 9 Page 2, line 12:
- 10 Delete "this subsection"
- 11 Insert "(b) or (c) of this section"

- 12 Page 10, line 18:
- 13 Delete "AS 44.62.030(c)"
- 14 Insert "AS 44.62.030(d)"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	
Amendment	19
Motion	B
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	W/out object

SENATE FINANCE
COMMITTEE #20

Adopted F-02

Amendment Number: _____
Bill Number: CSSB 24(FIN), Y
Sponsor: Donley Date: 3/31/99
Logged In By: Bannister

I-LS0274\Y.5
Bannister ✓
3/31/99

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 24(FIN), Draft Version "Y"

moved BY SENATOR DONLEY
w/o obj. ADOPTED

1 Page 3, line 9, following "amendment":

2 Delete "or"

3 Page 3, line 13, following "state":

4 Insert "; or

5 (4) the proposed regulatory action would reduce the regulatory burden

6 imposed on the public"

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	
Amendment	20
Motion	
Motion by	Donley
Objection	J
Objection by	
Removed	
Second Objection by	
<u>Committee Member</u>	<u>Vote</u>
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	w/out object

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Journal; in the discretion of the state agency giving the notice, the requirement of publication in a newspaper or trade or industry publication may be satisfied by using a combination of publication and broadcasting; when broadcasting the notice, an agency may use an abbreviated form of the notice if the broadcast provides the name and date of the newspaper or trade or industry journal where the full text of the notice can be found;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency,

(A) mailed to a person or group of persons whom the agency believes is interested in the proposed action; and

(B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency;

~~(7) furnished to the standing committee of each house of the legislature having legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;~~

~~(8) furnished to the staff of the Administrative Regulation Review Committee, together with a copy of the proposed regulation, amendment, or order of repeal and, if preparation of an appropriation increase estimate is required by AS 44.62.195, a copy of the estimate;~~

(9) published on the Internet by a designated state agency proposing the action if the designated state agency has the technological capability

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number:	SB 24
Amendment:	21
Motion:	Adopt
<u>Motion by:</u>	Wilkin
<u>Objection</u>	
<u>Objection by:</u>	S. Torgerson
<u>Removed</u>	U
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilkin	
Senator Pete Kelly	
Senator Lyda Green	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	Withdrawn

delete pt line 24-29 delete

FISCAL NOTE

*Amend # 22
Adopted*

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSSB 24 (FIN)

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Environmental Conservation
 Title The Alaska Regulations Reform Act BRU Administration
 Component Commissioner's Office
 Sponsor Senators Donley, Taylor
 Requester Senate Finance Component Serial No. 633

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	200.8	200.8	200.8	200.8	200.8
Travel	0.0	30.0	30.0	30.0	30.0	30.0
Contractual	0.0	<i>1/2</i> 71.5	69.6	69.6	69.6	69.6
Supplies	0.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	18.0	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	0.0	325.3	305.4	305.4	305.4	305.4

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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	325.3	305.4	305.4	305.4	305.4
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
TOTAL	0.0	325.3	305.4	305.4	305.4	305.4

Estimate of any current year (FY99) cost: 0.0

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time	0	4	4	4	4	4
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 3/26/99 10:41 AM
 Approved by Commissioner Michele Brown Date 3/21/99
 Agency Department of Environmental Conservation

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Fiscal Analysis
CSSB 24 (FIN)

There are four sections in this bill that create significant costs for the department.

Section 3 states that the department may not adopt a regulation that changes the intent of the statute being implemented. In many cases, regulations are interpreting statutes that have been on the books for many years, thus the specific "intent" is not readily known. Similarly, there are no records of specific actions taken in subcommittee or conference committee meetings on legislation, again making the specific "intent" of the drafters unknown. Finally, there are often numerous and conflicting understandings amongst legislators as to the "intent" of legislation. All of these issues would need to be thoroughly researched by a paralegal before regulations were drafted.

Section 4 requires a cost-benefit analysis and provides some exemptions. In the past two years, this department has developed approximately 50 regulation projects. Only one (industrial solid waste fee increases) would have been excluded from the required analysis under the proposed exemption at page 3, lines 6-7. Nearly all of the department's regulations that are based on federal requirements include provisions to "Alaskanize" those requirements. Because those types of provisions are not "necessary to meet federal requirements", those regulations would not qualify for the exemption at page 3, lines 10-11. Mixing zones, site specific water quality criteria, many of the provisions in the solid waste regulations, and exemptions from certain drinking water monitoring requirements are some examples of where we have modified federal requirements to better fit conditions in the state. A full time economist would be necessary to research the costs of compliance for the public and costs of the benefits to the public. In addition, page 2, line 29 specifies that regulations may not be adopted unless the benefits to the public outweigh the costs to the public. Therefore, a cost-benefit analysis would have to be prepared each and every time changes were made to proposed regulations. When coupled with Section 10 of this legislation, this would result in numerous analyses being prepared.

Section 10 requires the department to re-notice regulations whenever changes were made to the draft proposal. Public notice is expensive. Many of our regulation mailing lists exceed 3,000 names. To mitigate the numerous and potentially never-ending public comment periods and to meet the two year time limit in Section 14, we would need to have assistance from the Department of Law in the development of regulations. We have included \$51.1 in FY 01, and \$49.2 in succeeding fiscal years in our contractual costs for assistance. We would also need additional paralegal support in our department to meet the requirements of the Administrative Procedures Act for public notice and to quickly incorporate regulatory changes. Additional clerical assistance would also be needed to deal with the increased paperwork under these sections.

Summary:

1 Economist	Total Cost FY 01	\$82.5	Cost in succeeding FY	\$78.0
2 Paralegals	Total Cost FY 01	\$148.6	Cost in succeeding FY	\$139.6
1 Clerk	Total Cost FY01	\$43.1	Cost in succeeding FY	\$38.6
RSA with Law	Total Cost FY01	\$51.1	Cost in succeeding FY	\$49.2



Amend #23 adopted

SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Amend #23
moved Donley
w/o obj. ADOPTED

MEMORANDUM

To: Senator Torgeson, Chair of the Senate Finance Committee
Fr: Senator Dave Donley *DD*
Dt: March 31, 1999
Re: SB 24 Fiscal Note for LAW

I am proposing that the fiscal note supplied by the Department of Law for CSSB 24 (FIN) (1-LS0274\X) be amended to reflect the following changes.

<u>FY 2001</u>	
Personal Services	40.0
Travel	1.45
Contractual	23.5
Supplies	0.85
Equipment	<u>6.5</u>
Total	72.3

FY 2002-2005 would remain the same minus the 6.5 one-time equipment costs.

DD/hrn

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

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FISCAL NOTE

(WD1-LS0274X)

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. CSSB 24 (FIN)

Revision Date/Time (new work draft)	<u>3/26/99, 11:10 AM</u>	Dept. Affected	<u>Law</u>
Title	<u>"An Act relating to regulations; amending Rule</u>	BRU	<u>Civil Division</u>
	<u>65, Alaska Rules of Civil Procedure; and ... effective date."</u>	Component	<u>Legislation/Regulations</u>
Sponsor	<u>Senator Donley</u>		
Requester	<u>Senate Finance Committee</u>	Component Serial No.	<u>2209</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		112.3	112.3	112.3	112.3	112.3
Travel		2.9	2.9	2.9	2.9	2.9
Contractual		47.0	47.0	47.0	47.0	47.0
Supplies		1.7	1.7	1.7	1.7	1.7
Equipment		6.5				
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	170.4	163.9	163.9	163.9	163.9

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF		68.2	65.6	65.6	65.6	65.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Rcpts		102.2	98.3	98.3	98.3	98.3
TOTAL	0.0	170.4	163.9	163.9	163.9	163.9

Estimate of any current year (FY99) cost: _____

POSITIONS

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time		1	1	1	1	1
Part-time						
Temporary						

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

CSSB 24 (FIN) (WD 1-LS0274X) 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 for the designated state agencies in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on most regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment for substance changes in proposed regulations after initial notice and public comment has occurred; (3) a new standard for regulation challenges in court based on if the proposed regulation

Prepared by	<u>Joan M. Kasson</u> <i>Joan M. Kasson</i>	Phone <u>465-5370</u>
Division	<u>Attorney General's Office</u>	Date/Time <u>3/26/99, 11:10 AM</u>
Approved by Commissioner	<i>[Signature]</i> <u>Blura M. Bole</u> <i>Blura M. Bole</i>	Date <u>3/26/99</u>
Agency	<u>Department of Law</u>	

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

(WD1-LS0274X)
BILL NO. CSSB 24 (FIN)

ANALYSIS CONTINUATION

uses an approach that causes the least necessary intrusion on the rights and property of the persons affected by the regulation, and if there is a substantial state interest in using the approach; and (4) a requirement that regulations be within the intent of the statute to be valid. While there are exceptions for some situations, most 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 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 individuals 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.

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. The department anticipates that the new workload generated by this bill would be split approximately 40/60 between general funds and interagency agreements.

Based on the department's FY00 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 \$133,926. 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.

12/14/98

16:01:30.7

PERSONAL SERVICES EXPENDITURES DETAIL REPORT

PAGE: 17

DEPARTMENT OF LAW

SCENARIO: 1 (FY00 AGENCY SCENARIO 1)

COMP #: 03 97-01-02-08-00 NAME: LEGISLATION/REGULATIONS

BRU NAME: CIVIL DIVISION

PCN	JOB CLASS TITLE	T R B S C U	LOCATION NAME	S R&S	BUDG	ANNUAL SALARY	PREM PAY	ANNUAL BENES	TOTAL COSTS	G.F. AMT	COLA AMT
030009	ATTORNEY V	F A XE	JUNEAU	AA 25K	12.00	86892	0	22837	109,729	109,729	0
030013	LEGAL SECRETARY II	F A CG	JUNEAU	2A 11DE	12.00	30667	0	12327	42,995	42,995	0
030069	ATTORNEY V	F A XE	JUNEAU	99	12.00	58487	0	17831	76,318	0	0
030146	ASSOC ATTORNEY II	F A XE	JUNEAU	AA 19LM	12.00	60649	0	18278	78,928	78,928	0
030290	ASSOC ATTORNEY II	F A XE	JUNEAU	AA 19DE	12.00	51304	0	16343	67,647	67,647	0

COMPONENT TOTALS:

STAFF MONTHS	60.00	NEW+AUTH TOTAL	NEW	DELETED	TOTAL SALARY COSTS	288,000.50	TOTAL PREMIUM PAY COSTS	0.00	TOTAL BENEFITS COSTS	87,619.12	TOTAL PERSONAL SERVICES	375,619.62	0.00
FULL TIME POSITIONS		5			TOTAL PERSONAL SERVICES	375,619.62	PLUS LUMP SUM PREMIUM PAY	0.00	TOTAL PERSONAL SERVICES	375,619.62			
PART TIME/SEASONAL POSITIONS					SUB-TOTAL	375,619.62							
NON PERMANENT POSITIONS					- 0.00000 % VACANCY FACTOR	0.00							0.00
NUMBER OF POSITIONS IN COMPONENT 9701020800 =		5			PERSONAL SERVICES, LINE 100	375,619.62							0.00
FUND SOURCE	FUNDING AMOUNT	PERCENT											
1004 GENERAL FUND RECEIPTS	299,300.90	79.68											
1007 INTER-AGENCY RECEIPTS	76,318.72	20.32											
TOTAL W/O VACANCY ADJUSTMENT:	375,619.62												

This is the sheet I used to estimate numbers on salaries

Amend #24

ADOPTED

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24 version X

Revision Date: 31-Mar-99 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: (S) FIN Component Serial No. #423

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

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES		164.2	54.9	81.6	88.3	81.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	164.2	54.9	81.6	88.3	81.6

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
--------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF		164.2	54.9	81.6	88.3	81.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	164.2	54.9	81.6	88.3	81.6

Estimate of any current year (FY99) cost: \$ none

POSITIONS

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
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: 31-Mar-99
 Approved by Commissioner: *Carol Carroll* Date: 3/31/99
 Agency: Natural Resources

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authority to adopt regulations to implement, interpret, make specific, or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective, notwithstanding any other provision of law, unless the regulation takes a reasonable approach within the intent of the statute.

(c) In addition to the requirements of (b) of this section, a designated state agency may not adopt a regulation that changes the intent of the statute being implemented, interpreted, made specific, or otherwise carried out. When challenging a regulation under this subsection, the burden of proof is on the person challenging the regulation to prove that the regulation changes the intent of the statute. A person may not obtain a temporary restraining order, a preliminary injunction, or a permanent injunction from a court to enjoin the operation of a regulation based on a failure to comply with this subsection.

* Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

Sec. 44.62.035. Cost-benefit requirement. (a) When adopting a regulation, an order of repeal, or an amendment to a regulation, unless the adopting state agency head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive ~~or that the costs and benefits cannot be easily determined~~, a designated state agency shall prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action. The designated state agency shall consider a cost or benefit even if the cost or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state agency is not required to give the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

(b) Notwithstanding (a) of this section, a designated state agency is not required to prepare a cost-benefit analysis if the estimated cost of implementing the proposed regulatory action is equal to or not substantially greater than the cost of implementing the proposed regulatory action as estimated in the fiscal note prepared for the bill that enacted the authorizing statute.

(c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is required by this section, the designated state agency may not adopt a regulation, order of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	25
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	Wilken
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Leman	2
Senator Al Adams	1
Senator Gary Wilken	2
Senator Pete Kelly	2
Senator Lyda Green	1
Senator Randy Phillips	1
Senator Dave Donley	1
Co-Chair Sean Parnell	1
Co-Chair John Torgerson	1
<u>Tally</u>	
Yea	0 4
Nay	0 2
Absent	0 3
<u>MOTION</u>	
Pass	

Adopted

1-LS0274Y ✓
Bannister
3/29/99

CS FOR SENATE BILL NO. 24(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to regulations; amending Rule 65, Alaska Rules of Civil**
2 **Procedure; and providing for an effective date."**

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

4 * **Section 1. SHORT TITLE.** This Act may be known as the Alaska Regulations Reform
5 Act.

6 * **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute. Except for**
8 **designated state agencies, if [IF], by express or implied terms of a statute, a state**
9 **agency has authority to adopt regulations to implement, interpret, make specific, or**
10 **otherwise carry out the provisions of the statute, a regulation adopted is not valid or**
11 **effective unless consistent with the statute and reasonably necessary to carry out the**
12 **purpose of the statute.**

13 * **Sec. 3.** AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry
2 out the provisions of the statute, a regulation adopted is not valid or effective,
3 notwithstanding any other provision of law, unless the regulation takes a reasonable
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state
6 agency may not adopt a regulation that changes the intent of the statute being
7 implemented, interpreted, made specific, or otherwise carried out. When challenging
8 a regulation under this subsection, the burden of proof is on the person challenging the
9 regulation to prove that the regulation changes the intent of the statute. A person may
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent
11 injunction from a court to enjoin the operation of a regulation based on a failure to
12 comply with this subsection.

13 * Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
17 or that the costs and benefits cannot be easily determined, a designated state agency
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the
19 proposed regulatory action and the benefits to the public from the proposed regulatory
20 action. The designated state agency shall consider a cost or benefit even if the cost
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state
22 agency is not required to give the cost or benefit a dollar value in order to prepare a
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the
26 proposed regulatory action is equal to or not substantially greater than the cost of
27 implementing the proposed regulatory action as estimated in the fiscal note prepared
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
30 required by this section, the designated state agency may not adopt a regulation, order
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal
11 requirements, to obtain an exemption for a person, program, or situation in the state
12 from federal requirements, or to revise how a federal requirement will apply to a
13 person, program, or situation in the state.

