

HB

424

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: 23-LS0732(S)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "An Act relating to review by the BRU Legislative Council
Legislative Affairs Agency of certain state agency...." Component: Council and Subcommittees
 Sponsor Representative Holm
 Requestor Representative Holm Component No. 2028

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	98.0	98.0	98.0	98.0	98.0	98.0
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	98.0	98.0	98.0	98.0	98.0	98.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	98.0	98.0	98.0	98.0	98.0	98.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL	98.0	98.0	98.0	98.0	98.0	98.0

Estimate of any current year (FY2004) cost: _____

Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

23-LS0732(S) proposes establishing in statute, a review of proposed regulations, other than regulations of the Boards of Game or Fisheries, that would implement newly enacted legislation, or any proposed regulations a standing legislative committee, the Administrative Regulation Review Committee, or the Legislative Council requested be reviewed as implicating major policy development. This review would be conducted by the LAA-Legal and Research Services Division, within available staff resources and priorities set by Legislative Council. This legislation directs the Legislative Affairs Agency to assign one or more attorneys to conduct a review of the proposed regulations. Legal Services is currently at it's workload capacity and could not, without additional staff, review more than one, possible two, regulations per year.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Administrative Services Date/Time 3/3/04 9:17 AM
 Approved by: Pamela Varni, Executive Director Date 3/3/2004
 Agency Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION
ANALYSIS CONTINUATION

BILL NO. 23-LS0732S

A legislative staff regulation reviewer in Colorado, which performs a limited regulation review function, estimates that reviewing one regulation of average complexity could take up to 5 hours. Taking on the additional responsibilities of regulation review with existing division staff is unworkable because the impact of reviewing regulations as the session is gearing up in December, on top of the need to adequately research and draft prefiled bills for the upcoming session, or at the end of session when attorneys are working on rewrites or amendments does not allow time to perform this new function. During the remaining portion of the year, the division is not fully staffed as some employees are seasonal and others are on annual leave. The division performs interim projects on other matters such as examining and preparing a report on all court decisions and opinions of the Attorney General construing Alaska Statutes, contract and litigation work, and interim projects such as title reviews and annual statute revision to incorporate new laws. During the interim the division receives and assigns between 50 and 100 new drafting requests per month.

The language in the legislation states that the Legislative Affairs Agency

1. "...may review each proposed regulation.."
2. "...that the review by LAA-Legal Services does not affect a state agency's authority to complete its proposed action regarding the regulation.."
3. "...suggestions for changes to a proposed regulation by the Legislative Affairs Agency are not binding on a state agency..."
4. "...No action may be brought for the failure of the Legislative Affairs Agency to conduct a legal review under this section..."

This makes it is clear that there are no consequences if the Legislative Affairs Agency does not have the staff to carry out the legislation. The legislation does make it very clear that the Legislature would like to have the ability to review a certain percentage of regulations proposed by state agencies over the course of a year.

As we are unable to determine exactly how many regulations, whether simple or complex, would actually be reviewed under this legislation, we have included funding for one attorney to perform this work. It is anticipated that the Legislature would wish to review, at a minimum, 30% of all proposed regulations. The 98.0 included in this fiscal note to fund the new attorney position represents approximately 30% of the 348.4 cost to review all proposed regulations for the State of Alaska. If the demand by the Legislature for regulation review exceeded the amount of work one attorney could accomplish, the Legislature would have at least two ways of increasing funding for this function, or they could choose to cease reviewing regulations. Method one for increasing funding for this function would be to increase the Legislative Affairs Agency budget request in subsequent fiscal years to include more positions and more funding for Legal Services. Method two would be for the Legislative Council to authorize the expenditure of Legislative Council funds for the Legislative Affairs Agency to retain a law firm to accomplish the review of specific regulations.

