

ALASKA LEGISLATURE

1681

HOUSE and SENATE FINANCE COMMITTEE FILES, 1997-1998

HB

261

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/22/98

FURTHER: 4/30/98

DATE TURNED
IN TO OFFICE: May 98

Finance Committee considered

CS FOR HOUSE BILL NO. 261(FIN) am

"An Act relating to fines and to a surcharge imposed for violations of state or municipal law and to the Alaska police training fund."

and recommends:

- be replaced with S CS CS HB 261 (FIN)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Roll of Call</i>	✓	<i>Cal Adams</i>	X		
<i>John Jorgensen</i>	✓				
Co-Chair: _____		Co-Chair: <i>Seance</i>	✓		
Co-Chair: <i>B. [Signature]</i>	✓	Co-Chair: _____			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
AK Police Standards	3/11/98		573.5
AK Court System	3/10/98		5.0
DPS AK State Troopers	2/11/98	✓	
Admin, Public Defend.	2/21/98	✓	

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

SENATE FINANCE COMMITTEE REPORT

DATE: 4/22/98

FURTHER: 4/30 committee revisited + changes actions
 DATE TURNED IN TO OFFICE: _____

Finance Committee considered CS FOR HOUSE BILL NO. 261(FIN) am

"An Act relating to fines and to a surcharge imposed for violations of state or municipal law and to the Alaska police training fund."

and recommends:

- be replaced with 5 CS CS HB 261 (FIN)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Reel, Kelly</i>	✓	<i>Paul Parrell</i>	X		
<i>John...</i>	✓	<i>Al Edus</i>	X		
<i>John Darley</i>	✓				
Co-Chair: <i>Peace</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair: <i>Best...</i>			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

REPORTED OUT OF
SFC 4/30/98

No: 5

STATE OF ALASKA 1998 LEGISLATIVE SESSION

Bill Version: CSHB 261 (FIN)
BILL NO: (H) Publish Date: 3/13/98

Revision Date: 3-11-98 Dept. Affected: Alaska Police Standards Council
Title: An Act... Surcharge imposed for violations... and to the Alaska Police Training Fund. BRU: Alaska Police Standards Council
Sponsor: Rep. Davis Component: _____
Requestor: (H) FN COMPONENT SERIAL NO. _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	573.5	1147.0	1147.0	1147.0	1147.0	1147.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	573.5	1147.0	1147.0	1147.0	1147.0	1147.0
CAPITAL EXPENDITURES	-0-	-0-	-0-	-0-	-0-	-0-
CHANGE IN REVENUES () Revenue Code	573.5	1147.0	1147.0	1147.0	1147.0	1147.0

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts	573.5	1147.0	1147.0	1147.0	1147.0	1147.0
1006 GE/MHTIA						
Other						
TOTAL						

Estimate of current year (FY 98) impact: \$ 396.1

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Funding from the program receipts provided by HB 261 will allow the Alaska Police Standards Council to fully support the basic training needs for the statewide law enforcement and corrections community. It will also allow the Council to support in-service and specialized training for the 2000 officers representing 50 police agencies, 12 correctional institutions and the Village Public Safety program.

Considering administrative start-up of HB 261 during FY 99, the estimated projection for collections is 50% (573.5) of FY 00 projections. New revenue from HB 261 for FY 00 is projected at 1147.0.

Prepared By: Laddie Shaw Phone: 465-4378
Division: Alaska Police Standards Council Date: 3-11-98

Approved by Commissioner: Ronald L. Otto Date: 3-11-98
Agency: Ronald L. Otto, Dept. of Public Safety

COMMITTEE COPY

Page 1 of 2

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

FISCAL NOTE
HB261
ATTACHMENT A

2,250 Felony convictions in 1997 at \$85.00 = \$191,250.00 (191.3)

3,972 DWI related convictions in 1997 at \$75.00 = \$297,900.00 (297.9)

16,425 Misdemeanor convictions in 1997 at \$45.00 = \$739,170.00 (739.2)

\$245,700 infractions (\$10.00) collected in FY97 at \$15.00 = \$368,550 (368.6)

Total estimated revenue generated as a result of surcharges = \$1,597.00

Felony, misdemeanor and DWI related convictions for 1997 obtained from
DPS Information Systems. Infraction information obtained from APSC for
FY97.

REVENUE ESTIMATES (FY00)

With HB261 (New Program Receipts) Total	1,597.0
Without HB261 (Existing Program Receipts) Estimate	<u><450.0></u>
New Program Receipt Revenue Generated By HB261	1,147.0
 FY 99 1st Year Start Up Estimate	 573.5

EXPENDITURE ESTIMATE

FY99 - Existing Surcharge Receipt Estimate	450.0
 Total Surcharge Receipts Available HB 261 (FY00)	 1147.0

REPORTED OUT OF
SFC 4/30/98 No: 4
Bill Version: CSHB 261 (FIN)
(H) Publish Date: 3/13/98

FISCAL NOTE

STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date: 03/10/98 Dept. Affected: Alaska Court System
 Title: Surcharge for violations of state and BRU: Trial Courts
municipal violations Component: _____
 Sponsor: Rep. Davis
 Requestor: _____ COMPONENT SERIAL NO. 768

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES	5.0					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & AIMS						
MISCELLANEOUS						
TOTAL OPERATING	5.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

Fund Sources (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	5.0	0.0	0.0	0.0	0.0	0.0
1008 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	5.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ None

Positions

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See attached analysis

Prepared by: C. S. Christensen III, General Counsel
 Agency: Alaska Court System

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8228
 Date: 03/10/98
 Date: 03/10/98

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Alaska Court System
Fiscal Analysis
CSHB 261 (FIN)

This legislation will impose a surcharge on felonies, misdemeanors and violations which result in a fine. Court system forms will have to be revised to accommodate information on the surcharge.

Supplies

Producing and distributing new forms

One-time cost

\$ 5,000

FISCAL NOTE

REPORTED OUT OF
SFC 4/20/98 No: 1
Bill Version: CSHB 261 (JUD)
(H) Publish Date: 3/4/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date: _____
Title: "An Act relating to a surcharge imposed for violations of state or municipal law..."
Sponsor: Representative Davis
Requestor: (H) JUD

Department Affected: Administration
BRU: Legal and Advocacy Services
Component: Public Defender Agency
COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

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

FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill adds a "surcharge" on fines and penalties for anyone convicted of a crime: \$85 for a felony, \$75 for a driving/alcohol misdemeanor, \$45 for other misdemeanors, and \$15 for a violation.

The funds are to be used for a police training fund. This bill will not cost the Agency money directly, but will impact indigent clients who cannot afford to pay this on top of restitution, fines, and Rule 39 costs already assessed against them. Additionally, it would be more fair to distribute funds generated by the criminal justice system to all of the players. Constantly allocating limited resources to only select components throws the ability of participants to cope out of balance.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency

Phone: (907) 264-4414
Date: _____

Approved by Commissioner: Mark Boyer
Agency: Department of Administration

Date: 2/27/98

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COMMITTEE COPY

FISCAL NOTE SFC

REPORTED OUT OF

4/30/98

No: 3

Version: CSHB 261 (FIN)

BILL NO: (H) Publish Date: 3/13/98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date: 02/11/98 Dept. Affected: Public Safety
 Title: An Act ...surcharge imposed for violations... and to the Alaska police training fund. BRU: Alaska State Troopers
 Sponsor: Rep. Davis Component: _____
 Requestor: H. Judiciary COMPONENT SERIAL NO. 0799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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CHANGE IN REVENUES (+)						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year (FY 98) impact: \$ _____

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

Changes in revenue are identified on Alaska Police Standards Council's fiscal note.

Prepared By: F/Sgt. Don Bowman Phone: 269-5084
 Division: Alaska State Troopers Date: 02/11/98
 Approved by Commissioner: Ronald L. Otte *Dee Smith* Date: 2/11/98
 Agency: Department of Public Safety

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

Amendment Number: 2
Bill Number: SCS CS HB 261 (FIN)
Sponsor: Donley Date: 4/30/98
Logged In By: Galtani

0-1.S0920AH.1
Luckhaupt
4/29/98

A M E N D M E N T

OFFERED IN THE SENATE
TO: SCS CS HB 261(FIN)

BY SENATOR DONLEY
moved by Sen. Phillips
w/o objection, adopted

- 1 Page 3, line 18:
- 2 Delete "appropriate equal amounts"
- 3 Insert "make appropriations [APPROPRIATE EQUAL AMOUNTS]"

ORIGINAL

SENATE FINANCE
COMMITTEE #3
Amendment Number: #3
Bill Number: HB 261
Sponsor: _____ Date: 4/30/98
Logged In By: Mindy

AMENDMENT

moved by Sen. Phillips
w/o objection, adopted

OFFERED IN THE SENATE

TO: SCS HB 261(FIN), Draft Version ""

Page 4, Line 8:

DELETE: "shall"

INSERT: "may"

Page 4, Line 10, following "to the state."

INSERT: "The reimbursement may not exceed ten percent of
the surcharge collected and transmitted to the state."

A F A X

Alaska State Legislature

Date: 30 April 98

To: Judy Ripley - Legal Services

Fax #: 2029 Phone #: 2450

From: Mindy Rowland - Senate Finance

Phone #: 4935

Re: 0-LS092044
SCSCS HB 261(FIN) w/ 2 amendments: \ H.1, 4
attached. Please deliver new CS final this
afternoon. Any questions, please call

Mindy

Following this page, please find 1 page(s). If this does not reach you in full, please inform us ASAP.



THANK YOU.

SENATE FINANCE
COMMITTEE

Amendment Number: #1

Bill Number: HB 261

Sponsor: Donley Date: 4/28/98

Logged In By: Mundy

0-LS0920\FA.2

Luckhaupt

4/28/98

A M E N D M E N T

OFFERED IN THE SENATE
TO: CSIB 261(FIN) am

moved BY SENATOR DONLEY
w/o objection, ADOPTED

- 1 Page 2, line 21:
- 2 Delete "\$85"
- 3 Insert "\$100"

- 4 Page 2, line 30:
- 5 Delete "\$45"
- 6 Insert "\$50"

- 7 Page 3, line 5:
- 8 Delete "\$15"
- 9 Insert "\$10"

- 10 Page 3, line 18:
- 11 Delete "the (1)"
- 12 Insert "[THE] (1) the"

- 13 Page 3, line 20:
- 14 Delete "and"
- 15 Insert "[AND]"
- 16 Following "(2)":
- 17 Insert "the"

- 18 Page 3, line 21, following "AS 18.65.230":
- 19 Insert ", and (3) municipalities that conduct their own police training programs"

0-LS0920\FA.2

1 Page 4, line 6, following "AS 37.05.142.":

2 Insert "Subject to appropriation, the legislature shall reimburse a municipality that
3 collects a surcharge required to be imposed under AS 12.55.039 for the cost to the
4 municipality in collecting the surcharge and transmitting the surcharge to the state."



ALASKA STATE LEGISLATURE

PLEASE ENTER INTO THE RECORD MY TESTIMONY TO THE Senate Finance
COMMITTEE NAME

COMMITTEE ON HB 261 Training Surcharge DATED 4/28/98
BILL/SUBJECT

Apparently The present system for collecting "surcharges" doesn't work since the Department of Law acknowledged collecting only about 50% of surcharges levied.

The requested increase in value of surcharges and Expansion ^{of surcharges} will not fix the problem of collections.

Why place additional burden on those who do pay?

