

ALASKA LEGISLATURE

2698

HOUSE and SENATE FINANCE COMMITTEE FILES, 2003-2004

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Poorly written, poorly administered, poorly enforced regulations are costly to an economy, a government, and society in general and will likely continue until a fair and impartial system of adjudication of those regulations is in place.

I. Overview

Origin of Central Panels

The governance of administrative law has become a huge challenge in the United States. With this challenge have come reforms and the foremost is the establishment of quasi-judicial powers and proceedings to keep in balance the need to administer regulations with the public's right of due process and justice when those rules are challenged.

In many cases, it has become nearly impossible for all but the wealthy to take on regulators, and economically survive the process. Medium and small-scale businesses are desperate for speedy resolutions that are fair and impartial as are everyday citizens.

This chronic and suffocating problem of untouchable regulation has created a high social and political demand for a solution. Courts have long been uncomfortable with the erosion of due process evident in the aggressive growth of administrative law. The need for independent, highly skilled and trained adjudicators is a direct result of efforts to resolve this growing conflict.

The governing premise for this need is as old as our federal constitution and based on the premise that executive government can only be held in balance if it is constrained and held accountable through a separate and equal power that being the Judiciary.

When examining the damage caused by oppressive or poor regulations, it became evident that the balance needed to achieve fairness and due process within the administrative body of law was severely lacking or in some cases completely compromised through in-house bias or outright prejudice.

The answer has been the installment of separate and independent hearing officer functions within executive branches of government. These have come to be known as Central Panels.

II. Introduction of the Central Panel Concept to the Alaska Legislature.

The Term. Central Panels is commonly used to describe any number of varieties of independent hearing office functions either established or being established in various states.

Presently. Alaska's Administrative Hearing Officers are not centralized and for the most part are located within various State Agencies. They often serve as employees under the authority of a particular Commissioner. Qualifications of hearing officers vary, and in many instances these adjudicators are not cross-trained.

Public Perception. Over the years the public has constantly wondered and complained about hearing officers who work for agencies and whether or not these officers are in fact unbiased and delivering fair, impartial, and timely decisions.

Not a New Concept. In doing research on how to achieve better regulations and more timely hearings, it was discovered that the issue of achieving high standards of due process in the administrative hearing function has been addressed in over half the 50 states through Central Panels.

Adjustments. To do so, other states have in many instances removed hearing officers from the burden of serving separate agencies and establishing a centralized, hearing office, with high standards, a strict code of ethics, and with a high degree of autonomy.

A New Mission. Central panels and the hearing officers in them are charged with serving the public with fair, efficient hearings based on the goal of complete due process under the law. While most fall under the administrative branch of government, theirs is very much a quasi-judicial responsibility as opposed to an extension of any particular agency.

III. Genesis of Initial Legislative Action

1996-97 The first legislation introduced to establish independent hearing office functions in Alaska occurred on April 4 during the 20th Alaska legislature. HB 232 was sponsored by Representative Scott Ogan and was based on a model provided by Mr. Edwin Felter, the Senior Administrative Law Judge and founder of Colorado's Central Panel.

Mr. Felter is a recognized national expert on Central Panels, a member and elected leader in the national organization of independent hearing officers, and has been instrumental in establishing what is considered to be one of the most efficient and well-organized Central Panels in the United States.

Also contacted was Mr. John Hardwicke of Maryland who is also an expert in the establishment and functions of Central Panels and served as Maryland's Chief Administrative Law Judge.

Mr. Felter and Mr. Hardwick provided much guidance and a model act for Representative Ogan's office to examine. Mr. Felter also offered, through teleconference, his testimony to the House Judiciary Committee then Chaired by Representative Joe Green.

Mr. Ed Hein, from Juneau, a former Legislative Legal Services bill drafter, Judge, and now an independent hearing officer for the National Marine Fisheries Service, also provided a great deal of expertise on the Central Panel concept. Mr. Hein is a leader in the State Association of Administrative law Judges and is active at the National level as well.

IV. Legislative Action

Much debate centered on how best to proceed based on cost and the highest chance of success in the application of the Central Panel during the Knowles Administration.

As predicted by Mr. Felter, many of the Knowles Department heads were concerned about losing the ability to have their own in-house hearing officers. While it was difficult for the Administration to object to fair, efficient administrative hearings, it was possible for them to provide inflated and very convoluted fiscal notes. If there was one fact that was surely established in the legislative process for HB 232, it was the true cost of Alaska's administrative hearing functions; their efficiency, and degree of fairness has never been established and reported to the legislature or the administration.

Mr. Felter explained that the lack of such details and inflated costs is not uncommon when states have not attempted to consolidate and centralize their hearing office functions. Many officers serve many different masters and in many cases have not been asked to keep track of and report specific costs of their hearing related duties.

One of the most important reasons states find to centralize their hearing officers is to reduce cost and be better able to track the behavior and efficiency of hearing officers.

Legislatures appreciate the ability to budget directly for centralized and well reported hearing office functions. Elected officials find it much easier to hold those they budget to high standards when performance is easily tracked.

When it became quite clear that Governor Knowles would veto HB 232, many legislators were uncomfortable with investing a lot of time and effort only to see the measure rejected by the Governor. There were also overtures by the Department of Law to work with the legislature to improve the hearing officer system. These good will gestures evaporated after the legislative session ended.

In an effort to avoid a future veto and to build a more active base of support for independent hearings among Alaskans, Representative Ogan elected to introduce in the 21st Legislature, a constitutional amendment requiring independent hearing officers through HJR-18.

Not only did this strategy involve a much cleaner and easy to understand document, it also quickly got the attention of the Governor's political advisors. It was much more difficult to raise fiscal objections since the resolution did not require a particular type of centralized effort. Throughout the 21st session, the administration vacillated between new promises of cooperation and fiscal warnings. In the end the effort for HJR – 18 was lost amidst a host of other budget driven priorities and failed to attract the attention it needed within the House leadership to achieve passage.

With new leadership in the House and the Senate and a new administration of the same party and persuasion, the opportunity to more cooperatively establish independent hearing office functions has vastly improved.

Addressing One of the Main Objections to Independent Hearing Officers

The In-house (agency) Expertise Issue.

- *Note: During hearings in the Alaska Legislature, one of the first issues that in-house hearing office advocates raised is the value of in-house expertise. Agencies desire hearing officers well versed in agency regulations and policy.*
- *Of course our state and federal constitutions recognize just the opposite in protecting due process. It would be unthinkable to allow a judge to be employed by an agency of the administration or the legislature.*
- *Results based data shows that impartial, well-trained hearing officers actually deliver higher quality, fairer, and more legally sustainable decisions if they are not under the watchful eye of a commissioner or director.*

A national expert counters the in-house expertise argument this way.

Agency expertise may actually cause impairment in the adjudication process. Judge Edwin Felter includes the following remarks in his written presentation to the Colorado Bar. *“Even though a hearing officer may exhibit an attitude completely independent from the agency and its staff, physical location and continuous relationships with only the personnel of the employing agency may bias his analytical capacities, or they may contribute to an inclination to narrow his perspectives to only those social problems and regulatory objectives sought by this one agency.”*

Another commentator considers *“the unavoidable appearances of bias”* when a hearing officer, attached to an agency, presides in litigation by that agency against a private party.

Mr. Felter goes on to say that *“there are two competing concepts in administrative law. One is the concept that adjudicators should be separate from the regulatory agencies they serve. The second is what the author calls administrative law. The proponents of the latter concept maintain that adjudicators by the agency are a necessary part of statutory mandated policy formulation. In contrast, the opponents of agency law hold that the best approach to policy formulation is the adoption of rules and regulations by the agency.”*

One proponent of Central Panels states that, *“the vast majority of hearings now consist of large numbers of fairly fungible cases which involve private rights rather than proceedings in which the agency has a major stake in a policy making issue. Antiquated ideas that for decades have controlled administrative practice and procedure must give way to a more practical and economic system if the public and Congress are to continue to accept this means of dispute resolution.”*

V. Options to Consider

The following options are provided for legislators and administration officials as they consider how best to improve Alaska's administrative hearing functions.

If a consensus can be reached on the good government principle of fair, efficient, timely, cost effective hearings that achieve the highest possible due process standards, then the only question remaining is how to do so in a responsible and affordable manner.

Reform through Central Panel

The following primary issues in Central Panel reform are location of hearing officers, their qualifications, standards and duties within the central office, panel reporting requirements, and training of hearing officers.

Location

The degree of separation from agencies can vary but the goals for such separations are consistent.

Hearing officers should not have ex-parte contact with agency people. Physically removing them to a central office avoids the easy temptation through the normal fraternization that occurs in office settings. To physically relocate is not absolutely necessary if cost becomes too large a consideration and other acceptable mitigation measures can be taken.

Qualifications

Standards of conduct, qualifications, and standards of performance for hearing officers can all be established by the legislature.

Duties

Better guidelines for hearing functions, including efficiency and atmosphere, can also be established by the legislature. Providing hearings in a timely manner, avoiding endless cycles of remanding decisions within agencies, and carrying out duties in a judicial setting can also be established by the legislature.

Standards

Establishing fair and balanced hearing rules and procedures can be accomplished through legislative action, as can other avenues of relief if the hearing process has not performed in a timely and responsible manner.

VI. Three Main Focal Points of Interest

1. Public.

Delivery to the citizen of the most efficient, fair, professional, due process hearings possible.

2. Business.

The ability to help establish a more secure and inviting business climate through consistent, efficient, and fair hearings.

3. Government.

The upfront costs of relocation of hearing officers and functions are real. Less costly, time consuming, better prepared and defensible hearing dockets should offset these.

VII. Mechanics

To Establish Professional Hearing Offices

- | | |
|-------------------------------|--|
| 1. <u>Ethical conduct.</u> | Judicial Cannon should be applied to the hearing officer function. |
| 2. <u>Mission statements.</u> | The legislative branch of government should establish high expectations. |
| 3. <u>Oversight.</u> | The legislature should establish a person to be responsible for hearing officer oversight. |
| 4. <u>Training.</u> | The legislature should establish training requirements as well as cross training. |

To Provide Facilitation and Accountability

1. **Central location.** The legislature shall establish where hearing office functions occur and centralize them to whatever extent affordable.
2. **Judicial atmosphere.** Some states require hearing officers to robe and conduct their hearings in a judicial setting.
3. **Reporting.** The legislature can require the type of budgeting and reporting they deem best as well as performance evaluations and regular audits.

VIII. Various Solutions For Consideration

The following options are arranged to provide policy makers the ability to weigh major considerations, both real and political, into their decision process. They are obviously open for alteration and exist to stimulate further discussion and ideas.

Plan A Just change the rules

1. Current hearing officers would basically remain in place and in their present locations at their same pay range.
2. New guidelines would be established by the legislature.
3. New budgeting procedures would be established for a more consolidated budget increment.
4. The legislature would place someone in an oversight position over all hearing officers that would be responsible for reporting to the legislature.