Personal Services

Legal Admin Reg Review Attorney IV position (R24) - 98.0

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB424-LAW-L&R-2-24-0
 Bill Version: HB 424
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating to review of regulations under the
Administrative Procedure Act by the Legislative Affairs Agency..." RDU: ADMINISTRATION & SUPPORT
 Component: Legislation & Regulations
 Sponsor: Representative Holm
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill establishes a process by which the Legislative Affairs Agency reviews certain regulations subject to the Administrative Procedure Act. The Department of Law will be impacted in three major ways by legislation:
 1) The Department of Law is required to submit regulations to the Legislative Affairs Agency for review;
 2) the Legislative Affairs Agency may consult with the Department of Law in the review process;
 3) Department of Law will be notified of Legislative Affairs Agency's conclusions and assist agencies in analyzing comments.
 4) Regulations may not be adopted until after the Department of Law receives notice from Legislative Affairs Agency that the review has been completed
 It is anticipated that the Legislative Affairs Agency's review will lengthen the time for finalizing

Prepared by: Kathryn A. Daughhete, Director Phone: 465-3673
 Division: Administrative Services Date/Time: 2/25/04 9:05 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date: 2/25/2004
 Agency: Department of Law

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB 424

ANALYSIS CONTINUATION

regulations. The Drafting Manual will require revision to reflect the changes in the process and training will be needed on the changes. Agencies will require assistance from the Department of Law in responding to public records requests for the analysis produced by the Legislative Affairs Agency. Precluding agencies from acting on regulations absent approval from Legislative Affairs creates a separation of powers issue, and may result in a court test on constitutionality.

The fiscal impact is indeterminate and dependent on the volume of regulations subject to the process in any fiscal year and the level of legal assistance that agencies will need to appropriately consider the comments and to respond to requests.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB424-DHSS-DAS-02-23-04

() Publish Date: _____
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction): _____
 Title REVIEW OF REGULATIONS BY LEGISLATIVE AFFAIRS

RDU Departmental Support Services
 Component Commissioner's Office

Sponsor HOLM
 Requester HOUSE (JUD)

Component No. 317

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation will likely result in significant costs to the Department of Health and Social Services. However those costs are indeterminate given the department's inability to predict with any certainty the timeliness or consequences of the Legislative Affairs Agency's reviews of the department's regulations.

Under current law incumbent legislators and the Legislative Affairs Agency receive copies of notices of regulatory changes as part of the normal public comment process. Individual legislators, legislative committees including the Administrative Regulation Review Committee, and Legislative Affairs all have the ability to comment on the proposed regulations.

Prepared by: Sherry Hill, Special Assistant
 Division: Office of the Commissioner
 Approved by: Joel S. Gilbertson, Commissioner
 Agency: Department of Health and Social Services

Phone 465-1618
 Date/Time 02/23/2004
 Date 02/23/2004

FISCAL NOTE
FN #

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB424-DHSS-DAS-02-23-04

ANALYSIS CONTINUATION

The proposed legislation would require the Department of Law to provide a copy of proposed regulations to the Legislative Affairs Agency prior to opening the normal public comment period. The bill prohibits the agency from adopting the regulations pending receipt of the Legislative Affairs Agency review.

At this point in time a majority of the department's new regulations are necessary to achieve cost-savings in order for the department to live within its budget. Many of these cost-savings have been explicitly mandated by the legislature as discrete transactions in the department's budget. It is likely that the reviews conducted by the Legislative Affairs Agency will result in delays in implementing cost-containment activities. Delays may result from 1) Lack of timeliness of reviews; 2) Additional redrafting of regulations to address perceived deficiencies; or 3) Legal challenges arising from an unfavorable review.

If the department is unable to achieve its cost containment goals through the timely adoption of regulations, the department would have two choices: 1) To request a supplemental appropriation; or 2) Undertake alternative cost containment activities which may not have been envisioned in the budget passed by the legislature and signed by the Governor.

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Tam Cook, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 4, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS0732\S, HB 424, incorporating the technical, conceptual amendment #1 described below and also the attached amendment # 2. The bill was passed out of committee yesterday.

Amendment #1:

Page 2, Line 18:

Change "the statute" to "the applicable statutes" if you feel that it should read that way instead. (there was just concern by Rep. Gruenberg that grammatically and technically there might be more than one applicable statute, but if stating it singularly works, than that's fine).