14 (f) A regulation, an order of repeal, or an amendment to a regulation may not
15 be voided because the designated state agency taking the regulatory action failed to
16 comply with this section. A person may not obtain a temporary restraining order, a
17 preliminary injunction, or a permanent injunction from a court to enjoin the operation
18 of a regulation based on a failure to comply with this section.

19 (g) The designated state agency shall make a copy of the cost-benefit analysis
20 prepared under this section available to the public before a hearing on the proposed
21 regulatory action, or, if a cost-benefit analysis is not required due to the operation of
22 (b) of this section, the designated state agency shall make a copy of the fiscal note
23 identified in (b) of this section available to the public before a hearing on the proposed
24 regulatory action.

25 (h) In this section, "adopting state agency head" means the commissioner of
26 the department within which the state agency is located.

27 * Sec. 5. AS 44.62.190(a) is amended to read:

28 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
29 notice of the proposed action shall be

30 (1) published in the newspaper of general circulation or trade or
31 industry publication that the state agency prescribes and in the Alaska Administrative

1 Journal; in the discretion of the state agency giving the notice, the requirement of
2 publication in a newspaper or trade or industry publication may be satisfied by using
3 a combination of publication and broadcasting; when broadcasting the notice, an
4 agency may use an abbreviated form of the notice if the broadcast provides the name
5 and date of the newspaper or trade or industry journal where the full text of the notice
6 can be found;

7 (2) mailed to every person who has filed a request for notice of
8 proposed action with the state agency;

9 (3) if the agency is within a department, mailed or delivered to the
10 commissioner of the department;

11 (4) when appropriate in the judgment of the agency,

12 (A) mailed to a person or group of persons whom the agency
13 believes is interested in the proposed action; and

14 (B) published in the additional form and manner the state
15 agency prescribes;

16 (5) furnished the Department of Law together with a copy of the
17 proposed regulation, amendment, or order of repeal for the department's use in
18 preparing the opinion required after adoption and before filing by AS 44.62.060;

19 (6) furnished to all incumbent State of Alaska legislators and the
20 Legislative Affairs Agency;

21 (7) furnished to the standing committee of each house of the legislature
22 having legislative jurisdiction over the subject matter treated by the regulation under
23 the Uniform Rules of the Alaska State Legislature, together with a copy of the
24 proposed regulation, amendment, or order of repeal for the committee's use in
25 conducting the review authorized by AS 24.05.182;

26 (8) furnished to the staff of the Administrative Regulation Review
27 Committee, together with a copy of the proposed regulation, amendment, or order of
28 repeal and, if preparation of an appropriation increase estimate is required by
29 AS 44.62.195, a copy of the estimate;

30 (9) published on the Internet by a designated state agency
31 proposing the action if the designated state agency has the technological capability

1 to publish on the Internet.

2 * Sec. 6. AS 44.62.200(a) is amended to read:

3 (a) The notice of proposed adoption, amendment, or repeal of a regulation
4 must include

5 (1) a statement of the time, place, and nature of proceedings for
6 adoption, amendment, or repeal of the regulation;

7 (2) reference to the authority under which the regulation is proposed
8 and a reference to the particular code section or other provisions of law that are being
9 implemented, interpreted, or made specific;

10 (3) an informative summary of the proposed subject of agency action;

11 (4) other matters prescribed by a statute applicable to the specific
12 agency or to the specific regulation or class of regulations;

13 (5) a summary of the fiscal information required to be prepared under
14 AS 44.62.195;

15 (6) a statement that a copy of the cost-benefit analysis is available
16 from the designated state agency proposing the regulatory action if the cost-
17 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not
18 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note
19 identified in AS 44.62.035(b) is available from the designated state agency
20 proposing the regulatory action.

21 * Sec. 7. AS 44.62.200(b) is amended to read:

22 (b) Except for designated state agencies, a [A] regulation that is adopted,
23 amended, or repealed may vary in content from the summary specified in (a)(3) of this
24 section if the subject matter of the regulation remains the same and the original notice
25 was written so as to assure that members of the public are reasonably notified of the
26 proposed subject of agency action in order for them to determine whether their
27 interests could be affected by agency action on that subject.

28 * Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

29 (d) A regulation that is adopted, amended, or repealed by a designated state
30 agency may vary in content from the summary specified in (a)(3) of this section if the
31 subject matter of the regulation remains the same and the notice was written so as to

1 assure that members of the public are reasonably notified of the proposed subject of
2 agency action in order for them to determine whether their interests could be affected
3 by agency action on that subject.

4 * Sec. 9. AS 44.62.210(a) is amended to read:

5 (a) On the date and at the time and place designated in the notice, the agency
6 shall give each interested person or the person's authorized representative, or both, the
7 opportunity to present statements, arguments, or contentions in writing, with or without
8 opportunity to present them orally. The state agency may accept material presented
9 by any form of communication authorized by this chapter and shall consider all
10 factual, substantive, and other relevant matter presented to it before adopting,
11 amending, or repealing a regulation. When considering the factual, substantive, and
12 other relevant matter, the agency shall pay special attention to the cost to private
13 persons of the proposed regulatory action. A designated state agency shall also pay
14 special attention to the benefit to private persons of the proposed regulatory
15 action.

16 * Sec. 10. AS 44.62 is amended by adding a new section to read:

17 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a
18 designated state agency rewrites a proposed regulation, amendment of a regulation, or
19 order of repeal after the designated state agency has complied with AS 44.62.190,
20 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,
21 amendment, or order but the designated state agency would not normally consider the
22 change to be significant enough to require additional notice and opportunity for
23 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the
24 designated state agency shall provide notice and opportunity for public comment under
25 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,
26 amendment, or order of repeal.

27 (b) If a designated state agency does not provide the notice and opportunity
28 for public comment under (a) of this section for a rewritten proposed regulation,
29 amendment, or order of repeal, the designated state agency shall prepare a written
30 explanation of the reasons why the requirement of (a) of this section does not apply.
31 When the adopted regulation, amendment, or order of repeal is published in the Alaska

1 Administrative Journal, the lieutenant governor shall include the designated state
2 agency explanation with the text or a summary of the text of the regulation,
3 amendment, or order of repeal.

4 (c) A regulation, an order of repeal, or an amendment to a regulation of a
5 designated state agency may not be voided because the designated state agency taking
6 the regulatory action failed to comply with this section.

7 (d) This section does not apply to regulations

8 (1) adopted under AS 44.62.260 to make emergency regulations
9 permanent; or

10 (2) that are necessary to meet federal requirements, to obtain an
11 exemption for a person, program, or situation in the state from federal requirements,
12 or to revise how a federal requirement will apply to a person, program, or situation in
13 the state.

14 * Sec. 11. AS 44.62.230 is amended to read:

15 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
16 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
17 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
18 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
19 emergency regulation, and the agency finds that an emergency exists, the requirements
20 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
21 apply, and the agency may submit the regulation to the lieutenant governor
22 immediately after making the finding of emergency and putting the regulation into
23 proper form.

24 * Sec. 12. AS 44.62.250 is amended to read:

25 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
26 be adopted as an emergency regulation or order of repeal if a state agency makes a
27 written finding, including a statement of the facts that constitute the emergency, that
28 the adoption of the regulation or order of repeal is necessary for the immediate
29 preservation of the public peace, health, safety, or general welfare. The requirements
30 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
31 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon

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

7 * Sec. 13. AS 44.62.260 is amended to read:

8 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

9 (a) A regulation adopted as an emergency regulation does not remain in effect more
10 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
11 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are
12 applicable to the regulation, 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 44.62.035, 44.62.040(c)
16 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were
17 applicable to the regulation, were complied with before submitting the regulation to
18 the lieutenant governor, or that the agency complied with those sections within the
19 120-day period. Failure to so certify repeals the emergency regulation; it may not be
20 renewed or refiled as an emergency regulation.

21 * Sec. 14. AS 44.62 is amended by adding a new section to read:

22 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may
23 not take more than two years to adopt regulations that the designated state agency is
24 required to adopt by a statute. The two-year period begins on the effective date of
25 enactment of the statute requiring the adoption of the regulations.

26 (b) If a designated state agency fails to comply with (a) of this section, the
27 designated state agency shall prepare a written report containing the reasons for the
28 failure and submit the report to the president of the senate, the speaker of the house
29 of representatives, and the Administrative Regulation Review Committee established
30 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a
31 regulation invalid for failure to comply with this section.

1 (c) The requirement of (a) of this section is not intended to prohibit a
2 designated state agency from amending a regulation after the regulation has been
3 adopted.

4 (d) This section does not apply to regulations that are necessary to meet
5 federal requirements, to obtain an exemption for a person, program, or situation in the
6 state from federal requirements, or to revise how a federal requirement will apply to
7 a person, program, or situation in the state.

8 * Sec. 15. AS 44.62.300 is amended by adding new subsections to read:

9 (b) Except where a court has other grounds for holding the regulation invalid,
10 a court that reviews the validity of a regulation of a designated state agency shall hold
11 the regulation valid unless

12 (1) the regulation uses an approach that causes more than the least
13 necessary intrusion on the rights and property of the persons affected by the regulation;
14 and

15 (2) the approach taken by the regulation is not required by a substantial
16 state interest.

17 (c) Notwithstanding (b) of this section, when an action for declaratory relief
18 is brought under (a) of this section, a court may not issue a temporary restraining
19 order, a preliminary injunction, or a permanent injunction based on (b) of this section
20 to stop the operation of a regulation of a designated state agency.

21 (d) In (b)(2) of this section, the person challenging the regulation carries the
22 burden of proving that there is not a substantial state interest that requires using the
23 approach taken by the regulation.

24 (e) The provisions of (b) - (d) of this section do not apply to regulations that
25 are necessary to meet federal requirements, to obtain an exemption for a person,
26 program, or situation in the state from federal requirements, or to revise how a federal
27 requirement will apply to a person, program, or situation in the state.

28 * Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

29 (5) "designated state agency"

30 (A) means

31 (i) the Department of Environmental Conservation;

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(ii) the Department of Natural Resources; and
(iii) the Department of Fish and Game for habitat and restoration programs;

(B) does not include

(i) a board or commission located in an agency described in (A) of this paragraph; or

(ii) any other organizational entity located in an agency described in (A) of this paragraph if the organizational entity is governed by a board whose members are subject to confirmation by the legislature.

* Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the effective date of this Act.

(b) Section 14 of this Act applies to the adoption of regulations if the effective date of the Act enacting the statutory authority requiring the adoption is the same as or after the effective date of this Act.

* Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

* Sec. 19. This Act takes effect July 1, 2000.

Adopted

WORK DRAFT

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1-LS0274X
Bannister/
3/25/99

CS FOR SENATE BILL NO. 24(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; amending Rule 65, Alaska Rules of Civil
2 Procedure; and providing for an effective date."

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

4 * Section 1. SHORT TITLE. This Act may be known as the Alaska Regulations Reform
5 Act.

6 * Sec. 2. AS 44.62.030 is amended to read:

7 Sec. 44.62.030. Consistency between regulation and statute. Except for
8 designated state agencies, if [IF], by express or implied terms of a statute, a state
9 agency has authority to adopt regulations to implement, interpret, make specific, or
10 otherwise carry out the provisions of the statute, a regulation adopted is not valid or
11 effective unless consistent with the statute and reasonably necessary to carry out the
12 purpose of the statute.

13 * Sec. 3. AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry
2 out the provisions of the statute, a regulation adopted is not valid or effective,
3 notwithstanding any other provision of law, unless the regulation takes a reasonable
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state
6 agency may not adopt a regulation that changes the intent of the statute being
7 implemented, interpreted, made specific, or otherwise carried out. When challenging
8 a regulation under this subsection, the burden of proof is on the person challenging the
9 regulation to prove that the regulation changes the intent of the statute. A person may
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent
11 injunction from a court to enjoin the operation of a regulation based on a failure to
12 comply with this subsection.

13 * **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
17 or that the costs and benefits cannot be easily determined, a designated state agency
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the
19 proposed regulatory action and the benefits to the public from the proposed regulatory
20 action. The designated state agency shall consider a cost or benefit even if the cost
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state
22 agency is not required to give the cost or benefit a dollar value in order to prepare a
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the
26 proposed regulatory action is equal to or not substantially greater than the cost of
27 implementing the proposed regulatory action as estimated in the fiscal note prepared
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
30 required by this section, the designated state agency may not adopt a regulation, order
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not
13 be voided because the designated state agency taking the regulatory action failed to
14 comply with this section. A person may not obtain a temporary restraining order, a
15 preliminary injunction, or a permanent injunction from a court to enjoin the operation
16 of a regulation based on a failure to comply with this section.

17 (g) The designated state agency shall make a copy of the cost-benefit analysis
18 prepared under this section available to the public before a hearing on the proposed
19 regulatory action, or, if a cost-benefit analysis is not required due to the operation of
20 (b) of this section, the designated state agency shall make a copy of the fiscal note
21 identified in (b) of this section available to the public before a hearing on the proposed
22 regulatory action.

23 (h) In this section, "adopting state agency head" means the commissioner of
24 the department within which the state agency is located.

25 * Sec. 5. AS 44.62.190(a) is amended to read:

26 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
27 notice of the proposed action shall be

28 (1) published in the newspaper of general circulation or trade or
29 industry publication that the state agency prescribes and in the Alaska Administrative
30 Journal; in the discretion of the state agency giving the notice, the requirement of
31 publication in a newspaper or trade or industry publication may be satisfied by using

1 a combination of publication and broadcasting; when broadcasting the notice, an
2 agency may use an abbreviated form of the notice if the broadcast provides the name
3 and date of the newspaper or trade or industry journal where the full text of the notice
4 can be found;

5 (2) mailed to every person who has filed a request for notice of
6 proposed action with the state agency;

7 (3) if the agency is within a department, mailed or delivered to the
8 commissioner of the department;

9 (4) when appropriate in the judgment of the agency,

10 (A) mailed to a person or group of persons whom the agency
11 believes is interested in the proposed action; and

12 (B) published in the additional form and manner the state
13 agency prescribes;

14 (5) furnished the Department of Law together with a copy of the
15 proposed regulation, amendment, or order of repeal for the department's use in
16 preparing the opinion required after adoption and before filing by AS 44.62.060;

17 (6) furnished to all incumbent State of Alaska legislators and the
18 Legislative Affairs Agency;

19 (7) furnished to the standing committee of each house of the legislature
20 having legislative jurisdiction over the subject matter treated by the regulation under
21 the Uniform Rules of the Alaska State Legislature, together with a copy of the
22 proposed regulation, amendment, or order of repeal for the committee's use in
23 conducting the review authorized by AS 24.05.182;

24 (8) furnished to the staff of the Administrative Regulation Review
25 Committee, together with a copy of the proposed regulation, amendment, or order of
26 repeal and, if preparation of an appropriation increase estimate is required by
27 AS 44.62.195, a copy of the estimate;

28 (9) published on the Internet by a designated state agency
29 proposing the action if the designated state agency has the technological capability
30 to publish on the Internet.

31 * Sec. 6. AS 44.62.200(a) is amended to read:

1 (a) The notice of proposed adoption, amendment, or repeal of a regulation
2 must include

3 (1) a statement of the time, place, and nature of proceedings for
4 adoption, amendment, or repeal of the regulation;

5 (2) reference to the authority under which the regulation is proposed
6 and a reference to the particular code section or other provisions of law that are being
7 implemented, interpreted, or made specific;

8 (3) an informative summary of the proposed subject of agency action;

9 (4) other matters prescribed by a statute applicable to the specific
10 agency or to the specific regulation or class of regulations;

11 (5) a summary of the fiscal information required to be prepared under
12 AS 44.62.195;

13 (6) a statement that a copy of the cost-benefit analysis is available
14 from the designated state agency proposing the regulatory action if the cost-
15 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not
16 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note
17 identified in AS 44.62.035(b) is available from the designated state agency
18 proposing the regulatory action.