SIGNED Jerry Jernigan
TESTIFIER

REPRESENTING (OPTIONAL)

Po Box 785 Tok AK 99780

ADDRESS/PHONE NUMBER

907-883-5074

HB

264

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: January 20, 1998

FURTHER REFERRALS:

Date of Committee Action: 3/3/98

The FINANCE Committee considered:

HB 264

HOUSE BILL NO. 264

NEGOTIATED REGULATION MAKING

“An Act providing for a negotiated regulation making process; and providing for an effective date.”

recommends it be replaced with the following committee substitute CSHB 264 (Fin) the same title a new title

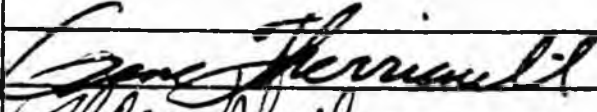

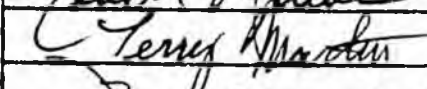
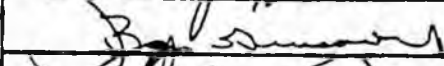
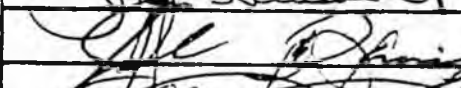


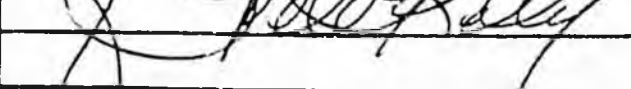
additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

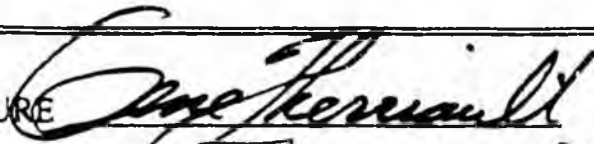
ATTACHES NEW FISCAL NOTE(s): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) Rev. Gov fiscal note(s) _____

zero fiscal note(s) _____ zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
	Therriault			X	
	Mulder	X			
	Martin	✓			
	Grussendorf	X			
	DAVIES	X			
	DAVIS			X	
	Foster	X		X ^{R2}	
	Kelly			✓	

CHAIR'S SIGNATURE


 Therriault

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB HB 264(STA)

Revision Date (Note if correction) 3/4/98 Dept. Affected All departments
 Title An Act providing for a negotiated rulemaking process. BRU _____
 Sponsor Rep. James Component _____
 Requester House Finance Committee Component Serial No. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

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

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY98) cost: *****

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would authorize state agencies to use a negotiated rulemaking process. Use of this process would not be mandatory, and would depend on a determination by agencies that such a process would be in the public interest, based on several factors listed in the bill.

The asterisks on this fiscal note indicate that the fiscal impact of the bill is indeterminate. While the negotiated rulemaking process would be optional, to the extent the process is used by state agencies, there may be additional costs involved in using the process.

Prepared by Jack Kreinheder *Jack Kreinheder* Phone 465-4676
 Division Office of Management and Budget Date 3/4/98
 Approved by Commissioner Jim Ayers, Chief of Staff *D. Samson* Date _____
 Agency Office of the Governor

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

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Revision Date: _____ Dept. Affected: Revenue
 Title: Negotiated Regulation Making BRU: Revenue Operations
 Component: Income and Expense Audit
 Sponsor: Representative James
 Requestor: IHI STA COMPONENT SERIAL NO. 113

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost \$ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

**** (See Attached Analysis)

Prepared by: Robert Bartholomew
 Division: Income and Expense Audit
 Approved by Commissioner: Wilson L. Condon
 Agency: Revenue

Phone: 465-4773
 Date: January 13, 1998
 Date: January 13, 1998

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
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HB 264 would establish a set of procedures that an administrative agency may use as a part of the regulation adoption process. These procedures would establish a committee to resolve controversial issues before the formal regulation adoption process under AS 44.62 begins. The committee would review and negotiate the issues, and make a recommendation to the agency. The agency would then presumably propose that regulation under the existing requirements of AS 44.62.

The Department of Revenue has successfully used a process similar to the negotiated regulation process. We believe that most of what the bill would provide is currently permissible under existing statute. There is a great deal of merit to an open exchange of ideas before an agency commits itself in writing to what it believes is the best solution to an issue. But because of several important differences between our procedures and the ones authorized by HB 264, the Department of Revenue would not use these procedures, and therefore the fiscal impact of the bill would be minimal.

We have used a "working group" approach in several regulations projects. Some of the differences between our procedures and the ones in HB 264 follow. First, we do not use the term "negotiated." To the extent that the concept implies a compromise between positions, it is inappropriate for our programs. Our aim in tax regulations is simplicity, clarity, equity and faithfulness to statutory language; we don't adopt regulations to "raise revenue." But the duty to administer the tax laws belongs with the department. By the same token, both CSED and PFD affect far too many people for it to be appropriate to "negotiate" between the agency and a small group.

Second, we don't identify specific members of a committee, and would not pay their travel to meetings. The meetings are open to the public. It would be too cumbersome to deal with a set membership. Finally, our system is far less formalized than that envisioned by HB 264.

Alaska State Legislature

REPRESENTATIVE
PETER KELLY

Mailing Address:
119 N. Cushman, Suite 203
Fairbanks, Alaska 99701
(907) 456-8161



White in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-2327

House District 31

House Of Representatives

February 23, 1998

Subcommittee Report

To: Representative Gene Therriault, Co-Chair
House Finance Committee

From: Representative Pete Kelly, Subcommittee Chair

Re: House Bill 264

The following changes are incorporated in the Committee Substitute before HFIN:

Page 2, line 10: Deleted "shall", inserted "is advised to"

Page 2, following line 30:

Inserted a new subparagraph: "(b) Upon determining that a negotiated regulation making committee will be formed, an agency shall notify the public so that persons significantly affected by the proposed regulation can apply to be appointed to the committee."

Page 3, line 17 following "regulation.":

Insert "The agency should strive to achieve balanced committee representation as provided in AS 44.62.720(3)."

Page 5, line 17, following "participation." Delete all material authorizing an agency to pay individual members to attend the committee process.

Note: This does not prohibit one private party from paying for another private party's participation. It is possible that a corporation seeking to use this process may wish to sponsor a broad spectrum of the public to participate in the process. However, it protects the agency from allegations of impropriety, should the agency accept funds from a corporation, then be in the position of choosing between interested parties to be funded to participate in the committee.

Changes to HB 264 in HFIN Subcommittee
Page 2.

Page 5, after line 26, insert: "(e) A member of a negotiated regulations making committee shall disclose to the agency and other members of the committee any grants, gifts, or other financial benefit that exceeds \$150 and that has been accepted by the disclosing member to finance the disclosing member's participation in the negotiated rule making committee."

Page 7, line 17, following "chapter", insert ".", delete "unless the act or omission constitutes gross negligence or reckless or intentional misconduct."

Page 7, lines 26 through 30, insert a new bill section excluding "members of a negotiated regulation making committee . . ." from the administrative ethics act in Title 39.52. Note: See also the change on Page 5, line 26.

0-LS0910L
- Bannister
2/25/98

Adopted
3/3/98
Amended pg 5

CS FOR HOUSE BILL NO. 264()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES JAMES, Berkowitz, Cowdery, Kemplen

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to negotiated regulation making; and providing for an effective**
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 44.62 is amended by adding new sections to read:**

5 **Article 10. Negotiated Regulation Making.**

6 **Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800. (a)**

7 The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct
8 of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated
9 regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320
10 but may be used as a supplemental procedure to permit the direct participation of
11 affected interests in the development of new regulations or the amendment or repeal
12 of existing regulations. A consensus agreement reached by a negotiated regulation
13 making committee may be modified by an agency as a result of the subsequent
14 regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an

1 attempt to limit innovation and experimentation with the negotiated regulation making
2 process or to limit other means to obtain public participation in the regulation making
3 process.

4 (b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency
5 even if other provisions of this chapter do not apply to that agency.

6 **Sec. 44.62.720. Determination of need for negotiated regulation making**
7 **committee.** (a) In addition to the regulation adoption requirements under
8 AS 44.62.010 - 44.62.320, an agency may determine that the use of a negotiated
9 regulation making committee to negotiate and develop a proposed regulation is in the
10 public interest. In making that determination, the agency is advised to consider
11 whether

12 (1) there is a need for a regulation, including whether any legal action
13 is pending that might resolve the need;

14 (2) there are a limited number of identifiable interests that are held by
15 more than one person and that will be significantly affected by the regulation;

16 (3) there is a reasonable likelihood that a committee can be convened
17 with a balanced representation of persons who

18 (A) can adequately represent the interests identified under (2)
19 of this section; and

20 (B) are willing to negotiate in good faith to reach a consensus
21 on the proposed regulation;

22 (4) there is a reasonable likelihood that a committee will reach a
23 consensus on the proposed regulation within a fixed period of time;

24 (5) the negotiated regulation making procedure will not unreasonably
25 delay the adoption of the final regulation;

26 (6) the agency has adequate resources and is willing to commit those
27 resources, including technical assistance, to the committee; and

28 (7) the agency, to the maximum extent possible consistent with the
29 legal or other obligations of the agency, will use the consensus of the committee as the
30 basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320.

31 (b) Upon determining that a negotiated regulation making committee will be

1 formed, an agency shall notify the public so that interested persons can apply to be
2 appointed to the committee.

3 **Sec. 44.62.730. Use of convener.** (a) An agency may use the services of an
4 impartial person as a convener to assist in making the determination of need under
5 AS 44.62.720 and to assist the agency to

6 (1) identify the persons who will be significantly affected by a
7 proposed regulation; and

8 (2) conduct discussions with affected persons on the issues of concern
9 and determine whether the establishment of a negotiated regulation making committee
10 is feasible and appropriate for the particular proposed regulation.

11 (b) A person acting as a convener may also be named as a facilitator under
12 AS 44.62.760. The convener shall report findings and make recommendations to the
13 agency. The report and recommendations of the convener shall be made available to
14 the public upon request.

15 **Sec. 44.62.740. Establishment, support, and termination of committee.** (a)
16 The agency may establish a negotiated regulation making committee to assist in the
17 formulation of a proposed regulation. The agency should strive to achieve the
18 balanced committee representation described under AS 44.62.720(a)(3). Members of
19 the committee serve at the pleasure of the head of the agency. If a committee member
20 is unable to attend a meeting, the agency head may select a designee to serve in that
21 member's place for a meeting.

22 (b) The agency head may expand the membership of the negotiated regulation
23 making committee if necessary to facilitate the workings of the committee.

24 (c) The agency shall make available administrative support to the negotiated
25 regulation making committee, including technical support, that the agency determines
26 necessary.

27 (d) A negotiated regulation making committee terminates upon adoption under
28 AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency
29 specifies an earlier termination date.

30 **Sec. 44.62.750. Committee duties, procedures, and report.** (a) A negotiated
31 regulation making committee shall consider the matter proposed by the agency for

1 consideration and shall attempt to reach consensus concerning a proposed regulation
2 and any other matter on which the agency requests assistance and that is relevant to
3 the proposed regulation.

4 (b) The person representing the agency on a negotiated regulation making
5 committee shall participate in the deliberations of the committee with the same rights
6 and responsibilities of other members of the committee and is authorized to fully
7 represent the agency in the discussions and negotiations of the committee.

8 (c) An agency may adopt procedures for the operation of the negotiated
9 regulation making committee. The agency head shall appoint the chair of the
10 committee.

11 (d) If a negotiated regulation making committee achieves consensus on a
12 proposed regulation at the conclusion of the negotiations, the committee shall transmit
13 to the agency that established the committee a report containing the proposed
14 regulation.

15 (e) If a negotiated regulation making committee does not reach a consensus
16 on the proposed regulation, the committee shall transmit to the agency a report
17 specifying areas in which the committee reached consensus and the issues that remain
18 unresolved. The committee may include in the report other information,
19 recommendations, or materials that the committee considers appropriate. A member
20 of the committee may include as an addendum to the report additional information,
21 recommendations, or materials.

22 (f) AS 44.62.310 - 44.62.312 apply to meetings of a negotiated regulation
23 making committee.

24 **Sec. 44.62.760. Facilitator selection, duties, and authority.** (a) An agency
25 may appoint a person who is impartial to serve as a facilitator for the negotiations of
26 a negotiated regulation making committee. A person designated to represent the
27 agency on substantive issues may not serve as facilitator.

28 (b) A facilitator appointed or selected under (a) of this section shall

29 (1) preside at the meetings of the committee in an impartial manner,
30 unless the agency head has designated another person as chair;

31 (2) impartially assist the members of the committee to conduct

1 discussions and negotiations and to achieve consensus;

2 (3) coordinate with the agency regarding the management of records
3 of the committee; and

4 (4) perform other duties related to the negotiated regulation making
5 committee that are assigned by the agency head.

6 (c) A facilitator does not have decision-making authority for the committee.