5. Annual performance reports would be required-including public surveys of how the hearing process is working.

6. Protections would be provided as an insulating factor to eliminate retribution fears from the agency they are operating in.

7. Establish basic professional standards for hearing officers including cross training and on going educational requirements. Allow a transition time for present hearing officers to gain that level of excellence.

Positive:

- a) Favorable public approval
- b) Least upsetting to agencies
- c) Least costly overall.

Negative:

- a) Results will happen slowly.
- b) Most vulnerable to internal bureaucratic resistance.
- c) Most dependent on pro-active (cooperative) administration.

Plan B *Create an affordable model with select officers*

- 1. Establish model system on a small scale
- 2. Determine what functions and hearing officers would be put into a central location.
- 3. As the new model succeeds, add in other hearing officers and functions as budgets allow.
- 4. Use the new model as an oversight office and a training facility for all hearing officers as well as a clearinghouse for adjudication cases that are not being handled well in the non-central locations.

Positive:

- a) Very few displacements of employees.

- b). Creation of an affordable model to demonstrate success.
- c). A new standard of expertise and autonomy for other hearing officers to work toward.

Negative:

- a) Some upfront costs of moving and office set up.
- b) Only a partial solution.
- c) Susceptible to administrative pressure if not carefully protected by the legislature.

Plan C *A Select Central Panel*

1. Create a new central panel model and include all hearing office functions except those determined by the legislature to leave in place as is for the time being. Reasons for allowing an opt out provision would be established by the legislature and could include such items as cost, efficiency, or satisfaction with how the hearing officers are performing.

** New model will be complete with all the training and standards in place including professional qualifications.*

Positive:

- a) Faster results.
- b) Higher public satisfaction through better service.
- c) Less risk to agencies and less contested cases to the court system.

Negative:

- a) More resistance from bureaucrats
- b) Higher cost
- c) More complex and therefore more difficult to administer and set up.

Plan D

All hearing officers and functions included with all standards in place

1. Create the new model with an administrator, training requirements, professional qualifications, oversight, budget process, audit requirements, and performance requirements.

Positive:

- a) Highest public approval
- b) Fastest results in all sectors.
- c) The least likely to be undone by non-supportive administrations.
- d) greatest savings down-line

Negative:

- a) Highest upfront costs
- b) Most legislatively complex.
- c) Most threatening to bureaucracy.

Plan E

Amend the State Constitution

1. Define the issue and put it before voters for approval as an amendment to our state constitution.
2. Constitutional approach would not require dealing with the details until the public approved the reform through the voting process.
3. An example of constitutional language could be, "*Administrative hearing functions shall be separate and independent from all agencies of government.*"

Positive:

- a) Governor's signature not required.
 - b) Public ultimately affirms issue.
 - c) No specific costs or mandates on how to work out the details.
4. Likely to stimulate voters.

Negative:

- a) Subject to campaign distortion.
- b) Subject to unrealistic cost projections.
- c) Results will take longer.

Plan F *Request the Administration to undertake the reform*

1. Give the new administration the option of coming up with a plan to accomplish the objectives of central panels.

Positive:

- a) Demonstrates a high degree of trust and confidence in the administration.
- b) Relieves the legislature of being directly involved in the details.
- c) Allows the administration to accomplish a good government goal.

Negative:

- a) Absent legislative initiative, Central Panels will have to be of the highest priority to overcome the internal resistance to the concept.
- b) The task might become needlessly bogged down and many legislators would then be reluctant to push the Governor.

VII. Staff Recommendations

After several years of research and assessing the dynamics involved in implementing Central Panels, a few key suggestions are respectfully offered.

Cooperation and common goals

To achieve the least costly and best system of Central Panels, the Administration must be thoroughly involved and willing to stay focused on the broad based common goal of achieving the best possible hearing office function in Alaska. To enlist such support, the Legislature must be well informed and willing to share their support for reform with the Administration emphasizing a cooperative effort. This will necessitate a thorough presentation of a plan from concept to implementation as performed in other states and municipal governments.

Build public support through a bi-partisan good government approach

Central Panels are supported nationally without political boundaries. Liberals and conservatives support the formation of Central Panels albeit occasionally for slightly different reasons. The well-established facts are that fair, due process-oriented hearings, serve all sectors of society and commerce very well. In addition they restore faith in government and make life easier for Commissioners and those who need to concentrate their day-to-day efforts on purely administrative duties. Once the effectiveness and efficiencies of Central Panels are in place, in-house adjudication is a burden most agency officials are happy to have off their plate.

Reduce costs and errors through expertise

There is so much enthusiasm and interest in reforming Administrative Law and the adjudication on a national basis that many experts in the field are offering their assistance to government entities embarking on the reform. With each new state bringing about this reform, improved models are being offered and efficiencies of legislation and application improve. Alaska needs to avail itself to this expertise.

X. Primary National and State Contacts

National

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Wendy and Pete,

I am writing concerning the bill designed to create an Office of Administrative Hearings. In general, it is my conclusion that the university should be exempted from the bill. I have the following specific comments about the bill:

1. It ain't broke with respect to the university. The university has had very good experience with its administrative hearing processes. In the main, the hearings are completed in a timely and efficient manner, are relatively cost effective, and are very fair. To the extent the university uses hearing officers, it hires independent attorneys to serve that function. This insures that the hearing officers are knowledgeable in the law, normally within the area of law involved in the hearing. Subject to timeliness and responsiveness, the university makes an effort to repeatedly use the same hearing officers in similar matters to take advantage of their familiarity with university policies and culture and avoid the increased cost associated with developing that expertise each hearing.

2. The bill infringes on the university's constitutional and rational autonomy from the executive branch. The Constitution of Alaska provides that the Board of Regents shall govern the university--not the Governor, the Department of Administration, the Attorney General, or the Chief Administrative Hearing Officer. While the constitution clearly anticipated that the university would be bound by law of general application, which probably includes the administrative processes associated with them, it does not anticipate that laws would supplant the Board of Regents' authority to govern the university on matters that are not of general application, especially those that are important to its function of operating a system of higher education. The Supreme Court has recognized that the university is in some limited respects, a fourth coordinate branch of government.

The bill as currently written would violate this constitutional allocation of responsibility by setting up a code of ethics and a review process for complaints against all hearing officers, including those employed by the university, which is to be decided by the Chief Administrative Hearing Officer within the Department of Administration and the Attorney General. It also would certainly violate the wise legislative recognition that the university is different from other elements of state government and should be afforded independence from the executive branch with respect to many of its functions.

3. Although the bill has limited application to the university as written, it does apply to procurement and that is not a good result. The bill designates areas of application by listing specific statutes and regulations that are subject to adjudicative hearings to be held by the central panel. As it relates to the university, because it does not list AS 14.40 within its scope designation, the bill as currently written does not appear to intend to cover any of the current types of matters in which the university holds hearings, whether with or without hearing officers, other than with respect to product, service, and construction procurement matters. As you will recall, because the university's procurement was not reputed to be a problem, the university was not

Prepared by the University of Alaska

included within the arbitration of construction disputes provided for in a bill last year. One problem with placing procurement within the control of the Chief Administrative Hearing Officer, within Department of Administration, is that it increases the potential that political pressure will be exerted by powerful complainants relative to the decision.

4. **The Board of Regents and the Bar Association, not the Department of Administration or the Attorney General, should be responsible for supervising the conduct of university hearing officers.** Even with respect to hearing officers who are not hired by the Chief Administrative Hearing Officer, the bill places the supervision of the hearing officers with the Chief Administrative Hearing Officer, who is housed within the Department of Administration, and the Attorney General. In my view, as the public body that holds public meetings, with public comment periods, the Board of Regents is the appropriate body to be responsible for the activity of university hearing officers to the extent that activity does not implicate legal ethics. To the extent that it does, the Bar Association should be the responsible entity, given that it already has investigation and disciplinary authority. Finally, to the extent that a claim is made of violation of due process, that should be resolved by the courts.

It should be noted that in my eight years of service as general counsel, I don't recall any instance in which any complaints regarding the fairness of its hearing officers have been made to the Board of Regents, the President of the University of Alaska, or the general counsel. A problem with placing supervision of hearing officers with an outside agency is that it will prompt more complaints against hearing officers, especially if there is a perception of political influence.

5. **The bill should certainly not be applied to the university since it is not applied to several more major departments that use hearing officers.** One concern I have about this bill is that some of the major elements of state government that utilize hearing officers are not included within the jurisdiction of the Office of Administrative Hearings. Specifically, I don't see where the Department of Revenue, Alaska Labor Relations Agency, Unemployment Compensation, Workers Compensation, Regulatory Commission of Alaska, Alaska Railroad, Alaska Housing Finance Corporation, Alaska Aerospace Development Corporation, and probably others, are not included in this bill. Nor does the bill apply to construction disputes or labor grievances that are subject to arbitration. This indicates to me that the departments or entities involved in these areas do not have confidence in the process. Until the process takes on general application, the university should not be subject to it.

6. **Once the foot is in the door, further expansion will be sought.** One point that was consistently made by the experts with experience from other states is that these bills start small, and expand rapidly. This is in part because once the structure is in place, any time someone does not like a decision, they can go to their favorite legislator to include their cases in the bill, so they can then go to their politically sensitive governor, for relief. With the University, at least, this would create a pressure point too far removed from familiarity with the nature and challenges of higher education.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 19, 2004



REPORT NUMBER 04.152

ADMINISTRATIVE REGULATIONS PROPOSED AND ADOPTED, FY2000 - FY2003

PREPARED FOR SENATOR GENE THERRIALT

BY ROGER WITHINGTON, LEGISLATIVE ANALYST

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ALASKA ADMINISTRATIVE CODE SECTIONS..... 4

Table 3: Estimated Number of Regulation Sections Added, Amended, or Repealed, FY1996 through FY2003..... 5

You asked for information regarding administrative regulations. Specifically, you wished to know how many administrative regulations have been proposed during the last three years.

As you may know, enumerating regulations is problematic because there does not appear to be a perfect definition of "a regulation." As a result, we present counts of regulation activity in three ways: the number of pages of proposed regulations reviewed by the Alaska Department of Law, the number of regulation project files opened by the Department of Law, and the number of regulation sections created, amended, or repealed. None of these methods will unequivocally answer your question. They should, however, provide some perspective as to the volume of regulations proposed and adopted annually by Executive Branch agencies.

PAGES OF REGULATIONS

The Alaska Department of Law (DOL), Legislation and Regulations section reviews proposed state legislation and regulations (both civil and criminal) for constitutional and statutory requirements. Assistant Attorney General Deborah Behr provided us with the number of pages of regulations reviewed by the DOL, by department, from FY1999 through FY2003.¹ We combined this information with comparable information we collected several years ago in support of a similar request, to provide an eight-year summary of the number of pages of regulations reviewed by the DOL. We provide this eight-year summary in Table 1.