19 * Sec. 7. AS 44.62.200(b) is amended to read:

20 (b) Except for designated state agencies, a [A] regulation that is adopted,
21 amended, or repealed may vary in content from the summary specified in (a)(3) of this
22 section if the subject matter of the regulation remains the same and the original notice
23 was written so as to assure that members of the public are reasonably notified of the
24 proposed subject of agency action in order for them to determine whether their
25 interests could be affected by agency action on that subject.

26 * Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

27 (d) A regulation that is adopted, amended, or repealed by a designated state
28 agency may vary in content from the summary specified in (a)(3) of this section if the
29 subject matter of the regulation remains the same and the notice was written so as to
30 assure that members of the public are reasonably notified of the proposed subject of
31 agency action in order for them to determine whether their interests could be affected

1 by agency action on that subject.

2 * Sec. 9. AS 44.62.210(a) is amended to read:

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4 shall give each interested person or the person's authorized representative, or both, the
5 opportunity to present statements, arguments, or contentions in writing, with or without
6 opportunity to present them orally. The state agency may accept material presented
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8 factual, substantive, and other relevant matter presented to it before adopting,
9 amending, or repealing a regulation. When considering the factual, substantive, and
10 other relevant matter, the agency shall pay special attention to the cost to private
11 persons of the proposed regulatory action. A designated state agency shall also pay
12 special attention to the benefit to private persons of the proposed regulatory
13 action.

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18 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,
19 amendment, or order but the designated state agency would not normally consider the
20 change to be significant enough to require additional notice and opportunity for
21 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the
22 designated state agency shall provide notice and opportunity for public comment under
23 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,
24 amendment, or order of repeal.

25 (b) If a designated state agency does not provide the notice and opportunity
26 for public comment under (a) of this section for a rewritten proposed regulation,
27 amendment, or order of repeal, the designated state agency shall prepare a written
28 explanation of the reasons why the requirement of (a) of this section does not apply.
29 When the adopted regulation, amendment, or order of repeal is published in the Alaska
30 Administrative Journal, the lieutenant governor shall include the designated state
31 agency explanation with the text or a summary of the text of the regulation,

1 amendment, or order of repeal.

2 (c) A regulation, an order of repeal, or an amendment to a regulation of a
3 designated state agency may not be voided because the designated state agency taking
4 the regulatory action failed to comply with this section.

5 (d) This section does not apply to regulations

6 (1) adopted under AS 44.62.260 to make emergency regulations
7 permanent; or

8 (2) that are necessary to meet federal requirements.

9 * Sec. 11. AS 44.62.230 is amended to read:

10 Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting
11 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
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13 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
14 emergency regulation, and the agency finds that an emergency exists, the requirements
15 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
16 apply, and the agency may submit the regulation to the lieutenant governor
17 immediately after making the finding of emergency and putting the regulation into
18 proper form.

19 * Sec. 12. AS 44.62.250 is amended to read:

20 Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may
21 be adopted as an emergency regulation or order of repeal if a state agency makes a
22 written finding, including a statement of the facts that constitute the emergency, that
23 the adoption of the regulation or order of repeal is necessary for the immediate
24 preservation of the public peace, health, safety, or general welfare. The requirements
25 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
26 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
27 adoption of an emergency regulation, the adopting agency shall immediately submit
28 a copy of it to the lieutenant governor for filing and for publication in the Alaska
29 Administrative Register, and, within five days after filing by the lieutenant governor,
30 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
31 Failure to give the required notice by the end of the 10th day automatically repeals the

1 regulation.

2 * Sec. 13. AS 44.62.260 is amended to read:

3 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

4 (a) A regulation adopted as an emergency regulation does not remain in effect more
5 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
6 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are
7 applicable to the regulation, either before submitting the regulation to the lieutenant
8 governor or during the 120-day period.

9 (b) Before the expiration of the 120-day period, the agency shall transmit to
10 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
11 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were
12 applicable to the regulation, were complied with before submitting the regulation to
13 the lieutenant governor, or that the agency complied with those sections within the
14 120-day period. Failure to so certify repeals the emergency regulation; it may not be
15 renewed or refiled as an emergency regulation.

16 * Sec. 14. AS 44.62 is amended by adding a new section to read:

17 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may
18 not take more than two years to adopt regulations that the designated state agency is
19 required to adopt by a statute. The two-year period begins on the effective date of
20 enactment of the statute requiring the adoption of the regulations.

21 (b) If a designated state agency fails to comply with (a) of this section, the
22 designated state agency shall prepare a written report containing the reasons for the
23 failure and submit the report to the president of the senate, the speaker of the house
24 of representatives, and the Administrative Regulation Review Committee established
25 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a
26 regulation invalid for failure to comply with this section.

27 (c) The requirement of (a) of this section is not intended to prohibit a
28 designated state agency from amending a regulation after the regulation has been
29 adopted.

30 (d) This section does not apply to regulations that are necessary to meet
31 federal requirements.

1 * Sec. 15. AS 44.62.300 is amended by adding new subsections to read:

2 (b) Except where a court has other grounds for holding the regulation invalid,
3 a court that reviews the validity of a regulation of a designated state agency shall hold
4 the regulation valid unless

5 (1) the regulation uses an approach that causes more than the least
6 necessary intrusion on the rights and property of the persons affected by the regulation;
7 and

8 (2) the approach taken by the regulation is not required by a substantial
9 state interest.

10 (c) Notwithstanding (b) of this section, when an action for declaratory relief
11 is brought under (a) of this section, a court may not issue a temporary restraining
12 order, a preliminary injunction, or a permanent injunction based on (b) of this section
13 to stop the operation of a regulation of a designated state agency.

14 (d) In (b)(2) of this section, the person challenging the regulation carries the
15 burden of proving that there is not a substantial state interest that requires using the
16 approach taken by the regulation.

17 (e) The provisions of (b) - (d) of this section do not apply to regulations that
18 are necessary to meet federal requirements.

19 * Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

20 (5) "designated state agency"

21 (A) means

22 (i) the Department of Environmental Conservation;

23 (ii) the Department of Natural Resources; and

24 (iii) the Department of Fish and Game for habitat and
25 restoration programs;

26 (B) does not include

27 (i) a board or commission located in an agency
28 described in (A) of this paragraph; or

29 (ii) any other organizational entity located in an agency
30 described in (A) of this paragraph if the organizational entity is
31 governed by a board whose members are subject to confirmation by the

1 legislature.

2 * Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the
3 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as
4 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
5 effective date of this Act.

6 (b) Section 14 of this Act applies to the adoption of regulations if the effective date
7 of the Act enacting the statutory authority requiring the adoption is the same as or after the
8 effective date of this Act.

9 * Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and
10 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil
11 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

12 * Sec. 19. This Act takes effect July 1, 2000.

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CS FOR SENATE BILL NO. 24(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; amending Rule 65, Alaska Rules of Civil
2 Procedure; and providing for an effective date."

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

4 * **Section 1. SHORT TITLE.** This Act may be known as the Alaska Regulations Reform
5 Act.

6 * **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute. Except for**
8 **designated state agencies, if [IF], by express or implied terms of a statute, a state**
9 **agency has authority to adopt regulations to implement, interpret, make specific, or**
10 **otherwise carry out the provisions of the statute, a regulation adopted is not valid or**
11 **effective unless consistent with the statute and reasonably necessary to carry out the**
12 **purpose of the statute.**

13 * **Sec. 3.** AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry
2 out the provisions of the statute, a regulation adopted is not valid or effective,
3 notwithstanding any other provision of law, unless the regulation takes a reasonable
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state
6 agency may not adopt a regulation that changes the intent of the statute being
7 implemented, interpreted, made specific, or otherwise carried out. When challenging
8 a regulation under this subsection, the burden of proof is on the person challenging the
9 regulation to prove that the regulation changes the intent of the statute. A person may
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent
11 injunction from a court to enjoin the operation of a regulation based on a failure to
12 comply with this subsection.

13 * Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
17 or that the costs and benefits cannot be easily determined, a designated state agency
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the
19 proposed regulatory action and the benefits to the public from the proposed regulatory
20 action. The designated state agency shall consider a cost or benefit even if the cost
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state
22 agency is not required to give the cost or benefit a dollar value in order to prepare a
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the
26 proposed regulatory action is equal to or not substantially greater than the cost of
27 implementing the proposed regulatory action as estimated in the fiscal note prepared
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
30 required by this section, the designated state agency may not adopt a regulation, order
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not
13 be voided because the designated state agency taking the regulatory action failed to
14 comply with this section.

15 (g) The designated state agency shall make a copy of the cost-benefit analysis
16 prepared under this section available to the public before a hearing on the proposed
17 regulatory action, or, if a cost-benefit analysis is not required due to the operation of
18 (b) of this section, the designated state agency shall make a copy of the fiscal note
19 identified in (b) of this section available to the public before a hearing on the proposed
20 regulatory action.

21 (h) In this section, "adopting state agency head" means the commissioner of
22 the department within which the state agency is located.

23 * Sec. 5. AS 44.62.190(a) is amended to read:

24 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
25 notice of the proposed action shall be

26 (1) published in the newspaper of general circulation or trade or
27 industry publication that the state agency prescribes and in the Alaska Administrative
28 Journal; in the discretion of the state agency giving the notice, the requirement of
29 publication in a newspaper or trade or industry publication may be satisfied by using
30 a combination of publication and broadcasting; when broadcasting the notice, an
31 agency may use an abbreviated form of the notice if the broadcast provides the name

1 and date of the newspaper or trade or industry journal where the full text of the notice
2 can be found;

3 (2) mailed to every person who has filed a request for notice of
4 proposed action with the state agency;

5 (3) if the agency is within a department, mailed or delivered to the
6 commissioner of the department;

7 (4) when appropriate in the judgment of the agency,

8 (A) mailed to a person or group of persons whom the agency
9 believes is interested in the proposed action; and

10 (B) published in the additional form and manner the state
11 agency prescribes;

12 (5) furnished the Department of Law together with a copy of the
13 proposed regulation, amendment, or order of repeal for the department's use in
14 preparing the opinion required after adoption and before filing by AS 44.62.060;

15 (6) furnished to all incumbent State of Alaska legislators and the
16 Legislative Affairs Agency;

17 (7) furnished to the standing committee of each house of the legislature
18 having legislative jurisdiction over the subject matter treated by the regulation under
19 the Uniform Rules of the Alaska State Legislature, together with a copy of the
20 proposed regulation, amendment, or order of repeal for the committee's use in
21 conducting the review authorized by AS 24.05.182;

22 (8) furnished to the staff of the Administrative Regulation Review
23 Committee, together with a copy of the proposed regulation, amendment, or order of
24 repeal and, if preparation of an appropriation increase estimate is required by
25 AS 44.62.195, a copy of the estimate;

26 (9) published on the Internet by a designated state agency
27 proposing the action if the designated state agency has the technological capability
28 to publish on the Internet.

29 * Sec. 6. AS 44.62.200(a) is amended to read:

30 (a) The notice of proposed adoption, amendment, or repeal of a regulation
31 must include

1 (1) a statement of the time, place, and nature of proceedings for
2 adoption, amendment, or repeal of the regulation;

3 (2) reference to the authority under which the regulation is proposed
4 and a reference to the particular code section or other provisions of law that are being
5 implemented, interpreted, or made specific;

6 (3) an informative summary of the proposed subject of agency action;

7 (4) other matters prescribed by a statute applicable to the specific
8 agency or to the specific regulation or class of regulations;

9 (5) a summary of the fiscal information required to be prepared under
10 AS 44.62.195;

11 (6) a statement that a copy of the cost-benefit analysis is available
12 from the designated state agency proposing the regulatory action if the cost-
13 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not
14 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note
15 identified in AS 44.62.035(b) is available from the designated state agency
16 proposing the regulatory action.

17 * Sec. 7. AS 44.62.200(b) is amended to read:

18 (b) Except for designated state agencies, a [A] regulation that is adopted,
19 amended, or repealed may vary in content from the summary specified in (a)(3) of this
20 section if the subject matter of the regulation remains the same and the original notice
21 was written so as to assure that members of the public are reasonably notified of the
22 proposed subject of agency action in order for them to determine whether their
23 interests could be affected by agency action on that subject.

24 * Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

25 (d) A regulation that is adopted, amended, or repealed by a designated state
26 agency may vary in content from the summary specified in (a)(3) of this section if the
27 subject matter of the regulation remains the same and the notice was written so as to
28 assure that members of the public are reasonably notified of the proposed subject of
29 agency action in order for them to determine whether their interests could be affected
30 by agency action on that subject.

31 * Sec. 9. AS 44.62.210(a) is amended to read:

1 (a) On the date and at the time and place designated in the notice, the agency
2 shall give each interested person or the person's authorized representative, or both, the
3 opportunity to present statements, arguments, or contentions in writing, with or without
4 opportunity to present them orally. The state agency may accept material presented
5 by any form of communication authorized by this chapter and shall consider all
6 factual, substantive, and other relevant matter presented to it before adopting,
7 amending, or repealing a regulation. When considering the factual, substantive, and
8 other relevant matter, the agency shall pay special attention to the cost to private
9 persons of the proposed regulatory action. A designated state agency shall also pay
10 special attention to the benefit to private persons of the proposed regulatory
11 action.

12 * Sec. 10. AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a
14 designated state agency rewrites a proposed regulation, amendment of a regulation, or
15 order of repeal after the designated state agency has complied with AS 44.62.190,
16 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,
17 amendment, or order but the designated state agency would not normally consider the
18 change to be significant enough to require additional notice and opportunity for
19 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the
20 designated state agency shall provide notice and opportunity for public comment under
21 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,
22 amendment, or order of repeal.

23 (b) If a designated state agency does not provide the notice and opportunity
24 for public comment under (a) of this section for a rewritten proposed regulation,
25 amendment, or order of repeal, the designated state agency shall prepare a written
26 explanation of the reasons why the requirement of (a) of this section does not apply.
27 When the adopted regulation, amendment, or order of repeal is published in the Alaska
28 Administrative Journal, the lieutenant governor shall include the designated state
29 agency explanation with the text or a summary of the text of the regulation,
30 amendment, or order of repeal.

31 (c) A regulation, an order of repeal, or an amendment to a regulation of a

1 designated state agency may not be voided because the designated state agency taking
2 the regulatory action failed to comply with this section.

3 (d) This section does not apply to regulations

4 (1) adopted under AS 44.62.260 to make emergency regulations
5 permanent; or

6 (2) that are necessary to meet federal requirements.

7 * Sec. 11. AS 44.62.230 is amended to read:

8 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
9 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
10 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
11 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
12 emergency regulation, and the agency finds that an emergency exists, the requirements
13 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
14 apply, and the agency may submit the regulation to the lieutenant governor
15 immediately after making the finding of emergency and putting the regulation into
16 proper form.

17 * Sec. 12. AS 44.62.250 is amended to read:

18 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
19 be adopted as an emergency regulation or order of repeal if a state agency makes a
20 written finding, including a statement of the facts that constitute the emergency, that
21 the adoption of the regulation or order of repeal is necessary for the immediate
22 preservation of the public peace, health, safety, or general welfare. The requirements
23 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
24 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
25 adoption of an emergency regulation, the adopting agency shall immediately submit
26 a copy of it to the lieutenant governor for filing and for publication in the Alaska
27 Administrative Register, and, within five days after filing by the lieutenant governor,
28 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
29 Failure to give the required notice by the end of the 10th day automatically repeals the
30 regulation.

