

HB

424

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 04/02/04

FURTHER:

DATE TURNED
IN TO OFFICE:

REPORTED OUT

MAY 04 2004

SENATE FINANCE
COMMITTEE

4 May 2004

Finance Committee considered CS FOR HOUSE BILL NO. 424(JUD)

HB 424 REGULATION REVIEW / ANNULMENT

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
HSS	3/24/04			✓	#4
Legislative	7/25/04			✓	#5
Law	7/24/04		*		#6

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>[Signature]</i>	✓			
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

MAY 04 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: CSHB 424(JUD)
(H) Publish Date: 3/25/04

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 Finance 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						
----------------------	--	--	--	--	--	--

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

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 will need to provide training to covered state agencies and to update the Drafting Manual for Administrative Regulations to reflect the new process;
- 2) The Department of Law may be consulted during the review process to discuss legal concerns with the Legislative Affairs Agency and the covered state agency;
- 3) Department of Law will be notified in writing if any proposed regulations fail to meet the legal standards set out in this bill.

The fiscal impact is indeterminate and dependent on the volume of regulations subject to the process in

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division: Administrative Services Date/Time 3/24/04 3:48 PM
Approved by: Kathryn Daughhete for Gregg D. Renkos, Attorney General Date 3/24/2004
Agency: Department of Law

FISCAL NOTE #6

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 424(JUD)

ANALYSIS CONTINUATION

any fiscal year and the level of legal assistance that agencies will need to appropriately consider the comments and to respond to requests.

MAY 4 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 424(JUD)
(H) Publish Date: 3/25/2004

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act relating to review by BRU Legislative Council
LAA of certain state agency..." Component Council and Subcommittees
Sponsor Representative Holms
Requester House Finance 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						
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						
----------------------	--	--	--	--	--	--

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

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 (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						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Co-Chair Williams, House Finance Committee

Co-Chair Harris, House Finance Committee

Phone 465-3424

Date/Time 3/25/04 9:18 AM

Date 3/25/2004

MAY 04 2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 424(JUD)
 (H) Publish Date: 3/25/04
 Dept. Affected: Health & Social Services

SENATE FINANCE
COMMITTEE

Revision Date/Time (Note if correction):

Title REVIEW OF REGULATIONS BY LEGISLATIVE AFFAIRS

RDU Departmental Support Services

Component Commissioner's Office

Sponsor HOLM

Requester _____

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	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010

CHANGE IN REVENUES (0)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Enactment of this legislation will not result in significant costs to the Department of Health and Social Services.

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 03/24/2004
 Date 03/24/2004

COMMITTEE COPY

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Representative Jim Holm



119 N. Cushman
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

3/26/4

The Legislature writes laws - which are then often implemented by the Administration's regulations. Under current statute, only the Administration's Attorney General formally reviews these regulations, and this review comes late in the process when public comment has already been closed.

HB 424 establishes a formal framework for adding Legislative review to the process.

Under this bill, first the covered state agencies will e-mail their proposed regulations to the Legislative Affairs Agency, Legislative Council, the chairs of the appropriate standing committees, and the Administrative Regulation Review Committee. Then attorneys at the Legislative Affairs Agency may conduct a legal review.

If the proposed regulations fail to comply with statutory authority or legislative intent, written notice is sent to the Department of Law, the affected state agency, the Administrative Regulation Review Committee, the President of the Senate, and the Speaker of the House, where appropriate Legislative action can occur.

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

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Representative Jim Holm



119 N. Cushman
Fairbanks, AK 99701
TEL 456-7423, FAX 451-9293

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

CS HB 424 (JUD)

Regulation Review

Sectional Analysis

4/4/4

Section 1 amends AS 18.56.088(a) to make conforming amendments for the repeal of AS 44.62.320(a) regarding legislative annulment of regulations by concurrent resolution. See sec. 7 of the bill.

Section 2 adds a new section AS 24.20.105, establishing standards for legislative review of proposed regulations.

Subsection (a) expressly authorizes the Legislative Affairs Agency to review administrative regulations. The subsection also requires that the review be conducted by an attorney employed at that agency.

Subsection (b) establishes an order of priority for the review authorized by subsection (a) of administrative regulations.