7 **Sec. 44.62.770. Employees, contractors, expenses, and funding.** (a) An
8 agency may appoint an agency employee or obtain the services of another state
9 employee or a private contractor to serve as a convener or facilitator for a negotiated
10 regulation making committee.

11 (b) Before appointing or selecting a convener under AS 44.62.730 or a
12 facilitator under AS 44.62.760, an agency shall determine whether a person being
13 considered has a financial or other interest that would prevent the person from serving
14 in an impartial and independent manner. A person disqualified under this criterion
15 may not be considered further.

16 ~~(c) Members of a negotiated regulation making committee are responsible for~~
17 ~~their own expenses of participation.~~

18 (d) The state may accept grants or gifts from any appropriate source to finance
19 the negotiated regulation making process of a committee if

20 (1) information on the name of the person giving the grant or gift and
21 on the amount of the grant or gift is available to the public;

22 (2) the grant or gift is given to and accepted by the state without
23 placing any condition on the membership of a negotiated regulation making committee
24 in an agency or the outcome of the negotiated regulation making process; and

25 (3) any other requirement of law has been met.

26 (e) A member of a negotiated regulation making committee shall disclose to
27 the agency and other members of the committee a grant, gift, or other financial benefit
28 that exceeds \$150 and that has been accepted by the disclosing member to finance the
29 disclosing member's participation on the negotiated regulation making committee.

30 **Sec. 44.62.780. Judicial review.** An agency action relating to establishing,
31 assisting, or terminating a negotiated regulation making committee under AS 44.62.710

1 - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial
2 review if the judicial review is otherwise provided by law. A regulation that is the
3 product of negotiated regulation making and is later subject to judicial review may not
4 be given greater deference by a court for that reason than a regulation that is not the
5 product of negotiated regulation making.

6 **Sec. 44.62.790. Relationship to other requirements.** The negotiated
7 regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the
8 procedures required under AS 44.62.010 - 44.62.320 for adopting, amending, or
9 repealing regulations, and, if an agency decides to use negotiated regulation making,
10 the negotiated regulation making shall, where possible, occur before the procedures
11 under AS 44.62.010 - 44.62.320 begin.

12 **Sec 44.62.795. Confidentiality of certain records and documents.**
13 Notwithstanding AS 09.25.100 - 09.25.220, records from private persons that are
14 requested or used by a negotiated regulation making committee and working
15 documents prepared by the committee that analyze or incorporate information from the
16 records shall be kept confidential if the records or working documents contain
17 proprietary information and the owner of the records or working documents requests
18 that the records or working documents be kept confidential.

19 **Sec. 44.62.800. Definitions.** In AS 44.62.710 - 44.62.800,

20 (1) "agency" means a department, an institution, a division, or another
21 administrative unit of the executive branch of state government authorized or required
22 by law to make regulations, except that "agency" does not include

23 (A) a board; a commission; a council, except the Alaska Coastal
24 Policy Council established in AS 44.19.155; an authority; or a public
25 corporation of the executive branch of state government authorized or required
26 by law to make regulations; or

27 (B) the Department of Corrections;

28 (2) "consensus" means unanimous concurrence among the interests
29 represented on a negotiated regulation making committee;

30 (3) "convener" means a person who performs the services identified
31 under AS 44.62.730 for an agency;

1 (4) "facilitator" means a person who performs the services identified
2 under AS 44.62.760(b) for a negotiated regulation making committee;

3 (5) "negotiated regulation making" means regulation making through
4 the use of a negotiated regulation making committee;

5 (6) "negotiated regulation making committee" means an advisory
6 committee to consider and discuss issues for the purpose of reaching a consensus in
7 the development of a proposed regulation;

8 (7) "person" has the meaning given in AS 01.10.060, and expressly
9 includes a public organization of any character;

10 (8) "regulation" has the meaning given in AS 44.62.640 and includes
11 the amendment or repeal of a regulation.

12 * Sec. 2. AS 09.65 is amended by adding a new section to read:

13 **Sec. 09.65.235. Immunity for negotiated regulation making committee and**
14 **its members.** A civil action for damages or costs may not be brought against a
15 negotiated regulation making committee established under AS 44.62.710 - 44.62.800
16 or any of its members for an act or omission occurring in the course and scope of the
17 official duties of the committee under this chapter.

18 * Sec. 3. AS 36.30.850(b) is amended by adding a new paragraph to read:

19 (38) contracts for a convener under AS 44.62.730 or for a facilitator
20 under AS 44.62.760 related to a negotiated regulation making process under
21 AS 44.62.710 - 44.62.800.

22 * Sec. 4. AS 39.25.110 is amended by adding a new paragraph to read:

23 (33) a person employed as a convener under AS 44.62.730 or as a
24 facilitator under AS 44.62.760 related to a negotiated regulation making process under
25 AS 44.62.710 - 44.62.800.

26 * Sec. 5. AS 39.52.960(4) is amended to read:

27 (4) "board or commission" means a board, commission, authority, or
28 board of directors of a public or quasi-public corporation, established by statute in the
29 executive branch, but excluding the Alaska Railroad **and members of a negotiated**
30 **regulation making committee under AS 44.62.710 - 44.62.800;**

31 * Sec. 6. AS 39.52.960(4) is amended to read:

- 1 (4) "board or commission" means a board, commission, authority, or
2 board of directors of a public or quasi-public corporation, established by statute in the
3 executive branch, but excluding the Alaska Railroad [AND MEMBERS OF A
4 NEGOTIATED REGULATION MAKING COMMITTEE UNDER AS 44.62.710 -
5 44.62.800];
- 6 * Sec. 7. AS 09.65.235; AS 36.30.850(b)(38); AS 39.25.110(33); AS 44.62.710, 44.62.720,
7 44.62.730, 44.62.740, 44.62.750, 44.62.760, 44.62.770, 44.62.780, 44.62.790, 44.62.795, and
8 44.62.800 are repealed July 1, 2003.
- 9 * Sec. 8. Sections 1 - 5 and 7 of this Act take effect immediately under AS 01.10.070(c).
- 10 * Sec. 9. Section 6 of this Act takes effect July 1, 2003.

AMENDMENT

~~A~~ # 1

OFFERED IN THE HOUSE

BY REP. DAVIES

TO: CSHB 264 () L version

Page 5, line 17, following participation, delete “.”

Insert “if they have adequate resources. However, an agency may pay for a committee member’s reasonable travel and per diem expenses as authorized for boards and commissions under AS 39.20.180.”

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE JAMES

TO: HB 264

- 1 Page 2, line 26:
- 2 Delete "consensus agreement reached"
- 3 Insert "decision made"

- 4 Page 3, line 14:
- 5 Delete "reach a consensus"
- 6 Insert "make a decision"

- 7 Page 3, lines 16 - 17:
- 8 Delete all material.

- 9 Renumber the following paragraphs accordingly.

- 10 Page 3, line 23:
- 11 Delete "consensus"
- 12 Insert "decision"

- 13 Page 6, line 3:
- 14 Delete "consensus"
- 15 Insert "majority vote"

- 16 Page 6, line 22:
- 17 Delete "consensus"
- 18 Insert "majority vote"

1 Page 6, line 26:

2 Delete "reach consensus"

3 Insert "make a decision"

4 Page 7, line 3:

5 Delete "achieves consensus"

6 Insert "reaches a decision"

7 Page 7, lines 7 - 8:

8 Delete "consensus on"

9 Insert "decision on all of the issues involved in"

10 Page 7, line 9:

11 Delete "consensus"

12 Insert "a decision"

13 Page 7, line 19:

14 Delete "consensus"

15 Insert "majority vote"

16 Page 7, line 22:

17 Delete "consensus"

18 Insert "majority vote"

19 Page 7, line 29:

20 Delete "achieve consensus"

21 Insert "make a decision"

22 Page 8, line 27:

23 Delete "there is consensus among"

24 Page 8, line 28, following "committee":

- 1 Insert "make a decision"

- 2 Page 9, lines 16 - 18:
- 3 Delete all material.

- 4 Renumber the following paragraphs accordingly.

- 5 Page 9, following line 20:
- 6 Insert a new paragraph to read:
- 7 "(3) "decision" means a decision made by a majority vote;"

- 8 Renumber the following paragraphs accordingly.

- 9 Page 9, following line 22:
- 10 Insert a new paragraph to read:
- 11 "(5) "majority vote" means a vote that receives the approval of a majority of
- 12 the interests represented on a negotiated regulation making committee;"

- 13 Renumber the following paragraphs accordingly.

- 14 Page 9, line 26:
- 15 Delete "reaching a consensus"
- 16 Insert "making a decision"

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 264

BY REPRESENTATIVE JAMES

- 1 Page 7, following line 2:
2 Insert a new subsection to read:
3 "(d) A member of a negotiated regulation making committee who is not the
4 representative of the agency that established the committee and who is unable to
5 attend a meeting of the committee may appoint another person to attend the meeting
6 in place of the member, but the appointed person must be qualified to adequately
7 represent the interests that are represented by the member. If a member appoints
8 another person to attend a meeting under this subsection, the person appointed has the
9 same rights, including the right to vote, and responsibilities of the member when
10 serving on the committee."
11 Reletter the following subsections accordingly.

use commissioner to substitute

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 264

BY REPRESENTATIVE JAMES

1 Page 7, following line 15:

2 Insert a new section to read:

3 "Sec. 44.62.785. Immunity. A civil action for damages or costs may not be
4 brought against a negotiated regulation making committee or any of its members for
5 an act or omission occurring within the course and scope of the official duties of the
6 committee under this chapter unless the act or omission constitutes gross negligence
7 or reckless or intentional misconduct.

8
9

A M E N D M E N T

OFFERED IN THE HOUSE
TO: HB 264

BY REPRESENTATIVE JAMES

1 Page 3, line 24, following "AS 44.62.010 - 44.62.320":

2 Insert ", except to the extent not possible when the negotiated regulation making
3 occurs simultaneously with the procedures under AS 44.62.010 - 44.62.320"

4 Page 5, lines 7 - 9:

5 Delete all material.

6 Reletter the following subsections accordingly.

7 Page 5, line 13:

8 Delete "30"

9 Insert "15"

10 Page 9, line 10:

11 Delete "shall, where possible, occur before"

12 Insert "may, to the extent possible, occur simultaneously with"

13 Page 9, line 11:

14 Delete "begin"

15 Insert ". If the agency is proceeding at the same time with the procedures under
16 AS 44.62.010 - 44.62.320, the agency may include the notice required by AS 44.62.750(a)
17 in the notice given under AS 44.62.190"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE JAMES

TO: HB 264

1 Page 8, following line 29:

2 Insert a new section to read:

3 "Sec. 44.62.805. Confidentiality of certain records and documents.
4 Notwithstanding AS 09.25.100 - 09.25.220, records from private persons that are
5 requested or used by a negotiated regulation making committee and working
6 documents prepared by the committee that analyze or incorporate information from
7 the records shall be kept confidential if the records or working documents contain
8 proprietary information and the owner of the records requests that the records or
9 working documents be kept confidential."

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 264

BY REPRESENTATIVE JAMES

1 Page 9, line 13:

2 Delete "board, commission,"

3 Page 9, line 15, following "regulations;":

4 Insert "however, "agency" does not include a board or commission;"

Adopt
3/3/98

0-GH2023VE
Bannister
3/3/98

CS FOR HOUSE BILL NO. 386(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

**Offered:
Referred:**

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the financing authority, programs, operations, and projects
2 of the Alaska Industrial Development and Export Authority; and providing for
3 an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * Section 1. AS 44.88.090(e) is amended to read:

6 (e) Before issuing bonds, the authority shall provide for consideration at least
7 sufficient, in the judgment of the authority, to pay the principal of and interest on the
8 bonds as they become due and to create and maintain the reserves for the payments
9 that the authority considers necessary or desirable, and to meet all obligations in
10 connection with the lease or agreement and all costs necessary to service the bonds,
11 unless the lease or agreement provides that the obligations are to be met or costs are
12 to be paid by a party other than the authority. If the bonds are being issued to finance
13 a project or projects under AS 44.88.155 - 44.88.159, then the consideration shall be
14 provided by lease or other agreement regarding the project or projects. If the bonds

1 are being issued to finance a development project or development projects under
2 AS 44.88.172 - 44.88.177, then the consideration shall be provided by lease or other
3 agreement regarding the development project or development projects. [IF THE
4 BONDS ARE BEING ISSUED TO PROVIDE MONEY TO FINANCE,
5 GUARANTEE, OR INSURE AN EXPORTING TRANSACTION UNDER
6 AS 44.88.300 - 44.88.390, THEN THE CONSIDERATION SHALL BE PROVIDED
7 BY AGREEMENT WITH THE EXPORTER.]