31 * Sec. 13. AS 44.62.260 is amended to read:

1 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

2 (a) A regulation adopted as an emergency regulation does not remain in effect more
3 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
4 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are
5 applicable to the regulation, either before submitting the regulation to the lieutenant
6 governor or during the 120-day period.

7 (b) Before the expiration of the 120-day period, the agency shall transmit to
8 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
9 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were
10 applicable to the regulation, were complied with before submitting the regulation to
11 the lieutenant governor, or that the agency complied with those sections within the
12 120-day period. Failure to so certify repeals the emergency regulation; it may not be
13 renewed or refiled as an emergency regulation.

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

15 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may
16 not take more than two years to adopt regulations that the designated state agency is
17 required to adopt by a statute. The two-year period begins on the effective date of
18 enactment of the statute requiring the adoption of the regulations.

19 (b) If a designated state agency fails to comply with (a) of this section, the
20 designated state agency shall prepare a written report containing the reasons for the
21 failure and submit the report to the president of the senate, the speaker of the house
22 of representatives, and the Administrative Regulation Review Committee established
23 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a
24 regulation invalid for failure to comply with this section.

25 (c) The requirement of (a) of this section is not intended to prohibit a
26 designated state agency from amending a regulation after the regulation has been
27 adopted.

28 (d) This section does not apply to regulations that are necessary to meet
29 federal requirements.

30 * **Sec. 15.** AS 44.62.300 is amended by adding new subsections to read:

31 (b) Except where a court has other grounds for holding the regulation invalid,

1 a court that reviews the validity of a regulation of a designated state entity shall hold
2 the regulation valid unless

3 (1) the regulation uses an approach that causes more than the least
4 necessary intrusion on the rights and property of the persons affected by the regulation;
5 and

6 (2) the approach taken by the regulation is not required by a substantial
7 state interest.

8 (c) Notwithstanding (b) of this section, when an action for declaratory relief
9 is brought under (a) of this section, a court may not issue a temporary restraining
10 order, a preliminary injunction, or a permanent injunction based on (b) of this section
11 to stop the operation of a regulation of a designated state agency.

12 (d) In (b)(2) of this section, the person challenging the regulation carries the
13 burden of proving that there is not a substantial state interest that requires using the
14 approach taken by the regulation.

15 (e) The provisions of (b) - (d) of this section do not apply to regulations that
16 are necessary to meet federal requirements.

17 * Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

18 (5) "designated state agency"

19 (A) means the Department of Environmental Conservation, the
20 Department of Natural Resources, and the division of habitat and restoration
21 of the Department of Fish and Game;

22 (B) does not include

23 (i) a board or commission located in an entity described
24 in (A) of this paragraph; or

25 (ii) any other organizational entity located in an entity
26 described in (A) of this paragraph if the organizational entity is
27 governed by a board whose members are subject to confirmation by the
28 legislature.

29 * Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the
30 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as
31 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the

1 effective date of this Act.

2 (b) Section 14 of this Act applies to the adoption of regulations if the effective date
3 of the Act enacting the statutory authority requiring the adoption is the same as or after the
4 effective date of this Act.

5 * Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and
6 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil
7 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

8 * Sec. 19. This Act takes effect July 1, 2000.

Amended & Adopted

*(removed)
(Sec. 8)*

1-LS0274V
Bannister
3/17/99

**CS FOR SENATE BILL NO. 24(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION**

BY THE SENATE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

**1 "An Act relating to regulations; relating to administrative adjudications; amending
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date"**

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

**4 * Section 1. SHORT TITLE. Sections 2 - 15 of this Act may be known as the Alaska
5 Regulations Reform Act.**

6 * Sec. 2. AS 44.62.030 is amended to read:

**7 Sec. 44.62.030. Consistency between regulation and statute. Except for
8 designated state agencies, if [IF], by express or implied terms of a statute, a state
9 agency has authority to adopt regulations to implement, interpret, make specific, or
10 otherwise carry out the provisions of the statute, a regulation adopted is not valid or
11 effective unless consistent with the statute and reasonably necessary to carry out the
12 purpose of the statute.**

13 * Sec. 3. AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry
2 out the provisions of the statute, a regulation adopted is not valid or effective,
3 notwithstanding any other provision of law, unless the regulation takes a reasonable
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state
6 agency may not adopt a regulation that changes the intent of the statute being
7 implemented, interpreted, made specific, or otherwise carried out. When challenging
8 a regulation under this subsection, the burden of proof is on the person challenging the
9 regulation to prove that the regulation changes the intent of the statute. A person may
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent
11 injunction from a court to enjoin the operation of a regulation based on a failure to
12 comply with this subsection.

13 * **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
17 or that the costs and benefits cannot be easily determined, a designated state agency
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the
19 proposed regulatory action and the benefits to the public from the proposed regulatory
20 action. The designated state agency shall consider a cost or benefit even if the cost
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state
22 agency is not required to give the cost or benefit a dollar value in order to prepare a
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the
26 proposed regulatory action is equal to or not substantially greater than the cost of
27 implementing the proposed regulatory action as estimated in the fiscal note prepared
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
30 required by this section, the designated state agency may not adopt a regulation, order
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not
13 be voided because the designated state agency taking the regulatory action failed to
14 comply with this section.

15 (g) The designated state agency shall make a copy of the cost-benefit analysis
16 prepared under this section available to the public before a hearing on the proposed
17 regulatory action, or, if a cost-benefit analysis is not required due to the operation of
18 (b) of this section, the designated state agency shall make a copy of the fiscal note
19 identified in (b) of this section available to the public before a hearing on the proposed
20 regulatory action.

21 (h) In this section, "adopting state agency head" means the commissioner of
22 the department within which the state agency is located.

23 * Sec. 5. AS 44.62.190(a) is amended to read:

24 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
25 notice of the proposed action shall be

26 (1) published in the newspaper of general circulation or trade or
27 industry publication that the state agency prescribes and in the Alaska Administrative
28 Journal; in the discretion of the state agency giving the notice, the requirement of
29 publication in a newspaper or trade or industry publication may be satisfied by using
30 a combination of publication and broadcasting; when broadcasting the notice, an
31 agency may use an abbreviated form of the notice if the broadcast provides the name

1 and date of the newspaper or trade or industry journal where the full text of the notice
2 can be found;

3 (2) mailed to every person who has filed a request for notice of
4 proposed action with the state agency;

5 (3) if the agency is within a department, mailed or delivered to the
6 commissioner of the department;

7 (4) when appropriate in the judgment of the agency,

8 (A) mailed to a person or group of persons whom the agency
9 believes is interested in the proposed action; and

10 (B) published in the additional form and manner the state
11 agency prescribes;

12 (5) furnished the Department of Law together with a copy of the
13 proposed regulation, amendment, or order of repeal for the department's use in
14 preparing the opinion required after adoption and before filing by AS 44.62.060;

15 (6) furnished to all incumbent State of Alaska legislators and the
16 Legislative Affairs Agency;

17 (7) furnished to the standing committee of each house of the legislature
18 having legislative jurisdiction over the subject matter treated by the regulation under
19 the Uniform Rules of the Alaska State Legislature, together with a copy of the
20 proposed regulation, amendment, or order of repeal for the committee's use in
21 conducting the review authorized by AS 24.05.182;

22 (8) furnished to the staff of the Administrative Regulation Review
23 Committee, together with a copy of the proposed regulation, amendment, or order of
24 repeal and, if preparation of an appropriation increase estimate is required by
25 AS 44.62.195, a copy of the estimate;

26 (9) published on the Internet by a designated state agency
27 proposing the action if the designated state agency has the technological capability
28 to publish on the Internet.

29 * Sec. 6. AS 44.62.200(a) is amended to read:

30 (a) The notice of proposed adoption, amendment, or repeal of a regulation
31 must include

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(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law that are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations;

(5) a summary of the fiscal information required to be prepared under AS 44.62.195;

(6) a statement that a copy of the cost-benefit analysis is available from the designated state agency proposing the regulatory action if the cost-benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not required due to the operation of AS 44.62.035(b), that a copy of the fiscal note identified in AS 44.62.035(b) is available from the designated state agency proposing the regulatory action.

* Sec. 7. AS 44.62.200(b) is amended to read:

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

* Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

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

* Sec. 9. AS 44.62.210(a) is amended to read:

removed

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1 (a) On the date and at the time and place designated in the notice, the agency
2 shall give each interested person or the person's authorized representative, or both, the
3 opportunity to present statements, arguments, or contentions in writing, with or without
4 opportunity to present them orally. The state agency may accept material presented
5 by any form of communication authorized by this chapter and shall consider all
6 factual, substantive, and other relevant matter presented to it before adopting,
7 amending, or repealing a regulation. When considering the factual, substantive, and
8 other relevant matter, the agency shall pay special attention to the cost to private
9 persons of the proposed regulatory action. A designated state agency shall also pay
10 special attention to the benefit to private persons of the proposed regulatory
11 action.

12 * **Sec. 10.** AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a
14 designated state agency rewrites a proposed regulation, amendment of a regulation, or
15 order of repeal after the designated state agency has complied with AS 44.62.190,
16 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,
17 amendment, or order but the designated state agency would not normally consider the
18 change to be significant enough to require additional notice and opportunity for
19 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the
20 designated state agency shall provide notice and opportunity for public comment under
21 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,
22 amendment, or order of repeal.

23 (b) If a designated state agency does not provide the notice and opportunity
24 for public comment under (a) of this section for a rewritten proposed regulation,
25 amendment, or order of repeal, the designated state agency shall prepare a written
26 explanation of the reasons why the requirement of (a) of this section does not apply.
27 When the adopted regulation, amendment, or order of repeal is published in the Alaska
28 Administrative Journal, the lieutenant governor shall include the designated state
29 agency explanation with the text or a summary of the text of the regulation,
30 amendment, or order of repeal.

31 (c) A regulation, an order of repeal, or an amendment to a regulation of a

1 designated state agency may not be voided because the designated state agency taking
2 the regulatory action failed to comply with this section if the designated state agency
3 made a good faith attempt to comply with this section.

4 (d) This section does not apply to regulations

5 (1) adopted under AS 44.62.260 to make emergency regulations
6 permanent; or

7 (2) that are necessary to meet federal requirements.

8 * Sec. 11. AS 44.62.230 is amended to read:

9 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
10 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
11 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
12 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
13 emergency regulation, and the agency finds that an emergency exists, the requirements
14 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
15 apply, and the agency may submit the regulation to the lieutenant governor
16 immediately after making the finding of emergency and putting the regulation into
17 proper form.

18 * Sec. 12. AS 44.62.250 is amended to read:

19 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
20 be adopted as an emergency regulation or order of repeal if a state agency makes a
21 written finding, including a statement of the facts that constitute the emergency, that
22 the adoption of the regulation or order of repeal is necessary for the immediate
23 preservation of the public peace, health, safety, or general welfare. The requirements
24 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
25 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
26 adoption of an emergency regulation, the adopting agency shall immediately submit
27 a copy of it to the lieutenant governor for filing and for publication in the Alaska
28 Administrative Register, and, within five days after filing by the lieutenant governor,
29 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
30 Failure to give the required notice by the end of the 10th day automatically repeals the
31 regulation.

1 * **Sec. 13.** AS 44.62.260 is amended to read:

2 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

3 (a) A regulation adopted as an emergency regulation does not remain in effect more
4 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
5 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are
6 applicable to the regulation, either before submitting the regulation to the lieutenant
7 governor or during the 120-day period.

8 (b) Before the expiration of the 120-day period, the agency shall transmit to
9 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
10 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were
11 applicable to the regulation, were complied with before submitting the regulation to
12 the lieutenant governor, or that the agency complied with those sections within the
13 120-day period. Failure to so certify repeals the emergency regulation; it may not be
14 renewed or refiled as an emergency regulation.

15 * **Sec. 14.** AS 44.62 is amended by adding a new section to read:

16 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may
17 not take more than two years to adopt regulations that the designated state agency is
18 required to adopt by a statute. The two-year period begins on the effective date of
19 enactment of the statute requiring the adoption of the regulations.

20 (b) If a designated state agency fails to comply with (a) of this section, the
21 designated state agency shall prepare a written report containing the reasons for the
22 failure and submit the report to the president of the senate, the speaker of the house
23 of representatives, and the Administrative Regulation Review Committee established
24 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a
25 regulation invalid for failure to comply with this section.

26 (c) The requirement of (a) of this section is not intended to prohibit a
27 designated state agency from amending a regulation after the regulation has been
28 adopted.

29 (d) This section does not apply to regulations that are necessary to meet
30 federal requirements.

31 * **Sec. 15.** AS 44.62.300 is amended by adding new subsections to read:

1 (b) Except where a court has other grounds for holding the regulation invalid,
2 a court that reviews the validity of a regulation of a designated state entity shall hold
3 the regulation valid unless

4 (1) the regulation uses an approach that causes more than the least
5 necessary intrusion on the rights and property of the persons affected by the regulation;
6 and

7 (2) the approach taken by the regulation is not required by a substantial
8 state interest.

9 (c) Notwithstanding (b) of this section, when an action for declaratory relief
10 is brought under (a) of this section, a court may not issue a temporary restraining
11 order, a preliminary injunction, or a permanent injunction based on (b) of this section
12 to stop the operation of a regulation of a designated state agency.

13 (d) In (b)(2) of this section, the person challenging the regulation carries the
14 burden of proving that there is not a substantial state interest that requires using the
15 approach taken by the regulation.

16 (e) The provisions of (b) - (d) of this section do not apply to regulations that
17 are necessary to meet federal requirements.

18 * Sec. 16. AS 44.62 is amended by adding a new section to read:

19 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication of a
20 designated state agency must result in

21 (1) a proposed administrative order within the later of 60 days after the
22 hearing officer closes the record or two years after the statement of issues under
23 AS 44.62.370 or an accusation under AS 44.62.360 is filed; and

24 (2) a final administrative order within 30 days after the proposed
25 administrative order.

26 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the
27 contrary, a designated state agency may not order a record to be reopened after the
28 hearing officer has closed the record unless a substantial factual question exists that
29 is necessary to the resolution of the administrative adjudication and the lieutenant
30 governor approves reopening the record.

31 (c) A time limitation in (a) of this section may be extended if

1 (1) the lieutenant governor approves the extension, but, even with an
2 extension under this paragraph, the administrative adjudication may not exceed four
3 years;

4 (2) a respondent other than the designated state agency petitions for
5 reconsideration under AS 44.62.540 for a stay of execution under AS 44.62.520, for
6 an extension of a time limit in (a) of this section, or for the record to be reopened in
7 the administrative adjudication.

8 (d) Unless the time is extended by (c) of this section, if an administrative
9 adjudication does not result in a final administrative order in the total time allowed by
10 (a) of this section for a designated state agency to reach a proposed administrative
11 order and a final administrative order, and if a designated state agency instigated the
12 administrative adjudication, the respondent may cancel the administrative adjudication
13 by notifying the designated state agency in writing of the cancellation. The designated
14 state agency may not subsequently begin another administrative adjudication for the
15 same matter that was the subject of the cancelled administrative adjudication, and an
16 appeal may not be taken from the cancelled administrative adjudication or from the
17 cancellation of the administrative adjudication. However, after the administrative
18 adjudication is cancelled, the designated state agency may bring an action in superior
19 court covering the matter that was the subject of the cancelled administrative
20 adjudication. The complaint must be filed with the superior court within 60 days after
21 the administrative adjudication is cancelled under this subsection.

