

HB

243

LEGAL SERVICES

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

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 16, 2003

SUBJECT: CSHB 243(STA); draft version "D"
TO: Representative Bruce Weyhrauch
FROM: Terri Lauterbach
Legislative Counsel

TLauterbach

Enclosed is a draft version of a CS for HB 243. As you requested, there are two new sentences at the end of sec. 3 of the CS, clarifying that the material collected by the Alaska office of management and budget under the auditing function given by this bill will still be available to the legislative audit division, notwithstanding the confidential nature of the material.

If I may be of further assistance, please advise.

TML:med
03-399.med

Enclosure

CS FOR HOUSE BILL NO. 243(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing state agency program performance management and audit powers**
2 **in the Office of the Governor for the evaluation of agency programs; and providing for**
3 **an effective date."**

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

5 *** Section 1.** AS 37.07.040 is amended by adding a new paragraph to read:

6 (10) establish and administer a state agency program performance
7 management system involving planning, performance budgeting, performance
8 measurement, and program evaluation; the office shall ensure that information
9 generated under this system is useful for managing and improving the efficiency and
10 effectiveness of agency operations.

11 *** Sec. 2.** AS 44.19.145(a) is amended by adding a new paragraph to read:

12 (12) conduct internal audits of agencies and programs within the
13 executive branch of state government.

14 *** Sec. 3.** AS 44.19 is amended by adding a new section to read:

1 **Sec. 44.19.147. Internal audit records.** The office shall keep a complete file
2 of internal audit reports resulting from audits conducted under AS 44.19.145(a), and a
3 complete file of the internal audit work papers and other related supportive material.
4 Internal audit work papers and other related supportive material are confidential, and
5 internal audit reports are confidential until released by the governor. However, the
6 legislative audit division has the right to access these confidential reports, papers, and
7 other material in the same manner and to the same extent as provided in
8 AS 24.20.271(6) for access by the division to confidential material of state agencies.
9 The legislative audit division shall maintain the confidentiality of any reports, papers,
10 or other materials obtained from the office in the same manner as the legislative audit
11 division maintains the confidentiality of other confidential material to which the
12 legislative audit division has access under AS 24.20.271(6).

13 * **Sec. 4.** This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 243
 () Publish Date: _____

Revision Date/Time (Note if correction): 4/16/03 1:20 PM Dept. Affected: Governor
 Title An Act establishing audit powers in the BRU OMB
Office of the Governor Component OMB
 Sponsor Rules Committee
 Requester Governor Component No. 2144

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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 ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0

Check 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)

This bill would re-establish an audit function in the Office of the Governor. Funding will be provided by reallocation of existing Office of the Governor funds in the Governor's FY 04 budget; no new money will be required.

The Governor's budget request for the Office of Management and Budget, and as approved by the House, totals \$1,899,500 from the general fund. Of that amount, \$1,767,500 is in personal service costs for 23 full time positions. To help restore the internal performance audit function, the following transfers were accomplished:

Prepared by: Jay Hogan, Deputy Director Phone 465-3559
 Division OMB Date/Time 4/16/03 1:35 PM
 Approved by: Jay Hogan, Deputy Director Date 4/16/2003
 Agency OMB

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. HB 243

ANALYSIS CONTINUATION

Three positions were transferred from the Division of Governmental Coordination [DGC was reduced in size and transferred via Executive Order 106 to the Department of Natural Resources] to support the audit and performance evaluation function. Two were classified as Management Analysts and the third as an Internal Auditor.

Funding for the three positions transferred came from reallocations within the Division of Elections [\$196,800] and the Human Rights Commission [\$128,800].

The three "new" positions, plus two existing OMB Internal Audit positions would give the audit and performance evaluation function a staff of five full time positions. It is also envisioned that as circumstances may require, OMB Budget and Policy Analysts would assist in various audit and performance evaluations.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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April 16, 2003

Hon. Bruce Weyhrauch, Chair
House State Affairs Committee
Alaska Legislature
Room 102, State Capitol
Juneau, Alaska 99801

Re: HB 243 - state agency performance audit powers;
confidentiality provisions

Dear Representative Weyhrauch:

We were requested to comment on section 3 of the above-referenced bill which makes internal audit reports confidential until released by the governor. The intent of this provision is to attain the level of effectiveness for internal auditors as presently provided for legislative auditors. *See* AS 24.20.301(a) and 24.20.311. The ability to make audit communications and reports confidential greatly adds to an auditor's ability to provide candid assessments of program and policy implementation.

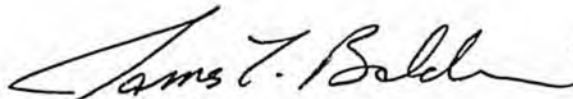
We expect that the internal audit function is likely to be less involved in post audit examinations and more in examinations of performance of assigned functions. In order to encourage candor on the part of auditors, there should be control vested in the governor as to when and if audit reports become public. It is likely that the preliminary reports of the auditors are privileged because the auditors will be advising the governor on matters of policy which would be part of the executive decision-making process. Under these circumstances the work of the auditors would be subject to the deliberative process privilege. *See Capital Info. Group v. State, Office of the Governor*, 923 P.2d 29 (Alaska 1996). However, unlike the unqualified privilege accorded to the legislature, the deliberative process privilege is qualified, meaning that it is determined by balancing the interests involved.

The bill proposes to make internal audit reports and supporting work papers confidential by law to avoid the uncertainty of the balancing process which can only be ultimately resolved in a court of law. In this way, the privilege accorded to the work product of internal auditors would be the same as accorded to legislative auditors.

Thank you for the opportunity to comment on this bill.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL



By: James L. Baldwin
Assistant Attorney General

JLB:jn

cc: David Marquez, Assistant Attorney General, Legislative Liaison
Deborah E. Behr, Legislation Attorney
Jay Hogan, Deputy Director, OMB

STATE OF ALASKA

OFFICE OF THE GOVERNOR

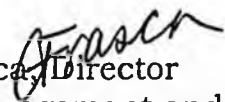
OFFICE OF MANAGEMENT AND BUDGET

FRANK H. MURKOWSKI, GOVERNOR


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To: The Honorable Bruce Weyhrauch
Chairman
House State Affairs Committee
State Capitol Room 102
Juneau, Alaska 99811

Date: April 9, 2003

Thru: Cheryl Frasca,  Director
Office of Management and Budget

Subject: HB 243 Scheduling

From:  Jay Hogan, Deputy Director
Office of Management and Budget

Legislative Administrative Assistant Ginny Austerman has indicated that HB 243, An Act establishing state agency program performance management and audit powers in the Office of the Governor for the evaluation of agency programs, is tentatively scheduled for hearing on Tuesday, April 15th. Please accept this as our request for the committee hearing as tentatively scheduled.

Your prompt scheduling of HB 243 is very much appreciated.

Materials requested by your staff are attached.