

ALASKA LEGISLATURE COMMITTEE FILES 1900-1900 00/2

3349 HJUD HB 458 - HB 460

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

In order for the department to comply with the provisions of this bill, the addition of two staff members would be necessary. A Regulations Specialist II and a Clerk Typist III, both located in Juneau, would be necessary for the additional research, analyses and documentation required by the bill. (See attached New Position Justification Forms for detail).

In addition to the new position costs, we would have to contract with economic research firms to determine the financial impact which would occur to those parties affected by the proposed regulations. Expertise does not currently exist in the department to complete this type of analysis. We estimate \$40,000 in research contracts would be required each year. (Ten contracts at an average of \$4,000 per contract).

Also required is additional published information when notices of regulations are placed in newspapers. We estimate an additional \$4,500 in advertising expenses each year to meet these requirements. (Ten regulations at an average of \$450 additional advertising cost.)

Assumptions:

1. The department would have ten regulations a year that would fall under the requirements of this bill.
2. Effective date of July 1, 1986.
3. Annual inflation of 4% on non-personal service items.

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU	Gov.	Apprv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District		Leg.	
Type of Expenditure			Justification					
		Amount	<p>This position would handle the clerical duties associated with this bill. The position would keep records of all proposed actions on all regulations in the department and assure the additional documentation requirements of this bill are met. This person would make sure all correspondence was properly handled and type the justifications, file logs and other required documents.</p> <p>Costs associated with this position are average per employee costs. The equipment expense for a desk, chair, cabinets, etc. would be a one-time cost.</p>					
1	2	3						
Salary	20,316							
Benefits	7,702							
Premium Pay								
Other								
Total Personal Services		28,018						
Travel		0						
Contractual		2,000						
Commodities		1,000						
Equipment		1,600						
Other								
Total Cost		32,618						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	32,618					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

APPENDIX 7, Page 4 of 6

**Request For
New Position**

Agency Labor
 BRU Commissioner's Office
 Component Commissioner's Office

Page of
 Revised Date

FY 87

Bill No. Sponsor Substitute for House Bill No. 458

RECEIVED Date

March 10, 1986

Title "An Act relating to the adoption of regulations."

Department of Labor

Robert W. Landau
465-2700
Eileen Plate
465-2700

MAR 10 1986

AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

Sponsor Substitute for House Bill 458 proposes to require preparation and public notice of cost estimates and justifications with respect to the adoption of regulations. Section 1, 6 and 7 of the bill do not present any significant problems for the Department. However, other sections do contain a number of provisions which are of considerable concern to the Department of Labor, as follows:

- 1. Section 2 requires that a financial estimate be prepared of the costs of compliance by the persons, industries, and businesses affected by the proposed regulation. The Department presently does not have the expertise to develop sound cost proposals in this regard.

Further, it would seem that such costs could vary to an extent that meaningful information would be difficult to extract. For example, changes in reporting requirements for Workers' Compensation insurers may have relatively little financial impact on a large insurer who has sophisticated data-gathering and reporting systems, but would likely have a more significant impact on a small insurer operating without an automated data-gathering and reporting system.

It would also seem that a great deal of subjective data would have to be used to make such cost estimates. For example, if a change in the permissible level for exposure to asbestos was proposed by the Department, the total cost estimate would largely depend on the amount of asbestos abatement and maintenance work that would be undertaken during the period for which the estimate was to cover. To accurately project the number of abatement projects, and particularly the number of maintenance projects, would be nearly impossible. Accordingly, the validity of any cost estimates would be circumspect at best.

Historically, the Department of Labor has viewed the public hearing process, which is used when a regulation is promulgated, as an information/data-gathering forum; and we have looked to the public, industry, and business to use this forum to relate to the Department their concerns with respect to a specific proposal--whether the concern is from a financial, procedural, or other aspect. Indeed, the persons actually affected by a regulation are the best sources of information in this regard.

The cost estimate requirements proposed in the bill would also result in substantial delays in implementing desirable or necessary changes to programs.

- 2) Sections 3 and 4 require that justifications of need be prepared and that a notice of proposed adoption, amendment, or repeal of a regulation must include, in addition to the information currently set out, a summary of the justifications of need. Because the court's determination of the

validity of a regulation could rest on the justification, careful and complete compliance with the justification of need requirement would be required. This could involve considerable research as well as statistical testing of the methodology used in reaching conclusions.

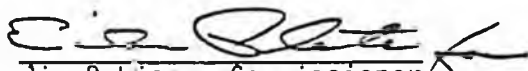
In addition, newspaper advertising costs would likely increase significantly due to the increased information that must be included in the notice. Accordingly, a careful review of this provision may be in order to assure that the increased expenditures for advertising do serve a public purpose commensurate to the cost.

Additional staff time would also be required to prepare the justifications.