22 (e) Unless the time is extended by (c) of this section, if an administrative
23 adjudication does not result in a final administrative order in the total time allowed by
24 (a) of this section for a designated state agency to reach a proposed administrative
25 order and a final administrative order, and if a person other than the designated state
26 agency instigated the administrative adjudication, the person may cancel the
27 administrative adjudication by notifying the designated state agency in writing of the
28 cancellation. The person is considered to have exhausted the person's administrative
29 remedies with regard to the subject matter of the cancelled administrative adjudication,
30 and an appeal may not be taken from the cancelled administrative adjudication or from
31 the cancellation of the administrative adjudication. However, after the administrative

1 adjudication is cancelled, the person may bring an action in superior court covering the
2 matter that was the subject of the administrative adjudication. The complaint must be
3 filed with the superior court within 60 days after the administrative adjudication is
4 cancelled under this subsection.

5 (f) If an administrative adjudication involves an allegation of criminal conduct
6 and is parallel to a criminal case brought in court for the criminal conduct, this section
7 does not apply to, and the time limits in this section do not start running for, the
8 administrative adjudication until the criminal case is resolved.

9 (g) In this section,

10 (1) "administrative adjudication" means the procedure that begins with
11 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380
12 and ends with the issuance of a final administrative order;

13 (2) "final administrative order" means a decision under AS 44.62.330 -
14 44.62.630 that is eligible for judicial review under AS 44.62.560.

15 * Sec. 17. AS 44.62.640(c) is amended to read:

16 (c) In this chapter,

17 (1) "designated state agency"

18 (A) means the Department of Environmental Conservation,
19 the Department of Natural Resources, and the division of habitat and
20 restoration of the Department of Fish and Game;

21 (B) does not include

22 (i) a board or commission located in an entity
23 described in (A) of this paragraph; or

24 (ii) any other organizational entity located in an
25 entity described in (A) of this paragraph if the organizational entity
26 is governed by a board whose members are subject to confirmation
27 by the legislature;

28 (2) "teleconferencing" means information exchange by audio or video
29 medium.

30 * Sec. 18. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the
31 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as

1 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
2 effective date of this Act.

3 (b) Section 14 of this Act applies to the adoption of regulations if the effective date
4 of the Act enacting the statutory authority requiring the adoption is the same as or after the
5 effective date of this Act.

6 (c) Section 16 of this Act applies to an administrative adjudication if the statement
7 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the
8 effective date of this Act.

9 * Sec. 19. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and
10 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil
11 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

12 * Sec. 20. This Act takes effect July 1, 2000.

SENATE FINANCE COMMITTEE
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	CS "V"
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	U
<u>Objection by</u>	Adams
<u>Removed</u>	X
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	amended + adopted

I-LS0274\S
Bannister/
3/10/99

CS FOR SENATE BILL NO. 24(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:

Referred:

Sponsor(s): **SENATORS DONLEY, Taylor**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; relating to administrative adjudications; amending
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date."

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

4 * **Section 1. SHORT TITLE.** Sections 2 - 13 of this Act may be known as the Alaska
5 Regulations Reform Act.

6 * **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Relationship [CONSISTENCY] between regulation and**
8 **statute.** If, by express or implied terms of a statute, a state agency has authority to
9 adopt regulations to implement, interpret, make specific, or otherwise carry out the
10 provisions of the statute, a regulation adopted is not valid or effective,
11 **notwithstanding any other provision of law, unless the regulation takes a**
12 **reasonable approach clearly within the intent of [CONSISTENT WITH] the statute**
13 **[AND REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE**
14 **STATUTE].**

1 * **Sec. 3.** AS 44.62.030 is amended by adding a new subsection to read:

2 (b) In addition to the requirements of (a) of this section, a state agency may
3 not adopt a regulation that changes the intent of the statute being implemented,
4 interpreted, made specific, or otherwise carried out. When challenging a regulation
5 under this subsection, the burden of proof is on the person challenging the regulation
6 to prove that the regulation changes the intent of the statute. A person may not obtain
7 a temporary restraining order, a preliminary injunction, or a permanent injunction from
8 a court to enjoin the operation of a regulation based on a failure to comply with this
9 subsection.

10 * **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

11 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
12 an order of repeal, or an amendment to a regulation, unless the adopting state agency
13 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
14 or that the costs and benefits cannot be easily determined, a state agency shall prepare
15 a cost-benefit analysis of the costs to the public to comply with the proposed
16 regulatory action and the benefits to the public from the proposed regulatory action.
17 The state agency shall consider a cost or benefit even if the cost or benefit relates to
18 aesthetics or is otherwise nonquantifiable, and the state agency is not required to give
19 the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

20 (b) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
21 required by this section, the agency may not adopt a regulation, order of repeal, or
22 amendment unless, under the analysis, the benefit to the public outweighs the cost to
23 the public.

24 (c) Consistent with this section, the adopting state agency head shall determine
25 the type of cost-benefit analysis to be prepared by the state agency under this section.

26 (d) The cost-benefit analysis requirement of this section does not apply when
27 the proposed regulatory action is necessary to implement a budgetary modification or
28 when the state agency is expressly required by statute to adopt the proposed regulation,
29 order of repeal, or amendment.

30 (e) A regulation, an order of repeal, or an amendment to a regulation may not
31 be voided because the state agency taking the regulatory action failed to comply with

1 this section if the state agency made a good faith attempt to comply with this section.

2 (f) The state agency shall make a copy of the cost-benefit analysis prepared
3 under this section available to the public before a hearing on the proposed regulatory
4 action.

5 (g) In this section,

6 (1) "adopting state agency head" means the governor if the state agency
7 is the Office of the Governor, or the commissioner of the department within which the
8 state agency is located;

9 (2) "state agency" does not include the Department of Corrections, the
10 Board of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
11 Commission.

12 * Sec. 5. AS 44.62.190(a) is amended to read:

13 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
14 notice of the proposed action shall be

15 (1) published in the newspaper of general circulation or trade or
16 industry publication that the state agency prescribes and in the Alaska Administrative
17 Journal; in the discretion of the state agency giving the notice, the requirement of
18 publication in a newspaper or trade or industry publication may be satisfied by using
19 a combination of publication and broadcasting; when broadcasting the notice, an
20 agency may use an abbreviated form of the notice if the broadcast provides the name
21 and date of the newspaper or trade or industry journal where the full text of the notice
22 can be found;

23 (2) mailed to every person who has filed a request for notice of
24 proposed action with the state agency;

25 (3) if the agency is within a department, mailed or delivered to the
26 commissioner of the department;

27 (4) when appropriate in the judgment of the agency,

28 (A) mailed to a person or group of persons whom the agency
29 believes is interested in the proposed action; and

30 (B) published in the additional form and manner the state
31 agency prescribes;

1 (5) furnished the Department of Law together with a copy of the
2 proposed regulation, amendment, or order of repeal for the department's use in
3 preparing the opinion required after adoption and before filing by AS 44.62.060;

4 (6) furnished to all incumbent State of Alaska legislators and the
5 Legislative Affairs Agency;

6 (7) furnished to the standing committee of each house of the legislature
7 having legislative jurisdiction over the subject matter treated by the regulation under
8 the Uniform Rules of the Alaska State Legislature, together with a copy of the
9 proposed regulation, amendment, or order of repeal for the committee's use in
10 conducting the review authorized by AS 24.05.182;

11 (8) furnished to the staff of the Administrative Regulation Review
12 Committee, together with a copy of the proposed regulation, amendment, or order of
13 repeal and, if preparation of an appropriation increase estimate is required by
14 AS 44.62.195, a copy of the estimate;

15 (9) published on the Internet by the state agency proposing the
16 action if the state agency has the technological capability to publish on the
17 Internet; in this paragraph, "state agency" does not include the Department of
18 Corrections, the Board of Fisheries, the Board of Game, or the Alaska
19 Commercial Fisheries Entry Commission.

20 * Sec. 6. AS 44.62.200(a) is amended to read:

21 (a) The notice of proposed adoption, amendment, or repeal of a regulation
22 must include

23 (1) a statement of the time, place, and nature of proceedings for
24 adoption, amendment, or repeal of the regulation;

25 (2) reference to the authority under which the regulation is proposed
26 and a reference to the particular code section or other provisions of law that are being
27 implemented, interpreted, or made specific;

28 (3) an informative summary of the proposed subject of agency action;

29 (4) other matters prescribed by a statute applicable to the specific
30 agency or to the specific regulation or class of regulations;

31 (5) a summary of the fiscal information required to be prepared under

1 AS 44.62.195;

2 (6) a statement that a copy of the cost-benefit analysis is available
3 from the agency proposing the regulatory action if a summary of the cost-benefit
4 analysis is required under AS 44.62.035.

5 * Sec. 7. AS 44.62.200(b) is amended to read:

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

12 * Sec. 8. AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
14 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
15 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
16 rewriting changes the substance of the regulation, amendment, or order but the state
17 agency would not normally consider the change to be significant enough to require
18 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and
19 44.62.210, before adoption, the agency shall provide notice and opportunity for public
20 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
21 regulation, amendment, or order of repeal.

22 (b) If a state agency does not provide the notice and opportunity for public
23 comment under (a) of this section for a rewritten proposed regulation, amendment, or
24 order of repeal, the agency shall prepare a written explanation of the reasons why the
25 requirement of (a) of this section does not apply. When the adopted regulation,
26 amendment, or order of repeal is published in the Alaska Administrative Journal, the
27 lieutenant governor shall include the agency explanation with the text or a summary
28 of the text of the regulation, amendment, or order of repeal.

29 (c) A regulation, an order of repeal, or an amendment to a regulation may not
30 be voided because the state agency taking the regulatory action failed to comply with
31 this section if the state agency made a good faith attempt to comply with this section.

1 (d) This section does not apply to regulations

2 (1) adopted under AS 44.62.260 to make emergency regulations
3 permanent; or

4 (2) that are necessary to meet federal requirements.

5 (e) In this section, "state agency" does not include the Department of
6 Corrections, the Board of Fisheries, the Board of Game, or the Alaska Commercial
7 Fisheries Entry Commission.

8 * Sec. 9. AS 44.62.230 is amended to read:

9 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
10 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
11 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
12 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
13 emergency regulation, and the agency finds that an emergency exists, the requirements
14 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
15 apply, and the agency may submit the regulation to the lieutenant governor
16 immediately after making the finding of emergency and putting the regulation into
17 proper form.

18 * Sec. 10. AS 44.62.250 is amended to read:

19 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
20 be adopted as an emergency regulation or order of repeal if a state agency makes a
21 written finding, including a statement of the facts that constitute the emergency, that
22 the adoption of the regulation or order of repeal is necessary for the immediate
23 preservation of the public peace, health, safety, or general welfare. The requirements
24 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
25 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
26 adoption of an emergency regulation, the adopting agency shall immediately submit
27 a copy of it to the lieutenant governor for filing and for publication in the Alaska
28 Administrative Register, and, within five days after filing by the lieutenant governor,
29 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
30 Failure to give the required notice by the end of the 10th day automatically repeals the
31 regulation.

1 * Sec. 11. AS 44.62.260 is amended to read:

2 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

3 (a) A regulation adopted as an emergency regulation does not remain in effect more
4 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
5 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the
6 regulation to the lieutenant governor or during the 120-day period.

7 (b) Before the expiration of the 120-day period, the agency shall transmit to
8 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
9 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
10 submitting the regulation to the lieutenant governor, or that the agency complied with
11 those sections within the 120-day period. Failure to so certify repeals the emergency
12 regulation; it may not be renewed or refiled as an emergency regulation.

13 * Sec. 12. AS 44.62 is amended by adding a new section to read:

14 **Sec. 44.62.285. Time limit for adoption.** (a) A state agency may not take
15 more than two years to adopt regulations that the state agency is required to adopt by
16 a statute. The two-year period begins on the effective date of enactment of the statute
17 requiring the adoption of the regulations.

18 (b) If a state agency fails to comply with (a) of this section, the state agency
19 shall prepare a written report containing the reasons for the failure and submit the
20 report to the president of the senate, the speaker of the house of representatives, and
21 the Administrative Regulation Review Committee established under AS 24.20.400.
22 Notwithstanding AS 44.62.300, a court may not hold a regulation invalid for failure
23 to comply with this section.

24 (c) The requirement of (a) of this section is not intended to prohibit a state
25 agency from amending a regulation after the regulation has been adopted.

26 * Sec. 13. AS 44.62.300 is amended by adding new subsections to read:

27 (b) Except where a court has other grounds for holding the regulation invalid,
28 a court that reviews the validity of a regulation shall hold the regulation valid unless

29 (1) the regulation uses an approach that causes more than the least
30 necessary intrusion on the rights and property of the persons affected by the regulation;
31 and

1 (2) the approach taken by the regulation is not required by a substantial
2 state interest.

3 (c) Notwithstanding (b) of this section, when an action for declaratory relief
4 is brought under (a) of this section, a court may not issue a temporary restraining
5 order, a preliminary injunction, or a permanent injunction based on (b) of this section
6 to stop the operation of the regulation.

7 (d) In (b)(2) of this section, the person challenging the regulation carries the
8 burden of proving that there is not a substantial state interest that requires using the
9 approach taken by the regulation.

10 (e) A regulation of the Department of Corrections, the Department of Natural
11 Resources, a state board, or a state commission is not subject to (b) of this section.

12 * **Sec. 14.** AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication must result
14 in

15 (1) a proposed administrative order within the later of 60 days after the
16 hearing officer closes the record or two years after the statement of issues under
17 AS 44.62.370 or an accusation under AS 44.62.360 is filed; and

18 (2) a final administrative order within 30 days after the proposed
19 administrative order unless the agency conducting the administrative adjudication is
20 a state commission or a state board, in which case the state commission or state board
21 has 30 days after the commission's or board's next meeting to arrive at a final
22 administrative order.

23 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the
24 contrary, an agency may not order a record to be reopened after the hearing officer has
25 closed the record unless a substantial factual question exists that is necessary to the
26 resolution of the administrative adjudication and the lieutenant governor approves
27 reopening the record.

28 (c) A time limitation in (a) of this section may be extended if

29 (1) the lieutenant governor approves the extension, but, even with an
30 extension under this paragraph, the administrative adjudication may not exceed four
31 years;

1 (2) a respondent other than a state agency petitions for reconsideration
2 under AS 44.62.540 for a stay of execution under AS 44.62.520, for an extension of
3 a time limit in (a) of this section, or for the record to be reopened in the administrative
4 adjudication.

5 (d) Unless the time is extended by (c) of this section, if an administrative
6 adjudication does not result in a final administrative order in the total time allowed by
7 (a) of this section for an agency to reach a proposed administrative order and a final
8 administrative order, and if an agency instigated the administrative adjudication, the
9 respondent may cancel the administrative adjudication by notifying the agency in
10 writing of the cancellation. The agency may not subsequently begin another
11 administrative adjudication for the same matter that was the subject of the cancelled
12 administrative adjudication, and an appeal may not be taken from the cancelled
13 administrative adjudication or from the cancellation of the administrative adjudication.
14 However, after the administrative adjudication is cancelled, the agency may bring an
15 action in superior court covering the matter that was the subject of the cancelled
16 administrative adjudication. The complaint must be filed with the superior court
17 within 60 days after the administrative adjudication is cancelled under this subsection.