8 * Sec. 2. AS 44.88.090(h) is amended to read:

9 (h) The authority may combine, for the purposes of a single offering, bonds
10 financing more than one project or development project under AS 44.88.155 -
11 44.88.159 or 44.88.172 - 44.88.177 [, AND BONDS ISSUED TO PROVIDE MONEY
12 TO FINANCE, GUARANTEE, OR INSURE AN EXPORTING TRANSACTION
13 UNDER AS 44.88.300 - 44.88.390].

14 * Sec. 3. AS 44.88.095(g) is amended to read:

15 (g) Before July 1, 2003 [1998], the authority may issue bonds in an amount
16 greater than \$10,000,000 to assist in the financing of a development project under
17 AS 44.88.172 - 44.88.177 only with legislative approval. Beginning July 1, 2003
18 [1998], and thereafter, without prior legislative approval, the authority may not issue
19 bonds, except refunding bonds.

20 * Sec. 4. AS 44.88.100 is amended to read:

21 **Sec. 44.88.100. Trust indentures and trust agreements.** In the discretion of
22 the authority, an issue of bonds may be secured by a trust indenture or trust agreement
23 between the authority and a corporate trustee (which may be a trust company, bank,
24 or national banking association, with corporate trust powers, located inside or outside
25 the state) or by a secured loan agreement or other instrument or under a resolution
26 giving powers to a corporate trustee (hereinafter in this section referred to as "trust
27 agreement") by means of which the authority may

28 (1) make and enter into any and all the covenants and agreements with
29 the trustee or the holders of the bonds which the authority may determine to be
30 necessary or desirable, including, without limitation, covenants, provisions, limitations,
31 and agreements as to

1 (A) the application, investment, deposit, use, and disposition of
2 the proceeds of bonds of the authority or of money or other property of the
3 authority or in which it has an interest;

4 (B) the fixing and collection of rents or other consideration for
5 [,] and the other terms to be incorporated in a lease or contract of sale of a
6 project or development project financed under AS 44.88.155 - 44.88.159 or
7 44.88.172 - 44.88.177 [, OR OF A FACILITY THAT IS PART OF AN
8 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
9 UNDER AS 44.88.300 - 44.88.390];

10 (C) the assignment by the authority of its rights in the lease or
11 contract of sale of a project or development project financed under
12 AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR OF A FACILITY
13 THAT IS PART OF AN EXPORTING TRANSACTION FINANCED,
14 GUARANTEED, OR INSURED UNDER AS 44.88.300 - 44.88.390] or in a
15 mortgage or other security interest created with respect to a project or
16 development project financed under AS 44.88.155 - 44.88.159 or 44.88.172 -
17 44.88.177 [, OR WITH RESPECT TO A FACILITY THAT IS PART OF AN
18 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
19 UNDER AS 44.88.300 - 44.88.390] to a trustee for the benefit of bondholders;

20 (D) the terms and conditions upon which additional bonds of
21 the authority may be issued;

22 (E) the vesting in a trustee of rights, powers, duties, funds, or
23 property in trust for the benefit of bondholders, including, without limitation,
24 the right to enforce payment, performance, and all other rights of the authority
25 or of the bondholders under a lease, contract of sale, mortgage, security
26 agreement, or trust agreement with respect to a project or development project
27 financed under AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR
28 WITH RESPECT TO A FACILITY THAT IS A PART OF AN EXPORTING
29 TRANSACTION FINANCED, GUARANTEED, OR INSURED UNDER
30 AS 44.88.300 - 44.88.390] by mandamus or other proceeding or by taking
31 possession of by agent or otherwise and operating a project or facility and

1 collecting rents or other consideration and applying the same in accordance
2 with the trust agreement;

3 (2) pledge, mortgage, or assign money, leases, agreements, property,
4 or other assets of the authority either presently in hand or to be received in the future,
5 or both; and

6 (3) provide for any other matters of like or different character which
7 in any way affect the security or protection of the bonds.

8 * Sec. 5. AS 44.88.130 is amended to read:

9 **Sec. 44.88.130. Pledge of the state.** The state pledges to and agrees with the
10 holders of bonds issued under this chapter and with the federal agency that lends or
11 contributes funds in respect to a project or development project financed under
12 AS 44.88.155 - 44.88.159 or 44.88.172 - 44.88.177 [, OR IN RESPECT TO AN
13 EXPORTING TRANSACTION FINANCED, GUARANTEED, OR INSURED
14 UNDER AS 44.88.300 - 44.88.390] that the state will not limit or alter the rights and
15 powers vested in the authority by this chapter to fulfill the terms of a contract made
16 by the authority with the holders or federal agency and that the state will not in any
17 way impair the rights and remedies of the holders until the bonds, together with the
18 interest on them with interest on unpaid installments of interest, and all costs and
19 expenses in connection with an action or proceeding by or on behalf of the holders are
20 fully met and discharged. The authority is authorized to include this pledge and
21 agreement of the state, insofar as it refers to holders of bonds of the authority, in a
22 contract with the holders and, insofar as it relates to a federal agency, in a contract
23 with the federal agency.

24 * Sec. 6. AS 44.88.155(d) is amended to read:

25 (d) A loan participation purchased by the authority with assets of the enterprise
26 development account or with proceeds of bonds secured by assets of the enterprise
27 development account

28 (1) may not exceed \$10,000,000; however, in the case of a loan
29 participation for a power transmission intertie, the loan participation may exceed
30 \$10,000,000 with legislative approval;

31 (2) may not be purchased unless

1 (A) the project applicant is not, or, if the applicant is not a
2 single proprietorship, all members of the business enterprise or enterprises
3 constituting the project applicant are not, in default on another loan made by
4 the state or by a public corporation of the state; and

5 (B) at least 20 percent of the principal amount of the loan is
6 retained by the loan originator;

7 (3) may not be purchased if the loan to be purchased exceeds [THE
8 COST OF THE PROJECT OR] 75 percent of the appraised value of the collateral
9 offered as security for the loan [PROJECT, WHICHEVER IS LESS,] unless the
10 amount of the loan in excess of this limit is federally insured or guaranteed or is
11 insured by a qualified mortgage insurance company, except that in no event may the
12 loan to be purchased under this paragraph exceed the total of loan proceeds used
13 to refinance an existing debt plus the cost of new construction, expansion, or
14 acquisition;

15 (4) may not be purchased if the participation in the loan to be
16 purchased is for a term longer than three-quarters of the authority's estimate of the life
17 of the collateral offered as security for the loan [PROJECT] or 25 years from the
18 date the loan is made, whichever is earlier; however, in the case of a loan participation
19 for a power transmission intertie, the term may not be longer than 50 years from the
20 date the loan is made;

21 (5) may be made only if the participation in the loan to be purchased
22 contains amortization provisions; the amortization provisions

23 (A) must be complete and satisfactory to the authority and
24 require periodic payments by the borrower;

25 (B) may allow the loan originator to amortize the portion of the
26 loan retained by the loan originator using a shorter amortization schedule than
27 the amortization schedule for the portion of the loan held by the authority if

28 (i) in the authority's opinion, the project financed can
29 support the increased debt service; and

30 (ii) the accelerated amortization schedule is required to
31 induce the originator to make the loan;

1 (6) may be made only if the participation in the loan to be purchased
2 is in the form and contains the terms and provisions with respect to insurance, repairs,
3 alterations, payment of taxes and assessments, default reserves, delinquency charges,
4 default remedies, acceleration of maturity, secondary liens, and other matters the
5 authority prescribes; and

6 (7) may be made only if the participation in the loan to be purchased
7 is secured as to repayment by a mortgage or other security instrument in the manner
8 the authority determines is feasible to assure timely repayment under the [A] loan
9 documents [AGREEMENT] entered into with the borrower.

10 * Sec. 7. AS 44.88.190(c) is amended to read:

11 (c) A loan participation purchased or financed by the authority is exempt from
12 the provisions of AS 45.45.010. [A GUARANTEE EXTENDED UNDER
13 AS 44.88.300 OR INSURANCE PROVIDED UNDER AS 44.88.390 DOES NOT
14 CONSTITUTE INSURANCE FOR THE PURPOSES OF AS 21.03.010.]

15 * Sec. 8. AS 44.88 is amended by adding a new section to read:

16 **Sec. 44.88.215. Confidentiality of information.** (a) In order to promote the
17 purposes of AS 44.88, unless the records were a matter of public record before
18 submittal to the authority, the following records, files, and information shall be kept
19 confidential upon the request of the person supplying the information or upon the
20 request of the project, bond, loan, or guarantee applicant or borrower:

21 (1) income tax returns;

22 (2) financial statements, profit-and-loss statements, and cash flow
23 projections, except the information required by the authority to calculate debt service
24 coverage on the loan;

25 (3) financial business plans;

26 (4) credit reports from consumer reporting agencies and other credit
27 information obtained from banks, creditors, or other credit reporting entities;

28 (5) trade secrets;

29 (6) appraisals, except the name of the appraiser, the date of the
30 appraisal, and the fair market value determined for the property appraised;

31 (7) market surveys and marketing strategy information; and

1 (8) any information required to be kept confidential by a federal law
2 or regulation or by state law.

3 (b) Information compiled by the authority from information described in (a)
4 of this section shall be kept confidential unless disclosure is authorized by the person
5 supplying the information and by the project, bond, loan, or guarantee applicant or
6 borrower.

7 (c) The information that is determined to be confidential under (a) or (b) of
8 this section is not a public record under AS 09.25.110 - 09.25.220.

9 * **Sec. 9.** AS 44.88.500 is repealed and reenacted to read:

10 **Sec. 44.88.500. Business and export assistance guarantees.** Subject to the
11 requirements of AS 44.88.500 - 44.88.599, the authority may

12 (1) guarantee new business and export assistance loans; and

13 (2) guarantee new business and export assistance loans made to
14 refinance existing loans.

15 * **Sec. 10.** AS 44.88 is amended by adding a new section to read:

16 **Sec. 44.88.502. Effect of guarantee.** (a) A guarantee under AS 44.88.500 -
17 44.88.599 does not create a debt or liability of the state.

18 (b) A guarantee under AS 44.88.500 may not be terminated, canceled, or
19 revoked except under its terms. A guarantee held by a participating financial
20 institution is presumed to be valid.

21 (c) A guarantee or portion of a guarantee under AS 44.88.500 that relates to
22 an export transaction must guarantee against commercial and political loss, in whole
23 or in part, of principal and interest. The authority may require the borrower to obtain
24 insurance against some or all of the loss guaranteed under AS 44.88.500. In this
25 subsection, "political loss" means a loss incurred as a result of

26 (1) a political risk that would be insurable under an export credit
27 insurance policy issued by the Export-Import Bank of the United States; or

28 (2) any other political risk that is actually insured under insurance the
29 authority requires the borrower to obtain.

30 * **Sec. 11.** AS 44.88.505(a) is amended to read:

31 (a) A business enterprise may apply for a new loan guarantee under

1 AS 44.88.500(1) [AS 44.88.500(a)(1)].

2 * **Sec. 12.** AS 44.88.515 is amended to read:

3 **Sec. 44.88.515. Qualifications of applicant for debt refinancing guarantee.**

4 A business enterprise may apply under AS 44.88.500(2) [AS 44.88.500(a)(2)] to
5 guarantee the refinancing of existing debt.

6 * **Sec. 13.** AS 44.88.525 is amended to read:

7 **Sec. 44.88.525. Conditions of debt refinancing guarantee.** The authority
8 may not guarantee refinanced debt

9 (1) unless the refinancing

10 (A) is necessary to extend substantial debt payments over a
11 longer period of time, thereby improving the applicant's net cash flow and
12 working capital position consistent with the useful life of the assets being
13 refinanced;

14 (B) assists with short-term debt or cash expenditures when
15 lenders will not extend reasonable longer terms to the applicant; and

16 (C) creates additional economic opportunity or improves the
17 viability of the borrower rather than just reducing the liability of the lender; or

18 (2) unless the refinancing is necessary to place a permanent loan
19 subsequent to an interim loan for financing [CONSTRUCTION] of the project.

