

**HB**

**140**

<TARGET><BILL>HB 140</BILL><SUBJECT>HB  
140</SUBJECT><COMM>SFIN28</COMM></TARGET>

# SENATE FINANCE COMMITTEE REPORT

DATE: 4/17/14

FURTHER: Rules / T.cal

DATE TURNED  
IN TO OFFICE: 4/19/14

**Finance Committee** considered CS FOR HOUSE BILL NO. 140(FIN) am

HB 140-REGULATIONS: NOTICE, REVIEW, COMMENT

"An Act relating to the proposed adoption, amendment, or repeal of a regulation; and relating to contact with agencies about regulations."

and recommends:

- [ ] be replaced with SCS \_\_\_\_\_ ( \_\_\_\_\_ ) [ ] Same Title [ ] Technical Title Change  
[ ] New Title/SCR No. \_\_\_\_\_
- [] adopt previous SCS CS HB 140 (JUD) [] Same Title [ ] Technical Title Change  
[ ] New Title/SCR No. \_\_\_\_\_
- [ ] attached amendment(s)
- [ ] adopt \_\_\_\_\_ Letter of Intent
- [ ] further referral to \_\_\_\_\_ Committee

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

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
SFIN/DEC	✓			7
SFIN/GOV			✓	8
SFIN/CED	✓			9

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR	✓			4

[ ] APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
<i>Anna Fairclough</i>	FAIRCLOUGH	✓			
<i>C. Aub Bishop</i>	BISHOP			✓	
<i>James J. Duleavy</i>	DULEAVY	✓			
<i>Thomas J. Orson</i>	ORSON				✓
<i>David Hoffman</i>	Hoffman				✓
CO-CHAIR: <i>K. Meyer</i>	Meyer			✓	
CO-CHAIR:					

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: SCS CSHB 140(JUD)  
Fiscal Note Number: 4  
(S) Publish Date: 4/17/14

Identifier: HB140SCSCS(JUD)-DNR-CO-4-16-14  
Title: REGULATIONS: NOTICE, REVIEW, COMMENT  
Sponsor: REINBOLD  
Requester: Senate Judiciary

Department: Department of Natural Resources  
Appropriation: Administration & Support Services  
Allocation: Commissioner's Office  
OMB Component Number: 423

## Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
OPERATING EXPENDITURES	FY 2015	FY 2015					
Personal Services							
Travel							
Services	112.0		70.0	70.0	70.0	70.0	70.0
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>112.0</b>	<b>0.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

## Fund Source (Operating Only)

1004 Gen Fund	112.0		70.0	70.0	70.0	70.0	70.0
<b>Total</b>	<b>112.0</b>	<b>0.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>	<b>70.0</b>

## Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

## ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

## Why this fiscal note differs from previous version:

Initial Version

Prepared By:	Esther Tempel, Legislative Liaison	Phone:	(907)465-4730
Division:	Commissioner's Office	Date:	04/16/2014 12:00 PM
Approved By:	Joe Balash, Commissioner	Date:	04/16/14
Agency:	Department of Natural Resources		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. SCS CSHB 140(JUD)

**Analysis**

This bill amends AS 44.62.190. Notice of Proposed Action.

The bill proposes changes to the Administrative Procedures Act pertaining to the adoption, amendment, or repeal of a state regulation. As part of the information included with certain notices of proposed regulations, state agencies would need to include, if applicable, an identification of the law, order, decision, or other action of the federal government or a federal court that requires the proposed action. This language is not expected to cause a fiscal impact to the Department of Natural Resources (DNR).

Sec. 3 of the bill would require that DNR provide the estimated annual cost, based on a good faith effort to estimate the costs in the aggregate for each of the following categories using the information available to the state agency, to: a) private persons to comply with the proposed action; b) other state agencies to comply with the proposed action; and c) municipalities to comply with the proposed action.

Allowing the cost estimate to be provided in the aggregate may lessen the burden on DNR. However, for DNR to provide a good faith estimate, it would still need to consider the estimated annual impact for private persons, other state agencies, and municipalities to comply with the proposed regulations. The cost estimate would be based on information available to the agency, but the bill does not indicate what state agency efforts would meet a standard of "good faith . . . using the information available to the state agency."

DNR anticipates that in most cases the department will be required to hire economists or other financial professionals, or enter into professional services contracts, to gather and analyze this type of information. DNR can estimate costs to itself and other state agencies, but does not have the expertise on staff to provide a good faith estimate for annual cost to private persons or municipalities. Assuming \$7,000 per professional services contract per regulatory action and 16 regulatory actions for the department in FY 2015, and on average, 10 regulatory action per year thereafter, DNR will need \$112,000 in FY 2015, and \$70,000 per year thereafter to facilitate this requirement.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 140  
Fiscal Note Number: 7  
() Publish Date:

Identifier: HB140 -DEC-CO-04-19-14  
Title: REGULATIONS: NOTICE, REVIEW, COMMENT  
Sponsor: REINBOLD  
Requester: Senate Finance

Department: Department of Environmental Conservation  
Appropriation: Administration  
Allocation: Office of the Commissioner  
OMB Component Number: 633

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
<b>OPERATING EXPENDITURES</b>								
Personal Services	95.2		114.2	114.2	114.2	114.2	114.2	114.2
Travel								
Services	155.7		156.9	156.9	156.9	156.9	156.9	156.9
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>250.9</b>	<b>0.0</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>

**Fund Source (Operating Only)**

1004 Gen Fund	250.9		271.1	271.1	271.1	271.1	271.1	271.1
<b>Total</b>	<b>250.9</b>	<b>0.0</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>	<b>271.1</b>

**Positions**

Full-time	1.0		1.0	1.0	1.0	1.0	1.0	1.0
Part-time								
Temporary								

Change in Revenues								

**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

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

SFC removed the travel and commodities costs.

Prepared By: Co-Chair Senator Kelly Phone: (907)465-3753  
Senate Finance Committee Date: 04/19/2014  
Co-Chair Senator Meyer  
Senate Finance Committee

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. SCSHCSHB 140 (JUD)

### Analysis

**Analysis/Assumptions:** This legislation would require the development of estimated annual costs to the state agency to implement a proposed regulation as well as for private persons, state agencies, and municipalities to comply with the proposed regulations. This cost information is to be furnished along with the notice for the regulation. This bill requires the Department to produce a "good faith" estimate, which could be difficult to gauge the legislative intent regarding the level of detail for a cost estimate. The Department has assumed that any proposed regulation package that results in a cost savings to regulated entities would also need to be calculated and included in the public notice.

**Personal Services:**

The Division of Administration would need one new Economist III position in Juneau to analyze data and calculate the estimated costs to implement proposed regulations for all divisions within the Department.

**Travel:**

Estimates quarterly travel to Anchorage for meetings related to pending regulation packages.

**Services:**

Contractual assistance is required each year for the development of cost estimates for the operating divisions for preparing the regulation packages including data collection, analysis, and reporting of findings. The Department estimates that 15 regulation packages will be prepared annually among the four operating divisions.