Subsection (c) requires that the notice of proposed regulatory actions, along with a copy of the proposed regulations, be forwarded electronically to named legislative agencies and committees, and to the legislative council.

Subsection (d) requires the Legislative Affairs Agency to assign one or more attorneys, within available staff resources and priorities of legislative council, to conduct the review. The subsection establishes the legal standards for the review.

Subsection (e) authorizes the assigned attorneys to consult with the Department of Law, with the legislative committee or legislative council that requested the review, and with the affected state agency. If the assigned attorney in the Legislative Affairs Agency determines that the proposed regulations do not meet the standards set in the bill, the assigned attorney shall notify in writing the Department of Law, the state agency, the Administrative Regulation Review Committee, the president of the senate, and the speaker of the house.

Subsection (f) requires the assigned attorney to notify the Administrative Regulations Review Committee, the president of the senate, and the speaker of the house of any provision of the proposed regulation that may be inconsistent with legislative intent and appropriate for additional legislative oversight.

Subsection (g) precludes the Legislative Affairs Agency from releasing information about the review, except as provided in the section.

Subsection (h) expressly clarifies that the process of review does not affect the state agency's authority to complete its proposed regulatory action, and that suggestions for changes to a proposed regulation are not binding on the state agency.

Subsection (i) prohibits an action from being brought for a failure of the Legislative Affairs Agency to conduct a review under this section.

Subsection (j) makes the provisions of (b) - (i) of AS 24.20.105 not applicable to proposed regulations by the Board of Fisheries or the Board of Game.

Subsection (k) provides a definition of "proposed regulations."

Section 3 is a conforming amendment to recognize the repeal of AS 44.62.320. *See* sec. 7 of the bill.

Section 4 makes notification and communications regarding the review under AS 24.20.105 not accessible through a public records request.

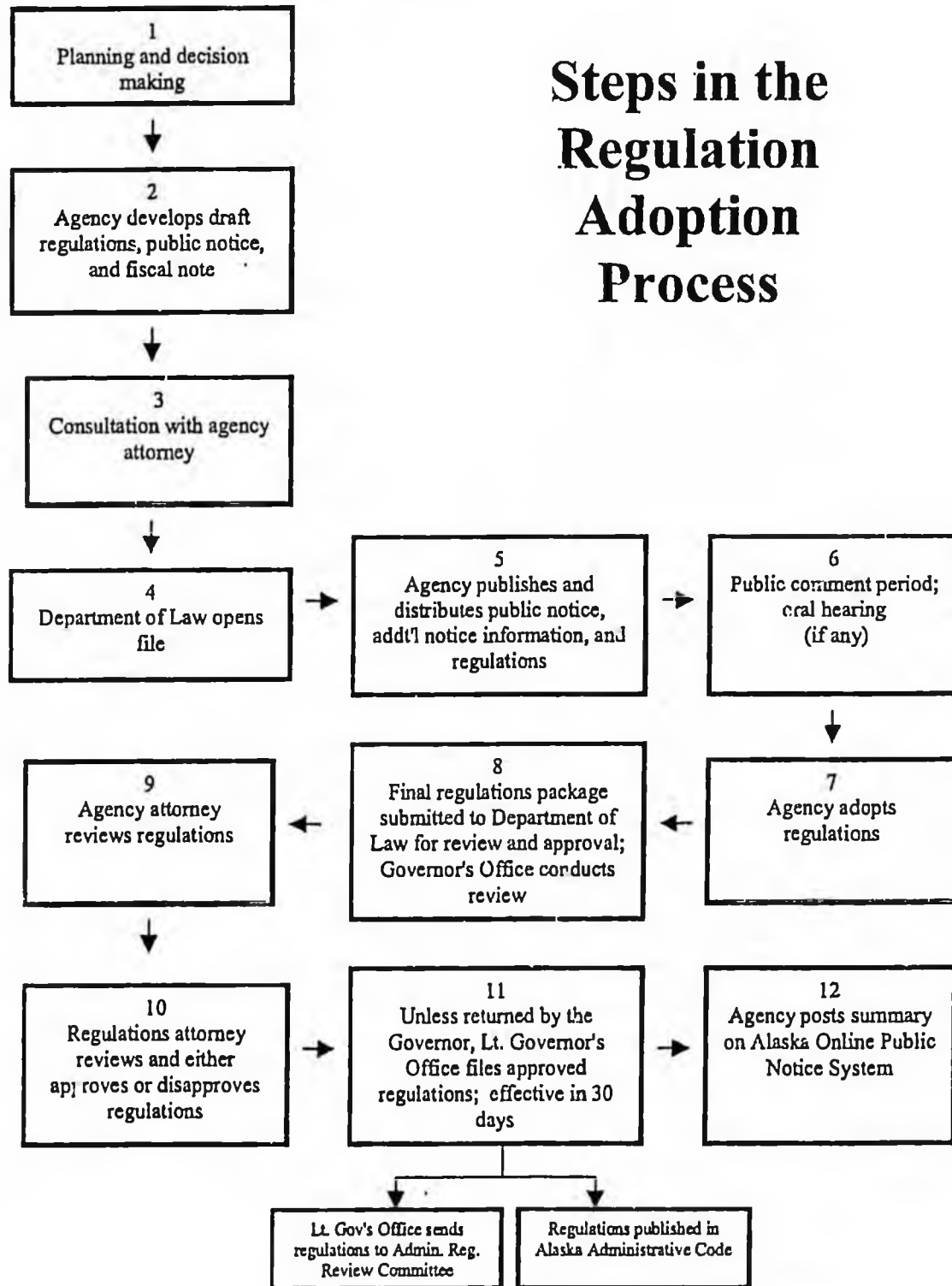
Section 5 requires the affected state agency to provide electronic copies of notices and proposed regulations as required by proposed AS 24.20.105(c). *See* sec. 2 of the bill.

