

HB

169

<TARGET><BILL>HB 169</BILL><SUBJECT>HB
169</SUBJECT><COMM>SJUD27</COMM></TARGET>

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595



Committee Members:
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Joe Paskvan
Senator John Coghill

Senate Judiciary Committee

MEMORANDUM

Request to waive HB 169 from Senate Judiciary Committee

I move and ask unanimous consent that House Bill 169 LAA Review of Proposed Regulations be waived from the Senate Judiciary Committee. I have the signatures of the committee and the bill has been heard by Senate State Affairs.

Handwritten signature of Senator Hollis French.

Senator Hollis French, Chair

Handwritten signature of Senator Bill Wielechowski.

Senator Bill Wielechowski

Handwritten signature of Senator Lesil McGuire.

Senator Lesil McGuire

Handwritten signature of Senator Joe Paskvan.

Senator Joe Paskvan

Handwritten signature of Senator John Coghill.

Senator John Coghill



Official Business

Alaska State Legislature

Senate

Office of the Secretary

State Capitol, Room 211
Juneau, Alaska 99801-1182
Phone: (907) 465-3701
Fax: (907) 465-2832
Email:senate_secretary@legis.state.ak.us

FOR YOUR IMMEDIATE ATTENTION

DATE: April 11, 2012
TO: Judiciary Committee
(Cindy, Room 417)
FROM: Office of the Senate Secretary
SUBJ: Referral Change

The Chair of the Committee noted above has waived the referral(s) on the following bills(s):

RETRIEVE

HOUSE BILL NO. 169

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

HB 169 LAA REVIEW OF PROPOSED REGULATIONS

Please give the bill file(s) to the page delivering this message for forwarding to the next Committee of referral.

Thank you.

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
REPRESENTATIVE CARL GATTO, CHAIR

COMMITTEE MEMBERS:
REP. STEVE THOMPSON, VICE CHAIR
REP. BOB LYNN
REP. WES KELLER
REP. LANCE PRUITT
REP. LINDSEY HOLMES
REP. MAX GRUENBERG



STATE CAPITOL BUILDING, RM 120
JUNEAU, AK 99801-1182
PHONE: 907-465-4990
FAX: 907-465-2381
HOUSE_JUDICIARY@LEGIS.STATE.AK.US

TO: Senator Hollis French, Chair
Senate Judiciary Committee

FROM: Representative Carl Gatto, Chair
House Judiciary Committee

Hollis French for Rep. Gatto

DATE: April 5, 2012

RE: Request for scheduling of HB 169

Enclosed is the packet for HB 169, "*an Act relating to the review of proposed regulations by the Legislative Affairs Agency; and providing for an effective date*" also called "LAA Review of Proposed Regulations." I have included a sponsor statement, the original version of the bill, and a memo from Legal Services.

I would appreciate if you would schedule this bill, pending referral from the Senate State Affairs Committee, for a hearing in Senate Judiciary Committee at your earliest convenience. I appreciate your time and look forward to a hearing.

Please contact my staff member, Melanie Lesh at 465-4990, with any questions or comments regarding this request.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

HOUSE OF REPRESENTATIVES

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JUDICIARY COMMITTEE

REPRESENTATIVE CARL GATTO, CHAIR

HB 169 Sponsor Statement

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

HB 169 closes gaps in the regulation review statutes. The Legislative Affairs Agency (LAA) attorneys review proposed regulations, including those from newly enacted legislation and at the request of a standing committee, the Administrative Regulations Review Committee, and the Legislative Council. However, if the attorney finds that the proposed regulations fail to meet statutory standards, the only legislative entities they are allowed to notify are the Administrative Regulation Review Committee, the Speaker of the House, and the President of the Senate. Additionally, LAA cannot currently notify anyone if the regulation meets statutory standards.

HB 169 allows LAA to notify the committee or council that requested the review that the regulations do not meet statutory standards. In addition, if the proposed regulation implements newly passed legislation, LAA would be able to consult with and notify the prime sponsor of that legislation, if the prime sponsor is still a sitting legislator. Finally, HB 169 allows LAA to notify the requester of the review if the attorney determines that the regulations meet statutory standards.

HB 169 is a simple fix to two minor problems in an otherwise functioning review system. It will give the benefits of the review process to those who need it most. If you have any questions, please contact Melanie Lesh, Judiciary Committee Aide, at 465-4990.

FISCAL NOTE

STATE OF ALASKA
2012 LEGISLATIVE SESSION

Bill Version HB 169
 Fiscal Note Number _____
 () Publish Date _____

Identifier (file name) HB 169-LEG-COU-01-18-2012 Dept. Affected Legislature
 Title "LAA Review of Proposed Regulations" Appropriation Legislative Council
 Allocation Legal and Research Services
 Sponsor House Judiciary Committee
 Requester House Judiciary Committee OMB Component Number 2028

Expenditures/Revenues (Thousands of Dollars)

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

	FY13 Appropriation Requested	Included in Governor's FY13 Request	Out-Year Cost Estimates				
			FY14	FY15	FY16	FY17	FY18
OPERATING EXPENDITURES	FY13	FY13	FY14	FY15	FY16	FY17	FY18
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE		(Thousands of Dollars)					
1002	Federal Receipts						
1003	GF Match						
1004	GF						
1005	GF/Prgm (DGF)						
1037	GF/MH (UGF)						
1178	temp code (UGF)						
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS							
Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES							
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Estimated **SUPPLEMENTAL (FY12) operating costs** _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated **CAPITAL (FY13) costs** _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version

Prepared by Jessica Geary, Finance Manager
 Division Legislative Affairs Agency
 Approved by Pamela Varni, Executive Director
Legislative Affairs Agency

Phone 465-6626
 Date/Time 1/18/12 10:31 AM
 Date 1/18/2012

FISCAL NOTE

**STATE OF ALASKA
2012 LEGISLATIVE SESSION**

BILL NO. HB 169 _____

Analysis

This Legislation has zero fiscal impact on the Legislative Affairs Agency.

