

SB

24

AMENDMENT
CSSB 24 (1-LSO274\K--2/19/99)

*Adopted 2/19/99
by the Legislature*

Page 3, Line 2; Amend subsection (g) to read:

- (g) In this section,
 - (1) "adopting state agency head" means the governor if the state agency is the Office of the Governor, or the commissioner of the department within which the state agency is located;
 - (2) "state agency" does not include the Board of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry Commission.

DD/hrn

1-LS0274K
Bannister ✓
2/19/99

Handwritten notes:
2/19/99
Bannister ✓
2/19/99

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. Consistency between regulation and statute.** If, by express
8 or implied terms of a statute, a state agency has authority to adopt regulations to
9 implement, interpret, make specific, or otherwise carry out the provisions of the statute,
10 a regulation adopted is not valid or effective unless consistent with the statute and
11 clearly [REASONABLY] necessary to carry out the purpose of the statute.

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

13 (b) In addition to the requirements of (a) of this section, a state agency may
14 not adopt a regulation that changes the intent of the statute being implemented,

1 interpreted, made specific, or otherwise carried out. When challenging a regulation
2 under this subsection, the burden of proof is on the person challenging the regulation
3 to prove that the regulation changes the intent of the statute. A person may not obtain
4 a temporary restraining order, a preliminary injunction, or a permanent injunction from
5 a court to enjoin the operation of a regulation based on a failure to comply with this
6 subsection.

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

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

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

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

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

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

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

1 action.

2 (g) In this section, "adopting state agency head" means the governor if the
3 state agency is the Office of the Governor, or the commissioner of the department
4 within which the state agency is located.

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

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

8 (1) published in the newspaper of general circulation or trade or
9 industry publication that the state agency prescribes and in the Alaska Administrative
10 Journal; in the discretion of the state agency giving the notice, the requirement of
11 publication in a newspaper or trade or industry publication may be satisfied by using
12 a combination of publication and broadcasting; when broadcasting the notice, an
13 agency may use an abbreviated form of the notice if the broadcast provides the name
14 and date of the newspaper or trade or industry journal where the full text of the notice
15 can be found;

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

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

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

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

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

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

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

30 (7) furnished to the standing committee of each house of the legislature
31 having legislative jurisdiction over the subject matter treated by the regulation under

1 the Uniform Rules of the Alaska State Legislature, together with a copy of the
2 proposed regulation, amendment, or order of repeal for the committee's use in
3 conducting the review authorized by AS 24.05.182;

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

8 (9) published on the Internet by the state agency proposing the
9 action if the state agency has the technological capability to publish on the
10 Internet; in this paragraph, "state agency" does not include the Board of
11 Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
12 Commission.

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

14 (a) The notice of proposed adoption, amendment, or repeal of a regulation
15 must include

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

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

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

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

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

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

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

30 (b) A regulation that is adopted, amended, or repealed may vary in content
31 from the summary specified in (a)(3) of this section if the subject matter of the

1 regulation remains the same and the [ORIGINAL] notice was written so as to assure
2 that members of the public are reasonably notified of the proposed subject of agency
3 action in order for them to determine whether their interests could be affected by
4 agency action on that subject.

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

6 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
7 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
8 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
9 rewriting changes the substance of the regulation, amendment, or order but the state
10 agency would not normally consider the change to be significant enough to require
11 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and
12 44.62.210, before adoption, the agency shall provide notice and opportunity for public
13 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
14 regulation, amendment, or order of repeal.

15 (b) If a state agency does not provide the notice and opportunity for public
16 comment under (a) of this section for a rewritten proposed regulation, amendment, or
17 order of repeal, the agency shall prepare a written explanation of the reasons why the
18 requirement of (a) of this section does not apply. When the adopted regulation,
19 amendment, or order of repeal is published in the Alaska Administrative Journal, the
20 lieutenant governor shall include the agency explanation with the text or a summary
21 of the text of the regulation, amendment, or order of repeal.

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

25 (d) This section does not apply to regulations

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

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

29 (e) In this section, "state agency" does not include the Board of Fisheries, the
30 Board of Game, or the Alaska Commercial Fisheries Entry Commission.

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

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

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

11 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
12 be adopted as an emergency regulation or order of repeal if a state agency makes a
13 written finding, including a statement of the facts that constitute the emergency, that
14 the adoption of the regulation or order of repeal is necessary for the immediate
15 preservation of the public peace, health, safety, or general welfare. The requirements
16 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
17 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
18 adoption of an emergency regulation, the adopting agency shall immediately submit
19 a copy of it to the lieutenant governor for filing and for publication in the Alaska
20 Administrative Register, and, within five days after filing by the lieutenant governor,
21 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
22 Failure to give the required notice by the end of the 10th day automatically repeals the
23 regulation.

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

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

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

30 (b) Before the expiration of the 120-day period, the agency shall transmit to
31 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)

1 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
2 submitting the regulation to the lieutenant governor, or that the agency complied with
3 those sections within the 120-day period. Failure to so certify repeals the emergency
4 regulation; it may not be renewed or refiled as an emergency regulation.

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

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

10 (b) If a state agency fails to comply with (a) of this section, the state agency
11 shall prepare a written report containing the reasons for the failure and submit the
12 report to the president of the senate, the speaker of the house of representatives, and
13 the Administrative Regulation Review Committee established under AS 24.20.400.

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

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

17 (b) Notwithstanding any other factor considered by the court, including the
18 grounds for invalidity identified under (a) of this section, a court that reviews the
19 validity of a regulation may not hold the regulation valid unless

20 (1) the regulation accomplishes its goal by using an approach that
21 causes the least intrusion on the rights and property of the persons affected by the
22 regulation; or

23 (2) if the regulation does not satisfy (1) of this subsection, a substantial
24 state interest requires using the approach taken by the regulation.

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

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

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

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

4 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication must result
5 in a final administrative order within the later of 60 days after the hearing officer
6 closes the record or two years after the statement of issues under AS 44.62.370 or an
7 accusation under AS 44.62.360 is filed.

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

13 (c) The time limitation in (a) of this section may be extended if

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

17 (2) a respondent other than a state agency petitions for reconsideration
18 under AS 44.62.540 for a stay of execution under AS 44.62.520, for an extension of
19 the two-year period, or for the record to be reopened in the administrative adjudication.

20 (d) Except as provided by (c) of this section, if an administrative adjudication
21 does not result in a final administrative order in the time required by (a) of this section
22 and if an agency instigated the administrative adjudication, the respondent may cancel
23 the administrative adjudication by notifying the agency in writing of the cancellation.
24 The agency may not subsequently begin another administrative adjudication for the
25 same matter that was the subject of the cancelled administrative adjudication, and an
26 appeal may not be taken from the cancelled administrative adjudication or from the
27 cancellation of the administrative adjudication. However, after the administrative
28 adjudication is cancelled, the agency may bring an action in superior court covering
29 the matter that was the subject of the cancelled administrative adjudication. The
30 complaint must be filed with the superior court within 60 days after the administrative
31 adjudication is cancelled under this subsection.

1 (e) Except as provided by (c) of this section, if an administrative adjudication
2 does not result in a final administrative order in the time required by (a) of this section
3 and if a person other than an agency instigated the administrative adjudication, the
4 person may cancel the administrative adjudication by notifying the agency in writing
5 of the cancellation. The person is considered to have exhausted the person's
6 administrative remedies with regard to the subject matter of the cancelled
7 administrative adjudication, and an appeal may not be taken from the cancelled
8 administrative adjudication or from the cancellation of the administrative adjudication.
9 However, after the administrative adjudication is cancelled, the person may bring an
10 action in superior court covering the matter that was the subject of the administrative
11 adjudication. The complaint must be filed with the superior court within 60 days after
12 the administrative adjudication is cancelled under this subsection.

13 (f) In this section,

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

17 (2) "final administrative order" means a decision under AS 44.62.330 -
18 44.62.630 that is eligible for judicial review under AS 44.62.560.

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

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

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

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

1

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

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 1/21/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/23/99

Judiciary 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 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

<u>SIGNING DO PASS</u>	<u>DP</u>	<u>OTHER RECOMMENDATIONS</u>	<u>NR</u>	<u>DNP</u>	<u>AM</u>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>SEE ATTACHED</i>			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

**DIFFERENCES BETWEEN CSSB 24 (1-LSO274/D)
AND CSSB 24 (1-LSO274/H)**

Summary of Changes:

The intent of SB 24 remains fundamentally unchanged. However, the proposed CSSB 24 (1-LSO274/H) adds several sections to CSSB 24 (1-LSO274/D) adopted by the Judiciary Committee during its previous hearing (Jan. 29, 1999).

In version CSCB 24 (1-LSO274/H). Additions are:

- **Section 3 (p.1)**—Consistency between regulation and statute—A state agency may not adopt a regulation that changes the intent of the statute being implemented.
- **Section 4 (p.2)**—Cost-benefit Requirement—exemptions are expanded to include the Department of Corrections, Department of Natural Resources, state boards and state commissions. Also, the concept of cost-benefit analysis is elaborated on to include non-quantifiable measurements (see lines 12-18).
- **Section 5 (p.2)**—proposed action on regulations (amendments, adoption or repeal) must be published on the internet. Exempt from this provision are the Department of Corrections, Department of Natural Resources, board of game and the board of fisheries.
- **Section 8 (p.4)**—Supplemental notice and public proceedings—This section was a part of the last version of the bill, and is altered in the new version by exempting the Department of Corrections, Department of Natural Resources, state boards and state commissions from this provision. The former version (1-LSO274/D) had exempted the Department of Corrections, the board of fisheries, the board of game and the Alaska Commercial Fisheries Entry Commission.