20 * **Sec. 14.** AS 44.88.535(a) is amended to read:

21 (a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the

22 (1) loan

23 (A) is commercially reasonable;

24 (B) contains payment [AMORTIZATION] provisions
25 satisfactory to the authority;

26 (C) is secured by adequate collateral; however, the authority
27 may waive on a case-by-case basis the requirement of collateral for a loan
28 guarantee of \$100,000 or less for which the proposed loan term
29 [AMORTIZATION PERIOD] does not exceed five years, but the ability to
30 waive the requirement of this subparagraph or the grant of a waiver does not
31 prevent the financial institution that holds the loan guaranteed by the authority

1 from requiring reasonable collateral for the loan;

2 (2) borrower demonstrates the ability to repay the loan from either
3 or both of the following:

4 (A) net cash flow from the borrower [PROVIDES ADEQUATE
5 COVERAGE FOR THE DEBT SERVICE ON THE LOAN]; and

6 (B) proceeds from the sale of current assets that are
7 collateral for the loan if the sale, or receipt of proceeds from the sale, is an
8 event that creates a payment obligation; in this subparagraph, "current
9 asset" means property that will be or could be converted into cash in the
10 normal operation of a business within one year;

11 (3) term of the loan does not exceed 20 years;

12 (4) loan is originated with and serviced by a state chartered or federally
13 chartered financial institution;

14 (5) portion of the loan not guaranteed by the authority is held by the
15 originating financial institution or another institution approved by the authority;

16 (6) loan is made to a business with a majority interest held by state
17 residents; and

18 (7) loan guarantee provides a benefit to the borrower.

19 * Sec. 15. AS 44.88.535(c) is amended to read:

20 (c) The authority may guarantee the payment of interest on the guaranteed
21 portion of a loan

22 (1) in the manner established by the authority by regulation; and

23 (2) for a period of time not to exceed

24 (A) 90 days for loans or parts of loans not made to support
25 an export transaction;

26 (B) 180 days for loans or parts of loans made for a post-
27 shipment loan guarantee to support an export transaction; in this
28 subparagraph, "post-shipment loan guarantee" means a guarantee, or
29 portion of a guarantee, that becomes effective after the export contract
30 date that shipment of the related goods or raw materials or provision of
31 the related services begins; or

1 (5) acquire real or personal property by purchase, transfer, or
2 foreclosure when the acquisition is necessary to protect the authority's interest in a loan
3 or a loan guarantee;

4 (6) exercise any other power necessary to implement AS 44.88.500 -
5 44.88.599; and

6 (7) to the extent the authority considers it to be in its best interest to
7 do so, use money to pay expenses relating to the liquidation of collateral securing
8 loans guaranteed by the authority.

9 * **Sec. 19.** AS 44.88.599 is amended by adding a new paragraph to read:

10 (3) "export transaction" means a contract for the sale of goods, services,
11 or raw materials that includes a term that requires the goods, services, or raw
12 materials, in whole or in part, to be shipped to or provided in a foreign country.

13 * **Sec. 20.** AS 44.88.085(h), 44.88.300, 44.88.310, 44.88.320, 44.88.330, 44.88.340,
14 44.88.350, 44.88.360, 44.88.370, and 44.88.390 are repealed.

15 * **Sec. 21.** Section 4, ch. 162, SLA 1988, as amended by sec. 4, ch. 25, SLA 1991, sec. 4,
16 ch. 27, SLA 1993, and sec. 20, ch. 111, SLA 1996, is repealed.

17 * **Sec. 22.** TRANSFER OF ASSETS. Assets of the export insurance account
18 (AS 44.88.390(a)) are transferred to the Alaska Industrial Development and Export Authority
19 revolving fund (AS 44.88.060) on July 1, 1998.

20 * **Sec. 23.** LEGISLATIVE APPROVALS. (a) The Alaska Industrial Development and
21 Export Authority may issue bonds to finance the expansion, improvement, and modification
22 of the existing port facilities owned by the authority with respect to the DeLong Mountain
23 transportation system and to finance the construction of new facilities to be owned by the
24 authority related to the DeLong Mountain transportation system or may finance these projects
25 by other means available to the authority. The principal amount of the bonds and other
26 financing provided by the authority may not exceed \$80,000,000.

27 (b) The Alaska Industrial Development and Export Authority may issue bonds to
28 finance the improvement and expansion of the existing port facilities located at the City of
29 Nome, Alaska, to be owned by the authority, or may finance the project by other means
30 available to the authority. The principal amount of the bonds and other financing provided
31 by the authority may not exceed \$30,000,000.

1 (c) Subsections (a) and (b) of this section constitute the legislative approvals required
2 by AS 44.88.095(g).

3 * **Sec. 24.** Section 21 of this Act takes effect June 30, 1998.

4 * **Sec. 25.** Except as provided in sec. 24 of this Act, this Act takes effect July 1, 1998.



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

Representative Jeannette James

House State Affairs Committee, Chair

Joint Regulation Review Committee, Chair

Capitol Building

(907) 465-3743 ph

Juneau, AK 99801

(907) 465-2381 fax

TO: House State Affairs Committee

FROM: Rep. Jeannette James

RE: House Bill 264 negotiated regulation/rule making, AKA Neg/Reg.

DATE: 4/25/97

SPONSOR STATEMENT

HB 264 Negotiated Regulation/rule Making

House Bill 264, enables and encourages negotiated regulation/rule making. Currently neg/reg is in use by the Federal government, Montana and Nebraska.

The citizens of Alaska are clamoring for the Legislature to do something about the regulation process, negotiated regulation making addresses the issue on point.

Negotiated regulation making is used only in cases involving very complex or controversial regulations.

Negotiate regulation (Neg/Reg) is a voluntary process for drafting regulations that brings together those parties who would be significantly impacted by a regulation (rule), including the Government, to reach consensus on some or all of its aspects before the rule is formally published as a proposal. An impartial mediator is used to facilitate intensive discussions among the participants, who operate as a committee open to the public.

Regulations drafted using this process tend to be

more technically accurate, clear and specific, and less likely to be challenged in litigation than are rules drafted by the agency alone without input from outside parties. The APA notice process is unchanged.

The negotiated regulation making process costs more money at the front end than the traditional approach (e.g. the added cost for a facilitator). In addition, agency personnel must work closely as a team with outside party representatives and their time must be dedicated to the project if it is to succeed. The advantages clearly outweigh these considerations, however. Because representative of all the interested parties draft the regulation, the formal process of public notice and comment is generally very smooth and very few comments and concerns are raised in that process. More importantly, lengthy regulation litigation is generally eliminated and compliance with the rule is believed to be much higher. Thus, agency long-term costs of litigating rules and enforcing standards are sharply reduced.

Use of a negotiated regulation making process requires most agencies to change the way they are accustomed to developing a rule. Standard practice in rule development is to have a particular office in the agency develop a draft regulatory document, and then that document is critiqued and reformulated as it is sequentially referred to other parts of the agency, the department, the Executive Branch, and the public. In negotiated regulation making, by contrast, the parties are brought together for simultaneous discussion and consideration of particular issues at the beginning of the process.

I have enough backup to choke a large horse, you are welcome to any or all of it. Please call me, or Walt Wilcox if there are any questions.

Please review the bill, your comments are solicited.

Thank you.



Regional Citizens' Advisory Council / "Citizens promoting environmentally safe operation of the Alyeska terminal and associated tankers."

- In Anchorage: 750 W. 2nd Ave., Suite 100 / Anchorage, Alaska 99501-2168 / (907) 277-7222 / FAX (907) 277-4523
 In Valdez: 154 Fairbanks Dr. / P.O. Box 3089 / Valdez, Alaska 99686 / (907) 835-5957 / FAX (907) 835-5926

February 9, 1998

Representative Gene Therriault, Chairman
House Finance Committee
Alaska State Capitol
Juneau, Alaska 99801

**RE: Comments to be provided to the full House Finance Committee for the
February 11 hearing on HB 264 - Negotiated Rulemaking**

Dear Representative Therriault,

This is to let you and the Finance Committee know of our concerns about House Bill 264, relating to negotiated regulation making.

The Regional Citizens' Advisory Council of Prince William Sound (RCAC) is an independent non-profit corporation whose mission is to promote environmentally safe operation of the Valdez Marine Terminal and associated tankers. Our work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. RCAC's 18 member organizations are communities in the region affected by the 1989 Exxon Valdez oil spill, as well as commercial fishing, aquaculture, Native, recreation, tourism and environmental groups.

While RCAC favors the early involvement of stakeholders in any rule-making process, we believe House Bill 264 in its present form has serious flaws that could permit an administrative agency to abuse the authority granted under the bill by biasing the process in favor of selected special interests. Fortunately, these problems could be remedied by a few simple changes without altering the intent of the bill.

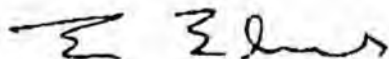
Here are the problems we see:

- The bill provides for notice of committee meetings, but does nothing to provide notice that a committee is being formed or that any action in a particular area of interest is being contemplated. Thus an interested party could find that a committee has been formed and is complete before it even knew about it. Clearly there needs to be a notice provision so that interested parties can ask to be part of the committee. A simple, inexpensive requirement of newspaper advertising should be enough.

- Nothing in the bill requires that a committee's makeup be fair and representative of the broad range of interests. The reference to "balanced representation" in Sec. 44.62.720(3) is not a requirement that the committee actually be constituted that way. The potential for abuse is clear. The choice of members can be totally arbitrary and biased, quite legally. A commissioner could appoint, for example, only members of environmental groups, or only members of oil companies, or only members of a regulated profession with no consumer representation. The potential for abuse is made all the worse because the agency's choice of committee members is insulated from judicial review. Thus the choice of members can be totally arbitrary and biased, quite legally. We suggest a simple requirement that the committee makeup be fair and representative of all interested viewpoints.
- Nothing gives members of the public -- or interests not represented on the committee -- any right to participate in meetings or even to make their views known. The bill makes committee meetings subject to the Open Meetings Act, but that act only entitles the public to sit in the corner and watch -- it creates no right to participate or speak. So, quite legally, an agency could appoint a biased and non-representative committee without prior notice to anyone else, and the committee could refuse to let any member of the public voice opinions or offer information. The bill should guarantee that non-members may speak at and participate in any meetings and submit materials to the committee.
- The bill states that committee members serve at the pleasure of the agency. That means any committee member who voices opposition to the particular viewpoint of the agency may be unceremoniously booted off, with no reason given. This is another opportunity for abuse. We believe it would be better to limit the causes for terminating a member to non-attendance.
- There is also a technical question whether the provision at Sec. 44.62.750(f), making the Open Meetings Act applicable to the committee, is effective, since the terms of the Open Meetings Act do not themselves apply to committee meetings of a non-decisional body within an agency. To make it certain, you probably need a technical amendment to the Open Meetings Act's list of meetings to which it applies.

We enclose proposed language to solve each of these problems and, we believe, largely eliminate the potential for abuse of the authority granted by this bill.

Please contact me if you have any questions.



Tex Edwards
President

enc.

Suggested amendments to CS HB 264 (STA)**Prince William Sound
Regional Citizens' Advisory Council****1. Regarding notice of proposed formation of a regulations committee:**

At page 3, l. 13, after "...formulation of a proposed regulation.", insert *"The agency shall request nominations to the committee through notices in newspapers of general circulation at least fourteen days before making appointments to the committee."*

2. Regarding fair and balanced makeup of regulations committees:

At page 3, l. 16, after "(b)", insert *"the membership of a negotiated regulation making committee shall fairly reflect the main interests and viewpoints regarding the subject of the regulations."*

3. Regarding the right of the public to participate:

At page 4, l. 3, after "...operation of the negotiated regulation making committee.", insert *"The committee shall permit public testimony at its meetings."*

4. Regarding termination of a committee member:

At page 3, l. 13-14, delete "serve at the pleasure of the head of the agency" and insert *"may be removed by the head of the agency for good cause."*

5. Regarding applicability of the Open Meetings Act:

At page 4, l. 16, after "...apply to meetings of a negotiated regulation making committee.", insert *", notwithstanding anything in those sections to the contrary."*

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Alaska Conservation Voice
Speaking Out for Alaska's Future

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Kirsten Shelton

Testimony of the Alaska Conservation Voice on CS HB 264

Although we are in agreement with its general intent, we are not entirely persuaded that the bill, as drafted, will fulfill the sponsor's hopes.