Section 6 is a conforming amendment for the repeal of AS 44.62.320(a).

Section 7 repeals AS 24.20.460(5) and AS 44.62.320(a). In *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980), the Alaska Supreme Court found that the provisions of AS 44.62.320(a) by which the legislature, by concurrent resolution adopted by a vote of both houses, might annul regulations of an agency or department violated art. II of the state constitution.

Section 8 establishes an effective date of July 1, 2004 for the bill.

Steps in the Regulation Adoption Process



Distributed by Rep. Holm

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions. (§ 3 ch 98 SLA 1972; am § 4 ch 54 SLA 1985; am § 9 ch 69 SLA 1994)

Effect of amendments. — The 1994 amendment, effective June 3, 1994, in subsection (b), made a section reference substitution and substituted "and to

avoid exemptions from open meeting requirements and unnecessary executive sessions" for "and avoid unnecessary executive sessions."

NOTES TO DECISIONS

Public disclosure of applications. — Strong public interest in the disclosure of the affairs of government generally, and in an open selection process for high public officials in particular requires public disclosure and inspection of applications for posts having substantial discretionary authority. *City of Kenai v. Kenai Peninsula Newspapers, Inc.*, 642 P.2d 1316 (Alaska 1982).

Quoted in *Hammond v. North Slope Borough*, 645

P.2d 750 (Alaska 1982); *Alaska Community Colleges' Fed'n of Teachers, Local 2404 v. University of Alaska*, 677 P.2d 886 (Alaska 1984); *Brookwood Area Homeowners Ass'n v. Municipality of Anchorage*, 702 P.2d 1317 (Alaska 1985); *KILA, Inc. v. State, Dep't of Admin.*, 876 P.2d 1102 (Alaska 1994).

Cited in *Anchorage Sch. Dist. v. Anchorage Daily News*, 779 P.2d 1191 (Alaska 1989); *Hickel v. Southeast Conference*, 863 P.2d 919 (Alaska 1994).

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review. (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978; am § 3 ch 16 SLA 1980)

NOTES TO DECISIONS

Legislative veto unconstitutional. — The legislative veto contained in subsection (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department," violates art. II of the state constitution. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

No implied general power to veto agency regulations by informal legislative action exists. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

Cited in *Wickersham v. State, Com. Fisheries Entry Comm'n*, 680 P.2d 1135 (Alaska 1984).

Article 8. Administrative Adjudication.

Sections 1, 3, 6, & 7 of CSHB424(JUD) all relate to the repeal of 44.62.320(a).

Section

- 390. Notice of defense
- 400. Amended or supplemental accusation
- 410. Time and place of hearing
- 420. Form of notice of hearing
- 430. Subpoenas; witness fees
- 440. Depositions

NOTE:

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