18 (e) Unless the time is extended by (c) of this section, if an administrative
19 adjudication does not result in a final administrative order in the total time allowed by
20 (a) of this section for an agency to reach a proposed administrative order and a final
21 administrative order, and if a person other than an agency instigated the administrative
22 adjudication, the person may cancel the administrative adjudication by notifying the
23 agency in writing of the cancellation. The person is considered to have exhausted the
24 person's administrative remedies with regard to the subject matter of the cancelled
25 administrative adjudication, and an appeal may not be taken from the cancelled
26 administrative adjudication or from the cancellation of the administrative adjudication.
27 However, after the administrative adjudication is cancelled, the person may bring an
28 action in superior court covering the matter that was the subject of the administrative
29 adjudication. The complaint must be filed with the superior court within 60 days after
30 the administrative adjudication is cancelled under this subsection.

31 (f) If an administrative adjudication involves an allegation of criminal conduct

1 and is parallel to a criminal case brought in court for the criminal conduct, this section
2 does not apply to, and the time limits in this section do not start running for, the
3 administrative adjudication until the criminal case is resolved.

4 (g) This section does not apply to the Department of Corrections, the Board
5 of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
6 Commission.

7 (h) In this section,

8 (1) "administrative adjudication" means the procedure that begins with
9 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380
10 and ends with the issuance of a final administrative order;

11 (2) "final administrative order" means a decision under AS 44.62.330 -
12 44.62.630 that is eligible for judicial review under AS 44.62.560.

13 * Sec. 15. APPLICABILITY. (a) Sections 1 - 11 and 13 of this Act apply to the
14 adoption, amendment, or repeal of a regulation if the initial notice under AS 44.62.190, as
15 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
16 effective date of this Act.

17 (b) Section 12 of this Act applies to a state agency's adoption of regulations if the
18 effective date of the Act enacting the statutory authority requiring the adoption is the same
19 as or after the effective date of this Act.

20 (c) Section 14 of this Act applies to an administrative adjudication if the statement
21 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the
22 effective date of this Act.

23 * Sec. 16. COURT RULE CHANGES. AS 44.62.030(b), enacted by sec. 3 of this Act,
24 and AS 44.62.300(c), enacted by sec. 13 of this Act, change Rule 65, Alaska Rules of Civil
25 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

26 * Sec. 17. This Act takes effect July 1, 2000.

1-LS0274\N
Bannister ✓
3/8/99

CS FOR SENATE BILL NO. 24()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; relating to administrative adjudications; amending
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date."

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

4 * Section 1. SHORT TITLE. Sections 2 - 13 of this Act may be known as the Alaska
5 Regulations Reform Act.

6 * Sec. 2. AS 44.62.030 is amended to read:

7 Sec. 44.62.030. Relationship [CONSISTENCY] between regulation and
8 statute. If, by express or implied terms of a statute, a state agency has authority to
9 adopt regulations to implement, interpret, make specific, or otherwise carry out the
10 provisions of the statute, a regulation adopted is not valid or effective,
11 notwithstanding any other provision of law, unless the regulation takes a
12 reasonable approach clearly within the intent of [CONSISTENT WITH] the statute
13 [AND REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE
14 STATUTE].

1 * Sec. 3. AS 44.62.030 is amended by adding a new subsection to read:

2 (b) In addition to the requirements of (a) of this section, a state agency may
3 not adopt a regulation that changes the intent of the statute being implemented,
4 interpreted, made specific, or otherwise carried out. When challenging a regulation
5 under this subsection, the burden of proof is on the person challenging the regulation
6 to prove that the regulation changes the intent of the statute. A person may not obtain
7 a temporary restraining order, a preliminary injunction, or a permanent injunction from
8 a court to enjoin the operation of a regulation based on a failure to comply with this
9 subsection.

10 * Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

11 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
12 an order of repeal, or an amendment to a regulation, unless the adopting state agency
13 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
14 or that the costs and benefits cannot be easily determined, a state agency shall prepare
15 a cost-benefit analysis of the costs to the public to comply with the proposed
16 regulatory action and the benefits to the public from the proposed regulatory action.
17 The state agency shall consider a cost or benefit even if the cost or benefit relates to
18 aesthetics or is otherwise nonquantifiable, and the state agency is not required to give
19 the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

20 (b) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
21 required by this section, the agency may not adopt a regulation, order of repeal, or
22 amendment unless, under the analysis, the benefit to the public outweighs the cost to
23 the public.

24 (c) Consistent with this section, the adopting state agency head shall determine
25 the type of cost-benefit analysis to be prepared by the state agency under this section.

26 (d) The cost-benefit analysis requirement of this section does not apply when
27 the proposed regulatory action is necessary to implement a budgetary modification or
28 when the state agency is expressly required by statute to adopt the proposed regulation,
29 order of repeal, or amendment.

30 (e) A regulation, an order of repeal, or an amendment to a regulation may not
31 be voided because the state agency taking the regulatory action failed to comply with

1 this section if the state agency made a good faith attempt to comply with this section.

2 (f) The state agency shall make a copy of the cost-benefit analysis prepared
3 under this section available to the public before a hearing on the proposed regulatory
4 action.

5 (g) In this section,

6 (1) "adopting state agency head" means the governor if the state agency
7 is the Office of the Governor, or the commissioner of the department within which the
8 state agency is located;

9 (2) "state agency" does not include the Department of Corrections, the
10 Board of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
11 Commission.

12 * Sec. 5. AS 44.62.190(a) is amended to read:

13 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
14 notice of the proposed action shall be

15 (1) published in the newspaper of general circulation or trade or
16 industry publication that the state agency prescribes and in the Alaska Administrative
17 Journal; in the discretion of the state agency giving the notice, the requirement of
18 publication in a newspaper or trade or industry publication may be satisfied by using
19 a combination of publication and broadcasting; when broadcasting the notice, an
20 agency may use an abbreviated form of the notice if the broadcast provides the name
21 and date of the newspaper or trade or industry journal where the full text of the notice
22 can be found;

23 (2) mailed to every person who has filed a request for notice of
24 proposed action with the state agency;

25 (3) if the agency is within a department, mailed or delivered to the
26 commissioner of the department;

27 (4) when appropriate in the judgment of the agency,

28 (A) mailed to a person or group of persons whom the agency
29 believes is interested in the proposed action; and

30 (B) published in the additional form and manner the state
31 agency prescribes;

1 (5) furnished the Department of Law together with a copy of the
2 proposed regulation, amendment, or order of repeal for the department's use in
3 preparing the opinion required after adoption and before filing by AS 44.62.060;

4 (6) furnished to all incumbent State of Alaska legislators and the
5 Legislative Affairs Agency;

6 (7) furnished to the standing committee of each house of the legislature
7 having legislative jurisdiction over the subject matter treated by the regulation under
8 the Uniform Rules of the Alaska State Legislature, together with a copy of the
9 proposed regulation, amendment, or order of repeal for the committee's use in
10 conducting the review authorized by AS 24.05.182;

11 (8) furnished to the staff of the Administrative Regulation Review
12 Committee, together with a copy of the proposed regulation, amendment, or order of
13 repeal and, if preparation of an appropriation increase estimate is required by
14 AS 44.62.195, a copy of the estimate;

15 (9) published on the Internet by the state agency proposing the
16 action if the state agency has the technological capability to publish on the
17 Internet; in this paragraph, "state agency" does not include the Department of
18 Corrections, the Board of Fisheries, the Board of Game, or the Alaska
19 Commercial Fisheries Entry Commission.

20 * Sec. 6. AS 44.62.200(a) is amended to read:

21 (a) The notice of proposed adoption, amendment, or repeal of a regulation
22 must include

23 (1) a statement of the time, place, and nature of proceedings for
24 adoption, amendment, or repeal of the regulation;

25 (2) reference to the authority under which the regulation is proposed
26 and a reference to the particular code section or other provisions of law that are being
27 implemented, interpreted, or made specific;

28 (3) an informative summary of the proposed subject of agency action;

29 (4) other matters prescribed by a statute applicable to the specific
30 agency or to the specific regulation or class of regulations;

31 (5) a summary of the fiscal information required to be prepared under

1 AS 44.62.195;

2 (6) a statement that a copy of the cost-benefit analysis is available
3 from the agency proposing the regulatory action if a summary of the cost-benefit
4 analysis is required under AS 44.62.035.

5 * Sec. 7. AS 44.62.200(b) is amended to read:

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

12 * Sec. 8. AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
14 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
15 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
16 rewriting changes the substance of the regulation, amendment, or order but the state
17 agency would not normally consider the change to be significant enough to require
18 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and
19 44.62.210, before adoption, the agency shall provide notice and opportunity for public
20 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
21 regulation, amendment, or order of repeal.

22 (b) If a state agency does not provide the notice and opportunity for public
23 comment under (a) of this section for a rewritten proposed regulation, amendment, or
24 order of repeal, the agency shall prepare a written explanation of the reasons why the
25 requirement of (a) of this section does not apply. When the adopted regulation,
26 amendment, or order of repeal is published in the Alaska Administrative Journal, the
27 lieutenant governor shall include the agency explanation with the text or a summary
28 of the text of the regulation, amendment, or order of repeal.

29 (c) A regulation, an order of repeal, or an amendment to a regulation may not
30 be voided because the state agency taking the regulatory action failed to comply with
31 this section if the state agency made a good faith attempt to comply with this section.

1 (d) This section does not apply to regulations

2 (1) adopted under AS 44.62.260 to make emergency regulations
3 permanent; or

4 (2) that are necessary to meet federal requirements.

5 (e) In this section, "state agency" does not include the Department of
6 Corrections, the Board of Fisheries, the Board of Game, or the Alaska Commercial
7 Fisheries Entry Commission.

8 * Sec. 9. AS 44.62.230 is amended to read:

9 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
10 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
11 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
12 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
13 emergency regulation, and the agency finds that an emergency exists, the requirements
14 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
15 apply, and the agency may submit the regulation to the lieutenant governor
16 immediately after making the finding of emergency and putting the regulation into
17 proper form.

18 * Sec. 10. AS 44.62.250 is amended to read:

19 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
20 be adopted as an emergency regulation or order of repeal if a state agency makes a
21 written finding, including a statement of the facts that constitute the emergency, that
22 the adoption of the regulation or order of repeal is necessary for the immediate
23 preservation of the public peace, health, safety, or general welfare. The requirements
24 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
25 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
26 adoption of an emergency regulation, the adopting agency shall immediately submit
27 a copy of it to the lieutenant governor for filing and for publication in the Alaska
28 Administrative Register, and, within five days after filing by the lieutenant governor,
29 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
30 Failure to give the required notice by the end of the 10th day automatically repeals the
31 regulation.

1 * Sec. 11. AS 44.62.260 is amended to read:

2 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

3 (a) A regulation adopted as an emergency regulation does not remain in effect more
4 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
5 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the
6 regulation to the lieutenant governor or during the 120-day period.

7 (b) Before the expiration of the 120-day period, the agency shall transmit to
8 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
9 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
10 submitting the regulation to the lieutenant governor, or that the agency complied with
11 those sections within the 120-day period. Failure to so certify repeals the emergency
12 regulation; it may not be renewed or refiled as an emergency regulation.

13 * Sec. 12. AS 44.62 is amended by adding a new section to read:

14 **Sec. 44.62.285. Time limit for adoption.** (a) A state agency may not take
15 more than two years to adopt regulations that the state agency is required to adopt by
16 a statute. The two-year period begins on the effective date of enactment of the statute
17 requiring the adoption of the regulations.

18 (b) If a state agency fails to comply with (a) of this section, the state agency
19 shall prepare a written report containing the reasons for the failure and submit the
20 report to the president of the senate, the speaker of the house of representatives, and
21 the Administrative Regulation Review Committee established under AS 24.20.400.
22 Notwithstanding AS 44.62.300, a court may not hold a regulation invalid for failure
23 to comply with this section.

24 (c) The requirement of (a) of this section is not intended to prohibit a state
25 agency from amending a regulation after the regulation has been adopted.

26 * Sec. 13. AS 44.62.300 is amended by adding new subsections to read:

27 (b) Except where a court has other grounds for holding the regulation invalid,
28 a court that reviews the validity of a regulation shall hold the regulation valid unless

29 (1) the regulation uses an approach that causes more than the least
30 intrusion on the rights and property of the persons affected by the regulation; and

31 (2) the approach taken by the regulation is not required by a substantial

1 state interest.

2 (c) Notwithstanding (b) of this section, when an action for declaratory relief
3 is brought under (a) of this section, a court may not issue a temporary restraining
4 order, a preliminary injunction, or a permanent injunction based on (b) ~~of~~ this section
5 to stop the operation of the regulation.

6 (d) In (b)(2) of this section, the person challenging the regulation carries the
7 burden of proving that there is not a substantial state interest that requires using the
8 approach taken by the regulation.

9 (e) A regulation of the Department of Corrections, the Department of Natural
10 Resources, a state board, or a state commission is not subject to (b) of this section.

11 * Sec. 14. AS 44.62 is amended by adding a new section to read:

12 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication must result
13 in

14 (1) a proposed administrative order within the later of 60 days after the
15 hearing officer closes the record or two years after the statement of issues under
16 AS 44.62.370 or an accusation under AS 44.62.360 is filed; and

17 (2) a final administrative order within 30 days after the proposed
18 administrative order unless the commission conducting the administrative adjudication
19 is a state commission or a state board.

20 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the
21 contrary, an agency may not order a record to be reopened after the hearing officer has
22 closed the record unless a substantial factual question exists that is necessary to the
23 resolution of the administrative adjudication and the lieutenant governor approves
24 reopening the record.

25 (c) A time limitation in (a) of this section may be extended if

26 (1) the lieutenant governor approves the extension, but, even with an
27 extension under this paragraph, the administrative adjudication may not exceed four
28 years;

29 (2) a respondent other than a state agency petitions for reconsideration
30 under AS 44.62.540 for a stay of execution under AS 44.62.520, for an extension of
31 a time limit in (a) of this section, or for the record to be reopened in the administrative

1 adjudication.

2 (d) Unless the time is extended by (c) of this section, if an administrative
3 adjudication does not result in a final administrative order in the total time allowed by
4 (a) of this section for an agency to reach a proposed administrative order and a final
5 administrative order, and if an agency instigated the administrative adjudication, the
6 respondent may cancel the administrative adjudication by notifying the agency in
7 writing of the cancellation. The agency may not subsequently begin another
8 administrative adjudication for the same matter that was the subject of the cancelled
9 administrative adjudication, and an appeal may not be taken from the cancelled
10 administrative adjudication or from the cancellation of the administrative adjudication.
11 However, after the administrative adjudication is cancelled, the agency may bring an
12 action in superior court covering the matter that was the subject of the cancelled
13 administrative adjudication. The complaint must be filed with the superior court
14 within 60 days after the administrative adjudication is cancelled under this subsection.

15 (e) Unless the time is extended by (c) of this section, if an administrative
16 adjudication does not result in a final administrative order in the total time allowed by
17 (a) of this section for an agency to reach a proposed administrative order and a final
18 administrative order, and if a person other than an agency instigated the administrative
19 adjudication, the person may cancel the administrative adjudication by notifying the
20 agency in writing of the cancellation. The person is considered to have exhausted the
21 person's administrative remedies with regard to the subject matter of the cancelled
22 administrative adjudication, and an appeal may not be taken from the cancelled
23 administrative adjudication or from the cancellation of the administrative adjudication.
24 However, after the administrative adjudication is cancelled, the person may bring an
25 action in superior court covering the matter that was the subject of the administrative
26 adjudication. The complaint must be filed with the superior court within 60 days after
27 the administrative adjudication is cancelled under this subsection.

28 (f) This section does not apply to an administrative adjudication that involves
29 allegations of criminal conduct and that is parallel to a criminal case brought in court
30 for the criminal conduct.