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 • Chairman, Capitol Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

- **Section 12 (p.6)**—Time limit for adoption (a new Sec. 44.62.285). This new 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, the speaker of the house, and the Administrative Regulation Review Committee.
- **Section 14 (p.7)**—Time Limit. An administrative adjudication must result in a final administrative order within two years after the statement of issues under AS 44.62.370 or under an accusation filed under AS 44.62.360.
- **Section 15 (p.7)**—Applicability of this Act and effective dates.

DD/hn

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 3, 1999

Senator John Torgerson
Alaska Senate
Room 516, State Capitol
Juneau, AK 99811-1182

Re: Length of time for regulations
adoption process

Dear Senator Torgerson:

At a recent hearing on SB 24, you asked for information about the length of time usually required for the regulations adoption process. While the length of time for adopting regulations varies according to the size and complexity of the project, we can provide the following basic timelines.

The Administrative Procedure Act requires at least 30 days between the date an agency publishes notice of proposed regulations and the date an agency adopts those regulations. See AS 44.62.190(a). If an agency anticipates widespread public interest in proposed regulations, the agency frequently extends the 30-day period in order to gather and consider additional public comment. Also, if a board or commission is involved in the adoption or approval of the regulations, the timeline for a project may be extended to accommodate the planned meeting schedule of the board or commission. Ordinarily, there is another 30-day period between the date the lieutenant governor files the regulations and the date they become effective. See AS 44.62.180. Between these two periods, the regulations undergo Department of Law review, as required by statute. See AS 44.62.060(b). The length of the Department of Law's review varies according to the size of the regulations project, the project's complexity, the legal issues, if any, that the project presents, and the Department of Law's workload.

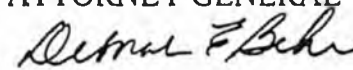
During fiscal year 1998, the Department of Law reviewed 2,648 pages of regulations. More recently, the Department reviewed 252 pages of regulations in December 1998, and 131 pages in January 1999.

We hope that you find the above information to be helpful. Please feel free to contact us if you have additional questions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

cc: Senator Dave Donley
Alaska Senate

Senator Robin Taylor
Alaska Senate

Pat Pourchot, Legislative Director
Office of the Governor

Barbara Ritchie
Deputy Attorney General—Civil Division
Department of Law

Chrystal Smith, Legislative Liaison
Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 3, 1999

RECEIVED

FEB 3 -- 1999

Ans'd.....

TONY KNOWLES, GOVERNOR

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Senator Robin Taylor
Alaska Senate
Room 30, State Capitol
Juneau, AK 99811-1182

Re: Standard for judicial review in
condemnation proceedings

Dear Senator Taylor:

At a recent hearing on SB 24, you asked for information on the standard for judicial review in condemnation proceedings.

Alaska Statute 09.55.460(b) provides that the condemnor "may not be divested of a title or possession acquired except where the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury." See also AS 09.55.430(7). The Alaska Supreme Court has read this provision to mean that each private person's injury "should be minimized to the extent that it is reasonably possible to do so without impairing the integrity and function of the project and without adding unreasonable costs to the project." State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, More or Less, 613 P.2d 829, 832-33 (Alaska 1980). The court does not substitute its own judgment for that of the condemnor, but will overturn a determination by the condemnor if that determination is arbitrary, capricious, or an abuse of discretion, or is otherwise not in accordance with law. Id. at 833. The state's determination of least private injury and the greatest public good must be a rational determination, and a court will consider that determination arbitrary if the condemnor has failed to consider all important, relevant factors in making that determination. State, Dep't of Transp. & Pub. Facilities v. 2.072 Acres, More or Less, 652 P.2d 465, 466-67 (Alaska 1982) (per curiam).

The standard for judicial review of condemnation proceedings differs from the standard for judicial review of a regulation. The Administrative Procedure Act sets out the following provisions for judicial review of a regulation's validity:

An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid

(1) for a substantial failure to comply with AS 44.62.010 – 44.62.320; or

(2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under AS 44.62.250.

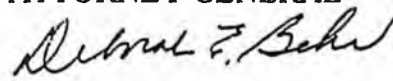
AS 44.62.300. To be effective, a regulation must be within the scope of authority that the legislature has conferred to the adopting agency, and must be in accordance with standards prescribed by other provisions of law. AS 44.62.020. Additionally, a regulation "is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute." AS 44.62.030.

Please feel free to contact us if you have additional questions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

cc: Senator Dave Donley
Alaska Senate

Pat Pourchot, Legislative Director
Office of the Governor

Barbara Ritchie
Deputy Attorney General—Civil Division
Department of Law

Chrystal Smith, Legislative Liaison
Department of Law—Juneau

SB 24 FISCAL NOTES INDEX

TAB	DEPT	BRU	COMPONENT	FY 2000	FY 2001	FY 2002	FY 2003
1	DOT/PF	Commissioner's Off		35.0	35.0	35.0	35.0
2	PUBLIC SAFETY	Statewide Support	Administrative Services	20.0	20.0	20.0	20.0
3	PUBLIC SAFETY	Vio Crimes Comp Board		0.0	0.0	0.0	0.0
4	H&SS	Administrative Services	Admin Support Services	90.5	85.5	85.5	85.5
5	DNR	Management & Admin.	Commissioner's Office	242.4	93.7	101.2	127.1
6	REVENUE	Revenue Operations		76.3	76.3	76.3	76.3
7	LAW	Criminal/Civil Divisions	1st-4th Jud Dist, Crim Ap	322.3	302.8	302.8	302.8
8	FISH & GAME	Limited Entry Comm	Program Administration	46.8	40.8	40.8	40.8
9	ADMINISTRATION	Various	Various	26.8	26.8	26.8	26.8
10	LABOR	Commissioner's Office	Labor Relations Agency	1.8	0.0	0.0	1.8
11	LABOR	Worker's Comp	Worker's Comp	19.5	19.5	19.5	19.5
12	LABOR	Employment Security	Unemployment Insurance	0.0	0.0	0.0	0.0
13	LABOR	Administrative Services	Labor Market Information	20.0	0.0	20.0	0.0
14	LABOR	Labor Standards & Safety	Wage & Hour Admin.	8.3	3.3	8.3	8.3
15	LABOR	Labor Standards & Safety	Mechanical Inspection	16.5	16.5	16.5	16.5
16	LABOR	Labor Standards & Safety	Occupational Safety & Health	16.5	16.5	16.5	16.5
17	DEC	Administration	Commissioner's Office	293.9	275.9	275.9	275.9
18	DCRA			0.0	0.0	0.0	0.0
19	EDUCATION	Executive Administration	State Board of Education	87.8	80.3	80.3	80.3
20	COMM & EC DEV	Occupational Licensing		87.8	81.5	81.5	81.5
21	COMM & EC DEV	Insurance	Insurance	41.2	41.2	41.2	43.5
22	COMM& EC DEV	Banking, Sec & Corp		39.0	39.0	39.0	39.0
23	GOVERNOR'S OFF	Governmental Coordination		54.9	55.9	56.9	57.9
24	GOVERNOR'S OFF	Commissions & Sp Offices	Human Rights Commission	20.2	0.0	20.2	0.0
25	AK COURT SYSTEM		Trial Courts	52.9	52.9	52.9	52.9
	TOTAL			1,620.4	1,368.4	1,417.1	1,407.9

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected DOT&PF
 Title Regulations: Adoption & Judicial Review BRU Commissioners Office
 Component _____
 Sponsor Senator Dave Donley
 Requester Senate Judiciary Component Serial No. _____

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	15.0	15.0	15.0	15.0	15.0	15.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	1.0	1.0	1.0	1.0	1.0	1.0
TOTAL OPERATING	35.0	35.0	35.0	35.0	35.0	35.0

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

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF	35.0	35.0	35.0	35.0	35.0	35.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	35.0	35.0	35.0	35.0	35.0	35.0

Estimate of any current year (FY99) cost: 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

There are approximately 196 active transportation regulations in 17 AAC. These regulations establish controls and standards, give authority, designate and define activities on surface, air, and marine transportation issues. DOT&PF's portion of the AAC is only 2% of the total volume of regulations.

The Dept. of Law will be responsible for accomplishing many of the tasks required by DOT&PF and this bill. The Dept. of Law will direct charge the DOT&PF for those services that relate to transportation issues.

These estimated costs are based on the assumption of moderate to minimal impacts to the adoption of regs by the DOT&PF.

Prepared by Dennis Poshard, Legislative Liaison Phone 465-3904
 Division Office of the Commissioner Date/Time 1/25/99 4:09 PM
 Approved by Commissioner [Signature] Date _____
 Agency Department of Transportation and Public Facilities

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FISCAL NOTE

22

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO: SB 24

Revision Date: 1/26/99 Dept. Affected: Public Safety
 Title: An Act relating to the adoption, amendment, BRU: Statewide Support
repeal, legislative reviewof regulations Component: Administrative Services
 Sponsor: Senator Donley
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 0525

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	20.0	20.0	20.0	20.0	20.0

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

CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	20.0	20.0	20.0	20.0	20.0	20.0

Estimate of current year (FY) impact: \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

The program effects of this bill, primarily resulting from section 44.62.035 requirement to conduct a cost benefit analysis will require approximately 3 months staff time complete cost benefit analyses and address changes related to public notice (Section 44.62.213) and shortened emergency regulation period (Section 44/62/260).