When reviewing Table 1, please keep in mind that there can be a great deal of variability regarding what is contained on a single regulation page. As one example, some pages consist of several brief amendments to regulations that already exist, while other pages consist of one, or a portion of one, new regulation.

¹ Deborah Behr, Assistant Attorney General with the Department of Law's Legislation and Regulations section can be contacted at 907-465-3600.

Table 1: Pages of Regulations Reviewed by the Legislation and Regulations Section of the Department of Law, FY1996 through FY2003

Department or Entity	FY 1996	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	Total
Fish & Game	424	617	830	476	550	614	383	447	4,341
Environmental Conservation	430	539	448	547	667	188	216	350	3,385
Community & Economic Development	296	298	287	279	484	160	425	343	2,572
Health & Social Services	287	350	363	150	135	346	370	199	2,200
Education & Early Development	44	105	206	93	106	71	306	136	1,067
Revenue	48	63	65	148	83	109	76	138	730
Labor & Workforce Development	74	65	99	85	37	49	41	38	488
Natural Resources	108	37	110	43	12	132	108	203	753
Public Safety	43	124	14	45	17	121	21	15	400
Governor's Office	9	7	1	104	84	16	0	0	221
Commercial Fisheries Entry Commission	31	55	35	13	21	18	36	35	244
Alaska Oil & Gas Conservation Commission	0	4	0	0	150	0	0	3	157
Transportation & Public Facilities	26	50	2	8	61	6	467	1	621
Division of Elections	32	30	61	16	1	13	7	521	681
Administration	31	20	50	11	6	172	50	21	361
Corrections	0	10	5	25	8	0	0	62	110
Military and Veteran Affairs	0	0	0	4	0	0	0	0	4
Law	0	0	0	0	0	0	0	10	10
Total Pages Reviewed	1,883	2,374	2,576	2,047	2,422	2,015	2,506	2,522	18,345
Sources: Craig Tillery, Assistant Attorney General, "Pages of Regulations Reviewed FY96 through FY00," Legislation and Regulations Section, Department of Law, April 4, 2001, and Deborah Behr, Assistant Attorney General, "Pages of Regulations Reviewed FY99 through FY03," Legislation and Regulations Section, Department of Law, February 12, 2004.									

DEPARTMENT OF LAW REGULATION PROJECT FILES

Typically, the Department of Law opens a regulation project file when a department wishes to add or amend a regulation. The DOL provided us with the number of regulation project files opened from FY1999 through FY2003, as well as the number of files that were closed without regulations being delivered to the Lieutenant Governor's office for filing.² Please keep in mind that there is a great deal of variability in what is contained in a project file. As an example, a project file may be a half page (such as a for minor change to a regulation that already exists), to 300 pages (such as for a new or legally complex regulation).

Table 2: Regulation Project Files Opened by the Department of Law, FY1999 to FY2003

Fiscal Year	Projects Files Opened	Regulation Project Files Sent to Lieutenant Governor	Project Files Closed, Regulations Not Sent to Lieutenant Governor
1999	133	115	18
2000	156	142	14
2001	135	129	6
2002	155	142	13
2003	154	143	11

Source: Steve Weaver, Attorney IV, Legislation and Regulations Section, Department of Law, 907-465-3600.

ALASKA ADMINISTRATIVE CODE SECTIONS

In addition, we searched the electronic version of the Alaska Administrative Code (AAC), to estimate the number of regulation sections added, amended, or repealed in a given year. Table 3 provides this information for FY1996 through FY2003. As with the Department of Law's "pages reviewed" methodology, there are limitations with this analysis. As an example, this analysis enumerates instances in which an entire section has been newly created as being equal to those instances in which a single word in an existing regulation section has been altered.

² Filing a regulation with the Lieutenant Governor is the second to last step in the regulation adoption process. The entire regulation adoption process is explained in the *Drafting Manual for Administrative Regulations*, which can be found at www.law.state.ak.us/doclibrary/drafting_manual.html.

Table 3: Estimated Number of Regulation Sections Added, Amended, or Repealed, FY1996 through FY2003

Fiscal Year	Number of Regulation Sections Added, Amended, or Repealed
1996	1,298
1997	1,693
1998	2,235
1999	1,260
2000	1,702
2001	1,777
2002	1,737
2003	2,709 ^(a)
2004 ^(b)	532

Notes: The Alaska Administrative Code is updated quarterly by the Alaska Administrative Register. We assigned each register to a specific fiscal year based on the date the register was published. A single fiscal year is composed of registers published on October 1, January 1, April 1, and July 1. We include regulations published within registers issued on July 1 as part of the previous fiscal year to best reflect when the regulations were prepared. Our register assignments are as follows: FY1996=Registers 135 to 138; FY1997=Registers 139 to 142; FY1998=Registers 143 to 146; FY1999=Registers 147 to 150; FY2000=Registers 151 to 154; FY2001=Registers 155 to 158; FY2002=Registers 159 to 162; FY2003=Registers 163 to 166; FY2004=Registers 167 to 168. To compile this table we queried the Folio version of the Alaska Administrative Code (dated December 15, 2003), searching the "History" field for the relevant Alaska Administrative Register number for each of the targeted fiscal years.

(a) Approximately 1,100 of these sections are related to the redistricting of election precincts that occurred after the 2000 census.

(b) The FY2004 figure is based on just the first two registers. The last two registers for the fiscal year have not yet been published.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 19, 2004



REPORT NUMBER 04.157

COSTS TO PRODUCE AND ADOPT REGULATIONS

PREPARED FOR SENATOR GENE THERRIALT

BY CHERIE NIENHUIS, LEGISLATIVE ANALYST

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Table 1: Actual, Authorized, and Governor's Budget, Department of Law, Legislation/Regulations Section, FY2002 through FY2005 (in 000s) 4

Table 2: Legislation/Regulations Section Employees, Pay, and Approximate Percentage of Time on Regulation Review..... 4

You asked about the costs to produce regulations. Specifically, you requested that we gather information about the costs incurred by State government in proposing, drafting, preparing for and taking public comment, reviewing, finalizing, and publishing an "average" regulation.

As you may know, several state agencies participate in the regulation adoption process. Even the simplest of regulation changes require the services of at least four agencies—the agency that proposes the regulation, the Department of Law, the Office of the Governor, and the Office of the Lieutenant Governor. According to the Department of Law's *Drafting Manual for Administrative Regulations*, a 230-page Instruction guide for state agencies and public involved in the regulation-making process, there are twelve steps in the regulation adoption process, beginning with planning and decision making, and ending with the publishing of regulations in the Alaska Administrative Code, and the forwarding of regulations from the Lieutenant Governor's Office to the Administrative Regulation Review Committee. We include a copy of the manual's flowchart showing these steps as Attachment A.

INDIVIDUAL AGENCY COSTS

Among the first steps in the regulation adoption process is the development and drafting of regulations, a step that usually originates with the affected department. Kurt West, Regulations

Specialist with the Department of Community and Economic Development, explained that the boards under the occupational licensing section of the department generally propose and formulate most of the regulation changes with little legal advice.¹ Mr. West handles all the public notice requirements, which include posting notices in one or more newspapers with wide circulation and through the on-line public notice system. He must also notify by mail every person directly affected by the regulation change, which can sometimes include thousands of individuals. When expertise from the Department of Law is required, Mr. West consults with Assistant Attorneys General David Brower and Gayle Horetski, both of the Department of Law's Commercial/Fair Business Section.

Mr. West estimates that his division processes between 25 and 32 regulations "projects" each year. A project can consist of one or more small changes or entire sets of new regulations. According to Mr. West, there is no "average" number of regulations per project. For example, he cites one recently initiated project—a rewrite of portions of the requirements for Marine Pilots—as a typical change, affecting nine sections of regulations for the occupation.

The costs to the Department of Community and Economic Development for regulation changes under the Division of Occupational Licensing include one full-time position (Mr. West) at Range 16 pay, approximately \$56,080 with benefits.² Division personnel report that combined advertising and postage costs for regulation notices exceeded \$65,000 in FY2003; combined with personnel costs, the division spends at least \$120,000 per year completing up to 32 regulations projects.³

All State of Alaska departments and some other state entities promulgate regulations that are designated by sections of the Alaska Administrative Code.⁴ Some departments experience more frequent regulation changes than others, and the amount of time and effort spent by department personnel varies from that of the Division of Occupational Licensing. Members of the boards of fish and game, for example, receive state compensation for hearings, many of which are held to consider regulation changes. Certain regulation change proposals engender more public comment than others, requiring more staff time to adequately evaluate and consider the responses. The regulation adoption process varies so significantly across departments that we were unable, in the time given to complete this project, to address this portion of the process fully.

The Office of the Lieutenant Governor is responsible for Step 11 in the regulation adoption process, which includes the final review, filing, and publishing of regulations. Robert Pearson, Regulations Administrator, Office of the Lieutenant Governor, completes these tasks for the agency; he also oversees the on-line public notice system, assisting other agency personnel when necessary. Mr. Pearson reviews approximately 200 regulations projects per year, and devotes an estimated 60 percent of his work hours to those projects. The Lieutenant Governor's office pays Mr. Pearson \$63,992 for his Range 19 salary and benefits; expenditures for

¹ Kurt West can be reached at (907) 465-2537.

² This is the pay rate for Step A of Range 16; Mr. West is most likely paid at a higher step.

³ This amount does not include inter-agency funds provided to the Department of Law for the number of pages reviewed for the division each year. This is explained in more detail in the following section.

⁴ There is no section in the administrative code for the Alaska Court System; there are distinct sections, however, for professional and vocational organizations and for miscellaneous boards and commissions, neither of which are departments.

regulations review in the Office of the Lieutenant Governor total approximately \$38,395 (60% x \$63,992) per year.⁵

We note that the Office of the Governor also reviews regulation changes before they are officially adopted. As of today, calls to the Governor's office about this step in the process have not been returned.

DEPARTMENT OF LAW

The Department of Law provides legal counsel, and sometimes drafting assistance, to individual departments and other regulation-making entities in the formulation of regulations. The extent of legal assistance provided, as you may expect, depends on the complexity of the regulation changes and the subject matter. For example, regulation changes that must adhere to federal law may necessitate more extensive study than those that need only comply with state law. Our understanding is that the 130 attorneys employed by the Department of Law each have areas of expertise to lend towards the regulation review process. According to Department of Law officials, there is not one set of attorneys responsible for the entire regulation review process, and all the department's attorneys may be called upon to assist in the process at any given time.

For that and other reasons, certain officials at the Department of Law were unable and, to some extent, unwilling, to assist us in assessing the costs the department incurs in reviewing regulations.⁶ We therefore compiled information we obtained through budget documents posted on the Office of the Governor's website and through limited conversations with Department of Law staff.

