

**HB**

**169**

<TARGET><BILL>HB 169</BILL><SUBJECT>HB  
169</SUBJECT><COMM>SSTA27</COMM></TARGET>

# SENATE COMMITTEE REPORT

DATE: 4/8/11

FURTHER: Judiciary

DATE TURNED  
IN TO OFFICE: 4/10/12

**State Affairs Committee** considered HOUSE BILL NO. 169

## HB 169-LAA REVIEW OF PROPOSED REGULATIONS

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

and recommends:

be replaced with SCS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  Technical Title Change  
 New Title/SCR No. \_\_\_\_\_

adopt previous SCS \_\_\_\_\_ ( \_\_\_\_\_ )  Same Title  Technical Title Change  
 New Title/SCR No. \_\_\_\_\_

attached amendment(s)

adopt \_\_\_\_\_ Letter of Intent

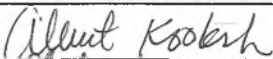
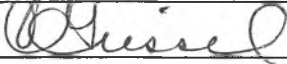
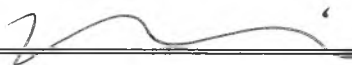
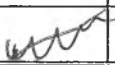
further referral to \_\_\_\_\_ Committee

Dept Abbr.	
ADM	LEG
CED	LAW
COR	LWF
CRT	MVA
EED	DNR
DEC	DPS
DFG	REV
GOV	DOT
DHS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
LEG			✓	2

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Kookesh	✓			
	Giessel	✓			
CHAIR: 	Wielechowski	✓			

**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 Bill Wielechowski, Chair  
Senate State Affairs Committee

A handwritten signature in black ink that reads "Carl Gatto".

FROM: Representative Carl Gatto, Chair  
House Judiciary Committee

DATE: January 18, 2012

RE: Request for a hearing of HB 169

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Enclosed is the committee 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 a hearing before the State Affairs Committee at your earliest convenience. I appreciate your time and look forward to your reply.

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

Thank you for your consideration.

1. HB169 Bill Packet Contents
2. HB169 Sponsor Statement 03-08-11
3. HB169 Version A 02-23-11
4. HB169 Relevant Statutes 24.20.105
5. HB169 Fiscal Note-LEG-COU 03-10-2011
6. HB169 Supporting Documents-Memo Legal Services 02-18-11

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**Sponsor Statement**  
**HB 169**

***"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.

Sarah Munson  
(907) 465-4990  
27-LS0559\A  
03/08/11

# FISCAL NOTE

**STATE OF ALASKA**  
**2011 LEGISLATIVE SESSION**

Fiscal Note Number \_\_\_\_\_  
 Bill Version HB 169  
 ( ) Publish Date \_\_\_\_\_

Identifier (file name) HB169-LEG-COU-03-10-2011 Dept. Affected Legislature  
 Title "LAA Review of Proposed Regulations" Appropriation Legislative Council  
 Allocation Legal and Research Services  
 Sponsor House Judiciary Committee  
 Requester House State Affairs & House Judiciary Committees OMB Component Number 2028

**Expenditures/Revenues** (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES</b>							
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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 Interagency Receipts							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2011) cost \_\_\_\_\_

**POSITIONS**

Full-time							
Part-time							
Temporary							

**Why this fiscal note differs from previous version**

Initial Version

Prepared by Shane Miller, Finance Manager  
 Division Administrative Services Division  
 Approved by Pamela Varni, Executive Director  
Legislative Affairs Agency

Phone 465-6626  
 Date/Time 3/10/11 1:22 PM  
 Date 3/10/2011

**Analysis**

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

# 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.<sup>1</sup>

**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,

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<sup>1</sup> 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

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).

# Steps in the Regulation Adoption Process