31 (g) This section does not apply to the Department of Corrections, the Board

1 of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
2 Commission.

3 (h) In this section,

4 (1) "administrative adjudication" means the procedure that begins with
5 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380
6 and ends with the issuance of a final administrative order;

7 (2) "final administrative order" means a decision under AS 44.62.330 -
8 44.62.630 that is eligible for judicial review under AS 44.62.560.

9 * **Sec. 15. APPLICABILITY.** (a) Sections 1 - 11 and 13 of this Act apply to the
10 adoption, amendment, or repeal of a regulation if the initial notice under AS 44.62.190, as
11 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
12 effective date of this Act.

13 (b) Section 12 of this Act applies to a state agency's adoption of regulations if the
14 effective date of the Act enacting the statutory authority requiring the adoption is the same
15 as or after the effective date of this Act.

16 (c) Section 14 of this Act applies to an administrative adjudication if the statement
17 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the
18 effective date of this Act.

19 * **Sec. 16. COURT RULE CHANGES.** AS 44.62.030(b), enacted by sec. 3 of this Act,
20 and AS 44.62.300(c), enacted by sec. 13 of this Act, change Rule 65, Alaska Rules of Civil
21 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

22 * **Sec. 17.** This Act takes effect July 1, 2000.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


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

MEMORANDUM

March 10, 1999

SUBJECT: Draft CSSB 24(Fin) relating to regulations and administrative adjudications (Work Order No. 21-LS0274S)

TO: Senator Sean Parnell, Co-Chair
Senator John Torgerson, Co-Chair
Senate Finance Committee
Attn: Mindy

FROM: 
Theresa Bannister
Legislative Counsel

This memo accompanies the draft bill described above.

The language for sec. 44.62.555(f) has been changed somewhat from what was requested by the amendment. The purpose of the changes is clarity. The first change was to add a provision expressly addressing the time limits in the section. Because the language in the "N" version was a total exemption from the section, it was sufficient to state that the section did not apply. However, in the new "S" version, the new language applies the sections of the provision, including specific time limits, to the administrative adjudication at a certain point (when the criminal case ends). This raised the question of when the time limits in the section started. To clarify this, and after consulting with Senator Donley's office as to the intent of the amendment, the subsection was changed to include the more express language about the time limits. The language of the subsection has also been rearranged to make it clearer and easier to read.

If I may be of further assistance, please advise.

TLB:pl:jr
99-035.plm

Enclosure



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER NO. 157

I, Tony Knowles, Governor of the State of Alaska, under the authority vested in me by art. III, secs. 1 and 24, of the Alaska Constitution, order all executive branch agencies to comply with the directives set out in this Order regarding administrative regulations, in order to accomplish the following objectives:

- achieve clear and concise language, and "plain English," in administrative regulations so that customers of state services are better able to understand and comply with the regulations;
- promote a better relationship between the Legislature, executive branch agencies, and the public that they serve;
- make the regulation-adoption process more accessible and understandable to the general public;
- minimize the cost to the public of complying with state regulations; and
- encourage state agencies to work with the regulated public to meet the objectives of agency regulations.

AGENCY DIRECTIVES

1. Public notices regarding regulation changes, including repeals of existing regulations, should include statements that describe:

- ▶ what is being changed;
- ▶ how it is being changed; and
- ▶ why it is being changed.

2. In public notices regarding regulation changes:

- ▶ minimize the use of technical terms not generally understood by the public;
- ▶ use "plain English" in describing the regulatory action;
- ▶ strive for clarity and clean, concise language;
- ▶ name a specific agency contact person for requesting information about the regulation project, including information regarding special accommodations for persons with a disability; and
- ▶ actively solicit comments from the affected public on the cost of compliance with the proposed regulation.

3. When drafting regulations, each agency shall consider known and potential costs to the public of complying with the regulations and, to the extent possible, shall draft the regulations so as to minimize those costs.

4. When preparing the public notice for regulation changes, the adopting agency shall consider whether, because of the nature and effect of the regulation changes, the agency should hold one or more oral public hearings on the changes, in addition to providing for written comments on the changes. In deciding whether to hold oral hearings, the agency shall consider both its budget and the possibility of using teleconferencing.

5. In determining an appropriate length of time for the public comment period for a set of regulations, the adopting agency shall consider:

- ▶ the special needs or concerns of those likely to be affected by the regulations;
- ▶ whether the anticipated comment period is sufficient for the public to obtain a copy of, review, and comment on the regulations;
- ▶ the urgency of the regulations project; and
- ▶ the overall time frame for the regulations project.

6. At the time of publishing a public notice regarding regulation changes, each adopting agency shall provide for additional newspaper or broadcast media press releases, or mailings to affected persons, to the extent that action is economically feasible, in order to ensure maximum public awareness of the agency action.

7. In maintaining mailing lists of persons interested in agency regulations, each agency shall periodically review the lists to ensure that, to the extent possible, the lists represent the broadest spectrum of interested persons as well as persons likely to be affected by the agency's regulations.

8. After a regulation change has been filed by the Lieutenant Governor's Office, the adopting agency, to the extent economically feasible, shall use newspaper or broadcast media press releases, or mailings, to inform the public of the filing and impending effective date of the regulation change.

9. To better respond to inquiries from the public regarding regulations projects, each commissioner shall institute an internal agency system for maintaining, in a centralized manner, current information regarding pending agency regulations projects. As part of such a system:

- ▶ each commissioner shall designate a staff person within the agency to serve as the general regulation information contact person for that agency;
- ▶ each commissioner shall direct agency staff to provide to the contact person information necessary to develop and maintain a current list of that agency's pending regulations projects;
- ▶ at the time it opens a regulation file, the Department of Law shall provide to the appropriate agency regulation contact person a copy of the file-opening information; and
- ▶ each commissioner shall ensure that that agency's pending regulation project list contains adequate and accurate information, including a sufficient description of each project and the name and phone number of the agency staff person who can provide more specific information about the project.

10. Each adopting agency immediately shall submit a plan to the Governor for a process of reviewing, in consultation with the Department of Law, its existing regulations for the purpose of identifying, within budget constraints, provisions to be amended or repealed because:

- ▶ the provision contains confusing or unnecessarily technical language; the use of "plain English" is the standard that should be achieved whenever possible;
- ▶ the cost to the regulated public is excessive when compared to the state's interest in or benefit from the particular requirement; and
- ▶ the requirements of the provision are burdensome to the regulated public and less burdensome requirements still would allow the agency to carry out its statutory responsibilities.

11. The Department of Law shall, to the extent economically feasible, provide, through its own staff or through others, training to appropriate staff of executive branch agencies regarding:

- ▶ handling of public information requests regarding regulation projects, including the requirements of the public records law;
- ▶ ways to improve the language of public notices regarding regulation changes, so that the notices are more understandable and meaningful to the public while still meeting legal requirements;
- ▶ ways to improve regulation writing, so that draft regulations that are distributed to the public for comment are clearer, in "plain English," and adequately and accurately describe the agency's intent;
- ▶ the requirements of the Americans With Disabilities Act regarding accommodations that might be required in order for persons with a disability to be able to participate in the regulatory process; and
- ▶ the requirements for collecting and seriously considering all public comments received during the public comment period for a regulation project.

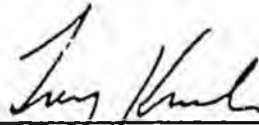
12. Each commissioner shall take appropriate steps to ensure that the agency focuses its efforts on educating and otherwise working with the public so that the public is better able to comply with regulatory requirements in a cost-effective manner and avoid inadvertent noncompliance.

13. Each commissioner shall take appropriate steps to inform federal agencies of state concerns in proposed federal regulations and to suggest changes so that federal regulations are not overly burdensome for Alaskans.

14. If state agencies have overlapping regulatory responsibilities regarding business activities, the commissioners of those agencies shall ensure that the agencies work together to achieve, to the extent possible, regulatory requirements that avoid duplication while facilitating compliance with statutory requirements.

This Order takes effect immediately.

DATED at Juneau, Alaska, this 5 day of June, 1995.



Tony Knowles
Governor

TONY KNOWLES
GOVERNOR



P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 485-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 9, 1997

The Honorable Jeannette James, Chair
The Honorable Jerry Mackie, Vice-Chair
Administrative Regulation Review Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Jeannette
Dear Representative James and Senator Mackie:

On June 5, 1995, the Governor issued Administrative Order (AO) No. 157 directing a number of actions be taken in the formulation, promulgation and implementation of regulations, (copy enclosed). This AO called for straightforward, "plain English" descriptions of proposed actions, comprehensive and flexible public notification designed to maximize public input, cost considerations to the public and affected parties, training of regulation writers and other reforms.

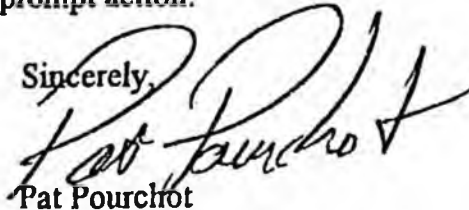
We recently received reports back from the various departments summarizing their actions over the past year and an half pursuant to the AO which I have enclosed for your interest and consideration. Several departments have reviewed and revised many of their current regulations in accordance with the AO; others, with a substantial body of regulation, have scheduled a rotation of their regulations so that all will be reviewed and revised over a short number of years. A number of innovations were part of this review and new rulemaking, including public notification methods (such as internet "home pages"), new staff training programs, centralized regulation information, streamlining application required processes, more readable language and many more.

I hope you will find these reports helpful to your efforts. Rest assured this Administration will continue to look for ways of making our regulatory process more efficient and more

The Honorable Jeannette James, Chair
The Honorable Jerry Mackie, Vice-Chair
April 9, 1997
Page 2

responsive to the needs of Alaskans. In this regard the Governor has recently introduced HB221/SB155 which would also improve several aspects of state rule-making and on which we hope the legislature will take prompt action.

Sincerely,



Pat Pourchot
Legislative Director

Enclosures

cc: The Honorable Gail Phillips, Speaker of the House
The Honorable Mike Miller, Senate President
The Honorable Jim Duncan, Senate Minority Leader
The Honorable Gene Kubina, House Minority Leader



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

DIFFERENCES BETWEEN CS SB 24 (JUD)
AND CS SB 24 () 1-LS0274\N

SUMMARY OF CHANGES:

The intent of CS Senate Bill 24 (JUD) remains fundamentally unchanged. The proposed CSSB 24 (1-LS0274\N) alters language in several sections in an effort to address some of the concerns of the Attorney General's Office.

Specific Changes:

Sec. 2—whereas CSSB 24 (JUD) substitutes the word "clearly" for "reasonably", CSSB 24 (1-LS0274\N) utilizes several language changes to address the concerns of the AG that the word "clearly" is problematic.

Sec. 12—CSSB 24 (1-LS0274\N) adds language on p. 7, line 22-23 that reads "Notwithstanding AS 44.62.300, a court may not hold a regulation invalid for failure to comply with this section."

Sec. 13—in CSSB 24 (1-LS0274\N) this section is rewritten to ensure the regulation is held valid unless it does not meet certain stated criteria. In CSSB 24 (JUD) the regulation was held invalid until meeting certain criteria.

Sec. 14—CSSB 24 (1-LS0274\N) replaces the term "final administrative order" with the term "proposed administrative order". Also, it adds an additional 30 day period to the 60 day period, by which time a "final administrative order" should be provided.

Subsections (d) & (e)—are amended to reflect the addition of the "proposed administrative order" language of subsection (a).

Subsection (f)—ensures that this section does not pertain to administrative adjudications that involve allegations of criminal conduct and that is parallel to a criminal case brought in court.

DD/hn

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June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

MEMORANDUM

State of Alaska

Department of Natural Resources
Division of Mining and Water Management

Tele: (907) 269-8625
Fax: (907) 563-1853
E-mail: bobl@dnr.state.ak.us

March 16, 1999

To: Carol Carroll, Director
Division of Support Services

From: Bob Loeffler
Director

Subject: CSSB24 (Fin)

You asked that I review CSSB24 to determine whether the bill would affect mining activities. The bill in its present form could, in fact, make it substantially more difficult for new mines to receive permits in Alaska. Had this bill been in effect a decade ago, it is possible that neither the Kensington Gold Mine nor many placer mines would have received permits without substantial additional cost. This consequence occurs because of the bill's potential affect on regulations of the Department of Environmental Conservation (not DNR).

Summary. Section 2 of the bill changes a current standard for determining the validity of a regulation. The current standard is that a regulation is not valid or effective unless it is "*reasonably necessary* to carry out the purpose of the statute." The new language requires a regulation "take a reasonable approach *clearly within the intent* of the statute." That is, a regulation must pass a more difficult validity test, and that more difficult test is the purpose of the section.

DEC's authorizing statutes are relatively general and focus on avoiding pollution. Many mining projects receive permits under regulatory exceptions to DEC standards. The standard is always the thrust of the law, but the exceptions are on the margin. My worry is that the proposed bill would invalidate the exceptions, which would drastically affect the mining industry.

Reasonably Necessary versus *Clearly within the Intent*. I base my analysis on my understanding of the difference between the two legal standards. *Black's Law Dictionary* defines "reasonable" to mean "fair, proper, just, moderate, suitable under the circumstances..." The same dictionary defines "clear" as "obvious; beyond reasonable doubt; perspicuous; plain; free from all limitation, qualification, question or shortcoming..." Obvious or beyond a reasonable doubt is a tough standard for regulations, and I fear that the exceptions would fail this test. Two examples may illustrate the problem.

Kensington Gold Mine — Discharge Under a New Regulation not Clearly Anticipated in the Statute.

The Kensington Gold Mine, north of Juneau, received permits to operate in 1997. One of the crucial permits was DEC's wastewater discharge permit, issued under a site-specific criterion. The site-specific criterion required DEC to go through a regulatory process to approve a discharge above the water quality standards established in regulation. The site-specific criterion process is a regulation process anticipated in regulation but not in statute.

DEC's authorizing statute is very broad. The pertinent section is AS 46.03.070, Pollution Standards, that authorizes DEC to adopt standards to determine "what qualities and properties of water indicate a polluted condition actually or potentially deleterious, harmful, detrimental, or injurious to the public health, safety, or welfare..." As I read it, (and I am not an expert), the law contains no clear intent that DEC should provide exceptions to allow discharge of water that contains effluent above the standards established to protect public health. But that is what was required at Kensington. DEC adopted a site-specific criterion under regulation that allowed effluent concentrations high than the established state-wide standard to be discharged in this location.

DEC's decision, made under regulation, to allow the Kensington Mine to discharge water with concentrations greater than the adopted public health standards was reasonable and appropriate under the circumstances ("reasonably necessary"). Given the controversy that surrounded Kensington, it is much less certain that the regulation was obvious or beyond a reasonable doubt ("clearly within the intent of the statute").

I fear that Kensington's site-specific criterion process and future site-specific criteria would fail the "clearly within the intent" standard. If so, mines like Kensington would be permitted only with greatly increased cost, if at all.

Would Mixing Zones Pass the "Clearly within the Intent" Test?

Using mixing zones to authorize a water quality discharge is a controversial and important part of DEC's permitting tools. Without mixing zones, many placer mines would fail to meet water quality standards.

The mixing zones regulation, 18 AAC 70.240, provides that "The water quality criteria and limits... may be exceeded within a mixing zone authorized by the department... The department will authorize a mixing zone if the department finds that the available evidence reasonably demonstrates that... the mixing zone will be as small as practicable; and... an effluent or substance will be treated... using... the most effective and technologically and economically feasible... treatment..." None of this language is in statute, expressly anticipated in statute, nor even expressly implied in statute. (AS 46.03.010 — 110).

