

SB

287

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 1/30/04

FURTHER: Finance

Date of 5-Day Notice: 2/12/04
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 2/22/04

State Affairs Committee considered SENATE BILL NO. 287

SB 287 REGULATION REVIEW

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

and recommends:

- be replaced with _____ CS SB 287 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
<u>Leg.</u>	<u>2/15/04</u>	<input checked="" type="checkbox"/>			

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<u>John J. Pawley</u>	<input checked="" type="checkbox"/>			
<u>Robert J. Stimpert</u>			<input checked="" type="checkbox"/>	
<u>Richard L. ...</u>			<input checked="" type="checkbox"/>	
CHAIR: <u>[Signature]</u>	<input checked="" type="checkbox"/>			

23-LS1566D
Cook
2/16/04

CS FOR SENATE BILL NO. 287()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR THERRIAULT

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.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSSB 287(STA)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Legislature
Title "An Act relating to review of certain BRU Legislative Council
regulations under the Administrative Procedures Act" Component: Legal and Research Svcs
Sponsor Senator Therriault
Requestor Senator Therriault 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	233.4	233.4	233.4	233.4	233.4	233.4
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	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	245.4	245.4	245.4	245.4	245.4	245.4

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	245.4	245.4	245.4	245.4	245.4	245.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	245.4	245.4	245.4	245.4	245.4	245.4

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	2	2	2	2	2	2
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 287(STA) 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, other than a proposal of a board, commission, council, or public corporation. This would include reviewing emergency regulations.

CSSB 287(STA), in contrast to the original version of SB287, excludes regulations proposed by boards, commissions, councils, or public corporations. Although still increasing the workload of the division, particularly during the session, this workdraft lessens the impact of this legislation by approximately 30%. All other regulations would still need to be reviewed by Legal Services 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

Prepared by: Karla Schofield, Deputy Director
Division: Administrative Services
Approved by: Pamela Varni, Executive Director
Agency: Legislative Affairs Agency

Phone 465-6626
Date/Time 2/20/04 10:12 AM
Date 2/20/2004

FISCAL NOTE

BILL NO. CSSB 287 (STA)

STATE OF ALASKA
2004 LEGISLATIVE SESSION
ANALYSIS CONTINUATION

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.

Some states, such as Colorado, perform a review of executive branch regulations, but only to determine if the rule making agency has the authority to make the rule. The review required by the proposed legislation would be more in depth. Some regulations would require minimal time to review. A reviewer in Colorado estimated that reviewing a regulation of average complexity could take up to 5 hours. A complex regulation would, of course take more time. Reviewing regulations is a year round process and would require year round staff.

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, which are frequently changed prior to the beginning of the calendar year. Fish and Game Board regulations would not need to be reviewed under this version of the legislation. 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 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 to 100 new drafting requests per month. 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 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 or reviewing regulations of boards, commissions, councils, and public corporations. However, the substantive matters being reviewed are much the same. Some issues could easily be sent back and forth between the Department of Law and LAA during the review process multiple times for discussions 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 IV) Range 24 - 97.4