According to information provided in the FY 2005 Governor's Operating Budget documentation, the Legislation/Regulations section of the Department of Law provides several core services. Among those services, the section "frequently provides advice to state agencies regarding legal requirements for legislation, regulations, public records, and the Open Meetings Act."⁷ It is important to note that the section provides other core services, including drafting and editing legislation submitted by the Governor, as well as tracking and reviewing all passed legislation prior to the Governor signing it into law. Reviewing regulations is just one component of the section's work.

With that in mind, we present budgetary information for the Legislation/Regulations section in Table 1 below. In Table 2, we provide combined salary and benefit information for the employees in that section, and the approximate percentage of employee work hours devoted to regulations review.

⁵ Mr. Pearson can be reached at (907) 465-3520.

⁶ Department of Law attorneys Deborah Behr, Supervisor, and David Marquez, Chief Assistant Attorney General—both of the Legislation/Regulations section—were helpful in providing an overview of the section's structure and responsibilities. Specific budgetary figures, however, were not available to us because the Director of Administrative Services, Kathryn Daughhete, refused to assist us. According to Ms. Daughhete, there is no way to accurately assess the extent of time department attorneys spend reviewing regulations.

⁷ State of Alaska FY2005 Governor's Operating Budget, Department of Law, Legislation/Regulations Component Budget Summary, December 15, 2003, p. 3.

Table 1: Actual, Authorized, and Governor's Budget, Department of Law, Legislation/Regulations Section, FY2002 through FY2005 (in 000s)

Component Expenditures	FY2002		FY2003		FY2004	FY2005
	Authorized	Actuals	Authorized	Actuals	Authorized	Governor
Personal Services	379.9	435.4	390.6	517.1	364.0	540.1 ^(a)
Travel	11.0	2.9	11.0	2.4	11.0	11.5
Contractual	99.2	73.9	99.2	101.7	99.2	114.9
Supplies	12.3	6.6	12.3	9.0	12.3	15.8
Equipment	0.0	1.9	0.0	5.6	0.0	6.5
Land/Buildings	0.0	0.0	0.0	0.0	0.0	0.0
Grants, Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
Expenditure Totals	502.4	520.7	513.1	635.8	486.5	688.8

Funding Sources

General Fund Receipts	375.2	345.9	382.7	483.4	355.7	470.9
Inter-Agency Receipts	127.2	174.8	130.4	152.4	130.8	217.9
Funding Totals	502.4	520.7	513.1	635.8	486.5	688.8

Notes: (a) The Personal Services component of the FY2005 Governor's Operating Budget differs from that of the FY2004 budget by the elimination of one Attorney III position, and the addition of two Attorney IV positions.

Source: "State of Alaska Governor's Operating Budget, Department of Law, Legislation/Regulations Component Budget Summary," for fiscal years 2003, 2004, and 2005.

As shown in Table 1, actual expenditures exceeded authorized expenditures in both fiscal years 2002 and 2003, by 3.6% and 23.9% respectively. For FY2005, the Governor's budget requests a 42% increase over the FY2004 authorized budget. We note that the FY2005 budget request eliminates the Attorney III position, and requests two Attorney IV positions for the section.

Table 2: Legislation/Regulations Section Employees, Pay, and Approximate Percentage of Time on Regulation Review

Employee Name	Position	Salary and Benefits (FY04) ^(a)	Percentage of Time to Reg Review	Salary and Benefits to Reg Review
David Marquez	Attorney VI	\$ 108,193	25%	\$ 27,048
Deborah Behr	Attorney V	\$ 92,440	50%	\$ 46,220
Steve Weaver	Attorney IV	\$ 86,828	100%	\$ 86,828
Kevin Messing	Assoc. Attorney II	\$ 64,524	100%	\$ 64,524
Barbara Jordan	Assoc. Attorney II	\$ 64,524	35%	\$ 22,583
Patricia Vanpool	Law Office Assistant I	\$ 42,408	50%	\$ 21,204
Totals/Averages		\$ 458,917	60%	\$ 268,408

Notes: (a) Salary and benefit amounts reflect Step A pay, except for that of David Marquez, which reflects actual salary and benefits paid. Most of the above pay information, therefore, are minimums. We also note that the position occupied by David Marquez is not included in the Legislation/Regulations component budget request--the source documentation for the budgets shown in Table 1.

Sources: David Marquez, Chief Assistant Attorney General, Legislation/Regulations Section, Dept. of Law; Employee name and percentage of time to reg review; Skiff Lobaugh, Human Resource Manager, Legislative Affairs; Salary and benefits information for all employees except for Mr. Marquez, which was provided earlier this year in response to a separate legislative request by Kathryn Daughhete, Director, Administrative Svcs, Dept. of Law.

The Department of Law also provided us with statistics about the pages of regulations reviewed for fiscal years 1999 through 2003. The table, which we include as Attachment B, attributes the number and percentage of pages reviewed to each of eighteen departments, divisions, or other governmental units. As can be seen in the table, the Department of Law reviewed 2,522 pages of regulations in FY2003; over the five-year period, the department reviewed an average of 2,302 pages per year. Also included in the figures is the amount charged back to individual agencies for regulation review services provided by the Department of Law. The table shows individual agency costs for FY2003 to be \$143,500, which department officials told us represents the salary of one attorney.⁸

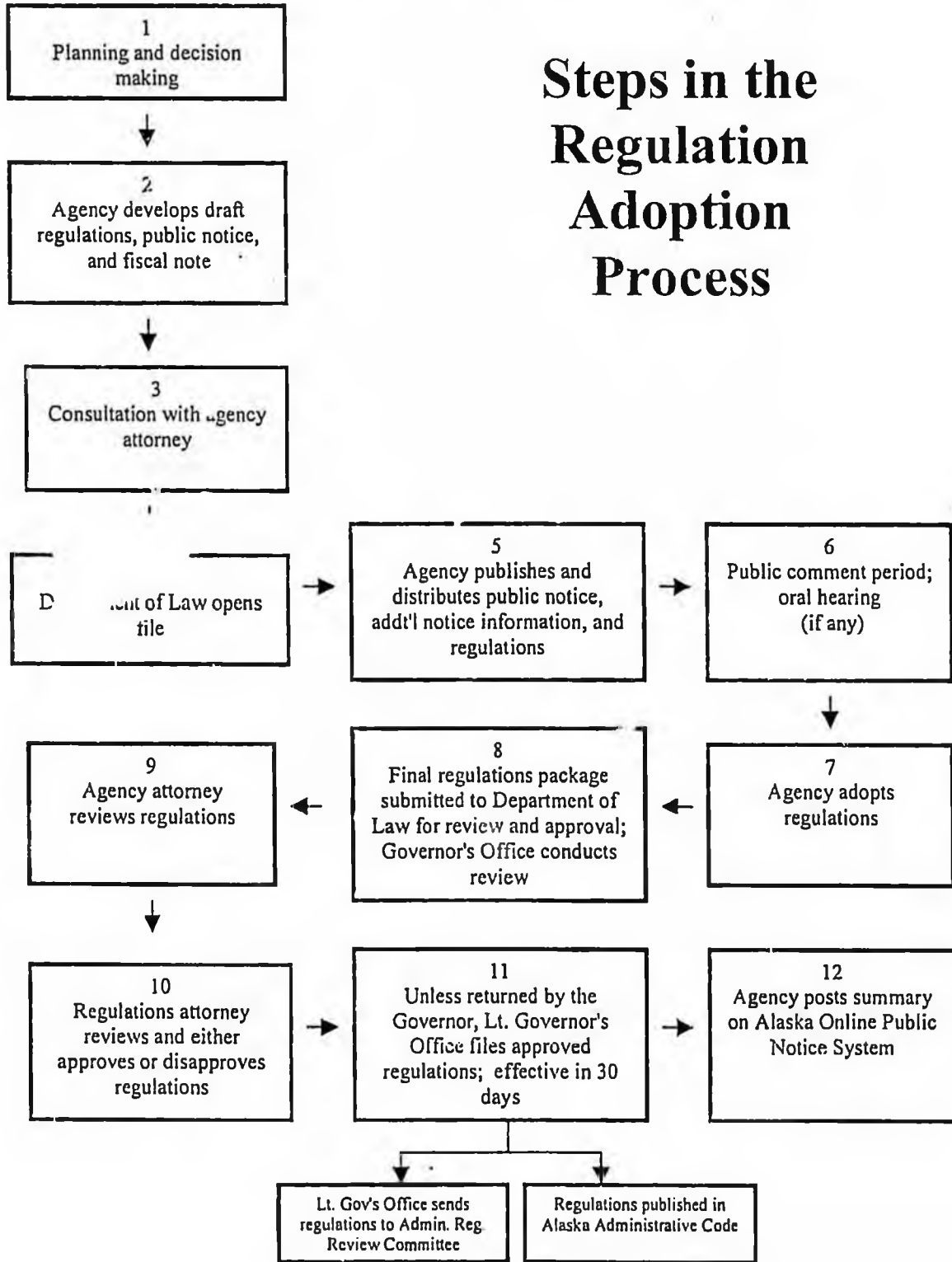
According to Department of Law staff, there is no such thing as an "average" regulation. Although portions of the department's cost of regulation review may be determined by analyzing section costs per page of regulations, even this analysis has its drawbacks. Documents adopted by reference, such as the manuals created by departments, are adopted by reference into the Alaska Administrative Code and are not included in the page count.⁹ Additionally, because regulation pages are double-spaced, less information is contained on a page than might be expected. One page may cover one regulation; conversely, one regulation may cover many pages.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

⁸ Personal communication, Kathryn Daughhete, Director, Administrative Services, (907) 465-3673. We note that the actual total inter-agency receipts for FY2003 were \$152,400.

⁹ For example, *The American Society of Anesthesiologists' Relative Value Guide*, and periodic updates to it are adopted by reference at 7 AAC 43.108 (c).