**Commodities:**

The economist position support costs, including furniture and computers (one-time costs for new positions); ongoing standard office supplies.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 140  
Fiscal Note Number: 8  
() Publish Date: \_\_\_\_\_

Identifier: HB140S Various -04-14-2014  
Title: REGULATIONS: NOTICE, REVIEW, COMMENT  
Sponsor: REINBOLD  
Requester: Senate Finance

Department: Various (for Fiscal Notes only)  
Appropriation: Various  
Allocation: Executive Branch  
OMB Component Number: 0

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
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>0.0</b>

**Fund Source (Operating Only)**

None								
<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>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

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

SFC Revised from an indeterminate note to a zero note.

Prepared By: Co-Chair Senator Kelly  
Senate Finance Committee  
Co-Chair Senator Meyer  
Senate Finance Committee

Phone: (907)465-3753  
Date: 04/19/2014

## FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2013 LEGISLATIVE SESSION

BILL NO. SCSCSHB 140 (JUD)

### Analysis

#### SCSCSHB 140(JUD)

Section 2 of the bill would allow the governor to have the authority to return regulations to the agency before they can be filed and certified under the Administrative Procedure Act for two reasons: 1) the regulations are inconsistent with statute; and 2) to have the agency respond to specific concerns raised by the Administrative Regulation Review Committee. Existing law exempts all boards and commissions. The CS exempts the Board of Game, Board of Fisheries, AOGCC, and the RCA. These exemptions would significantly reduce the overall fiscal impact.

The bill would further require that a state agency provide the estimated annual cost, based on a good faith effort to estimate the costs in the aggregate for each of the following categories using the information available to the state agency, to:

- a) private persons to comply with the proposed action;
- b) other state agencies to comply with the proposed action; and
- c) municipalities to comply with the proposed action.

There are 162 municipalities in Alaska. Estimating the annual cost to these municipalities is not a function that agencies are staffed to perform. State employees implement and execute state programs. They are not required nor have the capacity to provide a meaningful estimate of the annual costs to private persons and to municipalities of state action. For a state agency to determine the estimated annual cost and to provide this information to private persons and to municipalities would be a large undertaking and would require additional staff and economic consultants, depending on the size and complexity of the regulations project.

This bill will cause a fiscal impact for all departments, boards, commissions, and other state entities, other than those specifically exempted by the bill. Agencies that are expected to be more impacted include the Department of Natural Resources, Department of Environmental Conservation, and the Department of Commerce, Community and Economic Development. These agencies expect additional positions and resources will be needed in order to comply with the bill.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: HB 140  
Fiscal Note Number: 9  
() Publish Date: \_\_\_\_\_

Identifier: HB140 DCCED-CBPL-04-19-14  
Title: REGULATIONS: NOTICE, REVIEW, COMMENT  
Sponsor: REINBOLD  
Requester: Senate Finance

Department: Department of Commerce, Community and  
Economic Development  
Appropriation: Corporations, Business and Professional  
Licensing  
Allocation: Corporations, Business and Professional  
Licensing  
OMB Component Number: 2360

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services	78.7		78.7	78.7	78.7	78.7	78.7
Travel							
Services	20.2		20.2	20.2	20.2	20.2	20.2
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>98.9</b>	<b>0.0</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>

**Fund Source (Operating Only)**

1156 Rcpt Svcs	98.9		98.9	98.9	98.9	98.9	98.9
<b>Total</b>	<b>98.9</b>	<b>0.0</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>

**Positions**

Full-time	1.0		1.0	1.0	1.0	1.0	1.0
Part-time							
Temporary							

<b>Change in Revenues</b>	<b>98.9</b>		<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>	<b>98.9</b>
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

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

SFC removed the travel and commodities costs.

Prepared By: Co-Chair Senator Kelly  
Senate Finance Committee  
Co-Chair Senator Meyer  
Senate Finance Committee

Phone: (907)465-3753  
Date: 04/19/2014

FISCAL NOTE ANALYSIS

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. SCS CSHB140(JUD)

Analysis

SCS CS HB 140 amends AS 44.62.190.

The bill proposes changes to the statute that governs the requirements pertaining to the adoption, amendment, or repeal of a state regulation. The agency shall submit to the governor for review a copy of every regulation or order of repeal adopted by the agency; the bill requires boards and commissions to comply with this provision, which includes responding timely to requests for changes from the governor. The proposed legislation requires the agency, including board and commission members, to accept additional levels of public comment, which shall also be responded to and recorded. The bill also requires substantial additions to the public notice requirements, including publishing full copies of documents incorporated by reference.

The addition of these proposed actions requires startup expenses for administrative support. This fiscal note requests one permanent full time Administrative Assistant II (range 14) to supervise and execute projects in support of the regulations specialist, including coordination of public notices, public comments and responses, cost estimates, copyright research, and regulatory board meeting scheduling. Licensing fees for each program are set per AS 08.01.065 so the revenue collected equals the occupation's regulatory costs. Additional costs incurred to the division as a result of this legislation must, by statute, be borne by licensees through licensing fees.

In addition, contractual increase to accommodate additional regulations attorney review is necessary, based on an estimate of twenty-five regulation projects per year.

Costs for establishing and maintaining the new legislation are based on the following:

Personal Services: \$78.7 for one permanent full time Administrative Assistant II (range 14) to assist regulations specialist and paralegal with requirements associated with regulations projects.

Travel: \$200.2 for board members and \$29.0 for staff to twenty affected boards to schedule one additional meeting per year each in order to meet the requirements of this bill. It is expected that each of the affected boards will need one additional meeting to deliberate the topic, draft and approve regulations before the public comment period, and consider public comment before approving final regulations. This fiscal note reflects the travel costs for board members to travel to these meetings. The department will make every effort to schedule additional meetings via teleconference when feasible.

Services: \$10.2 ongoing legal support services related to regulation implementation; \$10.0 ongoing support services related to new position.

Commodities: \$5.0 start up for new position and \$1.0 in out years.

In addition to the above costs, affected programs would incur direct expenses for the regulations specialist, paralegal, and supervisory management through positive timekeeping. They would also incur indirect expenses for administrative support, such as accounting, payroll, risk management, ADA chargeback, and building leases. Although increased authorization is not needed for these costs, this program's share of the division's total indirect costs will be considered as part of the program's total costs during the biennial review of licensing fees.

# Alaska State Legislature



**Representative Lora Reinbold**  
House District 26

## **Sponsor Statement for CS House Bill 140(FIN)**

*"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."*

Under current law, state agencies that propose changes to the Alaska Administrative Code, our state regulations, are required to disclose certain information about the regulation, including the reason for the proposed action, costs of implementation of the regulation to the adopting agency and the origin of the proposed regulation.

To provide better information about regulations that may significantly affect private individuals and businesses, other state agencies and local governments, House Bill 140 requires that regulation notices include information about estimated costs beyond those to the agency.

In view of the increasing reach of the Washington D.C. into Alaska's affairs, the bill also requires that when the federal government is the reason for the regulation, the exact federal law, executive order or decision be identified in order for Alaskans to better understand government actions that affect their businesses and lives.