Sec. 24.20.105. Review of proposed regulations.

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

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

- (1) proposed regulations that would implement newly enacted legislation;
- (2) proposed regulations requested in writing to be reviewed by a standing committee, the Administrative Regulation Review Committee, or the legislative council as implicating major policy development.

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

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

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

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

(e) In conducting its review under this section, the assigned attorney may consult with the Department of Law, the committee or council that requests the review under (b)(2) of this section, and the state agency proposing the regulation change. If the assigned attorney determines that the proposed action fails to meet the standards set out in (d) of this section, 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 of representatives.

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

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

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

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

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

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

History -

(Sec. 2 ch 164 SLA 2004)

Cross References -

For provision exempting written notification provided under (e) of this section from the general right to inspect public records, see AS 40.25.120(a)(11).

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

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


MEMORANDUM

February 18, 2011

SUBJECT: Review of Proposed Regulations by the Legislative Affairs Agency
(Work Order No. 27-LS0559\A)

TO: Representative Carl Gatto
Chair of the House Judiciary Committee

FROM: Terri Lauterbach
Legislative Counsel



Enclosed is a draft of a bill you requested to "fix some flaws" in AS 24.20.105, as we discussed after the meeting of the Administrative Regulation Review Committee (ARRC) on Tuesday.¹

Section 1. This section of the bill accomplishes several things:

(1) The new language on page 1 allows the reviewing attorney in LAA to consult with the prime sponsor of the relevant bill if the attorney is reviewing proposed regulations that implement newly enacted legislation. You only asked specifically for the prime sponsor to get copies of memos denoting possible legal flaws determined in these kinds of reviews, but I thought it was probably in keeping with your goal to also add this consultation aspect as well. Let me know if I erred in this regard and I can remove the language. Also, please note that I have limited this consultation requirement to situations when the prime sponsor is still a member of the legislature. In addition to the logistics that may be difficult when the prime sponsor is no longer a member, it seems to me in keeping with the confidential nature of these reviews that only sitting legislators be included in the review process under AS 24.20.105.

(2) The first two lines on page 2 allow LAA review memos to be sent to a standing committee or to the Legislative Council if they have requested a review of some proposed regulations because of their "major policy implications." Under current law,

¹ Although I drafted the enclosed bill, Lisa Kirsch's name appears in the upper right-hand corner of page 1. This has been done so that, if you introduce the bill, legislators and staff will have a full-time attorney to call with questions or amendments related to the bill. As I mentioned at the ARRC meeting, I am only half-time. Lisa Kirsch reviewed proposed regulations under AS 24.20.105 for most of the past three years, and is knowledgeable about the issues addressed in this bill draft. Feel free to call either one of us about the draft.

Representative Carl Gatto
February 18, 2011
Page 2

these entities can request a review and that request is given priority status under AS 24.20.105(b)(2), but the law, through an oversight in the original legislation, does not allow them to get the memo that could result from the review. Current law allows these memos to go only to the Department of Law, the state agency proposing the regulations, the ARRC, the senate president, and the speaker of the house. (See AS 24.20.105(e) and the restriction on LAA's disclosure under AS 24.20.105(g).)

(3) Lines 3 - 7 on page 2 allow LAA review memos to be sent to the prime sponsor of the relevant legislation if a review of proposed regulations that implement newly enacted legislation shows legal problems of the type described in AS 24.20.105(d). As with the consultation requirement for prime sponsors described above in (1), I have limited this memo-sharing requirement to prime sponsors who are still sitting legislators.

(4) Lines 7 - 10 on page 2 require LAA to communicate to a standing committee or the Legislative Council the results of a review that was requested by either of them in situations where the reviewer has not found legal flaws. Currently, AS 24.20.105 only allows LAA to communicate with respect to reviews where legal flaws are perceived, and that makes sense with respect to the vast number of reviews, as the relevant entities would normally be interested only if the reviewing attorney sees problems. However, with respect to a review requested under AS 24.20.105(b)(2), it seems to me that it would make sense for LAA to be able to respond that a review has been completed but that no problems were found. I have deliberately not required this communication to be in writing so that a phone call could suffice; the requester, of course, could always request that the "no problems" response be in writing.

Sec. 2. This section clarifies that the new provisions of section 1 apply to any reviews ongoing in LAA at the time the bill takes effect even if the notice of proposed regulations was issued before the effective date of the bill.

Sec. 3. This section gives the bill an immediate effective date. There are no impediments I can think of that would keep LAA from immediately being able to implement any of the new provisions of section 1.

TML:LMK:ljw
11-115.ljw

Enclosure

Steps in the Regulation Adoption Process