If you have any questions, please call me at 4990. Thank you very much!

AMENDMENT NO. 2 - PASSED
TO HB 424

BY REPRESENTATIVE GRUENBERG

Page 1, line 3: After "Act;" insert the following:

repealing obsolete provisions of law concerning legislative annulment of regulations
and review;

Page 3, Line 19: Insert new bill section 5 and renumber sections accordingly:

*Sec. 5. AS 44.62.320 is repealed.

23-LS0732S
Cook
3/2/04

CS FOR HOUSE BILL NO. 424()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HOLM

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to review by the Legislative Affairs Agency of certain state agency
2 regulations proposed for adoption, amendment, or repeal under the Administrative
3 Procedure Act; and providing for an effective date."

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

5 * Section 1. AS 24.20 is amended by adding a new section to read:

6 **Sec. 24.20.105. Review of proposed regulations.** (a) The Legislative Affairs
7 Agency may review each proposed regulation that is subject to AS 44.62.010 -
8 44.62.300 (Administrative Procedure Act). A review of proposed regulations under
9 this section must be conducted by an attorney employed by that agency.

10 (b) Reviews shall be conducted under (a) of this section in the following order
11 of priority:

12 (1) proposed regulations that would implement newly enacted
13 legislation;

14 (2) proposed regulations requested in writing to be reviewed by a

1 standing committee, the Administrative Regulation Review Committee, or the
2 legislative council as implicating major policy development.

3 (c) Under AS 44.62.190(a)(7), the notice of proposed action, along with a
4 copy of the proposed regulation, shall be furnished electronically by the state agency
5 to the

- 6 (1) Legislative Affairs Agency;
- 7 (2) chairs of the standing committees with jurisdiction over the subject
8 of the proposed regulation;
- 9 (3) Administrative Regulation Review Committee;
- 10 (4) legislative council.

11 (d) Within available staff resources and priorities set by the legislative council,
12 the Legislative Affairs Agency shall assign one or more attorneys to conduct a review
13 of proposed regulations. The review shall evaluate

- 14 (1) the legality and constitutionality of the proposed regulation;
- 15 (2) whether the state agency has statutory authority to adopt the
16 proposed regulation to implement, interpret, make specific, or otherwise carry out a
17 statute; and
- 18 (3) whether the proposed regulation is consistent with the statute.

19 (e) In conducting its review under this section, the assigned attorney may
20 consult with the Department of Law, the committee or council that requests the review
21 under (b)(2) of this section, and the state agency proposing the regulation change. If
22 the assigned attorney determines that the proposed action fails to meet the standards
23 set out in (d) of this section, the assigned attorney shall notify, in writing, the
24 Department of Law, the state agency, the Administrative Regulation Review
25 Committee, the president of the senate, and the speaker of the house of
26 representatives.

27 (f) In addition to the review specified in (d) of this section, the assigned
28 attorney shall notify the Administrative Regulation Review Committee, the president
29 of the senate, and the speaker of the house of representatives of any provision of the
30 proposed regulation that may be inconsistent with legislative intent and appropriate for
31 additional legislative oversight as a result.

*w/ the
"applicable
statutes"*

1 (g) Except as provided in this section, the Legislative Affairs Agency may not
2 release any information regarding its review of a proposed regulation under this
3 section.

4 (h) The process of review of a proposed regulation under this section does not
5 affect a state agency's authority to complete its proposed action regarding the
6 regulation. Suggestions for changes to a proposed regulation made by the Legislative
7 Affairs Agency are not binding on a state agency.

8 (i) No action may be brought for the failure of the Legislative Affairs Agency
9 to conduct a legal review under this section.

10 (j) The provisions of (b) - (i) of this section do not apply to proposed
11 regulations of the Board of Game or the Board of Fisheries.

12 (k) In this section, "proposed regulation" means a proposed adoption,
13 amendment, or repeal of a regulation.

14 * Sec. 2. AS 40.25.120(a) is amended by adding a new paragraph to read:

15 (11) the written notification regarding a proposed regulation provided
16 under AS 24.20.105 to the Department of Law and the affected state agency and
17 communications between the Legislative Affairs Agency, the Department of Law, and
18 the affected state agency under AS 24.20.105.