Open government is a great American and Alaskan tradition. I respectfully request your support for House Bill 140.



**Representative Lora Reinbold**

House District 26

**Sectional Analysis for House Bill 140**

*"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."*

In this summary, "RCA" refers to the Regulatory Commission of Alaska, "BOF" refers to the Board of Fisheries, "BOG" refers to the Board of Game, and "AOGCC" refers to the Alaska Oil and Gas Conservation Commission.

**Bill section 1.** Gives the Act a short title.

**Bill section 2.** Amends AS 44.62.040(c) to remove the general exemption for boards and commissions. Retains exemptions for the RCA, BOF, BOG, and AOGCC. Allows the governor 30 days to return regulations to the adopting agency if there is an inconsistency with state law or specific concerns raised by the Administrative Regulation Review Committee.

**Bill section 3.** Amends AS 44.62.190(d) to identify additional information to include, if applicable, about the reason for the proposed action, including federal or state action requiring the proposed action. Adds information that is to be provided for the estimated annual costs of the proposed action, including the costs to private persons, other state agencies, and municipalities. States that the estimated annual costs are to be based on a good faith effort to estimate the costs using information available to the state agency.

Exempts the RCA, BOF, BOG, and AOGCC from this subsection.

**Bill section 4.** Adds new subsections to the notice statute, AS 44.62.190. The first, sec. 44.62.190(f), requires, as feasible, that the subject lines of electronic mail and titles of written publications providing the information required by AS 44.62.190(d) give the reader a fair idea of the substance of the proposed regulation, amended regulation, or repealed regulation. The second, sec. 44.62.190(g), requires the RCA, BOF, BOG, and AOGCC to include certain information along with a notice furnished under specific provisions of AS 44.62.190. This language is basically taken from the current language of AS 44.62.190(d).

**Bill section 5.** Amends AS 44.62.200(c) to require that a complete copy of each regulatory action, and, if feasible, the material incorporated by reference, be made available on the Alaska Online Public Notice System by providing an electronic attachment or link.

Exempts the RCA, BOF, BOG, and AOGCC from these new requirements.



**Representative Lora Reinbold**

House District 26

**Bill section 6.** Amends AS 44.62.200(d) to add back in the exemptions for the RCA, BOF, and BOG from the requirement to provide a brief description of the changes made by the proposed regulation, amended regulation, or repealed regulation. Removes the language (now appearing in bill sec. 10) that prohibits an action for failure of the brief description to comply with certain description, clarity, and readability requirements.

**Bill section 7.** Adds sec. 44.62.213(a) to authorize contact between agencies and the public when developing regulations. Adds sec. 44.62.213(b), which directs agencies to make a good faith effort to answer written or at-meeting questions before the public comment period ends. After that, allows an agency to answer the questions. Requires an answer to be written and that the question and answer be made available to the public. Allows an agency to post answers to frequently asked questions on the Alaska Online Public Notice System, to aggregate substantially similar questions and responses, and to provide a single consolidated response to similar questions.

In sec. 44.62.213(c), exempts the RCA, BOF, BOG, and AOGCC from sec. 44.62.213.

**Bill section 8.** Amends AS 44.62.215, which requires an agency to keep a record of public comment when adopting a regulation, to delete the general exemption for boards and Commissions, and to require that an agency keep a record of public comment received electronically or orally as well as in writing.

Exempts the RCA, BOF, BOG, and AOGCC.

**Bill section 9.** Amends AS 44.62.245(c) to require an agency to send certain notices to the members of the Administrative Regulation Review Committee.

**Bill section 10.** Adds a new subsection to the section that provides for judicial review of the validity of regulations. The new subsection prohibits actions to challenge the validity of regulations for certain failures related to certain new requirements of the bill.

**Bill section 11.** Amends AS 44.62.320 to add two new subsections. The first, sec. 44.62.320(c), directs a state agency to submit its proposed regulations (and fiscal information) to the Administrative Regulation Review Committee for review when the regulations are submitted to the governor under AS 44.62.040(c). The second, sec. 44.62.320(d), allows the Administrative Regulation Review Committee chair to submit comments on a regulation to the governor within 10 days after receiving the regulation from the agency under (c) of the section.

**Bill section 12.** Provides applicability provisions for the sections of the bill.

# Alaska State Legislature



## **Representative Lora Reinbold** House District 26

Section 10: Amends AS 44.62.300 – Adds a new subsection that contains a hold harmless provision for insufficient or inaccurate cost estimates, failure of a subject line in an email, failure of a brief description, or insufficient or inaccurate answers to questions provided by an agency.

Section 11: Amends AS 44.62.320 – Removed the language related to the submittal of comments from the Administrative Regulations Review Committee to the governor and replaced it with submittal of comments to the governor. Reinstated current statute that requires the lieutenant governor to submit the filed regulations to the Administrative Regulation Review Committee.



**Representative Lora Reinbold**  
House District 26

**Explanation of Changes between Version G.A and Version L**

*"An Act relating to the information that must be included with certain notices provided for the proposed adoption, amendment, or repeal of a regulation."*

Section 2: Amends AS 44.62.040(c) – Removes the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission from the requirement of submitting adopted regulations to the governor for review.

Section 3: Amends AS 44.62.190(d) – Removes the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission from the requirements of (1) submitting of a cost analysis that details the estimated annual costs to private persons, other state agencies, and municipalities; and (2) the reason for the proposed action, if the action is based on a federal law or federal or state court ruling.

Section 4: Amends 44.62.190 – Removes the hold harmless provision as it was moved to a new subsection created in section 10 and adds a new subsection (g) that requires the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission to provide a cost estimate of the initial costs and estimated annual costs of implementation. This is similar to current statute language.

Section 5: Amends AS 44.62.200(c) – Removes the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission from the requirements of posting additional documents or other material incorporated by reference to the Alaska Online Public Notice System.

Section 6: Amends AS 44.62.200(d) – Removes the Regulatory Commission of Alaska, the Board of Fisheries, and the Board of Game from the requirements and removes the hold harmless provision as it was moved to a new subsection created in section 10.

Section 7: Amends AS 44.62.213. Agency Contact with the Public – Removes the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission from the requirements and allows for the agencies to post answers to questions they have received through a frequently asked questions page on the Alaska Online Public Notice System.

Section 8: Amends AS 44.62.215. Record of Public Comment – Removes the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission from the requirements.

# 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

April 14, 2014

**SUBJECT:** Review of AOGCC comments on HB 140 relating to regulations  
(Work Order No. 28-LS0478)

**TO:** Representative Lora Reinbold  
Attn: Crystal Koeneman

**FROM:**  Terry Bannister  
Legislative Counsel

You have asked for a review of the comments you received from the Alaska Oil and Gas Conservation Commission (AOGCC). This memo provides a quick review of the comments. This memo does not address a particular version of the bill. For additional information on your bill and AOGCC, please review my memo to you of April 10, 2014.