While we withhold final judgement on HB 264, we welcome the opportunity to offer several additional suggestions that would improve its administration and make it more responsive to the public interest.

1. Our greatest concerns are that
 - the method for selecting participants is too discretionary, lacking a methodology that would insure proper representation, and that
 - the bill fails to guarantee participation of all interested parties.

2. The bill states (at 44.62.710) that:

"A consensus agreement . . . may be modified by an agency as a result of the subsequent regulation making process."

The bill also states, at 44.62.720, that:

"the agency, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation . . ."

We feel that both of these sections should make it clear that the agency may alter the consensus agreement if significant new information or insight is brought forward as a result of public comment. A definition for "significant new information or insight" needs to be developed, as well.

3. In 44.62.730, "Use of a convener," and 44.62.760, "Facilitator selection, duties and authority," several prospective tasks are spelled out. Since the bill appears to intend that conveners and facilitators can be either state employees (including affected agency staff, unless they have already been designated to represent the agency on the issue at hand), we feel these sections should clearly list the functions for the convener/facilitator roles, and then clearly spell out that they may be agency personnel or contractors, along with any limitations that would apply in the case of either staff or contractor.

4. We also believe that a standard should be established which would allow agencies to certify that conveners/facilitators have certain minimum qualifications, training and experience for their respective roles.

5. We feel the section dealing with potential conflict-of-interest (44.62.770(b)) needs to provide more specific direction to agencies as to how such determinations are to be made, especially with respect to political or financial conflict-of-interest which might not otherwise be evident through public information, unless disclosed by the individual.

6. We note the desire to avoid a fiscal note for this bill. Philosophically, at least, we don't have a problem with agencies being expected to budget for this process if they feel the public interest and the fulfillment of their mandate could be served by negotiated rule-making. However, we feel this bill's otherwise sensible intentions may founder on the section dealing with costs for participation. See 44.62.770(c). We feel it may work against the hoped-for spirit of collaboration if committee members begin deliberations with this sort of financial disparity between them. We feel there is some basis for concern that the views of those "paying their own way" will be given greater weight in some situations, or that some who cannot afford to participate may be entirely excluded if the agency chooses, at its discretion, not to provide funds for all interested parties. To avoid this, we suggest the agencies simply be required to pay all reasonable travel and logistical expenses for convening a committee.

7. It would seem that the provision for accepting grants or gifts to help underwrite a committee's deliberations would be one way for an agency to defray the costs of underwriting the expenses of all participants. However, to avoid the same issue cited above, we feel the bill should stipulate that gifts be limited to those from such foundations or other sources as do not have a direct stake in the outcome of the issues under discussion.

8. The requirements for notice of committee formation should be restored and be made more extensive than provided in the original bill, mandating a broader notification of the public through print (and possibly broadcast) media, including a contact name and phone number to obtain further information.

9. The rules laid out in the original bill for expansion of a committee should be restored and expanded to also apply expressly to the formation of the initial committee. It is very important that this information be provided and be available to the public if this process is to have the desired credibility.

Finally, we suggest that a better way to test the prospects of workability of the negotiated rule-making process in Alaska would be to mandate and fund a couple of pilot projects. The results of these projects might provide a wealth of very pragmatic information that could assure a more cost-efficient, responsive process that would meet the intentions of the sponsors.

We look forward to reviewing subsequent drafts of the bill, and again, thank you for the opportunity to comment.



STATE OF ALASKA

THE ALASKA STATE LEGISLATURE

House of Representatives

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House State Affairs Committee, Chair

Joint Regulation Review Committee, Chair

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HB 284 Negotiated Regulation/rule Making, AKA Neg/Reg.

Sponsor: Rep. Jeannette James

5/8/97

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April 10, 1997

MEMORANDUM

TO: Representative Jeannette James

FROM: Paul Brandt 
Legislative Analyst

RE: **Negotiated Rulemaking: Drafting Regulations by Involving Affected Parties**
Research Request 97.080

You asked about negotiated rulemaking--the practice of involving affected parties in regulation drafting prior to the public comment period required under Alaska's Administrative Procedures Act. Specifically, you wanted to know if Alaska law currently permits this practice, and, if so, what methods various departments use to involve affected groups. You also wanted to know about similar practices used in other states and by the federal government. After a brief summary, this memorandum provides an overview of the negotiated rulemaking process, reviews Alaska's regulation drafting policies, and examines the negotiated rulemaking efforts in other states and by the federal government.

Summary

Negotiated rulemaking is a voluntary process for drafting regulations that brings together those parties affected by a rule for the purpose of reaching consensus on all or a portion of a proposed regulation before formally soliciting public comment.¹ Alaska's laws do not currently require or encourage the use of negotiated rulemaking, but some state agencies already use the process. Department of Environmental Conservation officials used negotiated rulemaking committees to help draft highly technical and contentious air and water quality regulations prior to completing the formal requirements of Alaska's Administrative Procedures Act. Department officials selected committee members and conducted meetings following the requirements of Alaska's Open Meeting and Public Records Acts. While many states informally solicit the ideas of affected

¹The content of negotiated rulemaking committee discussions as well as all documents used by its members become public records. This presents some limitations on the process because business and industry officials may be reluctant to divulge sensitive information during work group meetings because this material would be available to their competitors.

Representative James
April 10, 1997
Page 2

parties when drafting regulations, the use of formal negotiated rulemaking is a relatively new practice. Congress formally recognized negotiated rulemaking by passing the Negotiated Rulemaking Act of 1990. Since 1990, lawmakers in two states, Montana and Nebraska, have incorporated negotiated rulemaking acts into their statutes, encouraging agencies to use the practice whenever appropriate. According to federal and state officials with whom we spoke, negotiated rulemaking is appropriate for highly contentious regulations that affect a limited number of parties. To be successful, a negotiated rulemaking committee must be small enough to give its members an opportunity to communicate their concerns; committee size usually does not exceed 25 members. The goal of the committee is to reach consensus on all or a portion of a proposed regulation. Once the committee reaches consensus, the formal regulation adoption process often proceeds quickly as little public comment is received. Federal and state officials from agencies currently using negotiated rulemaking speak favorably of the process. The U.S. Environmental Protection Agency and the U.S. Department of Labor, the agencies with the most experience in negotiated rulemaking, report reduced litigation costs and enhanced relations with industry officials, environmental advocates, and labor relations groups.

Overview of Negotiated Rulemaking

Negotiated rulemaking is a technique for drafting regulations that brings together those parties directly affected by a proposed rule, in a committee, to resolve particularly contentious or controversial issues prior to the formal regulation adoption process. After identifying a particularly contentious regulation that affects a limited number of parties, agency officials publish notice of their intent to form a negotiated rulemaking committee. The agency director selects the committee members from responses to the public notice and appoints a neutral mediator to oversee the committee's meetings.² The committee's goal is to reach a consensus decision on a proposed regulation.³ Once the committee reaches consensus, the agency uses the committee's proposals when completing the formal regulation drafting requirements.

It is important to note that the agency first completes the negotiated rulemaking process and then begins the formal regulation drafting process. In doing so, negotiated rulemaking does not conflict with the formal regulation drafting practices used by most states and the federal government. Negotiated rulemaking is a preparatory process used to resolve controversial issues prior to the commencement of formal rulemaking.

²The committee's meetings are open to the public and all records, reports, and research used by the committee are made available for public review.

³If the committee cannot reach consensus on the entirety of a rule, they prepare a report for the agency detailing areas of agreement and dispute. Agency officials then would be responsible for drafting the final regulation.

Representative James
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Page 3

During the formal regulation adoption process, the agency may change the committee's proposed regulation based on public comment. This requirement preserves the rights of private citizens to testify on proposed regulations. One of the advantages of negotiated rulemaking is that the public comment period normally proceeds smoothly because the committee has already resolved many potentially sensitive issues. Additionally, negotiated rulemaking may reduce the cost of litigation by resolving the concerns of industry and other parties without the need for judicial review.

Some federal and state agencies have criticized negotiated rulemaking because the process requires additional agency resources for the regulation drafting process. Hiring a neutral mediator and devoting agency resources to the committee process are costs not generally associated with regulation drafting.⁴ Officials of federal agencies that regularly use negotiated rulemaking committees defend these added costs by comparing the cost of negotiated rulemaking committees to that of litigation.

Alaska's Regulation Drafting Practices and Negotiated Rulemaking

The Alaska Department of Law publishes a manual for drafting administrative regulations which thoroughly describes the regulation adoption process required under Alaska's Administrative Procedures Act (APA).⁵ According to Deborah Behr, Assistant Attorney General, Alaska's APA does not specifically address the issue of negotiated rulemaking because this method of developing regulations has only recently become popular. While negotiated rulemaking is not formally identified in the APA, Ms. Behr indicated that some state departments have used similar techniques when developing regulations.⁶

According to John Stone, Environmental Conservation Manager for the Department of Environmental Conservation's Division of Air and Water Quality, the department has used

⁴The expenses of committee members, other than agency personnel, are not generally paid by the state. Members are responsible for their own travel and lodging costs when attending committee meetings. All the negotiated rulemaking acts we reviewed, however, allow the state to pay travel and per diem expenses for committee members if they are unable to afford the cost and their presence is vital to the committee's success.

⁵Alaska Department of Law, "Drafting Manual for Administrative Regulations," October 1995, p.8. Attachment A is a copy of a flow chart that describes the steps followed by department officials when they prepare regulations.

⁶Ms. Behr stated that negotiated rulemaking committees, under current state law, must develop regulation proposals prior to the formal notice-and-comment period required under the Alaska's APA. Additionally, the committees must follow the provisions of Alaska's Open Meetings and Public Records Acts (AS 44.62.310 and AS 9.25.110).

Representative James

April 10, 1997

Page 4

negotiated rulemaking to draft air and water quality regulations. These regulations are often highly technical and involve numerous interest groups. Because of the technical nature of many regulations, Mr. Stone feels that the use of negotiated rulemaking not only results in a consensus decision with affected parties, but also allows department officials to thoroughly explain the complexity of many regulations. Mr. Stone stressed that a consensus does not always result in the complete satisfaction of committee members, but generally the final regulations are responsive to their concerns.

Negotiated Rulemaking in Other States

According to Brenda Erickson, regulation specialist with the National Conference of State Legislatures (NCSL), many states informally solicit information from affected groups when drafting regulations, but the use of formal negotiated rulemaking committees is a relatively new practice. Based on the results of a Westlaw search and discussions with regulation specialists from NCSL, we identified two states, Montana and Nebraska, that have incorporated negotiated rulemaking acts into their state statutes.⁷ The Negotiated Rulemaking Acts of both states are similar to each other and provide a means of resolving potentially controversial issues prior to formal rulemaking procedures.⁸

The statutes of both states clearly recognize that the use of negotiated rulemaking committees are appropriate only in certain circumstances; consequently, both states' statutes contain nearly identical lists of criteria that agency directors must consider when determining if negotiated rulemaking is appropriate. Among those criteria, the agency directors must consider if:

- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that the agency can convene a committee that provides balanced representation of the affected parties;
- There is a reasonable likelihood that the committee will reach consensus on the proposed regulation; and

⁷Attachments B and C are copies of the Negotiated Rulemaking Acts of Montana and Nebraska, respectively.

⁸Nebraska's Negotiated Rulemaking Act differs from Montana's in that it specifically prohibits individuals incarcerated in correctional institutions from requesting the use of negotiated rulemaking.

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- The agency has adequate resources and is willing to commit those resources to the negotiated rulemaking committee.

According to Annette Covar of Nebraska's Department of Environmental Quality (DEQ), the department has used negotiated rulemaking techniques in drafting several environmental regulations. She indicated that the expense of a mediator makes negotiated rulemaking impractical in many situations, but for complex regulations the practice has proven valuable. She also stated that DEQ used informal negotiated rulemaking techniques prior to Nebraska's law and they continue to do so for many regulations. Ms. Covar views negotiated rulemaking techniques as valuable whether or not the agency establishes a formal committee.