Prepared By: Kenneth E. Bischoff, Director Phone: 465-4336
 Division: Administrative Services Date: _____
 Approved by Commissioner: Ronald L. Otte Date: 1-28-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA

BILL NO: SB24

1999 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: The Alaska Regulations Reform BRU: Violent Crimes Compensation Board
 Sponsor: Senator Donley Component: _____
 Requestor: _____ COMPONENT SERIAL NO. _____

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

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES () Revenue Code						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHT/A						
Other						
TOTAL						

Estimate of current year (FY 99) impact: \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact

Prepared By: Susan L. Browne, Administrator Phone: 465-5525
 Division: Violent Crimes Compensation Board Date: 1/19/99
 Approved by Commissioner: *Ronald L. Otte* Date: 1-28-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: An act relating to cost-benefit analysis on BRU: Administrative Services
regulations Component: Administrative Support Services
 Sponsor: Sen. Donley COMPONENT SERIAL NO. 320
 Requestor: Senate (JUD) See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	70.0	70.0	70.0	70.0	70.0	70.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	5.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	90.5	85.5	85.5	85.5	85.5	85.5

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.5	85.5	85.5	85.5	85.5	85.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	90.5	85.5	85.5	85.5	85.5	85.5

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will require the Department to conduct a Cost/Benefit analysis for each new regulation, regulation change, or repeal that it intends to effect. In order to do so, the Department will require the full-time services of an economist (Range 20) who can do these analyses and defend them. Because of the additional provisions concerning appeals, this individual would likely be required to travel frequently to appear in court. Additional costs would be incurred for special analyses that require outside expertise.


 Prepared by: Janet Clarke, Director Phone: 465-3082
 Division: Administrative Services Date/Time: 1/26/99 11:32 AM

 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/27/99
 Agency: Department of Health & Social Services

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FISCAL NOTE

#5

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24

Revision Date: _____ 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: Senators DONLEY, Taylor
 Requestor: (S) JUD 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	242.4	93.7	101.2	127.1	101.2	97.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	242.4	93.7	101.2	127.1	101.2	97.5

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

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	242.4	93.7	101.2	127.1	101.2	97.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	242.4	93.7	101.2	127.1	101.2	97.5

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 has 13 regulation projects at the present time that will most likely fall under this piece of legislation. Several are highly complex issues, in particular Land and Mining. Each of these will require a cost/benefit analysis and supplemental notice and hearings. Some of the projects are highly controversial and will require several supplemental notices and hearings. DNR will contract for a professional cost/benefit analysis to be done as the need arises. The Department believes that it would not be able to hire an economist that would be proficient with all the issues involved in oil and gas, land, mining, parks, forestry etc. and so would contract with the most experienced in the appropriate field. Years after FY2000 are estimates of the number of projects and their complexity. Projects will likely vary substantially in number and complexity.

Prepared by: Carol Carroll, Director Phone: 465-4730
 Division: Support Services Date: 27-Jan-99
 Approved by Commissioner: [Signature] Date: 1-27-99
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____	Dept. Affected	Revenue
Title <u>Regulations: Adoptions & Judicial Review</u>	BRU	Revenue Operations
	Component	_____
Sponsor <u>Sen. Donley</u>		
Requester <u>Sen. JUD</u>	Component Serial No.	_____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	76.3	76.3	76.3	76.3	76.3	76.3
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	76.3	76.3	76.3	76.3	76.3	76.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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	76.3	76.3	76.3	76.3	76.3	76.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	76.3	76.3	76.3	76.3	76.3	76.3

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

We estimate 5-10 regulation projects a year. Some would involve only technical changes, requiring minimal cost-benefit analysis. However, more complex regulatory changes will involve from 100-300 hours for each analysis, for an estimated total of 900 hours. At \$81 an hour, the cost would be \$72,900.

The cost of publishing regulation changes in the newspaper would run \$3,400 per year due to the added expense of publishing a summary of the cost-benefit analysis of each regulation project.

See attached page.

Prepared by <u>Deborah Vogt</u>	Phone <u>465-2300</u>
Division <u>Commissioner's Office</u>	Date/Time <u>25-Jan-99</u>
Approved by <u>Wilson L. Condon</u>	Date <u>25-Jan-99</u>
Agency <u>Department of Revenue</u>	

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Alaska Department of Revenue

SB 24

Regulations: Adoptions & Judicial Review

25-Jan-99

Page 2 of 2

Comments:

SB 24 increases the regulatory burden upon agencies and the liability to the state. Section 8 (public notice requirements) and Section 13 (least intrusive of all regulatory changes) would increase the expense of routine regulatory changes. Section 5 (cost-benefit requirements) would have the greatest fiscal impact. Conducting an accurate analysis would require identifying gainers and losers and quantifying the gains and losses. Many of these gains and losses involve intangibles that are difficult to value. For example, weighing the value of information lost due to regulatory streamlining against the time savings of applicants. Or, quantifying benefits such as reduced uncertainty and risk. In the Department of Revenue, the costs of performing the analysis would outweigh the benefits obtained from doing the analysis.

In our fiscal note, we do not address the potential costs of increased liability to civil claims by individuals or corporations. Even if we ignore potential legal challenges to the methods used to quantify the benefits and costs of intangibles, it will be difficult and expensive to demonstrate that a particular regulatory change is the least intrusive of all possible regulatory changes (see Section 3). Because of the risk of legal challenges and the expense of conducting benefit cost analysis, many regulatory changes that would benefit the public might not be considered.

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 24

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>"An Act relating to the adoption, amendment, repeal, legislative review, and judicial review of regulations..."</u>	BRU <u>Criminal Division/Civil Division</u>
Sponsor <u>Senator Donley</u>	Component <u>1st-4th Jud. Dist., Crim Apps/Spec Lit</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2198-99, 2201/03/61/79/09</u>
	<u>Legislation/Regulations</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	224.6	224.6	224.6	224.6	224.6	224.6
Travel	5.8	5.8	5.8	5.8	5.8	5.8
Contractual	69.0	69.0	69.0	69.0	69.0	69.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	19.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	322.3	302.8	302.8	302.8	302.8	302.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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	322.3	302.8	302.8	302.8	302.8	302.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	322.3	302.8	302.8	302.8	302.8	302.8

Estimate of any current year (FY99) cost: _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

To be known as the "Alaska Regulations Reform Act," SB 24 makes a number of significant changes to the way regulations are promulgated. Of most significance to the Department of Law from a cost perspective are three of the proposed changes: (1) a requirement for the preparation of cost-benefit analyses on every regulation adoption, repeal and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment for "significant changes" in proposed regulations after initial notice and public comment has occurred; and (3), an assumption of invalidity by the courts unless it can be shown that the proposed regulation uses an approach that causes the least intrusion on the rights and property of the persons affected by the regulation, and if it does not, that there is a compelling state interest in using the approach.

Prepared by Joan M. Kasson *Kathryn A. ... for JK*
 Division Attorney General's Office

Approved by Commissioner *Kathryn A. ...* Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 1/25/99, 3:32 PM
 Date 1/25/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS CONTINUATION

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations 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 will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least 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 fisheries regulations, and proving a compelling state interest in using a particular allocation scheme, would almost certainly involve extensive litigation because of the economic interests at stake in fisheries and other natural resource allocation decisions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 40 percent increase in time for all regulations-related projects would result from this bill. (Increases in fisheries and other natural resource-related litigation over regulations could be substantially higher.) At 40 percent, an additional 3000 hours would be required, a total of 2 full-time equivalent attorneys (3000/1448 hours). In addition, many of the cases in litigation would require the use of "outside" expert economists.

Based on the department's FY00 standard full-time equivalent attorney cost schedule (\$133,926), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 2 FTE attorneys is \$267,852. An additional \$5,000 per position is included for direct case costs, \$6,500 per position for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

While clerical support funding is included in the cost schedule, position authorization and one-time equipment costs are separate. The total PFT estimate thus includes one permanent full-time Legal Secretary I position, and the equipment line includes \$6,500 for one-time equipment.

FISCAL NOTE

#7

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24

Revision Date/Time (Note if correction)
Title Alaska Legislation Reform Act

Dept. Affected: Fish and Game
BRU: Commercial Fisheries (Limited) Entry Commission
Component: Limited Entry Program Administration

Sponsor Sen. Taylor, Donley
Requester Senate Finance

COMPONENT SERIAL NO. 0471

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	36.4	36.4	36.4	36.4	36.4	36.4
Travel						
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	2.4	2.4	2.4	2.4	2.4	2.4
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	46.8	40.8	40.8	40.8	40.8	40.8

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	46.8	40.8	40.8	40.8	40.8	40.8
1006 GF/MHTIA						
Other						
TOTAL	46.8	40.8	40.8	40.8	40.8	40.8

Estimate of any current year (FY99) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

For most CFEC regulatory actions, particularly those implementing limitations of specific fisheries, cost-benefit analyses would be impracticable. They would be complex, speculative, and not likely to be particularly meaningful. In addition, the delay due to the time it would take to complete such an analysis could undermine the effectiveness the limitation. However, if CFEC is not exempted from the cost-benefit analysis requirement, this fiscal note would allow us to attempt simple cost-benefit analyses of proposed regulatory actions.