Steps in the Regulation Adoption Process



**Pages of Regs
Reviewed FY99 through FY03**

DEPARTMENT	PAGES FY99	% of Total Pgs Reviewed	PAGES FY00	% of Total Pgs Reviewed	PAGES FY01	% of Total Pgs Reviewed	PAGES FY02	% of Total Pgs Reviewed	PAGES FY03	% of Total Pgs Reviewed	Cumulative Total # of Pages	Cumulative %	AGENCY FY COSTS
Department of Environmental Conservation	547	27%	667	28%	188	9%	216	9%	350	14%	1968	17%	\$ 24,532
Department of Fish & Game	476	23%	550	23%	614	30%	983	15%	447	18%	2470	21%	\$ 30,789
Department of Community & Economic Development (3)	279	14%	484	20%	160	8%	425	17%	343	14%	1891	15%	\$ 21,079
Department of Health & Social Services (6)	150	7%	135	6%	348	17%	370	15%	199	8%	1200	10%	\$ 14,968
Department of Natural Resources (7)	43	2%	12	0%	132	7%	108	4%	203	8%	498	4%	\$ 6,208
Department of Labor & Workforce Development	85	4%	37	2%	49	2%	41	2%	38	2%	260	2%	\$ 3,116
Department of Revenue	148	7%	83	3%	109	5%	78	3%	138	5%	664	5%	\$ 6,906
Department of Education & Early Development (8)	83	5%	106	4%	71	4%	306	12%	138	5%	712	6%	\$ 8,875
Department of Public Safety (5)	45	2%	17	1%	121	6%	21	1%	15	1%	219	2%	\$ 2,730
Division of Elections	10	1%	1	0%	13	1%	7	0%	521	21%	658	5%	\$ 6,958
Commercial Fisheries Entry Commission	13	1%	21	1%	18	1%	36	1%	35	1%	123	1%	\$ 1,533
Department of Administration (2) (9)	11	1%	6	0%	172	9%	50	2%	21	1%	260	2%	\$ 3,241
Department of Transportation & Public Facilities (4)	8	0%	61	3%	6	0%	467	19%	1	0%	643	5%	\$ 8,769
Governor's Office (1)	104	5%	84	3%	16	1%	0	0%	0	0%	204	2%	\$ 2,543
Department of Corrections (10)	25	1%	8	0%	0	0%	0	0%	62	2%	95	1%	\$ 1,184
AK Oil & Gas Conservation Commission	0	0%	150	6%	0	0%	0	0%	3	0%	153	1%	\$ 1,907
Dept. of Military and Veteran Affairs	4	0%	0	0%	0	0%	0	0%	0	0%	4	0%	\$ 60
Dept. of Law									10	0%	10	0%	\$ 125
TOTAL PAGES REVIEWED:	2047	100%	2,422	100%	2,015	100%	2,500	100%	2,522	100%	11,512	100.00%	\$ 143,500

- 1.) FY01 Governor's Office projects includes CDQ Program, TIC, Electronic Signatures, Broadcast Regulations, and Western Alaska Disaster Regulations.
- 2.) FY01 Contains 83 pages of APOC regulations
- 3.) FY02 contains 113 pages of Local Boundary Commission regulations and 4 pages of Regulatory Commission of AK
- 4.) FY02 contains 285 pages of rural airport regulations reviewed with the assistance of contract attorney.
- 5.) FY03 includes 9 pgs of Alcoholic Beverage Control Board regulations moved from Dept. of Revenue
- 6.) FY03 includes 77 pgs of childcare licensing & assistance program relations moved from the Dept. of Education & Early Development.
- 7.) FY03 includes 103 pgs of Alaska Coast Policy Council regulations moved from the Governor's Office.
- 8.) FY03 includes 41 pgs of AK State Council on the Arts regulations; includes 22 pgs of AK Commission on Post Secondary Ed regulations; includes 1 pg of Alaska Student Loan Corp. regulations.
- 9.) FY03 includes 1 pg of Alaska Public Offices Commission regulations.
- 10.) FY03 includes 51 pgs of Board of Parole regulations.

* FY03 Agency FY Costs based on \$143,500 multiplied by the cumulative percentage

SENATE COMMITTEE REPORT

DATE: 5/7/03

FURTHER: Finance

DATE TURNED
IN TO OFFICE: 2/9/04

Judiciary Committee considered

SENATE BILL NO. 203

SB 203 OFFICE OF ADMINISTRATIVE HEARINGS

"An Act relating to certain administrative hearings; and establishing the office of administrative hearings and relating to that office."

and recommends:

- be replaced with _____ CS SB 203 (JUD)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
— Fiscal info				
— forthcoming				
—				
—				

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
French	<i>[Signature]</i>			X	
Therriault	<i>[Signature]</i>	X			
Ogan	<i>[Signature]</i>	X			
CHAIR	<i>[Signature]</i>	X			

French
Therriault
Ogan

Seckins

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 4/29/03

FURTHER: Judiciary
Finance

Date of 5-Day Notice: 5/2/03
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/7/03

State Affairs Committee considered SENATE BILL NO. 203

SB 203 OFFICE OF ADMINISTRATIVE HEARINGS

"An Act relating to certain administrative hearings; and establishing the office of administrative hearings and relating to that office."

and recommends:

- be replaced with _____ CS SB 203 (STA)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOA	5/6/03	✓		1
DOR	5/6/03	✓		2
DOA	5/6/03	✓		3
DCED	5/6/03	✓		4
DOL	5/6/03	xxx		5

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

Cowdery
Guess
Dyson

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
CHAIR: <i>[Signature]</i>	X			

G. Stevens

SENATE FINANCE COMMITTEE

SIGN-IN

SB 203-OFFICE OF ADMINISTRATIVE HEARINGS

✓ NAME: Andy Hemenway Subject/Bill No: SB 203
Co./Dept./Title: DOA / Hearing officer Phone: 465-2752
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? ___ Yes ___ No ___ Respond To Questions

SENATE FINANCE COMMITTEE

SIGN-IN

SB 203-OFFICE OF ADMINISTRATIVE HEARINGS

NAME: SHARON BARTON Subject/Bill No: SB 203
Co./Dept./Title: DIR - PERM FUND DIV DIV Phone: 465-4785
Address: 11th Fl. SOB Bureau Zip: _____
Do you wish to testify? Yes No Respond To Questions *~ fiscal note*

NAME: Andy Hemenway Subject/Bill No: SB 203
Co./Dept./Title: DOA / Hearing office Phone: 2252
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

SB

2009

SFIN

FILE

SB 209

was referred to the
Senate Finance
Committee

No hearing was held
on this bill

SB

211

SFIN

FILE

SB 211

was referred to the
Senate Finance
Committee

Hearing(s) were held

The bill did not move
from Committee

Sectional Analysis of SB 211 (Regulation Notices and Distribution)

(Prepared by the Department of Law, May 15, 2003)

SB 211 would make notices of proposed regulations more readable, and would reduce the newspaper publishing costs for those notices, by requiring less detail in newspaper notices; by guiding the public to more detailed information, especially through the Internet; by making notice distribution requirements, such as publication in newspapers and on the Internet and by mail or electronic mail, more consistent across agencies; and by omitting newspaper notice for a few specialized subject areas, where interested businesses, firms, and other persons rely on the Internet or other means other than newspapers for notice.

I. Changes to requirements in the Administrative Procedure Act (AS 44.62) for publishing notice (Sections 23 - 24):

Sec. 23: Abbreviated newspaper notice: Section 23 amends the distribution requirements in AS 44.62.190(a) for a notice of proposed regulations, to allow an abbreviated notice in a newspaper of general circulation or in a trade or industry publication, and makes technical changes to improve readability.

Sec. 24: Content requirements: Section 24 amends the content requirements of AS 44.62.200, specifying requirements for the abbreviated notice that include:

- a statement of what is being changed;
 - a brief general description of the changes;
 - information on how to obtain more detailed information, through the Alaska Online Public Notice System or from a contact person at the state agency;
 - a statement of when hearings, if any, will take place.

II. Changes to make notice distribution consistent across agencies (Sections 3 - 6, 8 - 9, 14 - 15, 17 - 18, and 25):

Under the Administrative Procedure Act (APA), newspaper notice of proposed regulations is required in only one newspaper. For some agencies not subject to the requirements of the APA, newspaper notice of proposed regulatory changes is required in three or more newspapers. The bill allows the publication of notice in only one newspaper, the same as the minimum APA requirement.

The bill also allows agencies not subject to the APA to furnish notice by a means other than mailing, such as electronic mailing. As in the APA, the agency would, in most cases, still have to mail a paper copy of the notice to a person who requests one. This

1

Provided by Department of Law

amendment brings these agencies in conformance with other agencies whose statutes were similarly revised in 2000.

Secs. 3 - 4: Alaska Teachers' Retirement Board

Sec. 5: Alaska Aerospace Development Corporation

Sec. 6: Alaska Housing Finance Corporation

Secs. 8 - 9: Judicial Retirement System (Department of Administration)

Secs. 14 - 15: Public Employees' Retirement Board

Secs. 17 - 18: Alaska Railroad Corporation

Sec. 25: Alaska Industrial Development and Export Authority

III. Notice of proposed regulations for certain specialized subject areas (Sections 1 - 2, 7, 10 - 13, 16, 19 - 20, 26 - 27):

The bill allows some agencies that are subject to the APA to omit newspaper publication of a notice of proposed regulations, for regulations in certain highly specialized subject areas listed in statute, where interested persons are most likely to rely on the Internet or other means to obtain such information.

Sec. 1: Department of Community and Economic Development, Division of Banking, Securities, and Corporations, with respect to all regulations implementing the Revised Trust Company Act (AS 06.26)

Sec. 2: Office of the Lieutenant Governor, with respect to electronic signatures (AS 09.25.510)

Sec. 7: Department of Community and Economic Development, Division of Insurance, with respect to regulations implementing the Insurance Code (AS 21)

Sec. 10: Alaska Oil and Gas Conservation Commission with respect to all regulations adopted by the Commission (AS 31.05)

Sec. 11: Department of Natural Resources, with respect to oil and gas leases, including: competitive bidding regulations; standards, criteria, and definitions of terms that apply to the filing of applications for, and the review and certification of, discovery oil and gas royalty certifications; bidding methods; the rental rate for a plugged or abandoned well; issuance of certain state shoreland leases covering land within the boundaries of existing federal or private leases; cooperative or unit plans among lessees; and the offering of land for lease that

was subject to a best interest finding within the previous ten years (AS 38.05.180)

Secs. 12 - 13: Department of Administration, with respect to the state personnel rules; while not specifically referencing the APA, this change would eliminate the requirement of publication of changes to personnel rules in one newspaper and add a requirement that notice of such changes be posted on the Alaska Online Public Notice System (AS 39.25.140)

An additional change allows furnishing of notice by a means other than mailing, and requires mailing of notice to a person who requests it

Sec. 16: Regulatory Commission of Alaska, with respect to the Pipeline Act and including such matters as issuance of certificates of public convenience and necessity, standards of service and facilities for oil and gas pipeline facilities, tariffs, records, reporting and enforcement (AS 42.06.140)

Secs. 19 - 20: Department of Revenue, with respect to corporate income taxes and oil and gas property taxes (AS 43.20; AS 43.56)

Sec. 26: Department of Community and Economic Development, Division of Banking, Securities, and Corporations, with respect to regulations implementing the Alaska Securities Act (AS 45.55)

Sec. 27: Department of Health and Social Services, with respect to Medicaid regulations related to the setting of rates for service providers (AS 47.07.070, 47.07.073, 47.07.075)

IV. Changes to requirements in the Administrative Procedure Act (AS 44.62) for distribution of the Alaska Administrative Code (AAC) to local government units (Sections 21 - 22):

Sec. 21: *Distribution of the Alaska Administrative Code (AAC) to local government units:* Existing AS 44.62.140 requires the lieutenant governor to supply a paper copy of the Alaska Administrative Code (AAC) to the clerk of a local government unit, at no cost and regardless of whether the local clerk requests or wants the copy. Section 21 amends the statute to require that the local clerk first request a copy, and that the local government unit pay for it. The local clerk could request either a paper or an electronic copy.