19 * Sec. 3. AS 44.62.190(a) is amended to read:

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

22 (1) published in the newspaper of general circulation or trade or
23 industry publication that the state agency prescribes and posted on the Alaska Online
24 Public Notice System; in the discretion of the state agency giving the notice, the
25 requirement of publication in a newspaper or trade or industry publication may be
26 satisfied by using a combination of publication and broadcasting; when broadcasting
27 the notice, an agency may use an abbreviated form of the notice if the broadcast
28 provides the name and date of the newspaper or trade or industry journal and the
29 Internet address of the Alaska Online Public Notice System where the full text of the
30 notice can be found;

31 (2) furnished to every person who has filed a request for notice of

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proposed action with the state agency;

(3) if the agency is within a department, furnished to the commissioner of the department;

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

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

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

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

(6) furnished by electronic format, if the state agency has the technological capability, to all incumbent State of Alaska legislators, and furnished to the Legislative Affairs Agency; if the state agency does not have the technological capability to furnish the notice by electronic format to the legislators, the state agency shall furnish the notice to the legislators by other means;

(7) furnished by electronic format, along with a copy of the proposed regulation, amendment, or order of repeal, as required by AS 24.20.105(c).

* Sec. 4. This Act takes effect July 1, 2004.

23-LS0732V
Cook
2/20/04

CS FOR HOUSE BILL NO. 424()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE HOLM

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to review of certain regulations under the Administrative Procedure**
2 **Act by the Legislative Affairs Agency; and providing for an effective date."**

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

4 *** Section 1.** AS 24.20 is amended by adding a new section to read:

5 **Sec. 24.20.105. Review of regulations.** (a) The Legislative Affairs Agency
6 shall review each proposed adoption, amendment, or repeal of a regulation that is
7 subject to AS 44.62.010 - 44.62.300 (Administrative Procedure Act), other than a
8 proposal of a board, commission, council, or public corporation.

9 (b) An agency shall, at the time it provides a copy to the Department of Law,
10 submit each proposed adoption, amendment, or repeal of a regulation that it works on
11 and that is subject to review under (a) of this section to the Legislative Affairs
12 Agency. The copy shall be provided before notice of the proposed action is given
13 under AS 44.62.190 or a public hearing is held on the proposal. The Legislative
14 Affairs Agency shall review each proposal to determine whether the

1 (1) agency making the proposal has express or implied authority to
2 adopt, amend, or repeal the regulation;

3 (2) proposal implements, interprets, makes specific, or otherwise
4 carries out a statute;

5 (3) proposal is consistent with the statute;

6 (4) proposal is reasonably necessary to carry out the purpose of the
7 statute; and

8 (5) proposal is clear, grammatically and structurally sound, and
9 understandable by those affected.

10 (c) In conducting its review of a proposal, the Legislative Affairs Agency may
11 consult with the Department of Law and make recommendations for changes in the
12 proposal. If changes are made in the proposal, the Legislative Affairs Agency shall
13 continue its review of the proposal as changed. If, at the completion of its review, the
14 Legislative Affairs Agency determines that the proposal does not meet the standards
15 under (b) of this section, the agency shall notify the Department of Law in writing of
16 its conclusions. If the Legislative Affairs Agency determines that the proposal fails to
17 meet the requirements of AS 44.62.030, it shall also send a copy of its conclusions to
18 the Administrative Regulation Review Committee.

19 (d) The Legislative Affairs Agency may not release any information regarding
20 its receipt or review of a proposal under this section except to the Department of Law,
21 the Administrative Regulation Review Committee, the president of the senate, and the
22 speaker of the house of representatives.

23 (e) The adoption, amendment, or repeal of a regulation may not be delayed
24 because of the review by the Legislative Affairs Agency under this section.
25 Suggestions for changes to a proposal made by the agency are not binding.