See attachment

Prepared by Roger Kolden Phone 790-6950
Agency Commercial Fisheries (Limited) Entry Commission Date/Time 01/27/99

Approved by Commissioner Bruce Twomley Date: 1/27/99
Agency Commercial Fisheries (Limited) Entry Commission

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SB 24 Fiscal Note Analysis:

CFEC regulates entry into commercial fishing in Alaska in accordance with AS16.43. CFEC always considers the impact of a proposed regulation on the fishing industry when adopting regulations that achieve the statute's purposes. All CFEC regulatory proposals are extensively reviewed by the public before a decision is made. Through this public input process, the public provides the sort of cost-benefit information that SB24 seeks, and in a useful and timely manner.

Under the extensive requirements of SB 24, CFEC would need to devote considerably more resources to trying to estimate the benefits and costs of each regulatory proposal. Any analysis would necessarily be highly speculative and time-consuming. Additionally, because the requirement to complete a cost-benefit analysis prior to proposing regulatory action would delay implementation of fishery limitations, it would likely lead to an increase in last minute participation by those speculating for permits, and thus undermine the goals of limited entry and perhaps jeopardize the position of Alaskans in their fisheries. Finally, the analyses would have to withstand legal challenges. Because CFEC is an adjudicatory agency, the analysis requirement may lead to further expensive litigation for the state.

Each year, CFEC must add or amend many regulations. Each proposed regulatory change requires a public review process. For example, CFEC is required by its statutes to adopt regulations to limit additional fisheries, to place moratoria on new entrants into fisheries, to develop hardship ranking systems to allocate permits in newly limited fisheries, and to establish application periods for permits in newly limited fisheries. Additionally, CFEC often needs to change regulations related to fishery definitions, permanent and emergency permit transfer requirements, other reporting requirements, administrative procedures, permit fees and user fees for sundry services. Moreover, new legislation and court decisions sometimes require extensive regulatory changes. Many of these actions simply do not lend themselves to meaningful cost-benefit analysis.

In the last two years our Law Specialist needed to devote about 30% of her time on tasks related to the Commission's regulations and regulatory proposals. Many other staff persons also need to be involved in the development of proposed regulatory changes and/or the extensive public review process for such proposals.

Because our agency has lost 24% of its staff positions over the last 12 years, we are having serious difficulty meeting existing statutory requirements. Estimating the benefits and costs of each regulatory change will require the addition of at least one part-time regulatory economist position to help make the estimates and prepare the supporting documents. Some regulations will require more detailed economic analysis than others. In some cases these analyses would need to be very extensive and complex, and in the end, because of the nature of CFEC's statutory duties, results would be speculative at best.

First Year Additional Cost of SB 24:

Part-Time Economist II or equivalent position for 6.0 months
Telephone purchase and yearly expenses
Personal computer purchase
Office supplies
Office equipment

Subsequent Years Additional Cost of SB 24:

Part-Time Economist II or equivalent position for 6.0 months
Telephone yearly expenses
Office supplies

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected Administration _____
 Title "The Alaska Regulations Reform Act" BRU Various _____
 Component Various _____
 Sponsor Senator Donley _____
 Requester Senate Judiciary Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	26.8	26.8	26.8	26.8	26.8	26.8
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	26.8	26.8	26.8	26.8	26.8	26.8

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.8	26.8	26.8	26.8	26.8	26.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	26.8	26.8	26.8	26.8	26.8	26.8

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Page 2 for analysis.

Prepared by Sharon Barton *[Signature]* Phone 465-2277
 Division Administrative Services Date/Time _____
 Approved by Commissioner Robert Poe, Jr. *[Signature]* Date 11/27/99
 Agency Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS:

It is impossible to project the costs of this bill with any accuracy. However, by making certain conservative assumptions we hope to come close.

Assumptions:

The Department of Administration estimates three regulations packages are dealt with annually. Each regulations project would likely be subject to the supplemental notices and public comment provision of the bill. \$2.5 for costs related to this requirement is included in the fiscal note.

The fiscal note further assumes the three regulations packages to be of various complexity; one very complex, one of medium complexity, and one of lesser complexity. Estimates of the number of hours necessary to conduct cost benefit analysis, for which the department will contract, are 10 hours for less complicated regulations projects, 40 hours for projects of medium complexity and 200 hours for very complex projects. The cost of contracting for cost benefit analysis services is estimated at \$100/hr.

#10

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Office of the Commissioner
Component: AK Labor Relations Agency
COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1.8			1.8		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1.8	0.0	0.0	1.8	0.0	0.0

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

CHANGE IN REVENUE FUND SOURCE #						
---------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.8			1.8		
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	1.8	0.0	0.0	1.8	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 SB 24 proposes changes to procedures to adopt regulations that will increase the costs of such procedures: AS 44.62.213 would increase publication costs and AS 44.62.035 would add the cost of an economist to do a cost benefit analysis. This note assumes the agency will have one substantial regulation project every three years.

Prepared by: Mark Torgerson, Hearing Examiner *Mark Torgerson* Phone: 269-4895
Division: Alaska Labor Relations Agency Date/Time: 1/27/99 1:36 PM

Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
Agency: Department of Labor Date: 1/27/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
 Title: Regulations: Adoption & Judicial Review
 Sponsor: Senator Donley
 Requester: Senate JUD

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL	7.3	7.3	7.3	7.3	7.3	7.3
CONTRACTUAL	12.2	12.2	12.2	12.2	12.2	12.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.5	19.5	19.5	19.5	19.5	19.5

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

CHANGE IN REVENUE FUND SOURCE #						
---------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.5	19.5	19.5	19.5	19.5	19.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	19.5	19.5	19.5	19.5	19.5	19.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill provides for a right to judicial review in district or superior court by an interested party for any regulation adopted, amended, or repealed. The bill also requires a cost benefit analysis be performed for each regulation promulgated and supplemental notices and public proceedings to take place when a substantive change in regulation occurs. Please see attached for additional impact to Worker's Compensation.

Prepared by: Paul Grossi, Director Phone: 465-2790
 Division: Workers' Compensation Date/Time: 1/27/99 10:31 AM
 Approved by Commissioner: Ed Flanagan, Commissioner
 Agency: Department of Labor Date: 1/27/99

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SB 24 Analysis

The bill provides for a right to judicial review in district or superior court by an interested party for any regulation adopted, amended, or repealed. The bill also requires a cost benefit analysis be performed for each regulation promulgated and supplemental notices and public proceedings to take place when a substantive change in regulation occurs.

To ensure accurate cost benefit analysis data, a contract must be established with an experienced economic cost benefit analyst. It is anticipated that this form of Professional Services contract will cost \$10,000 annually.

Additionally, the required travel, supplemental notices and public proceedings will result in approximately \$9,500 in additional annual expenses.

Line 200 Travel

Board Members/Hearing Officers Travel	7.3
--	-----

Line 300 Contractual

Cost Benefit Analysis Professional Services Contract	10.0
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Advertising (Proposed Changes/Public Meetings)	2.2
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Total	19.5
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4/2

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requestor: Senate JUD

Department Affected: Labor
BRU: Employment Security
Component: Unemployment Insurance
COMPONENT SERIAL NO. 2276

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The Bill would amend the regulation adoption process in AS 44.62. See attached.

Prepared by: Rebecca Gamez, Director *Rebecca Gamez* Phone: 465-2711
 Division: Employment Security Division Date/Time: 1/27/99 11:52 AM

Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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Attachment
Fiscal Note for SB 24

Alaska Department of Labor
Employment Security Division

The Bill would amend the regulation adoption process in AS 44.62 in two primary areas:

Sections 5-6 of the Bill would require a mandatory cost-benefit analysis for each regulation and would allow adoption of the regulation only if benefits exceed costs. A summary of the cost-benefit analysis would be included with each notice.

Section 8 of the Bill would require a supplemental notice before adoption if the agency has made any "significant" change to the regulation after the original notice. The agency would be required to justify any failure to provide supplemental notice, presumably on the basis of whether the re-drafted changes were "significant."

Mandatory cost-benefit analysis

ESD regulations in most cases do not impose additional reporting or other burdens on the public. They interpret eligibility requirements in the statute or define statutory terms. Cost-benefit analysis would be minimal. The personal services cost for this function is based on one regulations project per year, with one staff person completing the analysis in one week. Estimated cost approximately \$1,500.

Supplemental notice

Almost all ESD regulations projects have some "significant" re-drafting before adoption. Personal services cost is based on one project per year, with one supplemental notice per project, and an estimated two staff-weeks to complete the supplemental notice and evaluate the public response. Estimated cost approximately \$2,800.

Anticipated costs to be absorbed within existing budgeted funds. Zero fiscal note to be submitted.

#13

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Administrative Services
Component: Labor Market Information
COMPONENT SERIAL NO. 336

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	20.0		20.0		20.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	0.0	20.0	0.0	20.0	0.0

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

CHANGE IN REVENUE FUND SOURCE #						
---------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0		20.0		20.0	
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	20.0	0.0	20.0	0.0	20.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Denise Liccioli, Acting Director Phone: 465-2720
Division: Administrative Services Date/Time: 1/27/99 12:13 PM
Approved by Commissioner: Ed Flanagan, Commissioner
Agency: Department of Labor Date: 1/27/99

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SB 24 Analysis

AS 09.38.115 of the Alaska Exemptions Act provides for the adjustment of the exemption amounts specified in other sections of the Act and requires that the Department of Labor adopt a regulation announcing the changes in the dollar amounts. The dollar amounts change on October 1 of each even-numbered year if the percentage of change is 10 percent or more. Senate Bill No. 24 would require that the department prepare a cost benefit analysis to identify the cost to the public and the benefit that the public would receive from the adjustment. The exemptions Act deals with the exclusion from various legal assessments and proceedings specified values for certain items. These legal proceedings ultimately result in the transfer of funds from one entity to another. The nominal net cost/benefit of this transfer or non-transfer in the case of exempted amounts is zero to the parties involved. The public social cost/benefit is not measurable (i.e., improved fairness, equity) in any reasonably quantifiable way. Doing a cost/benefit analysis for the adjustment of exemption amounts would not be a cost effective use of public funds. Adjustment of dollar amounts in the Exemptions Act should not be done by regulation but should more appropriately be acted upon by the legislature.