1. Comment 1 -- ex parte communications. As I read these comments, they appear to equate proposed regulation adoption procedures and quasi-judicial hearing procedures. Ex parte communications with a commissioner at a quasi-judicial hearing where the commissioners are acting in a judicial capacity and rendering a decision in a particular matter, is generally not allowed.

However, it does not appear from my research that communications by or with the agency need to be prohibited for the regulation adoption process. In addition, HB 140 does not require that the commissioners themselves answer the questions.

2. Comment 2 -- deliberative process privilege. These comments address the quasi-judicial activities of AOGCC, where the AOGCC is adjudicating disputes. Even if the decisions on regulations are made at hearings under the open meeting requirements (AS 44.62.310), these regulation adoption hearings are not the same thing as administrative adjudications.

3. Comment 3 -- governor overriding regulations. Under the bill, the reasons for which the governor may return the regulations are limited. AS 44.62.040(c) would allow the governor to return the Board's proposed regulations to the Board for two particular reasons.<sup>1</sup> The first is for a failure of the regulations to be consistent with the faithful

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<sup>1</sup> The two reasons are (1) if they are "inconsistent with the faithful execution of the laws," and (2) to enable the Board to "respond to specific issues raised by the Administrative Regulation Review Committee."

Representative Lora Reinbold

April 14, 2014

Page 2

execution of the laws. As I read this requirement, and it could be read other ways, it means that the regulations must comply with the statutory authorities for the regulations, which is a basic requirement for a regulation to be valid. The second requirement is to enable the AOGCC to respond to the specific issues raised by the Administrative Regulation Review Committee (ARRC). The governor does not develop these specific issues.

The bill does not state that the governor may cancel or invalidate the regulations. It states that the governor may return them to the agency for review. The provision does not state what procedure the Board must follow after the return before resubmitting the proposed regulations to the lieutenant governor, and whether or not the governor could continue this return and review indefinitely. The return is within the governor's discretion. To the extent the procedures are not clear and the governor has the discretion whether or not to return the regulations, the governor exercises some undefined control over the regulations.

4. Comment 4 -- up-front estimates. Even though the AOGCC may have provisions in place that AOGCC says work better, this does not prevent the legislature from making the cost estimates a requirement and placing them in statute. This is basically a policy argument.

5. Comment 5 -- increase to burden of hearing process. These are policy arguments.

6. Comment 6 -- AOGCC cost increases. These are policy arguments.

7. Comment 7 -- concession about federal law. These comments appear to apply to the requirement that the AOGCC provide the reason for the regulation, including a federal law or court decision, in amended AS 44.62.190(d). The bill does not state that this information concedes federal jurisdiction, and these comments are an overbroad conclusion about the possible effect a person could draw from providing the information. If, in fact, a federal law or decision is the reason behind the regulation, silence on the subject does not change the content of the regulation.

If I may be of further assistance, please advise.

TLB:ray

14-180.ray

# 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

April 10, 2014

**SUBJECT:** Review of letter concerning CSHB 140(FIN) am relating to regulations (Work Order No. 28-LS0478\G.A)

**TO:** Representative Lora Reinbold  
Attn: Crystal Koeneman

**FROM:**  Terry Bannister  
Legislative Counsel

You have asked for a review of a letter from the Alaska Oil and Gas Conservation Commission (AOGCC) dated March 27, 2014, relating to CSHB 140(FIN) am. This memo provides a few comments that I am able to make within the limited time available.

A portion of the letter addresses sec. 44.62.213(b), which requires that an agency answer questions from the public under certain conditions. The letter states that the AOGCC staff already answers the questions. Since the letter states that the AOGCC already does this, it is not clear why the AOGCC does not want to be covered by the provision in the bill. The letter does not state why.

The nature of AOGCC as an independent agency does not require that it be excluded from provisions of the bill. The AOGCC is established as an "independent" agency by AS 31.05.005, and is not placed in a department, so it doesn't report directly to the governor. However, it is not entirely independent since the three commissioners are appointed by the governor,<sup>1</sup> the governor designates the chair of the commission,<sup>2</sup> and the Department of Law provides legal counsel to the AOGCC.<sup>3</sup> AOGCC's independence is determined by statute, so statutes can change this.

The quasi-judicial nature of AOGCC is more extensive than the quasi-judicial activities of many other agencies. Many other agencies exercise some quasi-judicial powers, e.g., holding hearings on appeals from professional license denials. The quasi-judicial nature of AOGCC, by itself, does not require exclusion from the bill. However, the AOGCC

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<sup>1</sup> AS 31.05.005.

<sup>2</sup> AS 31.05.005.

<sup>3</sup> AS 31.05.021.

Representative Lora Reinbold

April 10, 2014

Page 2

adjudicates disputes between the state and other parties. So it could be argued that regulation review by the governor (under sec. 2 of the bill (AS 44.62.040(c)) might raise a conflict of interest for hearings in which a state agency<sup>4</sup> participates. The AOGCC adopts its own hearing regulations under AS 31.05.060(b) for certain situations. To the extent that a department under the supervision of the governor takes part in a hearing in those situations, it could be argued that there is a conflict of interest if the governor is able to review and return hearing regulations that would be used in a situation involving, e.g., the Department of Natural Resources.

The letter indicates that publishing cost estimates with the notice of hearing may complicate AOGCC hearings. This may be the case. However, this alleged potential problem appears to be more of a policy call than a legal matter.

With regard to the letter's request that other quasi-judicial independent agencies be exempted, "quasi-judicial" does not appear to be defined generally for the statutes. As indicated earlier, since many agencies have some features of quasi-judicial activity, it is not clear exactly which agencies the letter has in mind.

If I may be of further assistance, please advise.

TLB:lnd  
14-180.lnd

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<sup>4</sup> Under AS 31.05.026, the Department of Natural Resources has authority to raise issues before the AOGCC.



Sean Parnell  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

August 26, 2013

### ADMINISTRATIVE ORDER NO. 266

I, Sean Parnell, Governor of the State of Alaska, under the authority of Article III, Sections 1 and 24 of the Alaska Constitution, and to the maximum extent allowed by law, establish the following Regulatory Efficiency Guidelines (REGS) for State agencies in the executive branch to use in the review, oversight, adoption, amendment, and repeal of regulations and in the recommendation of improvements to the Alaska Statutes.

#### OBJECTIVES

This Order is intended to accomplish the following objectives:

- Minimize the cost, time, and burden to the affected public of complying with State regulations and encouraging State agencies to work with all stakeholders, to meet the objectives of Alaska Statutes;
- Reduce administrative cost and burden;
- Ensure that State regulations are consistent with Alaska Statutes and limited to carrying out the statutory purpose;
- Further the State's interest in preserving our State's rights in adopting regulations to implement federal programs and to receive federal funds.

#### BACKGROUND AND PURPOSE

For many years, State agencies responsible for implementing State statutes and federal mandates have not consistently

- Reviewed, overseen, amended, or repealed existing regulations to streamline program operations and create efficiencies;
- Considered and communicated with the affected public regarding the cost and impacts of proposed new regulations; nor
- Modified proposed regulations in response to concerns raised by the affected public.