26 * **Sec. 2.** AS 44.62.125(b) is amended by adding a new paragraph to read:

27 (8) submit each proposed adoption, amendment, or repeal of a
28 regulation that the department works on under (4) of this subsection to the Legislative
29 Affairs Agency for review under AS 24.20.105.

30 * **Sec. 3.** AS 44.62.250 is amended to read:

31 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may

1 be adopted as an emergency regulation or order of repeal if a state agency makes a
2 written finding, including a statement of the facts that constitute the emergency, that
3 the adoption of the regulation or order of repeal is necessary for the immediate
4 preservation of the public peace, health, safety, or general welfare. The requirements
5 of AS 24.20.105, AS 44.62.040(c), 44.62.060, 44.62.125(b)(8), and 44.62.190 -
6 44.62.215 do not apply to the initial adoption of emergency regulations; however,
7 upon adoption of an emergency regulation the adopting agency shall immediately
8 submit a copy of it to the lieutenant governor for filing and for publication in the
9 Alaska Administrative Register, and within five days after filing by the lieutenant
10 governor the agency shall give notice of the adoption in accordance with
11 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day
12 automatically repeals the regulation.

13 * Sec. 4. AS 44.62.260 is amended to read:

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

15 (a) A regulation adopted as an emergency regulation does not remain in effect more
16 than 120 days unless the adopting agency complies with AS 24.20.105,
17 AS 44.62.040(c), 44.62.060, 44.62.125(b)(8), and 44.62.190 - 44.62.215 either before
18 submitting the regulation to the lieutenant governor or during the 120-day period.

19 (b) Before the expiration of the 120-day period, the agency shall transmit to
20 the lieutenant governor for filing a certification that AS 24.20.105, AS 44.62.040(c),
21 44.62.060, 44.62.125(b)(8), and 44.62.190 - 44.62.215 were complied with before
22 submitting the regulation to the lieutenant governor, or that the agency complied with
23 those sections within the 120-day period. Failure to so certify repeals the emergency
24 regulation; it may not be renewed or refiled as an emergency regulation.

25 * Sec. 5. This Act takes effect July 1, 2004.

STATE OF ALASKA



Interim:

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Fairbanks, Alaska 99701
(907) 456-7423
Fax: (907) 451-9293

Session:

State Capitol Building
Juneau, Alaska 99801
(907) 465-3466
Fax: (907) 465-2937

REPRESENTATIVE JIM HOLM DISTRICT 9

DATE: February 12, 2004

TO: Representative Lesil McGuire, Chair
House Judiciary Committee

FROM: Representative Jim Holm

RE: HB 424

A handwritten signature in black ink, appearing to read "Jim Holm", written over the printed name in the "FROM:" field.

Please schedule HB 424, REGULATION REVIEW, for hearing in the Judiciary at your earliest convenience. Back-up material is attached.

Thanks very much for your help with this bill.

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Representative Jim Holm



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Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