Sec. 22: *Disclosure of costs:* Section 22 requires the lieutenant governor to tell a requesting local clerk the costs of complying with a request for the AAC.

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April 30, 2003 --

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault: *Gene*

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to change the Alaska Administrative Procedure Act and make other statutory improvements to provide for better and more cost-effective notice of regulatory changes.

First, the bill would allow certain state agencies to publish, in a newspaper or other publication, an abbreviated notice of proposed regulatory changes that clearly describes the changes and how an interested person may obtain more detailed information through the Internet or in written form. Second, the bill also would amend a variety of state statutes to allow agencies the flexibility of sending out individual notices by means other than regular mail. This change would make these newspaper publication requirements consistent with the provision in the Administrative Procedure Act, that notice need be published in only one newspaper of general circulation in the state.

Under the Administrative Procedure Act, public notice of changes to regulations must be published in a newspaper of general circulation or other specified type of publication. This notice is to include an informative summary of the changes, which has been interpreted to require a comprehensive description. In practice this results in lengthy notices, usually in the classified advertisement section of the newspapers, that are expensive and often difficult to understand.

This bill would change this practice to allow for a more abbreviated notice in newspapers or other publications, clearly describing the subject matter of the changes and directing interested persons to more detailed information sources. Recognizing the utility and efficiency of the Internet, the bill requires detailed information on the changes to be available on the Alaska

Online Public Notice System. Also, recognizing that the Internet is not available to all citizens, the bill would provide that detailed information be made available to interested persons by other means, if requested. Thus, the bill would allow state agencies to use the Internet to improve communications regarding regulatory changes, while still providing notice for those who do not yet have the access or ability to use the Internet.

The bill also would change statutory notice provisions for specific government entities to allow for the flexibility to use methods of communication other than regular mail in providing public notice of regulation or rule changes. There is a provision that notices shall be delivered by mail, upon request. This flexible approach was put into place in 2000 for regulations under the Administrative Procedure Act, and has proven effective. The changes in this bill would simply extend that flexibility to certain named state agencies. In addition, the bill would amend the statutes relating to publication of newspaper notices to make it consistent with the requirement in the Administrative Procedure Act that notice be published in a single newspaper of general circulation. The governmental entities affected by these changes include the Alaska Teachers' Retirement Board, Alaska Aerospace Development Corporation, Alaska Railroad Corporation, Alaska Housing Finance Corporation, Department of Administration, Public Employees' Retirement Board, and the Alaska Industrial Development and Export Authority.

This bill also excludes specific government entities from having to publish an abbreviated notice in a newspaper or other publication relating to topics of concern to larger institutions and groups that have the ability to or already regularly communicate with the state through electronic means. These statutes include such areas as the Alaska Securities Act, the Alaska Trust Company Act, oil and gas leasing, state personnel rules, certifying authority for an electronic signature, Medicaid rate setting for facilities, and the Pipeline Act. When adopting regulations or rules under these specific statutes, the government agencies would continue to post the notice on the Alaska Online Public Notice System and furnish the notice to interested parties and other government entities, but would not be required to publish the abbreviated notice. The government entities affected by these changes include the lieutenant governor, Department of Administration, Department of Revenue, Department of Health and Social Services, State Assessment Review Board, Alaska Oil and Gas Conservation Commission, Department of Natural Resources, Department of Community and Economic Development, and the Regulatory Commission of Alaska.

The changes to public notice procedures made by the bill would be applicable to public notices issued on or after the effective date of the Act.

The Honorable Gene T. Moriault

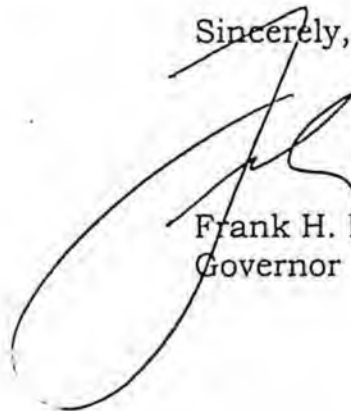
April 30, 2003

Page 3

Lastly, this bill would amend the requirement for the lieutenant governor, at state expense, to supply a complete set of the Alaska Administrative Code, the Alaska Administrative Register, and each supplement to the code or register to the clerk of each local government unit. This bill allows local government units' clerks to request a paper or electronic copy of the publications, and would require payment for the requested copy. Because electronic access to the Alaska Administrative Code is currently available through the legislature's website, and through links to that website found on various state agency websites, local governments still would have a "no-cost" option for access to the information.

I urge your prompt consideration and passage of this bill.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.

Frank H. Murkowski
Governor

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 5/1/03

FURTHER: Finance

Date of 5-Day Notice: 24 hour rule
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 5/14/03

State Affairs Committee considered SENATE BILL NO. 211

SB 211 REGULATIONS: NOTICE AND DISTRIBUTION

"An Act relating to the publishing and furnishing of certain public notices regarding regulations or rules of certain state agencies; relating to distribution of the Alaska Administrative Code, Alaska Administrative Register, and supplements to the code or register; and providing for an effective date."

and recommends:

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

Senate Bill:

- same title
- new title

House Bill:

- same title
- technical title
- new: SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
GOV	5/9/03	✓		2

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Cowdery	<i>John P. Cowdery</i>			✓	
Dyson	<i>John P. Dyson</i>			✓	
GUESS	<i>John P. Guess</i>		✓		
G. Stevens	CHAIR: <i>John P. Stevens</i>			✓	

SENATE FINANCE COMMITTEE

SIGN-IN

SB 211-REGULATIONS: NOTICE AND DISTRIBUTION

NAME: Linda Hall Subject/Bill No: SB211
Co./Dept./Title: Director - Division of Phone: 465-2560
DMS
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

SB

213

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 213
(S) Publish Date: 5/6/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title An act establishing the Knik Arm Bridge BRU Knik Arm Bridge
and Toll Authority Component Knik Arm Bridge
Sponsor Rules by Request of the Governor
Requester Rules by Request of the Governor Component No. 2715

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	187.7	193.3	199.1	205.1	211.2	217.5
Travel	30.0	30.0	30.0	30.0	30.0	30.0
Contractual	200.0	200.0	200.0	200.0	200.0	200.0
Supplies	20.0	5.0	5.0	5.0	5.0	5.0
Equipment	50.0	5.0	5.0	25.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous	36.0	36.0	36.0	36.0	36.0	36.0
TOTAL OPERATING	523.7	469.3	475.1	501.1	487.2	493.5

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 (CIP Receipts)	523.7	469.3	475.1	501.1	487.2	493.5
TOTAL	523.7	469.3	475.1	501.1	487.2	493.5

Estimate of any current year (FY2003) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dennis R. Poshard Phone 465-3900
Division Commissioner's Office Date/Time 5/5/03 3:22 PM
Approved by: Mike Barton, Commissioner Date 5/5/2003
Agency Department of Transportation and Public Facilities

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 213

ANALYSIS CONTINUATION

FISCAL NOTE CONTINUATION SHEET PAGE 2 OF 2
Knik Arm Bridge and Toll Authority

The Following assumptions were used:

Personal Services: The Bridge and Toll Authority will start with three staff, including an Executive Director, administrative, and clerical support. Staffing will be filled at the following levels:

- Executive Division Director - Range 26A including benefits: \$97,474 annually
 - Admin Manager I, Range 15A including benefits: \$53,090 annually
 - Admin Clerk II, Range 8A including benefits: \$37,089 annually
- Total on-going personal services: \$187,653 annually. Three percent salary increases yearly over the six-year interval.

Travel: Travel and per diem expenses calculated based on 2 of 3 appointed Board members traveling to Anchorage once monthly for Board meetings. Standard per diem rates were used. The travel budget also includes in-state staff travel, lodging and meal allowances; no inflationary increases included.

Contractual: Contractual items to include extensive legal services in the first year (necessary to set up the Authority), ongoing computer office system support, and costs associated with financial, engineering, and planning consultants and advisors.

Equipment: The authority will need a computer system with server, office copiers, fax machine, phones and cell phones. Computer system upgrades to occur every third year.

Miscellaneous: Assumes the necessity of leased office space at \$3000.00/month including utilities.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US



P.O. BOX 110001
JUNEAU, ALASKA 99811-0001
(907) 465-3500
FAX (907) 465-3532
WWW.GOV.STATE.AK.US

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 5, 2003

The Honorable Gene Therriault
President of the Senate
Alaska State Legislature
State Capitol, Room 107
Juneau, AK 99801-1182

Dear President Therriault:

Under the authority of art. III, sec. 8, of the Alaska Constitution, I am transmitting a bill establishing the Knik Arm Bridge and Toll Authority and relating to that authority.

This bill establishes an independent authority to build and operate a toll bridge over Knik Arm. The authority would be able to receive federal money and issue revenue bonds to finance the toll bridge and its appurtenant facilities. The authority would design, construct, and operate the bridge and its facilities.

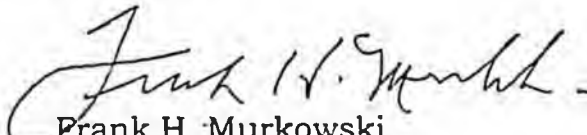
The authority would be a public corporation that, although an instrumentality of the state within the Department of Transportation and Public Facilities, would have a separate independent legal existence from the state. The revenue of the authority would not become part of the general fund and the property of the authority would be exempt from taxation.

The bill establishes a three-person board to govern the authority. The commissioners of revenue and transportation and public facilities would serve on the board, along with a member of the public appointed by the governor for a five-year term.

Construction of a Knik Arm bridge is a cornerstone of my public transportation development plan. A Knik Arm bridge will unite Anchorage and the Matanuska-Susitna Borough to enable growth throughout southcentral Alaska.

I urge your prompt and favorable action on this measure.