The public is best served when State agencies operate under direction such as REGS to ensure that regulations are up-to-date, clearly and plainly written, carry out the statutory purpose, take into account the costs imposed on individual Alaskans and those doing business in the state, particularly small businesses, and allow State agencies to facilitate implementation of a law in the most reasonable and cost-effective manner possible.

## AGENCY DIRECTIVES

1. Existing Regulations - Not later than October 15, 2013, and by September 15 in every succeeding year, each commissioner or agency head shall
  - Review, in consultation with the Department of Law, all existing regulations to ensure consistency with Alaska Statutes and the objectives of this Order and that costs of compliance to the public are minimized;
  - Identify regulations that should be repealed or amended to decrease the burden of fiscal and nonfiscal impacts on the affected public;
  - Discuss with members of the affected public, regulations that create an unnecessary burden; and
  - Advise the Governor and the Office of Management and Budget of the results of the review and recommendations for regulatory actions; any necessary State or federal statutory changes to implement the recommendations; and estimated costs and potential savings if the recommendations are implemented.
  
2. Proposed Regulations - Before proposed regulations are publicly noticed after the effective date of this Order, a State agency proposing the regulations shall
  - Assess the need for the regulations to avoid the adoption of unnecessary regulations;
  - Verify legal authority for the proposed regulations with the Department of Law, and verify that the regulatory language proposed is narrowly tailored to accomplish the statutory purpose;
  - Suggest to the Office of the Governor for consideration any changes to federal and State statutes to simplify and reduce costs of the newly proposed regulations;
  - Share ideas with members of the affected public to develop the proposed regulations through publicly noticed workshops or hearings, calls for written suggestions to improve the process, meetings with advisory boards to the State agency, or other similar means consistent with legal requirements;
  - Consider the use of a negotiated regulation-making process under AS 44.62.710 - 44.62.800;
  - Verify costs of implementation to the State agency and the affected public to ensure that the least costly alternatives are considered or enabled consistent with legal requirements; and
  - Coordinate with other State agencies that have overlapping responsibilities to avoid duplication while facilitating compliance with law.

Each commissioner or agency head shall review the comments from the public on

publicly-noticed regulations and evaluate the fiscal and nonfiscal impacts on the affected public. If the commissioner or agency head has concerns regarding the economic impact on the affected public, the commissioner or agency head shall consider regulatory alternatives to achieve the agency's statutory purpose while minimizing the impact, costs, and burden on the affected public. Consistent with legal requirements, regulations must be amended if it is possible to achieve the statutory purpose while reducing the impact, costs, and burden on the affected public

### GENERAL PROVISIONS

Consistent with law and available appropriations, each affected State agency shall use existing personnel and monetary resources to comply with this Order.

### DEFINITION

In this Order, "affected public" includes

1. Small and other businesses subject to regulation or conducting regulated activity;
2. State government;
3. Local governments;
4. Nonprofit organizations; and
5. Individuals.

This Order takes effect immediately.

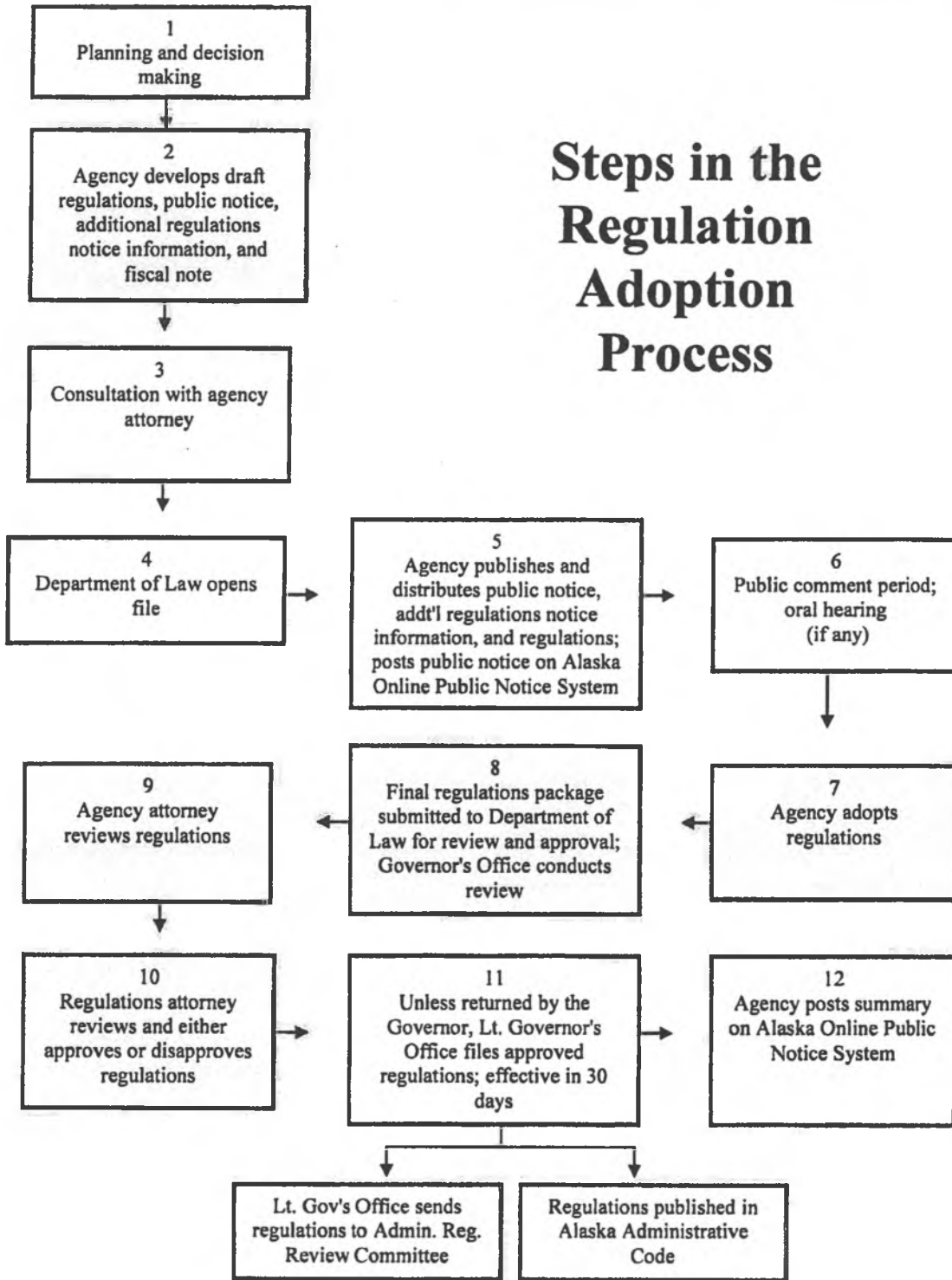
DATED at Juneau, Alaska, this 26th day of August, 2013.