The Alaska Exemptions Act deals with all sorts of financial settlements. They range from bankruptcies to divorce settlements. The number of new cases which would involve exemptions each year is unknown. An estimate of the number and type of cases would have to be identified and the adjustment amount related to each case; an estimate of the benefit to interested and unrelated parties would need to be determined. Understanding that a supportable estimate would require such information, we would nonetheless estimate that complying with Senate Bill No. 24 would require 250 hours of contracted economic analysis at \$80 per hour for a cost of \$20,000. This does not include the costs to the Courts system to develop and maintain an electronic database which would provide the data which would be the basis of the above analysis.

Presumably the adjustment would not be made if the cost outweighs the benefit even though the adjustment has also been mandated by state law. However, we question the legality of not acting on the requirements of the Alaska Exemptions Act and would propose an amendment to the Act to eliminate the requirement that adjustments are made by the Department of Labor and noticed by regulation. The amendment would require the legislature to act on future adjustments to the exemption amounts specified in the Alaska Exemptions Act and would clarify the legislature's intent as it relates to exemption amounts.

#14

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Wage & Hour Administration
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	8.3	8.3	8.3	8.3	8.3	8.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.3	8.3	8.3	8.3	8.3	8.3

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	8.3	8.3	8.3	8.3	8.3	8.3
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	8.3	8.3	8.3	8.3	8.3	8.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Section 5 of SB24 would significantly impact Wage & Hour Administration as it requires agencies to "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."

Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
Division: Labor Standards & Safety Date/Time: 1/27/99 1:18 PM
Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
Agency: Department of Labor Date: 1/27/99

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SB24

Fiscal Note Analysis continued:

We do not currently have the funding or qualified staff available to implement this legislation. We would be required to contract with professional economic consulting firms, at a rate of \$65 to \$97 per hour, to conduct analyses. The hours required to conduct the analyses as required by SB24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec. 13), we must assume significant detail will be required.

This section estimates one regulation adoption per year in response to new legislation, requiring 100 hours of contractual services each. (100 hours x \$82.60 per hour = \$8,260.00)

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Mechanical Inspection
COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTS/	16.5	16.5	16.5	16.5	16.5	16.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	16.5	16.5	16.5	16.5	16.5	16.5

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	16.5	16.5	16.5	16.5	16.5	16.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	16.5	16.5	16.5	16.5	16.5	16.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 Section 5 of SB24 would significantly impact Mechanical Inspection as it requires agencies to "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."
 Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 1/27/99 1:12 PM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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SB24

Fiscal Note Analysis continued:

We do not currently have the funding or qualified staff available to implement this legislation. We would be required to contract with professional economic consulting firms, at a rate of \$65 to \$97 per hour, to conduct analyses. The hours required to conduct the analyses as required by SB24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec.13), we must assume significant detail will be required.

Mecnanical Inspection's regulatory changes could involve fee structure changes, and the incorporation of new plumbing, boiler, and electrical codes in existing regulations.

This section estimates two regulation changes or adoptions per year, requiring 100 hours of contractual services each. (200 hours x \$82.60 per hour = \$16,520.00)

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
 Title: Regulations: Adoption & Judicial Review
 Sponsor: Senator Donley
 Requestor: Senate JUD

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Occupational Safety & Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	16.5	16.5	16.5	16.5	16.5	16.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	16.5	16.5	16.5	16.5	16.5	16.5
CAPITAL						
CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	16.5	16.5	16.5	16.5	16.5	16.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	16.5	16.5	16.5	16.5	16.5	16.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Section 5 of SB24 would significantly impact Occupational Safety and Health (OSH) as it requires agencies to "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."

Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 1/27/99 1:21 PM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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SB 24

Fiscal Note Analysis continued:

Every federal Occupational Safety & Health Administration final rule which OSH must adopt includes an analysis of costs of compliance, benefits to the public, and national economic effects. Each final rule also includes OSHA's estimated costs of compliance.

These federal analyses may be marginally acceptable as a response to Section 5, in cases where we are adopting a federal regulation. However, they often don't have much application to Alaska due to the differences in our geography, infrastructure, climate, and industries. In addition, there are regulatory changes OSH promulgates which are not federal changes, which we would have to analyze completely.

The OSH section currently uses information on occupational safety and health injuries, illnesses and fatalities as an indicator of needed state-specific changes, and OSH should be able to state the benefits to be received by the public with minimal additional effort. However, we do not complete formal cost/benefit analyses, and estimating the costs of compliance in Alaska could be a formidable task.

For example, a cost analysis for implementation of the relatively simple bloodborne pathogens standard in the Alaska Department of Health and Social Services required .5 FTE in 1992 for data gathering, analysis, rechecking assumptions, and report production for approximately four months. A statewide cost/benefit analysis for the implementation of the Process Safety Management standard probably would require several years for a team of safety professionals and professional analysts and economists to complete. We do not have this capability.

Because of the level of review and analysis required of the department, and the number of days allowed for each level of review, OSH would never meet federal deadlines for adoption of regulations. This would continue to be a serious problem for our federal monitors.

We do not currently have the funding or qualified staff to implement this legislation. We would be required to contract with professional economic consulting firms, at rate of \$65 to \$97 per hour, to conduct the cost benefit analyses. The hours required to conduct the analyses as required by SB 24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec. 13), we must assume significant detail will be required.

OSH estimates two regulation adoptions or amendments per year will be undertaken by the section, requiring 100 hours of contractual services for each. (200 hours x \$82.60 per hour = \$16,520.00)

FISCAL NOTE

#17

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction)	Dept. Affected
Title	Environmental Cons.
The Alaska Regulations Reform Act	BRU Administration
Sponsor	Component
Senators Donley, Taylor	Commissioner's Office
Requester	Component Serial No.
Senate Judiciary	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	207.9	207.9	207.9	207.9	207.9	207.9
Travel	30.0	30.0	30.0	30.0	30.0	30.0
Contractual	33.0	33.0	33.0	33.0	33.0	33.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	293.9	275.9	275.9	275.9	275.9	275.9

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

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	293.9	275.9	275.9	275.9	275.9	275.9
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	293.9	275.9	275.9	275.9	275.9	275.9

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	4	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 <u>Janice Adair, Director</u>	Phone <u>269-7644</u>
Division <u>Environmental Health</u>	Date/Time <u>1/25/99 1:05 PM</u>
Approved by Commissioner <u>[Signature]</u>	Date <u>1/25/99</u>
Agency <u>Department of Environmental Conservation</u>	

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ATTACHMENT
SB 24 FISCAL NOTE
Page 2 of 2

While the department supports the concept that the public and the regulated community have a right to know the impacts of proposed regulations, obviously there is a very real and substantial cost associated with preparing an in-depth cost-benefit analysis of each regulatory proposal, increasing the public notice requirements, and defending the regulations under a judicial review of validity.

In the past two years, this Department developed approximately 50 regulatory projects. A number of these were complex and comprehensive amendments to existing law, and many were mandated by federal law. If that level of regulatory activity continues, we believe the development of cost-benefit analyses would be a full-time job for two economists, a paralegal, and a clerk.

Additional photocopying and postage costs would result from required supplemental notices. Many of our regulations mailing lists exceed 3,000 names.

A paralegal would be required to help this Department and the Department of Law with determining if changes made as a result of public comments were substantive, and if so, assist with the successive public notices and resulting changes required by the Supplement Notice provision found on page 4, line 1 - 7. The paralegal will also help prepare justification for not issuing a supplemental notice, prepare information to defend the regulations under a judicial review, and will help the economists prepare the cost-benefit analyses.

Line item detail for fiscal note:

Personal Services: Salaries and benefits for the four required new employees (two Economist I, one Paralegal II, and one Administrative Clerk II).

Travel: Travel for the economists to interact with department employees in other locations and to work with affected industries in trying to determine costs.

Contractual Services: Includes space lease, phones, copier expense, training for new employees. Also includes increased costs associated with additional public notice (e.g. classified ads, postage)

Supplies: Includes basic office supplies for staff as well as envelopes and other supplies associated with additional public notice.

Equipment: One time cost for purchase of office and computer equipment for four new positions.

Personal Services New PCN Detail

Department of Environmental Conservation

Scenario: DEC - LEGISLATION INFORMATION
 Component: Office of the Commissioner
 BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range and Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#036	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#037	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#038	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B	12.0		39,156	0	0	14,000	53,156
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 53,156.00 <hr/> Total Funding: 00.00% 53,156.00						
18-#039	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B	12.0		23,436	0	0	10,779	34,215
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 34,215.00 <hr/> Total Funding: 00.00% 34,215.00						

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	207,851.00

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

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction)	Dept. Affected
Title	Environmental Cons.
The Alaska Regulations Reform Act	BRU Administration
Sponsor	Component
Senators Donley, Taylor	Commissioner's Office
Requester	Component Serial No.
Senate Judiciary	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	207.9	207.9	207.9	207.9	207.9	207.9
Travel	30.0	30.0	30.0	30.0	30.0	30.0
Contractual	33.0	33.0	33.0	33.0	33.0	33.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	293.9	275.9	275.9	275.9	275.9	275.9

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

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

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	293.9	275.9	275.9	275.9	275.9	275.9
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	293.9	275.9	275.9	275.9	275.9	275.9

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	4	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 <u>Janice Adair, Director</u>	Phone <u>269-7644</u>
Division <u>Environmental Health</u>	Date/Time <u>1/25/99 1:05 PM</u>
Approved by Commissioner	Date <u>1/25/99</u>
Agency <u>Department of Environmental Conservation</u>	

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ATTACHMENT
SB 24 FISCAL NOTE
Page 2 of 2

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Equipment: One time cost for purchase of office and computer equipment for four new positions.