State Capitol
Juneau, AK 99801
TEL 465-3466, FAX 465-2937

SPONSOR STATEMENT

HB 424

Legislative Review of Proposed Regulations

2/12/4

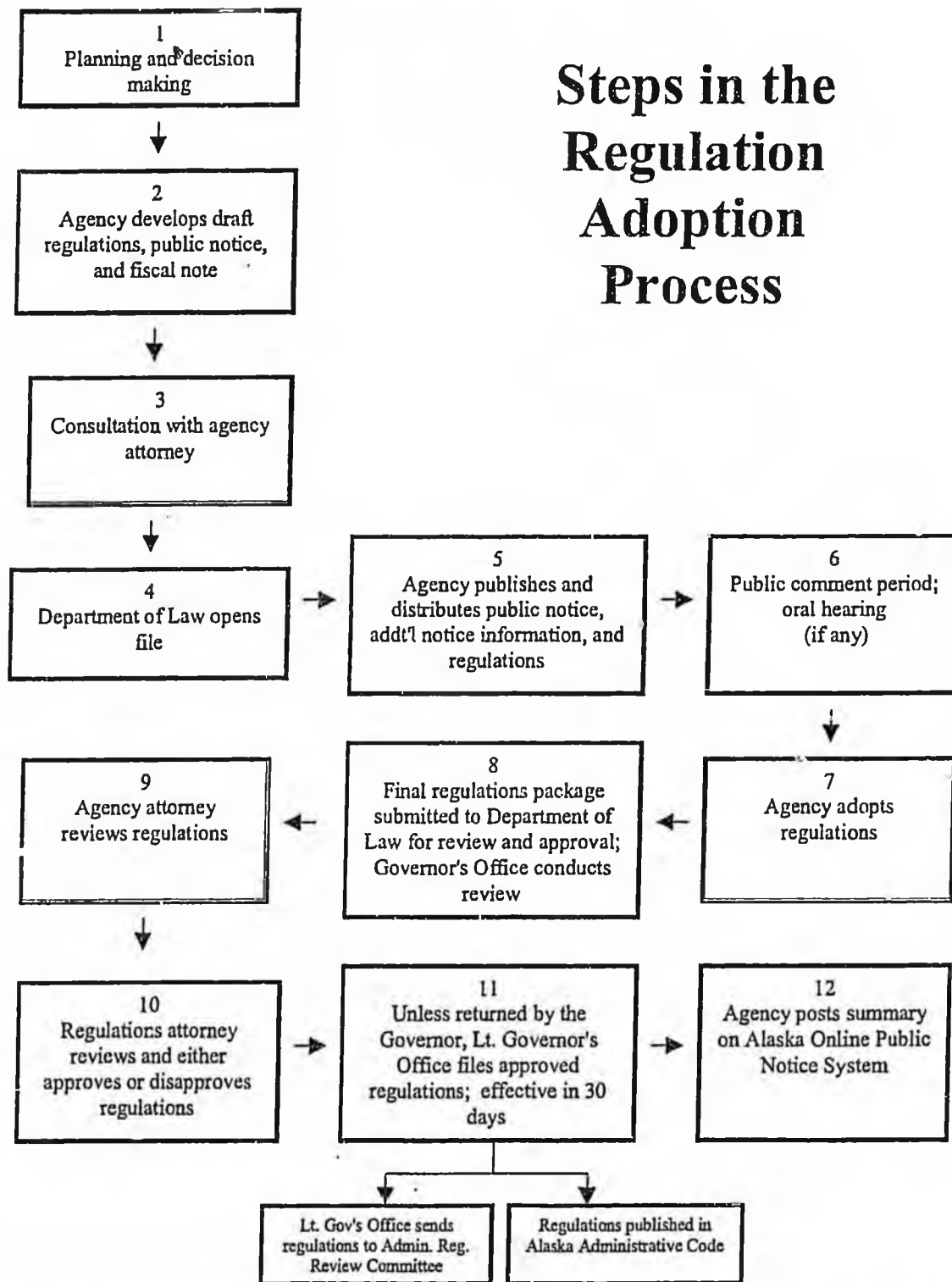
House Bill 424 requires legislative legal review of regulations before they go out for public comment.

Under current statute, only the Attorney General formally reviews proposed regulations, and this review comes late in the process, when public comment has already been closed. After the Attorney General approves proposed regulations they are transmitted to the Lt. Governor's office. As a practical matter, once the proposed regulations have reached the Lt. Governor they are seldom changed. And then the public justifiably gets frustrated when they see regulations adopted that are different from the ones on which they commented.

Under HB 424, legislative attorneys who actually draft the bills will review, prior to public comment, proposed regulations being promulgated from those bills. By working cooperatively with the Attorney General's office, differences of opinion can be worked out before the public sees the regulations. In the event differences cannot be worked out, the legislature will have an opportunity for input.

Overall impact to the state's economy will be positive. Adding legislative review to the regulation process prior to the public comment period will help eliminate conflicts, create a more stable business environment, and increase the public's trust in government.