/s/Sean Parnell  
Governor

**WWW.GOV.STATE.AK.US**

[Administrative Orders 201-present](#) | [Contact the Governor](#) | [Webmaster](#) | [State of Alaska](#)

## Steps in the Regulation Adoption Process





THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Alaska Oil and Gas  
Conservation Commission

333 West Seventh Avenue  
Anchorage, Alaska 99501-3572  
Main: 907.279.1433  
Fax: 907.276.7542

March 27, 2014

Representative Lora Reinbold  
The Alaska State Legislature  
State Capitol Room 432  
Juneau, AK 99801

Dear Representative Reinbold:

If at all possible please exempt quasi-judicial, independent agencies such as the AOGCC from CSHB140. As we testified to the House Finance Committee on 3/13/14 the AOGCC has formal and working procedures in place that adequately involve the public and address costs to them when creating and modifying regulations.

Regarding the section which requires us to answer questions from the public about our proposed regulations, while the Commissioners cannot speak off the record (ex-parte) after a proposed regulation is noticed, we have very qualified technical staff that do that on a regular basis. They hold meetings with the affected parties and finally, the AOGCC holds hearings (often lengthy) where the public is encouraged to comment.

Not addressed at the Finance Committee meeting, under this bill the Governor would have authority to "return" proposed regulations to us if the governor deems them inconsistent with the faithful execution of the law. Since the AOGCC is independent, it does not, by statute, report to the Governor (AS31.05.005). If we did there would be an inherent conflict of interest since we adjudicate disputes between the state and other parties regarding oil and gas issues. The AOGCC has been involved in costly lawsuits in the recent past regarding this issue.

As we testified at the hearing, publishing a cost estimate with the notice of hearing will likely prolong and derail the hearing and turn it into a debate about whose cost estimate is best, causing distraction from the main issues. It is also an area that will require us to either have additional personnel or hire contractors because the costs of our regulations to other agencies, private persons, etc. are not a matter within our expertise. Nonetheless, the AOGCC always considers those costs before enacting regulations after listening to the testimony of affected persons.

So, I think we demonstrated at the Committee hearing that we already cover the valid concerns addressed by the bill and for the above additional reason request that the AOGCC and other quasi-judicial, independent agencies be exempted.

Please feel free to contact us if you have any concerns or questions.

Sincerely,

for Sarah Carlin  
Cathy P. Foerster  
Chair, Commissioner

Dan Seamont  
Dan Seamont  
Commissioner

cc: Christa VonBergen, Chief of Staff  
Crystal Koeneman, Legislative Aide

## Crystal Koeneman

---

**From:** Crystal Koeneman  
**Sent:** Tuesday, April 15, 2014 12:00 PM  
**To:** Crystal Koeneman  
**Subject:** RE: HB140

----- Original message -----

**From:** "Foerster, Catherine P (DOA)"  
**Date:** 04/04/2014 9:12 AM (GMT-09:00)  
**To:** "Rep. Lora Reinbold"  
**Cc:** "Seamount, Dan T (DOA)"  
**Subject:** FW: HB140

Representative Reinbold,

Below is an e-mail that we sent to Senator Giessel yesterday at the request of her staff.

It outlines most of AOGCC's concerns with HB140, as currently written.

You and I are scheduled to meet at 1:30pm on Monday to discuss these concerns. I hope the information below is helpful in our discussion.

Cathy

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**From:** Foerster, Catherine P (DOA)  
**Sent:** Thursday, April 03, 2014 12:40 PM  
**To:** Giessel, Cathy (LAA)  
**Cc:** Seamount, Dan T (DOA)  
**Subject:** HB140

Senator Giessel,

Thank you for taking time to consider AOGCC's concerns relative to HB140. Please feel free to share our concerns with your colleagues as you deem appropriate.

HB140 has, I think, serious consequences to AOGCC, including:

1. The bill would force the commissioners to participate in ex parte communications.  
Anyone who wanted to could call up and require a commissioner to explain our reasons for a proposed regulation or regulatory change. We don't currently have conversations like this with individuals because, as a quasi-judicial body, we make all of our decisions as part of a public process. The technical reasons behind a proposed regulation or regulatory change are appropriately discussed on the public record. These one-on-one chats could make us vulnerable to court challenges about ex parte communications. We have been involved in lengthy and costly law suits over this sort of thing in the past.
2. The bill would infringe on the long-held protection of the deliberative process privilege underlying an agency's adjudicatory process.  
Adjudicatory decision makers, including judges and those adjudicating administrative disputes, have long been protected from inquiry into the mental processes which underlie their decisions. As a result, if an agency's decision is appealed, the courts look only to whether the agency has provided notice and an opportunity to be heard, whether there is statutory authority for the agency's decision, and whether there is evidence in the record to support the decision. The reason is simple and straightforward: the pertinent inquiry is whether an appropriate decision has been rendered. This approach works very well and tends to limit the number of appeals as well as the grounds for overturning the agency's decisions. This bill changes that in significant

ways. It requires the decision maker to respond to questions regarding those processes. The bill also requires AOGCC to keep a record of which evidence it relies upon and which evidence it rejects, all of which increases both the likelihood of appeals – an expensive and time-consuming process – and the bases for those appeals. Further, it unnecessarily creates the potential for bad will in the public. Imagine if, as a legislator, you had to keep a public record of which constituents' comments and requests you considered and which you ignored.

3. The bill would allow the Governor to override our regulations.

This is problematic for two reasons. First, we have a weird little niche of highly technical regulations and the meaning of our regulations is generally not obvious to the lay person. Giving a lay person carte blanche to erase highly technical regulations that usually are the result of months (if not years) of consideration, staff time, and hearing time could put us into gridlock. Second, giving the Governor veto power over the decisions of an agency that is, by design and statute, independent would violate that independence.

4. The bill would require us to make an up-front estimate of the costs of proposed regulations, thus duplicating a process that is already in place and that works better.

AOGCC has formal working procedures in place to involve the public and address costs to them when creating and modifying regulations. We hold hearings (often multiple hearings for one set of regulations changes) and, in those hearings, the public is encouraged to share their concerns relative to cost impacts. We take these cost impacts into account as part of our deliberative process. Requiring an up-front cost estimate prior to the hearings would add work to the agency, add cost to the agency (and, thus, to the regulated industry), impede our progress, and provide no additional benefit to the public.

5. The bill would substantially increase the burden of the hearing process.

It would create a situation where the published cost estimate could become the subject of debate at the hearing. This would funnel time and energy away from meaningful discussions on the technical aspects of the regulations and could derail the entire process.

6. The bill would dramatically increase AOGCC costs.

AOGCC would need to hire an additional experienced Petroleum Engineer (which would be very difficult, since we are competing with the regulated industry, where compensation is much more competitive than in State service), a Cost Estimator, and an Office Assistant II to handle the increased work load. Further, we would require an estimated \$10,000 per year for temporary hearing space to accommodate an abnormal increase in hearing attendance above what our current hearing room adequately accommodates.