Personal Services New PCN Detail

Department of Environmental Conservation

Scenario: DEC - LEGISLATION INFORMATION
 Component: Office of the Commissioner
 BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range and Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
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18-#037	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
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18-#038	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B	12.0		39,156	0	0	14,000	53,156
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 53,156.00 <hr/> Total Funding: 00.00% 53,156.00						
18-#039	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B	12.0		23,436	0	0	10,779	34,215
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 34,215.00 <hr/> Total Funding: 00.00% 34,215.00						

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	207,851.00

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

FISCAL NOTE

118

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to the adoption, BRU: _____
amendment, repeal, legislative review... Component: _____
 Sponsor: SENATOR DONLEY
 Requestor: Senate Judiciary Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This department's operational activities are not generally those of a "regulatory" agency. The occasional regulations promulgated by the department generally involve clarification of the day-to-day process of implementing statutorily created or amended programs. Consequently, the implementation of these regulations would involve minimal cost-benefit analysis, if any, and are not likely to lead to court actions. The department believes this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709

Division: Division of Administrative Services Date: 1/28/99

Approved by Commissioner: *Remond Henderson for* Date: 1/28/99

Agency: Community & Regional Affairs

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FISCAL NOTE

719

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 21

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Education</u>
Title <u>An Act relating to the adoption, amendment,</u>	BRU <u>Executive Administration</u>
<u>repeal, legislative review and judicial review of regulations;</u>	Component <u>State Board of Education</u>
Sponsor <u>Senator Donley</u>	
Requester <u>Senate Judiciary</u>	Component Serial No. <u>186</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	58.3	58.3	58.3	58.3	58.3	58.3
Travel	1.5	1.5	1.5	1.5	1.5	1.5
Contractual	20.0	20.0	20.0	20.0	20.0	20.0
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment	7.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	87.8	80.3	80.3	80.3	80.3	80.3

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	87.8	80.3	80.3	80.3	80.3	80.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	87.8	80.3	80.3	80.3	80.3	80.3

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time	1					
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 SB24 requires that the department prepare a cost benefit analysis of the costs to the public to comply with regulatory changes (adoption, amendment, repeal), and the benefits to the public from the proposed regulatory action. Expertise in preparing cost benefit analysis does not exist within the department. The legislation would require that a new economist position be established to complete this work. The fiscal note estimates the cost of an Economist I (R18) and contractual costs associated with legal services.

Prepared by <u>Karen J. Rehfeld</u>	Phone <u>465-8650</u>
Division <u>Education Support Services</u>	Date/Time <u>1/28/99 10:14 AM</u>
Approved by Commissioner	Date _____
Agency <u>Shirley J. Holloway, Ph.D.</u>	

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FISCAL NOTE

#20

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 24

Revision Date/Time (Note if correction)		Dept. Affected	Commerce & Econ Dev.
Title	An Act relating to the adoption ... of regulations;	BRU	Occupational Licensing
and amending Rule 202, AK Rules of Appellate Procedure		Component	Occupational Licensing
Sponsor	Senators Donley, Taylor	Component Serial No.	2360
Requester	Senate Judiciary		

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	16.6	16.6	16.6	16.6	16.6	16.6
Travel						
Contractual	64.7	64.7	64.7	64.7	64.7	64.7
Supplies	0.2	0.2	0.2	0.2	0.2	0.2
Equipment	6.3					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	87.8	81.5	81.5	81.5	81.5	81.5

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	87.8	81.5	81.5	81.5	81.5	81.5
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	87.8	81.5	81.5	81.5	81.5	81.5

Estimate of any current year (FY99) cost: 0.0

POSITIONS

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

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

SB 24 requires a state agency to prepare a cost-benefit analysis of the costs to the public to comply with proposed regulation changes. The Division of Occupational Licensing, including the licensing boards and commissions within the division, proposes an average of 30 regulations projects each year. The projects vary widely in complexity and costs. In most cases, analyzing the costs and benefits to the public will include estimating the cost or value of factors such as public protection and professional practice standards.

(Continued on attached pages)

Prepared by Jennifer Strickler, Administrative Manager
 Division Occupational Licensing
 Approved by Commissioner Deborah B. Sedwick
 Agency Commerce & Economic Development

Phone 465-2144
 Date/Time 1/25/99 2:33 PM
 Date 1/28/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS: (Continued)

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT FISCAL NOTE CALCULATIONS FOR SB 24

The Division of Occupational Licensing does not have an economist or other staff with the expertise to provide such a specialized analysis. To comply with SB 24, the division must contract with an economist. The division estimates that its 30 annual projects can be divided into three levels of complexity requiring three different levels of economic analysis, ranging from five to 20 hours each.

SB 24 also requires supplemental notice and public comment proceedings when an agency makes "significant changes" to a regulations proposal after the original public notice. The division estimates that 70 percent of its regulation projects will require supplemental notice and the majority of the renoticed projects will require an additional public hearing. Also, the licensing boards and commissions adopting the regulation changes will be required to hold additional public meetings by teleconference to conduct the hearings and take action on the proposals. The costs associated with these new requirements include newspaper advertising costs for the supplemental notices, postage and printing costs for distributing the supplemental notices, the costs of the teleconference meetings for the additional public hearings and board meetings, and a half-time clerk position to assume some of the routine duties of the regulations specialists so that the regulations specialist may handle the increased public notices, public hearings, and board meetings.

The estimated costs of complying with SB 24 are explained below:

PERSONAL SERVICES

\$ 16.6

1 – Administrative Clerk I, Range 7, permanent part-time, Juneau

The new position will assume some of the routine duties of the existing regulations specialist in the division to allow the regulations specialists to spend additional time on public notices, regulation hearings, board meetings, and related tasks that are required as a result of SB 24.

CONTRACTUAL

\$ 64.7

Costs for contractual services cover \$35.9 in costs to contract with an economist to prepare a cost-benefit analysis for each regulation project. The estimated contractual cost is based on a fee of \$97/hour and is broken down as follows:

- 10 projects each requiring 5 hours of analysis - \$ 4.9
- 10 projects each requiring 12 hours of analysis - \$11.6
- 10 projects each requiring 20 hours of analysis - \$19.4

Also covered are the costs of:

- publishing supplemental notices of regulations and board meetings - \$16.8
- duplicating supplemental notices - \$1.8
- postage for supplemental notices - \$4.7
- 15 additional teleconference board meetings - \$5.5

SUPPLIES

\$ 0.2

This is the estimated cost of envelopes, labels and miscellaneous supplies for mailing additional notices.

EQUIPMENT

\$ 6.3

This is a one-time cost for equipment and office set-up costs for the new half-time position.

TOTAL: \$ 87.8

FUND SOURCE: The division anticipates funding to be provided by general fund/program receipts. The costs will be passed on to licensees in the form of increased licensing fees as required in AS 08.01.065.

FISCAL NOTE

11-21

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Economic Development
 Title An Act relating to the adoption, amendment, repeal, BRU Insurance
legislative review and judicial review of regulations. Component Insurance
 Sponsor Senator(s) Donley and Taylor
 Requester _____ Component Serial No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	41.2	41.2	41.2	43.5	43.5	43.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	41.2	41.2	41.2	43.5	43.5	43.5

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	41.2	41.2	41.2	43.5	43.5	43.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	41.2	41.2	41.2	43.5	43.5	43.5

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The division has no economists on staff to provide the economic determinations required in this bill. The division will contract for this service. The division estimates an average cost of \$8,250.00 per regulation project, including supplemental notices. The division has averaged 5 regulation projects per year for the last two years. (\$8,250 x 5 = \$41,250.00)

The current procedures used by the division for developing regulations entail extensive upfront input from affected parties. The division utilizes a process of inviting interested parties to participate in drafting proposed regulations, drafts are circulated to interested parties, comments solicited and discussed. The final proposed regulation for the most part represents consensus of interested parties and the division. This approach greatly facilitates the hearing process, is cost efficient and fully participatory. The proposed legislation would erode and increase costs of the process.

Prepared by Marianne K. Burke, Director Phone 465-2515
 Division Insurance Date/Time 1/27/99 2:45 PM
 Approved by Commissioner Deborah B. Sedwick Date 1/28/99
 Agency Commerce & Economic Development

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title REGULATIONS: ADOPTION & JUDICIAL REVIEW BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor Senators Donley & Taylor
 Requester _____ Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	39.0	39.0	39.0	39.0	39.0	39.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	39.0	39.0	39.0	39.0	39.0	39.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	39.0	39.0	39.0	39.0	39.0	39.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	39.0	39.0	39.0	39.0	39.0	39.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Many of our regulations are for fees and forms filing. Statutes mandate that fees collected must pay for the services provided. Some of our regulations are driven and supported by industry requests. Cost-benefit analyses would require the division to contract the services of an Economist. The division promulgates regulations on an average of three times per year. Passage of SB 24 would not add anything to the regulations process except adoption costs (cost benefit analysis fees) and potential litigation costs. Should the division have prove the validity of the regulations as identified in Section 44.62.300 Judicial review of validity, the division would be faced with legal expenses. The division operating expenditures above are based on an average of three regulations packages a year at 20 pages each, a cost of \$10,500 each or \$31,500 a year in cost benefit analysis fees as well as an estimate of \$7,500 for potential litigation costs.