Steps in the Regulation Adoption Process



FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB424-DHSS-DAS-02-23-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____

Dept. Affected: Health & Social Services

Title REVIEW OF REGULATIONS BY LEGISLATIVE AFFAIRS

RDU Departmental Support Services

Component Commissioner's Office

Sponsor HOLM

Requester HOUSE (JUD)

Component No. 317

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation will likely result in significant costs to the Department of Health and Social Services. However those costs are indeterminate given the department's inability to predict with any certainty the timeliness or consequences of the Legislative Affairs Agency's reviews of the department's regulations.

Under current law incumbent legislators and the Legislative Affairs Agency receive copies of notices of regulatory changes as part of the normal public comment process. Individual legislators, legislative committees including the Administrative Regulation Review Committee, and Legislative Affairs all have the ability to comment on the proposed regulations.

Prepared by: Sherry Hill, Special Assistant

Phone 465-1618

Division: Office of the Commissioner

Date/Time 02/23/2004

Approved by: Joel S. Gilbertson, Commissioner

Date 02/23/2004

Agency: Department of Health and Social Services

FISCAL NOTE
FN #

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB424-DHSS-DAS-02-23-04

ANALYSIS CONTINUATION

The proposed legislation would require the Department of Law to provide a copy of proposed regulations to the Legislative Affairs Agency prior to opening the normal public comment period. The bill prohibits the agency from adopting the regulations pending receipt of the Legislative Affairs Agency review.

At this point in time a majority of the department's new regulations are necessary to achieve cost-savings in order for the department to live within its budget. Many of these cost-savings have been explicitly mandated by the legislature as discrete transactions in the department's budget. It is likely that the reviews conducted by the Legislative Affairs Agency will result in delays in implementing cost-containment activities. Delays may result from 1) Lack of timeliness of reviews; 2) Additional redrafting of regulations to address perceived deficiencies; or 3) Legal challenges arising from an unfavorable review.

If the department is unable to achieve its cost containment goals through the timely adoption of regulations, the department would have two choices: 1) To request a supplemental appropriation; or 2) Undertake alternative cost containment activities which may not have been envisioned in the budget passed by the legislature and signed by the Governor.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 424
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
 Title "An Act relating to review of regulations BRU Legislative Council
under the Administrative Procedures Act by the" Component: Legal and Research Svcs
 Sponsor Representative Holm
 Requestor House Judiciary Committee Component No. 2028

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	326.4	326.4	326.4	326.4	326.4	326.4
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	12.0	12.0	12.0	12.0	12.0	12.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	10.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	348.4	338.4	338.4	338.4	338.4	338.4

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	348.4	338.4	338.4	338.4	338.4	338.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	348.4	338.4	338.4	338.4	338.4	338.4

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	4	4	4	4	4	4
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 424 would amend AS 24 and AS 44 to add a legal review by the Legislative Affairs Agency, Legal and Research Services Division of all proposed new, amended, or repealed State of Alaska administrative regulations, including a post review of emergency regulations which must be conducted within 120 days in order for the emergency regulation to remain in effect.

HB 424 would increase the workload of the division significantly, particularly during the session, as the review requires the Agency to determine if the agency making the proposal has express or implied authority to adopt, amend, or repeal the regulation; whether the proposal implements, interprets, makes specific, or otherwise carries out a statute; if the proposal is consistent with the statute, if it is reasonably necessary to carry out the purpose of the statute; and if the proposal is clear, grammatically and structurally sound, and understandable by those affected.

Prepared by: Karla Schofield, Deputy Director Phone 465-6626
 Division Administrative Services Date/Time 2/23/04 10:09 AM
 Approved by: Pamela Varni, Executive Director Date 2/23/2004
 Agency Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB 424

ANALYSIS CONTINUATION

In order to make the judgments required in the bill, the attorneys reviewing the regulations would need a breadth of knowledge about numerous agency responsibilities and diverse, often complex, subject matters, such as oil and gas regulations or, in another example, wildlife management principles underlying fish and game regulations. These two particular groups of regulations are also significant because they are usually changed prior to the beginning of the calendar year (oil and gas tax revenue regulations), or in the spring (summer fishing regulations and fall hunting regulations). The impact of reviewing these regulations as the session is gearing up in December, on top of the need to adequately research and draft prefiled bills for the upcoming session, or at the end of session when attorneys are working on rewrites or amendments, would make the option of using existing staff unworkable.