7. The bill would require AOGCC to concede that the Federal Government has jurisdictional authority of over our agency.

Stating that Federal law requires AOGCC to take regulatory action is at odds with Alaska's assertion of state's rights and the authority to act independently of the Federal Government. AOGCC's problem with this may best be characterized in light of the BLM legacy travesty wells. AOGCC has battled the Federal BLM and DOI for years regarding cleanup of these wells and drill sites, a dispute turning largely on jurisdictional issues. The AOGCC is deeply troubled and puzzled by proposed legislation that could be read to force it to concede Federal jurisdiction or authority over it.



217 Second Street, Suite 200 • Juneau, Alaska 99801

Tel (907) 586-1325 • Fax (907) 463-5480 • www.akml.org

March 25, 2013

Honorable Representative Lora Reinbold  
Alaska State Capitol  
Juneau, Alaska

RE: HB 140

Dear Representative Reinbold,

The Alaska Municipal League would like relay to you our support for HB 140.

While most regulations at the state level and more than a few at the federal level impact municipalities, it is always helpful to have some idea of how that impact will affect our bottom line; for planning and budgetary considerations.

I believe that having this information available to Legislators will also help to identify legislation that might be forthcoming in order to save individuals and/or municipalities money. While the cost of implementation to the agency may be minimal, the costs that will be required of individuals and municipalities may impose more damage than the regulation is worth.

We applaud your attempt to encourage all involved to look at broader impacts of regulation changes.

Sincerely,

Kathie Wasserman  
Executive Director

April 5, 2013

The Honorable Lora Reinbold  
Alaska House of Representatives  
Capitol Room 432  
Juneau, AK 99801

Re: House Bill 140

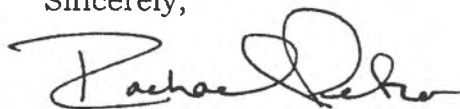
Dear Representative Reinbold,

The Alaska State Chamber of Commerce (Alaska Chamber) is an organization dedicated to improving the business climate in Alaska. The Alaska Chamber represents hundreds of statewide businesses from Ketchikan to Barrow that share a common goal: to make Alaska a viable and competitive place to do business. Today, I write in support of House Bill (HB) 140 – Notice for Regulation Adoption.

The Alaska Chamber supports legislation that updates and clarifies laws as they relate to doing business in Alaska and generally improves our business climate. HB 140 recognizes that administrative code and regulations often can add to the cost of doing business in Alaska. HB 140 requires costs to businesses and other governments be estimated during the adoption process.

Alaska has unique characteristics and challenges when it comes to being competitive in the marketplace – like our Arctic conditions, lack of economies of scale, etc. Promulgation of code and regulations by the State of Alaska should not add to our challenges with being competitive. By requiring cost estimates for businesses and government, HB 140 is an important first step to protect against the State of Alaska reducing Alaska's competitiveness for business investment.

Sincerely,



Rachael Petro  
President/CEO



ALASKA STATE  
**CHAMBER**  
OF COMMERCE

*The Voice of  
Alaska Business*

**Headquarters**

471 W 36th Ave  
Suite 201  
Anchorage  
AK 99503  
(907) 278-2722

**Regional Office**

3100 Channel Dr.  
Suite 300  
Juneau  
AK 99801  
(907) 586-2323

[www.alaskachamber.com](http://www.alaskachamber.com)

## Crystal Koeneman

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-----Original Message-----

From: Theresa Brisky [mailto:[theresa@marlowmanor.com](mailto:theresa@marlowmanor.com)]

Sent: Monday, April 14, 2014 1:19 PM

To: Christa Von Bergen

Subject: Re: HB 140

Ms. Von Bergen. Unfortunately I only have access via my phone. I am out of the office today, hence my unavailability. I agree with your attached letter. I represent Marlow Manor ALF but also the industry as a whole and more important the populations we serve whom are affected by the fall-out from regulations that have created hardship, both financially as well as from a lack of resource stand-point, as the deluge of changes creates a scenario whereby administratively it is impossible to meet the burdens. It is not a matter of not desiring to be compliant nor a quality organization, but the ability to keep up, stay informed, and implement changes is nearly impossible these days. By enacting transparency and a system to evaluate the affect of changes would hopefully assist those affected to prepare and comply in a manner that is more realistic and with a more positive outcome overall.

I don't know if this can count as my testimony, but I do want my support known.

Thank you,  
Theresa Brisky  
Executive Administrator  
Marlow Manor ALF  
President-Assisted Living Association of AK

Sent from my iPhone

April 14, 2014

Honorable Representative Laura Reinbold  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Reinbold,

On behalf of Assisted Living Home Providers Association of Alaska (ALHPAA), I would like to offer our support for the passage of House Bill 140, the "Regulation Impact Transparency Act." The HB140, which once passed will impact our daily lives in many ways and often will result with unintended consequence and huge cost to organizations and individuals. It is vital that the consequence and financial burden of these regulations be considered carefully prior to implementation.

House Bill 140 will work to ensure that agencies thoughtfully take into consideration the many outer costs that these regulations will initiate or impact the viability of operating our small assisted living homes. As well as create an awareness of these potential costs that these regulations will pose, both to private individuals and to organizations such as ours, the small assisted living home community who caters to 5 or less population. State agencies must be transparent in their enforcement of the regulations which they, the agencies were not exempted to HIPAA Confidentiality and Privacy Acts and accountability of their actions.

We feel that this "Regulation Impact Transparency Act" is an important step in creating an open and thoughtful regulation process.

Sincerely,



Mike Ocampo

Chairman

Assisted Living Home Providers Association of Alaska (ALHPAA)

4830 Leah Ct., Anchorage, AK 99508

Email: [assist\\_acf@hotmail.com](mailto:assist_acf@hotmail.com)

Phone number: 907-230-1065

Fax number: 907-337-1190



## Comments on HB140: Notice for Regulation Adoption

### Council of Alaska Producers

March 15, 2013

The Honorable Representative Lora Reinbold  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

Dear Representative Reinbold,

The Council of Alaska Producers (CAP) would like to thank you for introducing HB140, the Regulation Impact Transparency Act.

CAP is a non-profit trade association formed in 1992 and serves as a spokesperson for the large metal mines and major metal developmental projects in the state. The Council brings together mining companies with interest in Alaska to represent and inform members on legislative and regulatory issues, to support and advance the mining industry, to provide education to members, the media, and the general public on mining related issues, and to promote economic opportunity and environmentally sound mining practices.

CAP supports a regulatory framework that is rigorous, science based, transparent and predictable and we support HB140 as it provides transparency to proposed regulation changes in the State of Alaska.

It does this by ensuring that details of their provenance, including any federal action that may have resulted in their proposal, are available to the public. It also requires an accounting of the costs to private persons and municipalities that would be required to comply with any proposed regulation change.

By providing additional transparency to the process, this bill will allow all Alaskans to fully understand the impact of regulatory changes to their businesses and their daily lives.

We thank you for your support of the Alaska mining industry and we look forward to providing additional support to this bill as it moves through the legislative process.