Please see attached analysis for details on the above computations and explanation of expenses.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 1/28/99 11:03 AM
 Approved by Commissioner Deborah B. Sedwick Date 1/28/99
 Agency Commerce and Economic Development

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STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revisor Date/Time (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Relating to the adoption, amendment, repeal,</u>	BRU <u>Governmental Coordination</u>
<u>legislative review, and judicial review of regulations;</u>	Component <u>Governmental Coordination</u>
Sponsor <u>Senators Donley and Taylor</u>	
Requester <u>Judiciary, Finance</u>	Component Serial No. <u>18</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	54.9	55.9	56.9	57.9	58.9	60.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	54.9	55.9	56.9	57.9	58.9	60.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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	54.9	55.9	56.9	57.9	58.9	60.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	54.9	55.9	56.9	57.9	58.9	60.0

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	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Section 5 of the proposed legislation (AS 44.62) would place new regulatory requirements on the Division of Governmental Coordination, including evaluation of the economic effects of the proposed regulatory change. The Division has determined the most efficient way to meet the new requirements would be to contract with an economic consultant. The consultant would prepare a cost-benefit analysis of the proposed regulatory change. The fiscal impact to the Division is based on the average of three regulatory projects per year that would require one month of a consultant's time per project and Section 8 regarding supplemental notice and public proceedings. The inflation rate is based on current revenue forecasts.

Prepared by <u>Gabrielle LaRoche, Acting Director</u>	Phone <u>465-3562</u>
Division <u>Governmental Coordination</u>	Date/Time <u>1/28/99 11:13 AM</u>
Approved by <u>Jim Ayers, Chief of Staff</u>	Date <u>1/28/99</u>
Agency <u>Office of the Governor</u>	

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#24

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24

Revision Date: _____ Dept. Affected: Office of the Governor
 Title: "An Act relating to...review of regulations..." BRU: Commissions and Special Offices
 Sponsor: Senator Donley Component: Human Rights Commission
 Requester: Senate Judiciary COMPONENT SERIAL NO. 1

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	20.2	0.0	20.2	0.0	20.2	0.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.2	0.0	20.2	0.0	20.2	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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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	20.2	0.0	20.2	0.0	20.2	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	20.2	0.0	20.2	0.0	20.2	0.0

Estimate of any current year (FY99) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The Commission periodically enacts regulations. Section 44.62.036 and Section 44.62.200(a)(6) will require the agency to reach a determination on issues for which it does not have the expertise. The Commission would need the contractual services of an accountant, survey taker, and/or economist for two weeks to assist in providing the cost benefit analysis required in this subsections.

Prepared by: Paula M. Haley, Executive Director Phone: 276-7474
 Division: Human Rights Commission Date: 1/25/99

Approved by Commissioner: Jim Avers, Chief of Staff Date: _____
 Agency: Office of the Governor

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date _____ Dept. Affected Alaska Court System
 Title The Alaska Regulations Reform Act PRU Alaska Court System
 Component Trial Courts
 Sponsor Sen. Donley
 Requester Senate Judiciary Component Serial No. 769

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	52.9	52.9	52.9	52.9	52.9	52.9
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	52.9	52.9	52.9	52.9	52.9	52.9

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	52.9	52.9	52.9	52.9	52.9	52.9
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	52.9	52.9	52.9	52.9	52.9	52.9

Estimate of any current year (FY99) cost: none

POSITIONS

Full-time						
Part-time	2	2	2	2	2	2
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265
 Agency: Alaska Court System Date/Time: 1/29/99 9:04 AM
 Approved by: Stephanie J. Cole, Administrative Director Date: 1/29/99
 Agency: Alaska Court System

Alaska Court System
Fiscal Analysis
SB 24
The Alaska Regulations Reform Act

This bill reflects a significant change in the policies regarding the amendment or adoption of state agency regulations. Two areas in particular will have a fiscal impact on the court system. Under section 5 of the bill, all amendments to existing regulations and all newly adopted regulations must be accompanied by a cost-benefit analysis. Under section 13, if a regulation is challenged in court, the agency must prove that it accomplishes its purpose with the least intrusion possible on the rights and property of the persons affected. If the state cannot meet that standard then it must show a "compelling state interest" in the regulation that it did adopt. Both the cost-benefit requirement and the enhanced burden of proof will make it easier to challenge agency regulations in court and lead to an increase in court cases.

A cost benefit analysis is fertile ground for court challenges. It is much like an environmental impact statement in that it is relatively easy to allege that some factor or another was not considered or given proper weight. It is anticipated that this change will increase the number of challenges filed in court.

Likewise, because the enhanced burden of proof required by section 13 would significantly increase the likelihood of a successful challenge to any given regulation, the bill can be expected to significantly increase the number of challenges brought. Under current law, a regulation will be upheld as long as it has been properly adopted and is consistent with its authorizing statute. Senate Bill 24 raises that standard by requiring the state to prove that "the regulation accomplished its goal by using an approach that causes the least intrusion on the rights and property of the persons affected by the regulation." This is a significantly higher burden and one that is much more susceptible to challenge. If the agency cannot meet this burden then it must show that a "compelling state interest requires the approach taken by the regulation." The compelling state interest standard is very difficult to meet and it is likely that very few, if any, regulations would survive such scrutiny.

It is conservatively estimated that the court system currently sees a minimum of 20 regulatory review cases a year. It is estimated that the changes made by SB 24 will double that number to 40. This note assumes that the additional 20 cases will take an average of 5 days of judicial time (3-day trial with 2 more days for motions and record review). (No costs are figured for jurors, as these cases will be bench trials.)

Because these estimates are conservative, it is possible, even likely, that the number of challenges brought and the amount of judicial time required to resolve them will both be greater than assumed. If this is true, the court system may return to the legislature for additional funding.

This note does not include the costs associated with additional appeals to the supreme court and the costs associated with the lengthening of the regulatory challenges that the court currently sees.



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

SPONSOR STATEMENT FOR SENATE BILL 24 "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/hm

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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 • Chairman, Capital Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

**SECTIONAL ANALYSIS
FOR CS SENATE BILL 24
"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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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 utilise this affordable approach to publishing proposed regulation actions.

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 the 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 new 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 the 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.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

ADMINISTRATIVE ORDER NO. 157

1. 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.

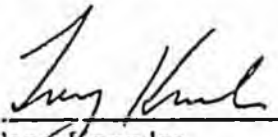
12. Each commissioner shall take appropriate steps to ensure that the agency focuses its efforts on educating and otherwise working with the public so that the public is better able to comply with regulatory requirements in a cost-effective manner and avoid inadvertent noncompliance.

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

SB 101 -- REGULATIONS: ADOPTION & JUDICIAL REVIEW

CHAIRMAN TAYLOR explained SB 101 makes fairly sweeping changes to the current regulatory process. It requires that a cost-benefit analysis be prepared before regulations are adopted, limits the effective period of emergency regulations, and provides for judicial review of the validity of regulations. He noted he supports the concept but does not know whether it is enforceable.

JOHN LINDBACK, testifying on behalf of the Lieutenant Governor's Office, the designated lead agency on legislation affecting the regulatory process, gave the following overview of the history and streamlining process that has occurred. Administrative Order 157 was issued in January of 1995. That order changed the way regulations are promulgated by using plain English, making the process more user friendly, and taking cost into account. Last

February agencies were required to submit a follow-up report on how they are complying with Administrative Order 157. The report shows that most agencies have set up a regular review of all regulations; for some agencies the task is much more time consuming than for others. Additionally, the Administration introduced SB 155 a week ago, which attempts to make the regulatory process more public-friendly. It allows for an automatic update for corporations, and more public friendly advertising of regulations. The Administration plans to launch a regulations home-page on the Internet which will allow the user to view all regulations in every agency. He offered to provide committee members with more comprehensive information on the current regulatory process and anticipated changes.

Number 216

DEBORAH BEHR, Department of Law, testified that SB 101 makes dramatic changes to the regulatory process. She made the following comments on the bill.

Sections 5 and 6 deal with a cost benefit analysis on regulations. This concept is not new; in 1995, Representative Kelly introduced HB 130 which eventually became law. It was based on this same concept and the fiscal notes were very high. State law was changed to require state agencies to pay special attention to the costs to private parties. During the public comment period, the agencies are asked to actively solicit costs of compliance and every newspaper ad asks for such information. DEC is now required, under HB 130, to consider alternative means of accomplishing the same goals.

Ms. Behr said that after reviewing SB 101, she has come to the conclusion that the cost-benefit analysis is a very expensive provision, especially to get the precision that is necessary to stand up in court. She is concerned about battles with experts, and the cost of hiring economists to defend regulations. In the case of the timber sale contracts, the DOL attorney in charge indicated it would be virtually impossible to get a timber sale contract that would stand up to a court test. The benefit to the public of leaving a tree standing or cutting it down would have to be determined. The bill contains no definition of the word "public." It could be the people in a community, the State of Alaska, or the United States. The new welfare reform program will require a lot of new regulations. It is difficult to

determine whether the costs should be based on the short or long term impact. Regulations projects may require more than one financial analysis.