In Montana, lawmakers are encouraging the use of negotiated rulemaking by all departments. According to Todd McMaster of Montana's Office of Legislative Research, negotiated rulemaking has been used successfully by several departments. Mr. McMaster stated that the Montana Consensus Council, located in the governor's office, provides mediators for negotiated rulemaking committees and training to state agencies that are developing negotiated rulemaking procedures.

We asked the Montana Consensus Council to send us information on their agency education initiatives. We will review and forward this information to you as soon as it is available.

Negotiated Rulemaking in Federal Agencies

Federal agencies began experimenting with negotiated rulemaking in the early 1980s, but it was not until federal lawmakers passed the Negotiated Rulemaking Act of 1990 that agencies used the practice with frequency (Attachment D).⁹ The number of regulations drafted using negotiated rulemaking is increasing, but many agency officials continue to show reluctance. A comprehensive review of negotiated rulemaking by the John F. Kennedy School of Government at Harvard University attributes this reluctance to the recency of the new legislation and the limited number of regulations for which negotiated rulemaking is appropriate.¹⁰

Among those federal agencies that routinely use negotiated rulemaking, the Environmental Protection Agency and the Department of Labor have done so most frequently. Based on agency

⁹Attachment D contains a copy of the Negotiated Rulemaking Act of 1990 (5 USC § 561 through § 570).

¹⁰Coglianes, Cary (no date), *Assessing Consensus: The Promise and Performance of Negotiated Rulemaking*[Online]. Available on the World Wide Web at internet address <http://www.ksg.harvard.edu/prg/coglianes/rulemake.htm> [accessed April 9, 1997].

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reports, these departments have had successful negotiated rulemaking experiences.¹¹ The agencies report reduced litigation costs, increased industry compliance with regulations, and enhanced working relationships with industry officials, environmental advocates, and labor relations groups.

Currently, we are in the process of obtaining additional information on federal negotiated rulemaking practices, including a negotiated rulemaking handbook from the U.S. Department of Labor. We will forward this information to you once it arrives.

I hope this information is useful for your purposes. Please do not hesitate to contact me if you have additional questions.

Attachments

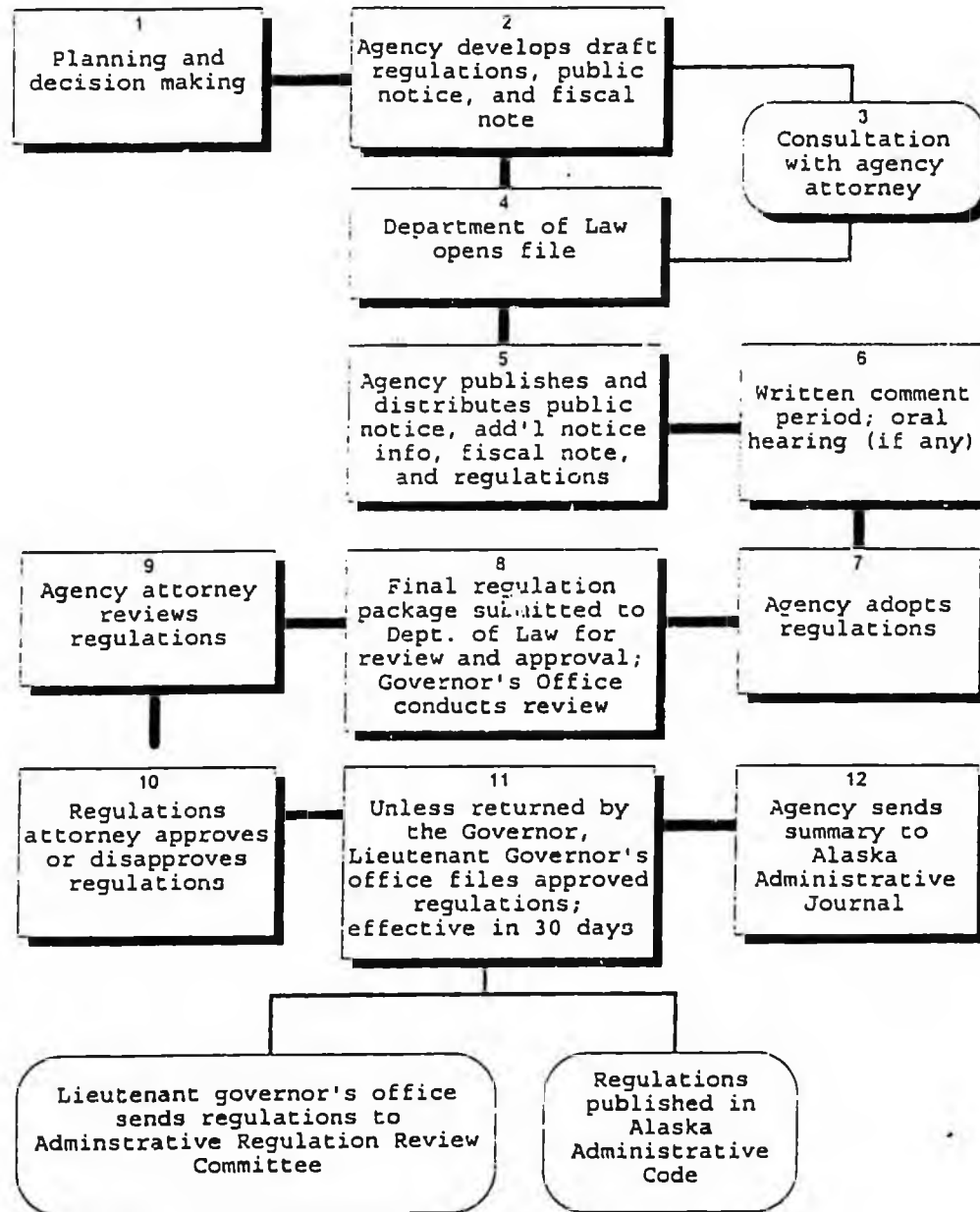
¹¹United States Department of Labor, June 27, 1996, *OSHA Chief Lauds "Negotiated Rulemaking" As a Way to Cut Red Tape and Bureaucracy* [Online]. Available on the World Wide Web at <http://www.osha.gov/media/oshnews/june96/osh96-253.html> [accessed April 2, 1997].

Page for notes

ATTACHMENT A

**Alaska's Regulation Adoption Process
Alaska Department of Law, "Drafting Manual for Administrative Regulations," 1995.**

Steps in the Regulations Process



ATTACHMENT B

**Montana's Negotiated Rulemaking Act
(Montana Statutes 2-5-101 through 2-5-110)**

Part 1 General Provisions

2-5-101. Short title. This part may be cited as the "Montana Negotiated Rulemaking Act".

History: En. Sec. 1, Ch. 400, L. 1993.

2-5-102. Purpose. The purpose of this part is to establish a framework for the conduct of negotiated rulemaking consistent with the Montana Administrative Procedure Act and the constitutional right of Montanans to participate in the operation of governmental agencies and to encourage agencies to use negotiated rulemaking when it enhances the rulemaking process. As authorized by 2-4-304, it is the intent of the legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process. However, negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. This part may not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

History: En. Sec. 2, Ch. 400, L. 1993.

Cross-References

Informal conferences and committees, 2-4-304.

2-5-103. Definitions. As used in this part, the following definitions apply:

- (1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized or required by law to make rules.
- (2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under 2-5-106, unless the committee agrees upon another specified definition.
- (3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.
- (4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.
- (5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.
- (6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.
- (7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under 2-5-106 and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

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(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(e) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

History: En. Sec. 3, Ch. 400, L. 1993.

Cross-References

Informal conferences and committees, 2-4-304.

Declaratory rulings by agencies, 2-4-501.

2-5-104. Determination of need for negotiated rulemaking committee. (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) there is a need for a rule;

(b) there are a limited number of identifiable interests that will be significantly affected by the rule;

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) can adequately represent the interests identified under subsection (1)(b); and

(ii) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(f) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency.

(2) An agency may use the services of a convener to assist in making the determination of need pursuant to subsection (1) and to assist the agency in:

(a) identifying persons who will be significantly affected by a proposed rule; and

(b) conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking procedure.

(3) The convener shall report findings and make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convener must be made available to the public upon request.

History: En. Sec. 4, Ch. 400, L. 1993.

2-5-105. Application for membership on committees — publication of notice. (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Montana Administrative Register and, as appropriate, in newspapers and other publications, a notice that includes:

(a) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) a description of the subject and scope of the rule to be developed and the issues to be considered;

(c) a list of interests likely to be significantly affected by the proposed rule;

(d) a list of the persons proposed to represent the affected interests and the agency;

(e) a proposed schedule for completing the work of the committee; and

(f) an explanation of how a person may apply for or nominate another person for membership on the committee.

(2) An agency may include the notice required in subsection (1) in the notice of intent to promulgate rules made pursuant to 2-4-302.

(3) The agency shall provide a period of at least 30 days for the submission of comments and applications for membership on a negotiated rulemaking committee.

History: En. Sec. 5, Ch. 400, L. 1993.

Cross-References

Notice, hearing, and submission of views, 2-4-302.

2-5-106. Establishment of committee — determination. (1) If, after considering comments and applications submitted under 2-5-105, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted under 2-5-105, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications.

(3) The agency shall publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications, of the negotiated rulemaking committee.

(4) A negotiated rulemaking committee shall submit a final rule under consideration to the agency, or the committee, or the convener, for promulgation. History: En. Sec. 5, Ch. 400, L. 1993.

2-5-107. Expedited rulemaking. (1) An agency may, at its discretion, establish an expedited rulemaking committee to negotiate and develop a proposed rule. The committee shall be essential to the submission of a petition submitted to the agency.

(2) Persons who believe that their interests will be significantly affected by a negotiated rulemaking committee shall submit a petition for membership on the committee. The petition must include:

(a) the name of the person representing the interests;

(b) evidence of the parties related to the rulemaking;

(c) a written statement of how the person will participate in government and

(d) an explanation of how the rulemaking committee will submit the proposed rule to the agency.

(3) Upon request of the agency, the committee shall determine whether to expand its membership.

History: En. Sec. 5, Ch. 400, L. 1993.

2-5-108. Consideration of rulemaking. (1) An agency shall consider a negotiated rulemaking committee's proposed rule and any other rulemaking proposals.

(2) The persons who submitted the petition shall participate in the rulemaking process and respond to the agency's requests for information.

(3) A negotiated rulemaking committee shall submit a proposed rule to the agency for promulgation.

(4) If a negotiated rulemaking committee proposes a rule, at the time the agency promulgates the rule, the agency shall also promulgate the rule.

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(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical support.

(4) A negotiated rulemaking committee terminates upon adoption of the final rule under consideration, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

History: En. Sec. 6, Ch. 400, L. 1993.

2-5-107. Expansion of committee membership. (1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2).

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination must be submitted to the negotiated rulemaking committee and must include:

(a) the name of the petitioner or nominee and a description of the interests the person represents;

(b) evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) a written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) an explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition pursuant to subsection (2), a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

History: En. Sec. 7, Ch. 400, L. 1993.

2-5-108. Committee — duties — procedures — report. (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule, at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Title 2, chapter 3, part 2, applies to meetings of a negotiated rulemaking committee.

History: En. Sec. 8, Ch. 400, L. 1993.

2-5-109. Facilitator — selection and duties. (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

- (a) preside at the meetings of the committee in an impartial manner;
- (b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and
- (c) manage the keeping of minutes and records.

History: En. Sec. 9, Ch. 400, L. 1993.

2-5-110. Expenses — convener — facilitator — committee members. (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are responsible for their own expenses of participation. However, an agency may pay for a committee member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation if:

- (a) the committee member certifies a lack of adequate financial resources to participate in the committee; and
- (b) the agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process, provided that:

- (a) information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

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(b) the grant or gift will not diminish the outcome of the committee established by the agency.

(c) there is no condition on the grant or gift that the committee established by the agency will not diminish the outcome of the committee established by the agency.