Sincerely,

Michael Satre, Executive Director  
PO Box 33499  
Juneau, Alaska 99803  
907-957-2149

# NFIB

The Voice of Small Business

ALASKA

March 14, 2013

The Honorable Lora Reinbold  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 140

Dear Representative Reinbold:

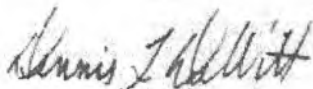
On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House Bill 140. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

Regulations promulgated by the administrative branch continue to add costs to the operation of small businesses in Alaska. All too often, those involved in writing regulations fail to realize the cost their actions have on private individuals and businesses that are not reimbursed by government. We are happy to see legislation recognizing this fact and requiring that it be recognized by administrative agencies as they consider new regulations.

The National Federation of Independent Businesses/Alaska polled its members asking if legislation or regulation that pertain to business require a cost-benefit analysis before implementation. Our members voted 71% in favor of such a requirement. While this is not specifically addressed in the legislation, HB 140 is a substantive step towards recognizing the cost of regulations to the private sector and municipalities.

If we want Alaska to be welcoming to small business, it is important the state begin to recognize the costs it mandates on those small businesses. Until we require those costs be officially recognized, it is difficult to reduce regulatory costs for small businesses.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

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Cc: NFIB/AK Leadership Council  
House Judiciary Committee



WASILLA AREA SENIORS INC.

ROOTED IN DIGNITY | SERVING WITH RESPECT

March 20, 2013

The Honorable Representative Lora Reinbold  
House of Representatives  
Alaska State Capitol  
Juneau, AK 99801-1182

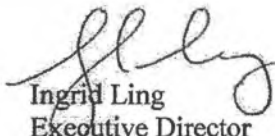
Dear Representative Reinbold,

On behalf of Wasilla Area Seniors, Inc., I would like to offer support for House Bill 140, the "Regulation Transparency Act." Regulations which are passed impact our daily lives in many ways and often have unintended consequences and huge costs to organizations and individuals. It is vital that the consequences and financial burden of these regulations be considered carefully prior to implementation.

House Bill 140 will work to ensure that agencies thoughtfully take into consideration the many outer costs that these regulations will initiate. As well as create an awareness of these potential costs that these regulations will pose, both to private individuals and to organizations such as ours.

We feel that this "Regulation Impact Transparency Act" is an important step in creating an open and thoughtful regulation process.

Sincerely,



Ingrid Ling  
Executive Director  
Wasilla Area Seniors, Inc.

PHONE 907.376.3104 | FAX 907.373.5170

1301 CENTURY CIRCLE | WASILLA, ALASKA 99654

WASILLASENIORS.COM



STATE OF ALASKA  
DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

*Sean Parnell, Governor*  
*Susan K. Bell, Commissioner*  
*T.W. Patch, Chairman*

**Regulatory Commission of Alaska**

Date: April 10, 2014

The Honorable Lora Reinbold  
House of Representatives  
State Capitol, Room 432  
Juneau, AK 99801  
Representative.Lora.Reinbold@akleg.gov

Re: Follow up to our conversation regarding House Bill 140 on April 9, 2014

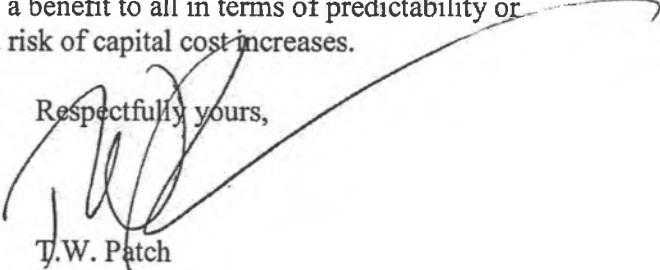
Dear Representative Reinbold:

Thank you for your time in conference yesterday and the opportunity to explain why I believe the far better course of legislative action is to retain both the Regulatory Commission of Alaska's by name and general exemptions as they exist in current law but may be removed by the current version of House Bill 140.

I have attached to this letter the points advanced yesterday.

The retention of the exemptions in current law for those independent, quasi-judicial, boards and commission is warranted. Such exemptions will result in independence for the boards and commissions that qualify, lower costs to all Alaskans, continuity of transparency of process, lower risk of needless litigation, and there will be a benefit to all in terms of predictability or certainty with decision and the attendant lessened risk of capital cost increases.

Respectfully yours,

  
T.W. Patch  
Chairman

cc: Randal Ruaro, Office of the Governor  
Stuart W. Goering, Department of Law

## Why Should the Boards and Commissions Exemption Be Retained in HB 140?

In response to a request from Representative Reinbold, the Regulatory Commission of Alaska (RCA) offers the following reasoning for retaining the existing boards and commissions exemptions in the Administrative Procedures Act.

- The RCA, like other boards and commissions, already has a high degree of transparency built into its regulations adoption process. The Open Meetings Act requires that commissions receive staff advice and consider adoption of regulations in public meetings. Discussion is usually robust and informative. At the RCA, transcripts of public meetings, along with all records and decisions of the RCA, are available to the public online and free of charge.
- The RCA must, under the Public Utilities Regulatory Act and the Pipeline Act, issue written orders reflecting the factual basis and reasoning for its decisions, even those voted on in public meetings. Those orders are subject to a petition for reconsideration by the agency (no filing fee), or judicial review, if any Alaskan, not just the governor or the legislature, believes that the regulations exceed statutory authority or are an abuse of discretion.
- In practice, the RCA goes well beyond these requirements, engaging industry and the general public through multiple rounds of public comment, workshops and public hearings. Although the agency does not formally use negotiated rulemaking, the process employed is similar and the RCA strives to adopt regulations for which there is consensus.
- Enabled by independent, quasi-judicial agency status, the RCA best performs the complex and delicate task of economically regulating monopoly providers of essential services, and is widely seen as a neutral and impartial decision-maker that cannot be swayed by political influence. Independence is particularly important because the state appears as a party before the agency, and any additional political influence on the decision-making process would be seen as an unfair advantage to the state. The current draft of HB 140 would provide additional bases for appeal, and an increase uncertainty and litigation costs for all parties. Those costs would ultimately be borne by consumers.
- Although independent, the RCA is subject to political oversight through the appointment and confirmation of commissioners. Commissioners can be removed by the governor for cause, including incompetence, neglect of duty, inability to serve or misconduct in office. Commissioners are subject to executive branch reporting requirements.
- The RCA is subject to legislative oversight through the sunset process, and is regularly subjected to legislative audit. The RCA is currently in the sunset review process and Legislative Budget and Audit recommended an eight-year extension, the maximum allowed by law. The House has already passed the RCA extension bill, including the eight-year extension.
- The RCA is subject to “course correction” by the amendment of its enabling statutes. The RCA is very responsive to legislative direction of this kind. For example, previously existing law made approval of some gas sales agreements (GSA) difficult. The legislature passed the Cook Inlet Recovery Act, which modified the factors to be considered by the commission when reviewing GSA. Since that enactment, submissions of GSA have not encountered difficulty.