Sincerely,


Frank H. Murkowski
Governor

SB

213

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/7/03

FURTHER:

REPORTED OUT

MAY 13 2003

SENATE FINANCE
COMMITTEE

DATE TURNED IN TO OFFICE: 13 May 2003

Finance Committee considered SENATE BILL NO. 213

SB 213 KNIK ARM BRIDGE AND TOLL AUTHORITY

"An Act establishing the Knik Arm Bridge and Toll Authority and relating to that authority; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 213 (FIN)
- adopt previous _____ CS CS Forthcoming _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

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

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	FN#
DOT & PF	7/5/02	523.7		#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	NO REC	AMEND
<i>John H. ...</i>	✓			
<i>...</i>			✓	
<i>...</i>			✓	
<i>...</i>			✓	
<i>...</i>	✓			
COCHAIR				
COCHAIR: <i>...</i>	✓			

MAY 13 2003

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 213
(S) Publish Date: 5/6/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title An act establishing the Knik Arm Bridge and Toll Authority BRU Knik Arm Bridge
Component Knik Arm Bridge
Sponsor Rules by Request of the Governor
Requester Rules by Request of the Governor Component No. 2715

Expenditures/Revenues (Thousands of Dollars)

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

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Equipment	50.0	5.0	5.0	25.0	5.0	5.0
Land & Structures						
Grants & Claims						
Miscellaneous	36.0	36.0	36.0	36.0	36.0	36.0
TOTAL OPERATING	523.7	469.3	475.1	501.1	487.2	493.5

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 (CIP Receipts)	523.7	469.3	475.1	501.1	487.2	493.5
TOTAL	523.7	469.3	475.1	501.1	487.2	493.5

Estimate of any current year (FY2003) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Dennis R. Poshard
Division: Commissioner's Office
Approved by: Mike Barton, Commissioner
Agency: Department of Transportation and Public Facilities

Phone 465-3900
Date/Time 5/5/03 3:22 PM
Date 5/5/2003

FISCAL NOTE #1

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 213

ANALYSIS CONTINUATION

FISCAL NOTE CONTINUATION SHEET PAGE 2 OF 2
Knik Arm Bridge and Toll Authority

The Following assumptions were used:

Personal Services: The Bridge and Toll Authority will start with three staff, including an Executive Director, administrative, and clerical support. Staffing will be filled at the following levels:

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Contractual: Contractual items to include extensive legal services in the first year (necessary to set up the Authority), ongoing computer office system support, and costs associated with financial, engineering, and planning consultants and advisors.

Equipment: The authority will need a computer system with server, office copiers, fax machine, phones and cell phones. Computer system upgrades to occur every third year.

Miscellaneous: Assumes the necessity of leased office space at \$3000.00/month including utilities.

SENATE FINANCE COMMITTEE
5/4/2003 COMMITTEE ACTION

Bill Number	
Amendment	SB 213
Motion	Rescind Action Reporting out
<u>Motion by</u>	Taylor
<u>Objection by</u>	Bunde
Removed	
<u>Second Objection by</u>	
<u>Committee Member</u>	Y Vote N
Senator Bunde	
Senator Hoffman	
Senator Olson	
Senator Stevens	
Senator Taylor	✓
Co-Chair Green	
Co-Chair Wilken	
<u>Tally</u>	
Yea	1
Nay	5
Absent	1
<u>MOTION</u>	FAIL

LEGAL SERVICES

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

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

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

MEMORANDUM

May 14, 2003

SUBJECT: CSSB 213(FIN) Knik Arm Bridge and Toll Authority
(Work Order No. 23-GS1149\D)

TO: Senator Lyda Green
Senator Gary Wilken
Co-chairs Senate Finance Committee

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the final of CSSB 213(FIN), An Act establishing the Knik Arm Bridge and Toll Authority as passed out of the Senate Finance Committee.

The CS passed by the Finance Committee adds two legislative members to the board of directors of the authority. The board is an executive branch agency charged with administering the authority. Though the legislative members of the board are non-voting members, their presence on the board of an executive branch agency implicates the prohibition against dual office holding by legislators under art. II, sec. 5 of the Alaska Constitution. The significance of the issue is unknown. The Department of Law has traditionally taken a firm position against legislative members serving on any board in the executive branch other than a board that serves only an advisory function.

If I may be of further assistance, please advise.

GU:med
03-532.med

Enclosure

LEGAL SERVICES

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

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

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

MEMORANDUM

May 14, 2003

SUBJECT: CSSB ²¹³~~231~~(FIN) Knik Arm Bridge and Toll Authority
(Work Order No. 23-GS1149\D)

TO: Senator Lyda Green
Senator Gary Wilken
Co-chairs Senate Finance Committee

FROM: George Utermohle *GU*
Legislative Counsel

Enclosed is the final of CSSB 213(FIN), An Act establishing the Knik Arm Bridge and Toll Authority as passed out of the Senate Finance Committee.

The CS passed by the Finance Committee adds two legislative members to the board of directors of the authority. The board is an executive branch agency charged with administering the authority. Though the legislative members of the board are non-voting members, their presence on the board of an executive branch agency implicates the prohibition against dual office holding by legislators under art. II, sec. 5 of the Alaska Constitution. The significance of the issue is unknown. The Department of Law has traditionally taken a firm position against legislative members serving on any board in the executive branch other than a board that serves only an advisory function.

If I may be of further assistance, please advise.

GU:med
03-532.med

Enclosure

SENATE FINANCE
COMMITTEE

Amendment Number: #1
Bill Number: SB 213
Sponsor: Hoffman Date: 5/10/03
Logged In By: Kobin

23-GS1149\A.1
Utermohle
5/8/03

AMENDMENT

NOT OFFERED

OFFERED IN THE SENATE

TO: SB 213

1 Page 2, line 13, following "citizen":

2 Insert ";

3 (4) one public member, appointed by the governor from a list of 5
4 names submitted by the mayor of the Municipality of Anchorage, who is a state
5 resident, resident of the Municipality of Anchorage, and United States citizen;

6 (5) one public member, appointed by the governor from a list of 5
7 names submitted by the mayor of the Matanuska-Susitna Borough, who is a state
8 resident, resident of the Matanuska-Susitna Borough, and United States citizen"

9

10 Page 2, line 14:

11 Delete "member"

12 Insert "members"

13 Delete "a term"

14 Insert "staggered terms"

15

16 Page 2, line 15:

17 Delete "member"

18 Insert "members"

19

20 Page 2, line 17:

21 Delete "in the"

22 Insert "in a"

23

1 Page 2, line 18, following "appointment":

2 Insert "to fill the vacancy in the same manner as the previous appointment to that
3 seat"

4

5 Page 2, line 22:

6 Delete "Two"

7 Insert "Three"

8

9 Page 2, line 23:

10 Delete "The"

11 Insert "A"

12 Delete "serves"

13 Insert "shall serve"

14

15 Page 2, line 26:

16 Delete "two"

17 Insert "three"

18

19 Page 2, line 27:

20 Delete "The"

21 Insert "Each"

22

23 Page 12, following line 30:

24 Insert a new bill section to read:

25 **"* Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new
26 section to read:

27 APPOINTMENT OF THE INITIAL PUBLIC MEMBERS OF THE KNIK ARM
28 BRIDGE AND TOLL AUTHORITY. Notwithstanding AS 39.05.055 and
29 AS 44.90.031(b), added by sec. 1 of this Act, the governor shall appoint the initial public
30 members of the board of directors of the Knik Arm Bridge and Toll Authority to terms as
31 follows:

- 1 (1) one public member to a term of five years;
- 2 (2) one public member to a term of three years; and
- 3 (3) one public member to a term of one year."

4

5 Renumber the following bill section accordingly.

ADOPTED

SENATE FINANCE
COMMITTEE
Amendment Number: #2
Bill Number: SB 213
Sponsor: Hoffman Date: 5/10/03
Logged In By: Rob.N

23-GS1149A.2
Utermohle
5/8/03

AMENDMENT

OFFERED IN THE SENATE

TO: SB 213

1 Page 2, line 13, following "citizen":

2 Insert ";

3 (4) one nonvoting member who is a member of the state house of
4 representatives appointed by the speaker of the house and who serves at the
5 pleasure of the speaker of the house; the speaker of the house shall consider the
6 appointment of a legislator elected from a house district that lies entirely or
7 partially within the Municipality of Anchorage or the Matanuska-Susitna Borough
8 for appointment under this paragraph; and

9 (5) one nonvoting member who is a member of the state senate
10 appointed by the president of the senate and who serves at the pleasure of the
11 president of the senate; the president of the senate shall consider the appointment
12 of a senator elected from a senate district that lies entirely or partially within the
13 Municipality of Anchorage or the Matanuska-Susitna Borough for appointment
14 under this paragraph"

15

16 Page 2, line 22, following "Two":

17 Insert "voting"

18

19 Page 2, line 23:

20 Delete "Members"

21 Insert "The voting members of the board"

22

23 Page 2, line 26, following "two":

- 1 Insert "voting"
- 2
- 3 Page 2, line 29:
- 4 Delete "and (2)"
- 5 Insert ", (2), (4), and (5)"

ADOPTED
SENATE FINANCE
COMMITTEE
Amendment Number: #3
Bill Number: SB 213
Sponsor: Green Date: 5/13/03
Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE FINANCE
COMMITTEE
TO: SB 213

BY SENATOR GREEN

- 1 Page 8, lines 16 - 20:
- 2 Delete all material.
- 3
- 4 Page 8, line 21:
- 5 Delete "(g)"
- 6 Insert "(f)"
- 7
- 8 Page 9, line 4:
- 9 Delete "(h)"
- 10 Insert "(g)"

SENATE FINANCE COMMITTEE
5/13/2003 COMMITTEE ACTION

Bill Number	SB 213		
Amendment	#3		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Taylor			
Senator Bunde			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Amendment Number: #4

Bill Number: SB 213

Sponsor: Green Date: 5/13/03

Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE FINANCE
COMMITTEE

BY SENATOR GREEN

TO: SB 213

Page 2, line 13:

Delete "."

Insert ";

Page 2, following line 13:

Insert the following new material:

"(4) one public member, appointed by the governor, who is a resident of the Matanuska-Susitna Borough and who has knowledge of local transportation issues;

(5) one public member, appointed by the governor, who is a resident of the Municipality of Anchorage and who has knowledge of local transportation issues."

Page 2, line 14:

Delete "member"

Insert "members"

Delete "a term"

Insert "staggered terms"

Page 2, line 15:

Delete "The"

Insert "A"

Page 2, line 17, following "occurs in":

Delete "the"

Insert "a"

Delete "member"

Insert "members"

Page 2, line 22:

Delete "Two"

Insert "Three"

Page 2, line 23:

Delete "public"

Insert "governor shall designate one"

Delete "serves"

Insert "to serve"

Page 2, line 26:

Delete "two"

Insert "three"

Page 2, line 27:

Delete "member"

Insert "members"

Page 12, following line 30:

Insert a new bill section to read:

"* Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPOINTMENT OF THE INITIAL PUBLIC MEMBERS OF THE KNIK ARM BRIDGE AND TOLL AUTHORITY. Notwithstanding AS 39.05.055 and AS 44.90.031(b), added by sec. 1 of this Act, the governor shall appoint the initial public members of the board of directors of the Knik Arm Bridge and Toll Authority to terms as follows:

23-GS1149\A.1

- (1) one public member to a term of five years;
- (2) one public member to a term of three years; and
- (3) one public member to a term of one year."

Renumber the following bill section accordingly.