The Board of Fish deals with 900 regulations proposals each year. The way SB 101 is written, it is not clear whether the cost-benefit analysis is supposed to occur when the regulation is noticed up, or at the time the Board adopts the regulation. If the Department of Fish and Game had to do a cost-benefit analysis on 900 proposals, the cost would be extremely prohibitive. Additionally, it might change the way the Board of Fish operates. That Board has a very democratic process and allows anyone to fill out a proposal book. Each proposal is noticed up so that anyone can comment. It would be very difficult to cost benefit some of these ideas. Printing the summary in newspaper ads will be very expensive. The Department of Fish and Game did a cost benefit analysis on a regulation in the past and estimated it took over 1 ½ years and cost over \$150,000.

Ms. Behr noted SB 101 is written to cover all administrative agencies. The Department of Corrections does regulations on discipline of prisoners. In order for DOC to adopt regulations it will have to do a cost benefit analysis to the public on whether or not the benefits of that prison disciplinary scheme outweigh the cost of implementation. The potential for frivolous litigation in that arena is high.

Ms. Behr discussed the difficulties of doing cost benefit analyses on the benefits of public safety, i.e. the benefits of requiring sex offender registration. DPS would not be able to sign off on a regulation unless it could prove that the benefits of registration outweigh the costs.

In light of Alaska's constitutional right of privacy, Ms. Behr pointed out that some of the cost information to private parties will be inaccessible. She recently assisted the Board of Dentistry in establishing a regulation pertaining to use of laser equipment by dental hygienists, which the Board felt was inappropriate. In order for the Board to establish the same regulation under SB 101, cost benefit information from dentists regarding how much time each dental employee has used laser equipment would be required. Many dentists may consider that proprietary business information and refuse to supply it. In addition, the issue of regulating mail or telephone access for prisoners would be problematic.

Number 325

Ms. Behr said her opinion is that SB 101 is a good idea that may have unintended consequences. During a time when the Legislature is trying to downsize state government, anyone could challenge that approach by suing anytime a regulation is promulgated on the basis that the cost benefit analysis was insufficient. She again referred to problems with the timber sale contracts. Promulgating emergency regulations would also be problematic. In order for an emergency regulation to become permanent, it can only be out for 120 days and an economic analysis that would stand up in court cannot be completed in that time. SB 101 would severely stifle an important part of the Procedures Act which is to respond to crises when the Legislature is not in session.

Ms. Behr questioned how one would do a cost benefit analysis of a fee regulation because the cost to an individual person and benefits to the public would have to be determined.

Ms. Behr thought this approach might be productive if applied to large projects only but not to regulations that have a minimal impact, such as raising copying costs a few cents. She also suggested exempting federal regulations and particular departments from the requirements of SB 101 . She noted the average business person would only do a cost benefit analysis on large projects. Ms. Behr discussed the next major change in SB 101 ; supplemental notices for significant changes of regulations. If an agency notices up a regulation for a fee increase from \$50 to \$100, and then, after the first set of hearings determines a more appropriate amount to be \$75, the agency would have to solicit a whole new round of public comments. Newspaper notices would be required, and if a board or commission is involved, it would have to meet again resulting in travel and per diem costs. The new public comment could produce different results and the procedure would have to occur again. She repeated her concern that in the attempt to downsize state government and raise fees, anyone who wants to challenge that approach could do so by challenging the cost benefit analysis. She explained that after the Legislature adjourns in May, state agencies will need to implement new regulations based on changes in law, for example welfare reform. They will be required to hold a public comment period and adopt regulations with a cost benefit analysis by July 1.

The third major change in SB 101 is the standard of review used by the court to review regulations. Section 7 contains the current standard used by judges to invalidate regulations: for substantial failure to comply with the APA; on constitutional grounds; or for equal protection rights violations. SB 101 changes the standard of review so that there will be a presumption of invalidity. To be valid, a regulation will have to be the least intrusive to the rights of persons or property affected by the regulations. There are many areas where this standard will create problems, such as with prison discipline regulations. A prisoner could sue on the new standard based on the possibility that a lesser punishment could be used. If the State could not defend the regulation based on that standard, it would have to prove a compelling State interest which would be virtually impossible to do.

Ms. Behr repeated her concerns that SB 101 will have unintended consequences and may result in a lot of frivolous litigation. She discussed a final change that could occur if SB 101 passes. Significant changes to regulations can be tested in District Court therefore, oil tax regulations could be brought before a District Court judge at the same time the judge is hearing cases about a child smoking underage or a driver who failed to remove studded snow tires. Once the case goes to District Court, it could be directly appealed to the Supreme Court. This will create a dramatic policy change.

Ms. Behr noted two technical problems with SB 101 . Section 4 does not include all state agencies, and excludes the Office of the Governor, which does regulations on telecommunications and elections, and the University of Alaska which has procurement regulations.

Number 410

SENATOR DONLEY , sponsor of SB 101 , explained SB 101 is an expansion of legislation proposed in past years. He tried to exempt agencies and areas in which additional restrictions would be inappropriate. The Boards of Fish and Game are exempted on page 4, as well as things that result from federal requirements. He

acknowledged there may be other areas, such as natural resources and the timber sale contracts mentioned by Ms. Behr, that may be appropriate to exempt. He also suggested removing the language on page 3, lines 5-7, because of problems identified by Ms. Behr. That deletion would still require departments to use the procedure for informational purposes, but not to use it as the standard for adopting a regulation, thereby preventing that standard from being used as the basis for a challenge in court. That would enable departments to use procedures appropriate for the level of seriousness of the regulation, such as raising the cost of copying fees.

SENATOR DONLEY noted that he intended the section on notices on page 4 to apply to all provisions of the bill.

SENATOR PARNELL noted he was also concerned about the language on page 3, lines 5-7. CHAIRMAN TAYLOR suggested forming a subcommittee of Senator Donley, department staff, and any interested committee members to work on the legislation and bring a committee substitute before the committee for further review.

Number 451

SENATOR DONLEY stated he has not found departments to be cooperative regarding this bill. He discussed the problem of notice in the regulatory process, and stated one has to balance the value of having the Executive Branch do immediate regulations without appropriate public input against the advantages of providing for expeditious regulations when necessary. He stated he believes it is clearly appropriate that the Executive Branch give the public notice of its intentions.

SENATOR PARNELL asked Senator Donley why he chose to include District Courts in addition to the Superior Court on page 6. SENATOR DONLEY replied he would like to increase the public's ability to challenge more regulations because such a wide scope of regulations exist now. He thought the challenge of some regulations would be appropriate for District Court, for others the Superior Court. SENATOR PARNELL agreed but thought if the District Court's jurisdiction is under \$50,000, it is not appropriate for a case involving millions of dollars in oil taxes to be resolved there. SENATOR DONLEY agreed and suggested changing the way the bill applies to revenue regulations.

Number 476

SENATOR ELLIS asked whether the District Court has any equitable jurisdiction right now. CHAIRMAN TAYLOR answered it does not. SENATOR ELLIS asked if the Legislature is seeking to change that. SENATOR DONLEY replied it would be struck down on the basis of fact.

CHAIRMAN TAYLOR thought that would fall under the equity jurisdiction because it would require someone to do an act, as opposed to pay money damages. That distinction limits one's ability to get access to the bench. If the focus was on jurisdiction limits, twice the number of judges would be available for adoptions and juvenile matters and it would not take two or three years to get on a court calendar.

SENATOR DONLEY said he would be satisfied if the bill required agencies to provide subsequent public notices before adopting things that were subsequently different.

CHAIRMAN TAYLOR commented he introduced a bill three years ago that would require, that before an agency proposed a regulation or before a federal regulation was adopted, the department to report the cost of the federal mandate. That bill was vetoed by the Governor.

Number 497

JACK KREINHEDER , Office of Management and Budget (OMB), summarized the fiscal notes. The grand total of the fiscal notes is in excess of \$1.6 million with the largest impact being on the Departments of Environmental Conservation, Natural Resources, Law and Commerce and Economic Development. The amendment offered to the cost benefit analysis provision may remove some court challenges, however even if that is true, promulgating regulations correctly is a complex process. He stated he is reluctant to advocate legislation with the idea that departments are going to pay lip service to it and provide a one-page cost benefit analysis that is not worth the paper it is written on. He supported Ms. Behr's comments that the benefit of any regulation should exceed the cost, but the effort devoted toward determining dollar figures, for cost, compliance and benefits should be devoted to making a better regulation. CHAIRMAN TAYLOR asked Mr. Kreinheder to work with Senator Donley's staff to improve the approach. He adjourned the meeting at 4:55 p.m.

Senate
97

SJUD

04/21/97

1330

SENATE JUDICIARY COMMITTEE

April 21, 1997

1:30 p.m.

COMMITTEE CALENDAR

CS FOR HOUSE BILL NO. 119(JUD)

"An Act raising the limit on small claims actions to \$7,500; amending Rule 9, Alaska Rules of Administration; and providing for an effective date."

**THE SENATE JUDICIARY COMMITTEE HEARING ON APRIL 21,
1997 WAS**

CANCELLED.

Senate
97

Post-It® Fax Note	7671	Date	1/29	# of pages	1
To	Senator Taylor	From	Pamela La Bolle		
Co./Dept.	Judiciary Committee	Phone #	ASCC		
Phone #		Phone #	586-2323		
Fax #	465-3922	Fax #			

Headquarters:
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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

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

Pamela La Bolle
President