Senior Admin Review Attorney - (Attny III) Range 23 - 91.5

Part time (10 months) Legal Secretary - Range 14 - 44.4

Total Personal Services 233.4

Contractual

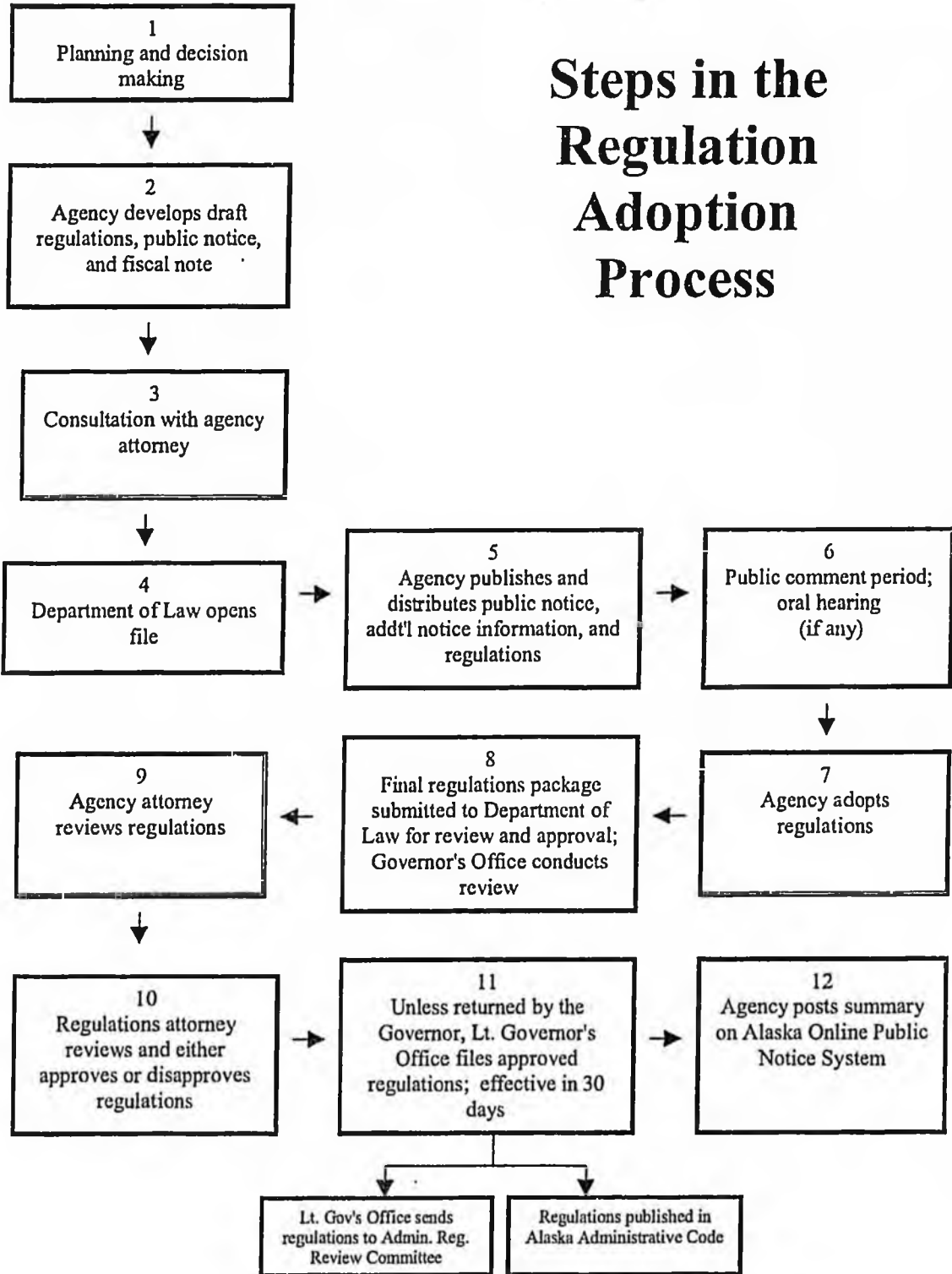
Contractual costs for phones, advertising for position vacancies, and other contractual items will be absorbed within existing budgets. There is no room to house the new staff in the TMLob.

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**

Travel, Supplies, and Equipment

These costs will be absorbed within existing budgets.