SENATE FINANCE COMMITTEE
5/13/2003 COMMITTEE ACTION

Bill Number	SB 213		
Amendment	#4		
Motion	adopt		
Motion by	Wilken		
Objection by	Wilken		
Removed	✓		
Second Objection by			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Taylor			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		

Attention: Deb

Of Senator _____'s office

RE: CS SB 213 FIN

Date: 5/14/03 Time: 3:30 PM

The attached Senate Finance CS incorporates the amendment(s) your boss sponsored. Please review and approve so the bill can be forwarded to the Senate Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935

Robin #2618

Already delivered to Senate Secretary!
↓

Approved: _____
(please initial)

Return ASAP

* Per Sheila's OK

Attention: Tim
Of Senator Hoffman's office
RE: CS SB 213 FIN
Date: 5/14/03 Time: 3:35 PM

The attached Senate Finance ^{Per: Amend # 2} CS
incorporates the amendment(s) your boss
sponsored. Please review and approve so
the bill can be forwarded to the Senate
Secretary.

The CS is your copy.

Thanks,
Senate Finance Secretary
Mindy #4935
Robin #2618

Approved: T.D.
(please initial)

Return ASAP

*Pls. Note:
This has
already been
delivered to
Senate
Secretary.*
We proofed
it really
good
thought!

* Per Shelle's OK

CS FOR SENATE BILL NO. 213(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the Knik Arm Bridge and Toll Authority and relating to that
2 authority; and providing for an effective date."

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

4 * Section 1. AS 44 is amended by adding a new chapter to read:

5 Chapter 90. Knik Arm Bridge and Toll Authority.

6 Article 1. Establishment and Organization.

7 Sec. 44.90.011. Purpose. The purpose of the authority created by this chapter
8 is to develop, stimulate, and advance the economic welfare of the state and further the
9 development of public transportation systems in the vicinity of the Upper Cook Inlet
10 with construction of a bridge to span Knik Arm and connect the Municipality of
11 Anchorage and the Matanuska-Susitna Borough.

12 Sec. 44.90.021. Establishment of authority. (a) There is established the
13 Knik Arm Bridge and Toll Authority. The authority is a public corporation and an
14 instrumentality of the state within the Department of Transportation and Public

1 Facilities, but the authority has a separate and independent legal existence from the
2 state. The exercise by the authority of the powers in this chapter is considered an
3 essential governmental function of the state.

4 (b) The authority may not be terminated as long as it has bonds, notes, or other
5 obligations outstanding. Upon termination of the authority, its rights and property
6 pass to the state.

7 **Sec. 44.90.031. Board of directors of authority.** (a) The authority shall be
8 governed by a board of directors consisting of the following:

9 (1) the commissioner of transportation and public facilities or the
10 commissioner's designee;

11 (2) the commissioner of revenue or the commissioner's designee;

12 (3) one public member, appointed by the governor, who is a state
13 resident and United States citizen;

14 (4) one public member, appointed by the governor, who is a resident of
15 the Municipality of Anchorage and who has knowledge of local transportation issues;

16 (5) one public member, appointed by the governor, who is a resident of
17 the Matanuska-Susitna Borough and who has knowledge of local transportation issues;

18 (6) one nonvoting member who is a member of the state house of
19 representatives appointed by the speaker of the house and who serves at the pleasure
20 of the speaker of the house; the speaker of the house shall consider the appointment of
21 a legislator elected from a house district that lies entirely or partially within the
22 Municipality of Anchorage or the Matanuska-Susitna Borough for appointment under
23 this paragraph; and

24 (7) one nonvoting member who is a member of the state senate
25 appointed by the president of the senate and who serves at the pleasure of the president
26 of the senate; the president of the senate shall consider the appointment of a senator
27 elected from a senate district that lies entirely or partially within the Municipality of
28 Anchorage or the Matanuska-Susitna Borough for appointment under this paragraph.

29 (b) The public members of the board shall serve for staggered terms of five
30 years and may be reappointed to a single successive five-year term. A public member
31 may only be removed for cause.

#4
#4
#2
#4
#4

1 (c) If a vacancy occurs in a public member's seat on the board, the governor #4
2 shall make an appointment, effective immediately, for the unexpired portion of that
3 member's term.

4 **Sec. 44.90.041. Operation of authority.** (a) The powers of the authority are #4
5 vested in the board. #2

6 (b) Three voting members of the board constitute a quorum.

7 (c) The governor shall designate one member of the board to serve as the chair #4
8 of the board. The voting members of the board shall elect other officers they #2
9 determine desirable.

10 (d) Action may be taken and motions and resolutions adopted by the board at a #4
11 meeting by the affirmative vote of at least three voting members. #2

12 (e) The public members of the board shall receive a stipend of \$300 a day #4
13 while performing business of the authority.

14 (f) The members of the board serving under AS 44.90.031(a)(1), (2), (6), and #2
15 (7) serve without compensation, but are entitled to per diem and travel expenses
16 authorized by law under AS 39.20.180.

17 **Sec. 44.90.051. Executive director.** The authority shall employ an executive
18 director who may not be a member of the board. The executive director shall serve at
19 the pleasure of the board. The board shall establish the duties and compensation of the
20 executive director.

21 **Sec. 44.90.061. Employment of personnel.** The executive director may hire
22 employees of the authority. The board shall prescribe the duties and compensation of
23 authority employees.

24 **Sec. 44.90.071. Personnel exempt from State Personnel Act.** The executive
25 director and employees of the authority are in the exempt service under AS 39.25
26 (State Personnel Act).

27 **Sec. 44.90.081. Legal advisor.** The attorney general is the legal counsel for
28 the authority. The attorney general shall advise the authority in legal matters and
29 represent it in suits.

30 **Article 2. Powers and Duties.**

31 **Sec. 44.90.111. Powers and duties of the authority.** (a) In furtherance of its

1 purposes, the authority may

2 (1) own, acquire, construct, develop, create, reconstruct, equip,
3 operate, maintain, extend, and improve the Knik Arm bridge and its appurtenant
4 facilities;

5 (2) sue and be sued;

6 (3) adopt a seal;

7 (4) adopt, amend, and repeal regulations under AS 44.62 and establish
8 bylaws;

9 (5) make and execute agreements, contracts, and other instruments for
10 the exercise of its powers and functions under this chapter, including contracts with
11 any person, firm, corporation, governmental agency, or other entity;

12 (6) in its own name acquire, lease, rent, or convey real and personal
13 property;

14 (7) issue bonds and otherwise incur indebtedness, in accordance with
15 AS 44.90.211, in order to pay the cost of the Knik Arm bridge and its appurtenant
16 facilities; the authority may also secure payment of the bonds or other indebtedness as
17 provided in AS 44.90.221;

18 (8) apply for and accept gifts, grants, or loans from a federal agency or
19 an agency or instrumentality of the state, or from a municipality, private organization,
20 or other source;

21 (9) fix and collect fees, rents, tolls, rates, or other charges for the use of
22 the Knik Arm bridge and appurtenant facilities, or for a service developed, operated,
23 or provided by the authority; notwithstanding AS 37.10.050(a), fees, rents, tolls, rates,
24 and other charges fixed and collected under this paragraph may exceed the actual
25 operating cost of the use of the bridge, facility, or service;

26 (10) pledge fees, rents, tolls, rates, charges, or other revenue of the
27 authority as security for bonds of the authority;

28 (11) deposit or invest its funds, subject to agreements with
29 bondholders;

30 (12) procure insurance against any loss in connection with its
31 operation;

1 (13) contract for and engage the services of consultants, experts, and
2 financial and technical advisors that the authority considers necessary for the exercise
3 of its powers and functions under this chapter;

4 (14) apply for, obtain, hold, and use permits, licenses, or approvals
5 from appropriate agencies of the state, the United States, a foreign country, and any
6 other proper agency in the same manner as any other person;

7 (15) perform reconnaissance studies and engineering, survey, and
8 design studies with respect to the Knik Arm bridge and its appurtenant facilities;

9 (16) exercise powers of eminent domain or file a declaration of taking
10 as necessary for the Knik Arm bridge and appurtenant facilities under AS 09.55.240 -
11 09.55.460 to acquire land or an interest in land;

12 (17) confer with municipal and other governments, metropolitan
13 planning organizations, and the department, concerning the Knik Arm bridge;

14 (18) do all acts and things necessary to carry out the powers expressly
15 granted or necessarily implied in this chapter.

16 (b) The authority shall

17 (1) prepare an annual report of its operations to include a balance
18 sheet, an income statement, a statement of changes in financial position, a
19 reconciliation of changes in equity accounts, a summary of significant accounting
20 principles, an auditor's report, comments regarding the year's business, and prospects
21 for the next year; the report shall be completed by the third day of each regular session
22 of the legislature, and the authority shall notify the governor, the commissioner of the
23 department, the presiding officers of each house of the legislature, and the Legislative
24 Budget and Audit Committee that the report is available;

25 (2) comply with the provisions of AS 37.07 (Executive Budget Act),
26 except that AS 37.07 does not apply to the activities of the authority that relate to the
27 authority's borrowing of money as provided in this chapter, including the issuing of its
28 obligations or evidence of that borrowing and the repayment of the debt obligation;

29 (3) establish a personnel management system for hiring employees and
30 setting employee-benefit packages;

31 (4) establish procedures, rules, and rates governing per diem and travel

1 expenses of the employees of the authority in substantial conformity to statutes,
2 procedures, rules, and rates applicable to state employees of similar state entities;

3 (5) coordinate the exercise of its powers to plan, design, construct,
4 opera: ., and maintain the Knik Arm bridge with the department, and with the mayors
5 of the Municipality of Anchorage and the Matanuska-Susitna Borough.

6 **Sec. 44.90.211. Bonds of the authority.** The authority may borrow money
7 and issue bonds on which the principal and interest are payable from money derived
8 from the fees, rents, tolls, rates, charges, and other revenue of the authority under this
9 chapter. Before issuing bonds for the Knik Arm bridge, the authority shall submit to
10 the state bond committee a description of the bond issue and a preliminary prospectus,
11 offering circular, or official statement relating to the bond issue. Bonds may not be
12 issued unless the state bond committee finds, based upon the information submitted by
13 the authority under this section and other information that is reasonably available to
14 the committee, that the Knik Arm bridge revenue and other revenue available to the
15 authority can be reasonably expected to be adequate for payment of the principal and
16 interest on the bonds to be issued and that issuance of the bonds by the authority
17 would not be expected to adversely affect the ability of the state or its political
18 subdivisions to market bonds. Bonds may not be issued unless the principal amount
19 of the bond issue is authorized by law.

20 **Sec. 44.90.221. Trust indentures and trust agreements.** (a) In the
21 discretion of the authority, an issue of bonds may be secured by a trust indenture or
22 trust agreement between the authority and a corporate trustee, by a secured loan
23 agreement or other instrument, or by a resolution giving powers to a corporate trustee,
24 by means of which the authority may

25 (1) make agreements with the trustee or the holders of the bonds that
26 the authority determines to be necessary or desirable, including agreements as to the

27 (A) application, investment, deposit, use, and disposition of

28 (i) the proceeds of bonds of the authority;

29 (ii) money or other property of the authority; or

30 (iii) money or other property in which the authority has

31 an interest;