During the remaining portion of the year, the division is not fully staffed, and is working on other matters such as examining and preparing a report on court decisions and opinions of the Attorney General construing Alaska Statutes, contract and litigation work, and interim projects such as title reviews and annual statute revision to incorporate new laws. Legal Services receives 50 to 100 new work orders each month during the interim. It is the opinion of the Legislative Affairs Agency that additional year round staff, both professional and secretarial would be needed to manage the added workload and provide continuity. The administrative attorneys would also provide consulting assistance to the Administrative Regulation Review Committee, in the rare, but inevitable situation where the Department of Law and the Legislative Affairs Agency do not agree upon a certain regulation and the committee is notified and wishes to take some action. In order to accomplish this new function, the current drafting attorneys would need to assist the new regulation attorneys with their review.

The Department of Law currently employs four legal professionals to perform their administrative regulation review responsibilities, ranging in pay scale from a 19 to a 25. Some of the responsibilities the Department of Law administers would not be required of the Legislative Affairs Agency, such as alerting agencies of the need for regulations. However, the substantive matters being reviewed are much the same, and could easily be sent back and forth between the Department of Law and LAA during the review process multiple times for discussion and rewrites. The Legislative Affairs Agency believes, in order to perform the oversight and review responsibilities required by this legislation in the manner envisioned under this bill, the following increased costs would be required.

Personal Services - full time positions

Legal Admin Reg Review Supervisor - (Attny V) Range 25 - 103.8
Senior Admin Review Attorney - (Attny IV) Range 24 - 97.4
Admin Reg Review Associate Attorney - Range 19 - 71.9
Legal Secretary - Range 14 - 53.3

Total Personal Services 326.4

Travel

Travel costs are not anticipated for these attorney's.

Contractual

Contractual costs for phones, advertising for position vacancies, and other contractual items will be absorbed within existing budgets. There is no room to house the new staff in the TMLOB. 500 square feet of office space would need to be rented to house the new staff. Estimated costs for renting the space are 500 sq ft at 2.00 sq foot x 12 months. **Total Contractual 12.0**

Office Space

Supply costs will be absorbed within existing budgets.

Equipment

One time purchase of 4 computers - $4 \times 1.5 = 6.0$

One time purchase of 2 printers = 4.0

Total Equipment 10.0

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB424-LAW-L&R-2-24-0
 Bill Version: HB 424
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to review of regulations under the RDU ADMINISTRATION & SUPPORT
Administrative Procedure Act by the Legislative Affairs Agency..." Component Legislation & Regulations
 Sponsor Representative Holm
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill establishes a process by which the Legislative Affairs Agency reviews certain regulations subject to the Administrative Procedure Act. The Department of Law will be impacted in three major ways by legislation:

- 1) The Department of Law is required to submit regulations to the Legislative Affairs Agency for review;
- 2) the Legislative Affairs Agency may consult with the Department of Law in the review process;
- 3) Department of Law will be notified of Legislative Affairs Agency's conclusions and assist agencies in analyzing comments.
- 4) Regulations may not be adopted until after the Department of Law receives notice from Legislative Affairs Agency that the review has been completed.

It is anticipated that the Legislative Affairs Agency's review will lengthen the time for finalizing

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 2/25/04 9:05 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/25/2004
 Agency: Department of Law

FISCAL NOTE

**STATE OF ALASKA
2004 LEGISLATIVE SESSION**

BILL NO. HB 424

ANALYSIS CONTINUATION

regulations. The Drafting Manual will require revision to reflect the changes in the process and training will be needed on the changes. Agencies will require assistance from the Department of Law in responding to public records requests for the analysis produced by the Legislative Affairs Agency. Precluding agencies from acting on regulations absent approval from Legislative Affairs creates a separation of powers issue, and may result in a court test on constitutionality.

The fiscal impact is indeterminate and dependent on the volume of regulations subject to the process in any fiscal year and the level of legal assistance that agencies will need to appropriately consider the comments and to respond to requests.