Steps in the Regulation Adoption Process



AAC CONTACTS as of July 30, 2003

Department/Agency	AAC Contact
Administration M/S 0200	Kevin Jardell, Assistant Commissioner <u>Kevin_Jardell@admin.state.ak.us</u> Ph: 2200 Fax: 2135
Community and Economic Development M/S 0800	Tom Lawson <u>Tom_Lawson@dced.state.ak.us</u> Ph: 269-8140 Fax: 269-8146
Corrections M/S 2000	Portia Parker <u>portia_parker@correct.state.ak.us</u> Ph: 269-7394 Fax: 269-7390
Education and Early Development M/S 0500	Darcy Markovich, Executive Secretary <u>darcy_markovich@eed.state.ak.us</u> Ph: 2801 Fax: 4156
Environmental Conservation M/S 1800	Laura Hastings, Legal Assistant <u>laura_hastings@envircon.state.ak.us</u> Ph: 5061 Fax: 5070
Fish and Game M/S 1100	Kerri Tonkin, Regulations Specialist <u>kerri_tonkin@fishgame.state.ak.us</u> Ph: 6124 Fax: 2332
Health and Social Services M/S 0700	Elmer Lindstrom <u>elmer_lindstrom@health.state.ak.us</u> Ph: 3030 Fax: 3068
Labor and Workforce Development M/S 0700	Sandra Dallas, Regulations Specialist <u>sandra_dallas@labor.state.ak.us</u> Ph: 2709 Fax: 2784
Law M/S 0300	David Marquez, Assistant Attorney General <u>david_marquez@law.state.ak.us</u> Ph: 3600 Fax: 2075
Military and Veterans' Affairs M/S 0900	Anita Porter, Special Assistant <u>anita_porter@ak-prepared.com</u> Ph: 907-428-6010 Fax: 907-428-6019
Natural Resources M/S 1000	Janet Burleson-Baxter, Spec. Asst. to the Comm'r II <u>janet_burleson@dnr.state.ak.us</u> Ph: 4730 Fax: 3886
Public Safety M/S 1200	Robyn Ramos <u>robyn_ramos@dps.state.ak.us</u> Ph: 4322 Fax: 4362
Revenue M/S 0400	Kim Rechin, Paralegal Assistant <u>kimberly_rechin@revenue.state.ak.us</u> Ph: 2358 Fax: 3798
Transportation and Public Facilities M/S 2500	Mike Barton, Commissioner <u>mike_barton@dot.state.ak.us</u> Ph: 6977 Fax: 586-8365
Post-Secondary Education & Alaska Student Loan Corp. M/S 0505	Donna Mayfield, Executive Assistant <u>donna_mayfield@acpe.state.ak.us</u> Ph: 6740 Fax: 3293
Governmental Coordination M/S 0101	Randy Bates <u>randy_bates@gov.state.ak.us</u> Ph: 8794 Fax: 3075
Elections M/S 0105	Leonard Jones, Special Assistant <u>leonard_jones@gov.state.ak.us</u> Ph: 4611 Fax: 3203
Commercial Fisheries Entry Commission M/S 0302	Susan Haymes, Law Specialist <u>susan_haymes@cfec.state.ak.us</u> Ph: 790-6963 Fax: 789-6170

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 287
 () 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 Senator Therriault
 Requestor Senate State Affairs 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)

SB 287 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.

SB 287 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 2/9/04 1:29 PM
 Approved by: Pamela Varni, Executive Director Date 2/9/2004
 Agency: Legislative Affairs Agency

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. SB 287

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. 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 rewrites. Therefore, 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

ALASKA STATE LEGISLATURE

SENATOR
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While in Juneau
State Capitol
Juneau, Alaska
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Senate
Senate District F

Sponsor Statement SB 287 **Legislative Legal Review of Proposed Regulations**

Senate Bill 287 was introduced to provide a more timely and thorough review of administrative regulations.

Senate Bill 287 would require Legislative Legal Services to review proposed regulations prior to the public comment period. Currently the attorney general's office does not conduct its review and make changes until after the public has weighed in, which results in final regulations that are substantially different from those on which the public commented. The regulations as amended by the attorney general do not always go back for public comment before they are sent to the lieutenant governor for final certification.

Placing the review early in the process and working cooperatively with the AG's office will help catch and correct major problems that could negate the public comment process, with all its associated expenses.

Legislative Legal would review the regulations for consistency, conformity and quality. It is not reasonable to expect legislators' personal staff to have either the experience or the professional expertise to legally analyze proposed regulations. It makes much more sense for the legislative legal team that actually drafts the legislation and follows its progress through the entire process to review the regulations for quality.

It is my belief that a better review process will not only mean higher quality proposed regulations, but also more timely and less frequently challenged regulations. This reform will not only translate into savings for the government, the public, and the Attorney General, it will also create a more stable and responsible regulatory scheme for businesses.