Mixing zones are reasonable and appropriate ("reasonably necessary"). The controversy surround them makes it unlikely they are obvious or beyond a reasonable doubt ("clearly within the intent of the statute"). This argument becomes especially difficult because mixing zones are not explicitly authorized in the governing federal laws. Arguing that Alaskan law obviously authorizes an exception that is not explicitly authorized in the governing federal laws may be difficult. Without mixing zones, many placer mines would be unable to operate.

Conclusion. These two examples illustrate the problem. The higher test for regulations may prohibit exceptions to water and air quality standards required for economical mining. If so, the proposed test will have a drastic affect on the industry. In this analysis, I focused on the water-related affects, because I know the DEC's water program best. However, there may be other, similar affects with the air program, solid waste, etc.

March 16, 1999

Senator Dave Donley,
State Capitol
Juneau, Alaska 99801

Subject: SB 24

Senator Donley,

I wish to commend you for submitting Senate Bill 24. This Bill, upon affirmation by both the House and Senate and being signed into law, would provide a means of reviewing Departmental drafted "Proposed Regulations" that would be burdensome to the public, before they are placed in effect.

Although the Statutes provide that a Department will enact regulations to implement the statutes applicable to the particular Department, and that there will be public input in developing the "Proposed Regulations," I have been involved in the public meeting process and I am extremely frustrated by the experience.

In my particular case I would like to make reference to the Department of Transportation Leasing & Public Facilities Proposed Regulation for Rural Airports, 17-AAC-45. This draft is far too lengthy and would cause a considerable burden to rural airport users and "bush residents" who depend on General Aviation as a means of transportation away from any road system. Within the "Proposed Draft" are all sorts of discretionary authority given to the DOT PF which restricts the activities of the public that operates on and from and also the resident and tourist passengers' users of the airports.

There is also additional spending included within the Proposed Regulation which would be approved if the regulation is implemented.

Representatives of the General Aviation public have been meeting with personnel from DOT/PF for five or more years voicing their objections to 17-AAC-45 and each time, the complaints seem to be falling on deaf ears. This is not a regulation that we need! We have 17-AAC-40, which is working well. If changes are needed, let us agree on the changes and make small changes instead of a sweeping change that would restrict free enterprise of the individuals that make a living working in General Aviation on and from State Owned Airports

If you are a pilot, this Proposed Regulation would affect you, if you are a passenger using FAR Part 135 Air Taxi services this Proposed Regulation would affect you, if you are a "Bush" resident this Proposed Regulation would affect you.

The one thing that this Proposed Rural Airport Regulation 17-AAC-45 does do, is give the public servants that are employed within DOT/PF absolute control over the lives of the Public

This is for
your files, - already
been distributed to
members.

-Darwin

that they are supposed to be serving, those individuals that depend upon State Owned Rural Airports for their lively hood, food, medical aid, fuel and general transportation.

I have visited with many of the Legislative members over the last five or six years, attended public meetings of the Senators & Representatives of my District and sent many Personal Opinion Messages and I will continue to do so, because you are the individuals elected to represent the voters and you should be able to control the power and authority seeking individual bureaucrats within the various Departments of the State Agencies.

Senate Bill 24 is one of the tools needed to Perform that function.

I sincerely thank you for your time and consideration of the comments I have made.

Thank you,

Marvin E. (Eddie) Trimmer
P. O. Box 361
Willow, Alaska 99688-0361
907-495-5724

Subject: SB 24

Date: Mon, 8 Mar 1999 22:57:18 -0900 (AKST)

From: winktas <winktas@alaska.net>

To: Darwin_Peterson@legis.state.AK.us

March 9, 1999

Dear Members of the Senate Finance Committee:

I am writing to you in reference to SB 24, the "Alaska Regulations Reform Act". As Chair of the Regulatory Board for Licensed Professional Counselors, I am very concerned with the writing of regulations. People who sit on boards do so as volunteers who act in good faith to serve interested parties and the public. I question the wisdom of some aspects of SB 24, and respectfully request that you consider who is being served by them.

sec. 2, page 1, line 11 which states that Regulations must be "clearly necessary", rather than the current "reasonably necessary" sounds like it opens the door for litigation. It also unreasonably restricts the power of boards to be flexible when circumstances warrant. Circumstances which will benefit the public good.

sec. 13, page 7, lines 20-27, (1) "the least intrusion on the rights and property" and (2) "a substantial state interest requires using the approach taken", sounds like you need experts on boards, and again invites litigation. How many regulations will be able to meet this test?

sec. 4, page 2, lines 17-31, the "benefit to the public outweighs the cost to the public". As a board member struggling to meet the mandates of our statutes in a timely fashion to serve the public interest and the licensees, this sounds both costly and time consuming. And ultimately, who is to determine the dollar value of "benefits to the public"?

sec. 8, page 5, lines 9-17, again are time consuming and costly when boards are attempting to be fiscally responsible and timely.

sec. 12, page 7, lines 9-11, a state agency may not take more than two years to adopt a regulation. As a new board, I am well aware that even the simplest seeming of regulations take many months to enact. If a more complex issue is at hand, I can well imagine it taking considerably longer. And, should a "clearly necessary" regulation take more than two years, what is the alternative? No regulation?

sec. 14, page 8, lines 7-9, lines 9-10, and 17-19, are again going to increase costs.

I urge you to consider these points. Reforming of the regulatory procedure needs to clearly serve the public, and not unduly hinder the process by which the public is served.

Thank you for your consideration.

Respectfully,

Anne L. Henry, MA
Chair, Regulatory Board of Licensed Professional Counselors



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Torgeson, Co-Chairman of the Senate Finance Committee

Fr: Senator Dave Donley **DD**

Dt: February 23, 1999

Re: Requesting a hearing for SB 24 "The Alaska Regulation Review Act"

I request that you schedule Senate Bill 24 "The Alaska Regulations Reform Act" for a hearing in your committee.

Senate Bill 24 reforms how administrative regulations are adopted by the state of Alaska and places reasonable new limits on the power of state bureaucracy to impose new regulations on Alaskans.

SB 24 increases opportunities for public notice and comment regarding adoption of regulations. SB 24 requires that new regulations pass a "needs" test and be drafted in a way to minimize their impact on personal liberties and property rights.

Senate Bill 24 makes state regulators more accountable to the public and to elected officials. SB 24 places reasonable and needed restraints on the ever increasing number of state regulations Alaskans live with.

Thank you in advance for your consideration of this request. If you or your staff should have any questions, please contact myself or Hans Neidig of my staff at 465-3892.

DD/hn



SENATOR DAVE DONLEY
 ALASKA STATE LEGISLATURE

**SPONSOR STATEMENT
 FOR CS SENATE BILL 24 (JUD)
 "THE ALASKA REGULATION REFORM ACT"**

Senate Bill 24 reforms how administrative regulations are adopted by the state of Alaska and places reasonable new limits on the power of state bureaucracy to impose new regulations on Alaskans.

SB 24 increases opportunities for public notice and comment regarding adoption of regulations. SB 24 requires that new regulations pass a "needs" test and be drafted in a way to minimize their impact on personal liberties and property rights. The Board of Fisheries, Board of Game and the Alaska Commercial Fisheries Limited Entry Commission are exempt from these changes.

Regulations adopted by state agencies have the effect of law similar to statutes adopted by the legislature. The regulations adoption process however has very few of the safeguards and opportunity 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 makes state regulators more accountable to the public and to elected officials. SB 24 places reasonable and needed restraints on the ever increasing number of state regulations Alaskans live with.

DD/hrn

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SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SECTIONAL ANALYSIS FOR CS SENATE BILL 24 (JUD) "THE ALASKA REGULATIONS REFORM ACT"

Section #1 - refers to this act as "The Alaska Regulations Reform Act"

Section #2 - in AS 44.62.030—*Consistency between regulation and statute*—a state agency may not adopt a regulation that changes the intent of the statute and 'clearly' (rather than the current word—'reasonably') necessary to carry out the purpose of the statute.

Rationale: the change from 'reasonably' to 'clearly' allows for less ambiguity in the way this statute can be interpreted, thus holding agencies to the original intent of the statutes for which they promulgate regulations.

Section #3 - adds a new subsection to AS 44.62.030 which states that an agency cannot adopt a regulation that changes the intent of the statute. It places the burden of proof on the person challenging the regulation under this subsection, and does not allow for a temporary restraining order, preliminary injunction or a permanent injunction to enjoin the operation of a regulation.

Rationale: by placing the burden of proof on the person challenging the regulation; and by removing the ability to obtain a temporary restraining order, a preliminary injunction or a permanent injunction the use of this section to enjoin the operation of a regulation is meant to be deterred.

Section #4 - requires that when a department adopts a regulation, an order of appeal, or an amendment to a regulation the department will submit a cost-benefit analysis of the costs of the regulatory action. The Department of Corrections, Board of Fisheries, Board of Game and the Alaska Commercial Fisheries Limited Entry Commission are exempt from this requirement.

Rationale: this would make each department justify that the fiscal benefit of a proposed regulatory action outweighs the cost to the public.

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MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

Section #5 – requires that before the adoption, amendment, or repeal of a regulation notice of the proposed action be published on the internet by agencies possessing the needed technological capability.

Rationale: under existing law a department is not required to utilize this affordable approach to publishing proposed regulation action.

Section #6 - adds a summary of the cost-benefit analysis to the other required information for a notice of proposed adoption, amendment, or repeal of a regulation.

Rationale: under existing law a department is required to include specific information when noticing a proposed regulatory action. If the department fails to provide a cost-benefit analysis or any other information required by law a court may declare the regulation invalid.

Section #7 - deletes the word "original" from the statute regarding the content of the public notice of a proposed adoption of a regulatory action. This is a conforming change since the bill now allows supplemental notices.

Section #8 - requires a department to provide a supplemental notice and the opportunity for additional public comment if the department rewrites a proposed regulatory action and the rewrite is significantly different in substance from the original regulatory action. This section does not include the Department of Corrections, Board of Fisheries, Board of Game and the Alaska Commercial Fisheries Limited Entry Commission.

Rationale: under existing law a department is only required to provide one notice to the public regarding a proposed regulatory action. However, the content of the proposed regulatory action could and often changes without the knowledge of the public. This provision would address this problem by alerting the public of any significant change and allow the public to provide additional testimony. This section exempts regulations promulgated by the Board of Game, Board of Fisheries, Alaska Commercial Fisheries Entry Commission or when emergency regulations are made permanent.

Sections #9, 10, 11 - exempt a department from complying with the new provisions of this bill if the proposed regulations are necessary for the immediate preservation of public peace, health, safety or general welfare.

Section #12 – places a time limit on the adoption of regulations. This section requires a state agency to not take more than two years to adopt regulations that it is required to by statute. If the agency fails to comply, it must prepare and submit a written report on the reasons for its failure to adopt the regulations to the senate president, speaker of the house and the Administrative Regulation Review Committee.

Rationale: this section addresses the issue of state agencies taking too long to promulgate regulations for new statutes.

Section #13 - adds additional provisions, except for the Department of Corrections, Board of Fisheries, Board of Game and the Alaska Commercial Fisheries Limited Entry Commission, that the court must consider in determining the validity of a regulation including new requirements that:

- 1) the regulation uses an approach that causes the least intrusion on the rights and property of the persons affected; or
- 2) a compelling state interest requires using the approach taken by the regulation.

Rationale: forces a department to not intrude on the rights and property of persons affected when adopting a regulation except in those cases where the department can prove that a compelling state interest requires such an action.

Section #14 – places time limits on administrative adjudications. This section requires administrative adjudication to result in an appealable decision by a deadline of the later of two possible dates (60 days after the hearing officer closes the record or two years after the adjudication is begun).

Rationale: these limits are created in order to curtail state agency's from taking too long to adjudicate cases.

Section #15 – a technical section to address the applicability of the various bill sections.

Section #16 – addresses the need to change Rule 65 of the Alaska Rules of Civil Procedure in order to comply with sec. 3 of this Act.

Section #17 - provides for the effective date of this legislation– July 1, 2000.

Headquarters:
217 2nd Street, Suite 201
Juneau, Alaska 99801
(907) 586-2323 FAX 463-5515



January 22, 1999

Senator Dave Donley
Alaska State Legislature
State Capitol, Room 508
Juneau, AK 99801-1182

RECEIVED

MAR 08 1999

Senate Finance
Committee

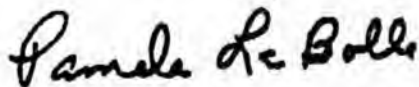
Dear Senator Donley:

We are pleased that you have introduced Senate Bill 24, "The Alaska Regulations Reform Act".

Reform of the present regulatory system is one of the highest priorities of the Alaska State Chamber of Commerce. Our resolution on this matter asks the legislature and the administration to create a regulatory and economic environment supportive of business development that encourages business to locate and grow in Alaska. ASCC's resolution also asks the legislature and the administration to provide for an effective oversight mechanism to assure that regulations are producing effective results that follow legislative intent.

We support the current version, "A" of SB 24 which provides the Legislature with decennial oversight of regulations, and requires a public comment period before final regulations are adopted. We would be happy to provide verbal testimony on SB 24 during the committee process. Please let us know of any other help we might provide in this matter.

Sincerely,



Pamela La Bolle
President

SENATE FINANCE COMMITTEE

SIGN-IN

SB 24-REGULATIONS: ADOPTION & JUDICIAL REVIEW

NAME: Deborah Behr Subject/Bill No: SB 24

Co./Dept./Title: Dept of Law Phone: 465-2122

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions *on fiscal note*
Testify only if needed on new issues

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

03/24/99
18:07:33

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90451 SCHEDULED FOR:03/24/99 18:00 TO 21:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE

SB 101	JIM	BUTCHART__ (ANS ?'S)	DMVA/DIES	TESTIFY
SB 101	MARY	GILSON____ (ANS ?'S)	DIAW	TESTIFY
SB 24	✓BOB	LOEFFLER	DNR-DIV OF MININTESTIFY	

SENATE FINANCE COMMITTEE

SIGN-IN

SB 24-REGULATIONS: ADOPTION & JUDICIAL REVIEW

NAME: DEBORAH BEHR Subject/Bill No: SB24
Co./Dept./Title: REGULATIONS ATTORNEY Phone: 465-3600
Department of LAW
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 24-REGULATIONS: ADOPTION & JUDICIAL REVIEW

NAME: Deborah Behr Subject/Bill No: SB24
Co./Dept./Title: Dept of LAW Phone: 465-2122
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 24-REGULATIONS: ADOPTION & JUDICIAL REVIEW

NAME: Juborah Behr Subject/Bill No: SB24

Co./Dept./Title: Dept of Law Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

03/09/99
09:46:35

LEGISLATIVE TELECONFERENCE NETWORK SYSTEM
PARTICIPANT LIST (TESTIFIERS ONLY)
TCN:90311 SCHEDULED FOR:03/09/99 09:45 TO 11:00
PUBLIC HEARING SENATE FINANCE

LTN1150
BY:JNU
FOR:ALL

LOCATION: ANCHORAGE
SB 24

TERESA

WILLIAMS

A.G.OFFICE

TESTIFY

SENATE FINANCE COMMITTEE

SIGN-IN

SB 24-REGULATIONS: ADOPTION & JUDICIAL REVIEW

NAME: Deborah Benr Subject/Bill No: SB 24

Co./Dept./Title: Dept of LAW Phone: 465-3600

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____

Co./Dept./Title: _____ Phone: _____

Address: _____ Zip: _____

Do you wish to testify? Yes No Respond To Questions