- 2-6-101. Definitions.
- 2-6-102. Citizens er
- 2-6-103. Filing and
- 2-6-104. Records of
- 2-6-105. Removal of
- 2-6-106. Possession
- 2-6-107. Proceeding
- 2-6-108. Attachmen
- 2-6-109. Prohibition
- 2-6-110. Electronic
- 2-6-111. Custody an

- 2-6-201. Purpose.
- 2-6-202. Definitions.
- 2-6-203. Secretary of
- 2-6-204. State record
- 2-6-205. Preservation
- 2-6-206. Protection o
- 2-6-207. Certified cop
- 2-6-208 through 2-6-210
- 2-6-211. Transfer of j
- 2-6-212. Disposal of p
- 2-6-213. Agency resp
- 2-6-214. Department

- Part
- 2-6-301. Definitions.
 - 2-6-302. Official recor
 - 2-6-303. Ownership o
 - 2-6-304. Outgoing offi
 - 2-6-305. Renumbered
 - 2-6-306. Renumbered
 - 2-6-307. Certified copi

- 2-6-401. Definitions.
- 2-6-402. Local govern
- 2-6-403. Duties and re
- 2-6-404. Rulemaking a

(b) the grant or gift is given to and accepted by the agency without placing condition on the membership of a negotiated rulemaking committee or the name of the negotiated rulemaking process; and

(c) there is consensus among the members of the negotiated rulemaking committee established pursuant to 2-5-106 that the acceptance of the grant or will not diminish the integrity of the negotiated rulemaking process.

History: En. Sec. 10, Ch. 400, L. 1993.

CHAPTER 6 PUBLIC RECORDS

Part 1 — Public Records Generally

- 101. Definitions.
- 102. Citizens entitled to inspect and copy public writings.
- 103. Filing and copying fees.
- 104. Records of officers open to public inspection.
- 105. Removal of public records.
- 106. Possession of records.
- 107. Proceedings to compel delivery of records.
- 108. Attachment and warrant to enforce.
- 109. Prohibition on distribution or sale of mailing lists — exceptions — penalty.
- 110. Electronic information — public access — fees.
- 111. Custody and reproduction of records by secretary of state.

Part 2 — Public Records Management

- 112. Purpose.
- 113. Definitions.
- 114. Secretary of state's powers and duties.
- 115. State records committee approval.
- 116. Preservation of public records.
- 117. Protection of essential records.
- 118. Certified copies of public records.
- 119 through 2-6-210 reserved.
- 211. Transfer of public records.
- 212. Disposal of public records.
- 213. Agency responsibilities and transfer schedules.
- 214. Department of administration — powers and duties.

Part 3 — Records of Elected Executive Branch Officers

- 215. Definitions.
- 216. Official records management — powers and duties.
- 217. Ownership of records — transfer.
- 218. Outgoing officials — records management duties.
- 219. Renumbered 2-6-107 by Code Commissioner, 1979.
- 220. Renumbered 2-6-108 by Code Commissioner, 1979.
- 221. Certified copies of official records.

Part 4 — Local Government Records

- 222. Definitions.
- 223. Local government records committee — creation.
- 224. Duties and responsibilities.
- 225. Rulemaking authority.

ATTACHMENT C

**Nebraska's Negotiated Rulemaking Act
(Nebraska Statutes 84-919.01 through 84-932)**

The appropriate standard of review for the Supreme Court in an appeal from an administrative agency's decision is found in this section, which prescribes a review of an agency's decision de novo on the record without the limitation imposed on the district court under former section §4-917(6)(e) and (6)(f). *Golden Five v. Department of Soc. Serv.*, 229 Neb. 148, 425 N.W.2d 865 (1988).

In conducting its de novo review under the provisions of this section, the Nebraska Supreme Court is required to make independent findings of fact without reference to those made by the tribunal from which the appeal was taken. *Meier v. State*, 227 Neb. 376, 417 N.W.2d 771 (1988).

Supreme Court reviews de novo on the record an appeal from the district court's review of a decision of the Nebraska Equal Opportunity Commission. *Father Flanagan's Boys' Home v. Goerke*, 224 Neb. 731, 401 N.W.2d 461 (1987).

The Supreme Court's review of an administrative agency's decision is de novo on the record; as such, the court makes independent findings of fact without reference to those made by the agency whose action is being reviewed. *Department of Health v. Grand Island Health Care*, 223 Neb. 587, 391 N.W.2d 582 (1986); *Dieter v. State*, 228 Neb. 368, 422 N.W.2d 560 (1988).

The Supreme Court reviews an administrative agency's decision de novo on the record. *City of*

Omaha v. Omaha Police Union Local 101, 222 Neb. 197, 362 N.W.2d 613 (1986); *Department of Health v. Lutheran Hosp. & Homes Inc.*, 227 Neb. 116, 416 N.W.2d 222 (1987); *Zybach v. State*, 226 Neb. 396, 411 N.W.2d 627 (1987).

The Supreme Court's review of an agency's decision under the Administrative Procedures Act is de novo on the record. *Haeffner v. State*, 220 Neb. 560, 371 N.W.2d 658 (1985).

On appeal of review by the district court of an order of the Nebraska Equal Opportunity Commission, the Supreme Court will not disturb the district court's findings if they are supported by substantial evidence. *Zalkins Peerless Co. v. Nebraska Equal Opp. Comm.*, 217 Neb. 289, 348 N.W.2d 946 (1984).

In appeal from the Liquor Control Commission, the Supreme Court determines only whether findings of the commission are supported by substantial evidence and whether district court applied the proper statutory criteria. *The 20's, Inc. v. Nebraska Liquor Control Commission*, 190 Neb. 761, 212 N.W.2d 344.

Where district court had only cold record before it, the rule pertaining to Supreme Court's consideration of the opportunity of the trial court in equity to observe the witnesses is inapplicable. *C & L Co. v. Nebraska Liquor Control Commission*, 190 Neb. 91, 206 N.W.2d 49.

84-919. Act; exclusive means of judicial review. Except as otherwise provided by law, the Administrative Procedure Act establishes the exclusive means of judicial review of a final decision of any agency in a contested case.

Source: Laws 1963, c. 531, § 3, p. 1666; Laws 1987, LB 253, § 21; Laws 1988, LB 352, § 187.

84-919.01. Negotiated Rulemaking Act; use by agency. Prior to the formal rulemaking procedure of section 84-907, agencies may use the procedures of the Negotiated Rulemaking Act to permit the direct participation of affected persons in the development of proposed rules and regulations. Negotiated rulemaking may be used to resolve controversial issues prior to the formal rulemaking of the Administrative Procedure Act. To be effective, such proposed rules and regulations shall be adopted pursuant to the Administrative Procedure Act in the form proposed by the negotiated rulemaking committee or as amended by the agency.

Source: Laws 1994, LB 446, § 37.

Operative date August 1, 1994.

Cross Reference

Negotiated Rulemaking Act, see section 84-921.

84-920. Act, how cited. Sections 84-901 to 84-920 shall be known and may be cited as the Administrative Procedure Act.

Source: Laws 1987, LB 253, § 22; Laws 1994, LB 446, § 38.
Operative date August 1, 1994.

(b) NEGOTIATED RULEMAKING ACT

84-921. Act, how cited. Sections 84-921 to 84-932 shall be known and may be cited as the Negotiated Rulemaking Act.

Source: Laws 1994, LB 446, § 1.
Operative date August 1, 1994.

84-922. Purpose of act. The purpose of the Negotiated Rulemaking Act is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act. It is the intent of the Legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process of the Administrative Procedure Act. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. A consensus agreement on a proposed rule reached by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent formal rulemaking process. This section shall not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

Source: Laws 1994, LB 446, § 2.
Operative date August 1, 1994.

Cross Reference
Administrative Procedure Act, see section 84-930.

84-923. Terms, defined. For purposes of the Negotiated Rulemaking Act:

- (1) Agency shall have the same meaning as in section 84-901;
- (2) Consensus shall mean unanimous concurrence among the interests represented on a negotiated rulemaking committee unless the committee agrees upon another specified definition;
- (3) Convenor shall mean a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure;
- (4) Facilitator shall mean a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator shall not have decisionmaking authority;
- (5) Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner;

(6) Negotiated rulemaking shall mean rulemaking through the use of a negotiated rulemaking committee;

(7) Negotiated rulemaking committee or committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule;

(8) Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, agency, or public or private organization of any character; and

(9) Rule shall mean rule or regulation as defined in section 84-901.

Source: Laws 1994, LB 446, § 3.

Operative date August 1, 1994.

84-924. Negotiated rulemaking committee; establishment; agency director; use of negotiated rulemaking procedure; determination; considerations; convenor; duties. (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) There is a need for a rule;

(b) There are a limited number of identifiable interests that will be significantly affected by the rule;

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) Can adequately represent the interests identified; and

(ii) Are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the Administrative Procedure Act;

(f) The agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency in the formal rulemaking process of the Administrative Procedure Act.

(2) An agency may use the services of a convenor to assist in making the determination of need pursuant to subsection (1) of this section and to assist the agency in:

(a) Identifying persons who will be significantly affected by a proposed rule; and

(b) Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking.

(3) The convenor shall report findings and make recommendations to the agency. Upon request of the agency, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. The report and any recommendations of the convenor shall be made available to the public upon request.

Source: Laws 1994, LB 446, § 4.
Operative date August 1, 1994.

Cross Reference
Administrative Procedure Act. see section 84-920.

84-925. Petition to use negotiated rulemaking committee; procedure; exception. (1) Except as provided in subsection (2) of this section, any person may petition an agency to request the use of a negotiated rulemaking committee in the development or revision of a rule. Each agency shall prescribe the form of the petition and the procedure for its submission, consideration, and disposition. Within sixty days after submission of a petition, the agency shall (a) deny the petition in writing stating its reasons therefor or (b) initiate the negotiated rulemaking procedure.

(2) A person committed to or otherwise incarcerated in a Department of Correctional Services facility may not petition the Department of Correctional Services to request the use of a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 5.
Operative date August 1, 1994.

84-926. Negotiated rulemaking committee established; agency; duties; Secretary of State; duties. (i) If an agency decides to establish a negotiated rulemaking committee, the agency shall:

- (a) Give notice to the Secretary of State; and
 - (b) Publish the notice in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.
- (2) The notice shall include:
- (a) An announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;
 - (b) A description of the subject and scope of the rule to be developed and the issues to be considered;
 - (c) A list of interests likely to be significantly affected by the proposed rule;
 - (d) A list of the persons proposed to represent the affected interests and the agency;
 - (e) A proposed schedule for completing the work of the committee; and

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(f) An explanation of how a person may apply for or nominate another person for membership on the committee.

(3) The Secretary of State shall establish and maintain a list of subscribers who wish to receive notice of an agency's intent to establish a negotiated rulemaking committee and shall provide such notice to such subscribers at a cost to be assessed against each subscriber. The Secretary of State shall collect payments and make disbursements of such funds as may be necessary to carry out the notification required by this subsection.

(4) The agency shall provide a period of at least thirty days for the submission of comments upon and applications for membership on a negotiated rulemaking committee.

Source: Laws 1994, LB 446, § 6.
Operative date August 1, 1994.

84-927. Negotiated rulemaking committee; establishment; notice of decision; agency support; termination. (1) If, after considering comments and applications for membership on the negotiated rulemaking committee submitted pursuant to section 84-926, the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted pursuant to section 84-926, the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice of the decision not to establish a negotiated rulemaking committee in a newspaper having general circulation in the state and, as appropriate, in other newspapers and publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical assistance and support.

(4) A negotiated rulemaking committee shall terminate upon the adoption of the final rule under consideration by the agency pursuant to the Administrative Procedure Act unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

Source: Laws 1994, LB 446, § 7.
Operative date August 1, 1994.

Cross Reference

Administrative Procedure Act, see section 84-920.

84-928. Negotiated rulemaking committee; membership; procedure. (1) A negotiated rulemaking committee may by consensus expand its mem-

bership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2) of this section.

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination shall be submitted to the negotiated rulemaking committee and shall include:

(a) The name of the petitioner or nominee and a description of the interests the person represents;

(b) Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) An explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition, a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

Source: Laws 1994, LB 446, § 8.

Operative date August 1, 1994.

84-929. Negotiated rulemaking committee; powers and duties; consensus; procedure; report; contents. (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and shall be authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that