- 3) Section 5 requires that a public hearing must be held if ten or more persons request a public hearing on a proposed regulation. Certainly, the Department of Labor would have no problem with bona fide requests. However, such a provision could be effectively relied upon by special interest groups that wish only to hamper or delay the promulgation process.
- 4) Section 8 provides that a regulation may be declared invalid by the court if the Department's justification of need fails to establish by a preponderance of the evidence the need for the regulation. Although the Department of Labor would rely on the Department of Law to address any legal implications of this provision, it does convey to the Department that a thorough and documented justification is contemplated.

Although the Department of Labor certainly takes the promulgation of regulations very seriously, and feels that the overall intent of this bill is commendable, on the basis of the above-described problems, as well as the costs associated with implementation, the Department is compelled to strongly oppose it.

APPROVED:


Jim Robison, Commissioner
Department of Labor

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : 2-27-86

REQUEST

Bill/Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations; and providing for an effective date."
 Sponsor : Repr. Pignalberi
 Requestor : Repr. Pignalberi
 Date of Request : February 25, 1986

FISCAL DETAIL

Agency Affected : Department of Law
 PRU : Legal Services
 Components : Legal Services Operation

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: 2-27-86
 Approved by Commissioner: Harold M. Brown, Attorney General Date: 2-27-86
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

APPENDIX 8
Page 1 of 2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

Although the sponsor substitute adds new sections that will have substantial fiscal impact on other departments, we still cannot say that it will have a fiscal impact on the Department of Law, because the department adopts few regulations of its own. The department does, however, review all regulations prior to their adoption, and it sometimes assists other departments in drafting their regulations. To the extent that we are requested to advise other agencies about the sufficiency of their efforts to conform to the provisions in this bill, we can expect innumerable requests for advice. These requests will probably result in our regulations and legislative drafting staff becoming more swamped than they already are.

Because we cannot accurately predict the additional workload that will occur if this bill becomes law, we are not requesting fiscal note funds at this time. Such a request may become necessary in the future, and the potential for this additional cost should be noted while the bill is being considered.

APPENDIX 8
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STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: 2/25/86

REQUEST Bill/Resolution No.: <u>SSHB 458</u> Title: <u>An act relating to the adoption of regulations; and providing for an effective date.</u>	FISCAL DETAIL Agency Affected: <u>Department of Administration</u> BRU: <u>Administrative Services</u>
Sponsor: <u>Pignaiberi, Cato, Marrou & Shultz</u> Components: _____ Requestor: _____ Date of Request: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	7.4	7.6	7.8	8.0	8.2
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	3.1	3.2	3.3	3.4	3.5
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	10.5	10.8	11.1	11.4	11.7
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	10.5	10.8	11.1	11.4	11.7
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	10.5	10.8	11.1	11.4	11.7

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

ANALYSIS: Attach a separate page if necessary

Attached

Prepared By: <u>Gary M. Bader</u> Division: <u>Administrative Services</u>	Phone: <u>465-2277</u> Date: <u>February 25, 1986</u>
Approved by Commissioner: <u>Eleanor Andrews</u> Agency: <u>Department of Administration</u>	Date: _____

Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS
For Sponsor Substitute for House Bill 458

ANALYSIS:

A. Assumptions

1. Enactment of Sponsor Substitute for House Bill No. 458 would amend AS 44.62 as it pertains to regulations. In addition to current regulatory procedures, this bill would require the completion of new tasks. The estimates which follow are based on the existence of fourteen chapters of regulations of the Department of Administration in the Alaska Administrative Code and the assumptions of at least two changes per year per chapter and five public hearings.

2. Listing of Activities

<u>Section</u>	<u>Task Description</u>	<u>Regular Change</u>	<u>Required Hearing</u>
44.62.190(d)	Age proposed action	.25 hrs	
44.62.190	If greater than 1 year, republish in accordance with 44.62.190(a)	1.0 hrs	
44.62.195(b)	Prepare financial estimate of those affected	3.0 hrs	
44.62.200(a)	Prepare summary of initial justification of need	2.0 hrs	
44.62.205	Prepare final justification of need	3.0 hrs	
44.62.210(c)	Public Hearing		4.0 hrs
44.62.230	Written reason of denial	.5 hrs	
44.62.275(a)	Maintain file of proposed actions	5.0 hrs	
44.62.275(b)	Log of filed items	1.0 hrs	
44.62.300	Court review as specified by AS 44.62.205		2.0 hrs
		<u>15.75 hrs</u>	<u>6.0 hrs</u>

3. Inflation is estimated at three percent per year.

B. Staff Requirements

1. Each regulation change is estimated to require 15.75 hours per year. If each chapter of the Department of Administration changes two regulations

which do not require a public hearing, $2 \times 14 \times 15.75 = 441.0$ hours per year of additional processing are required by House Bill 458. Pending legislation provides the basis for the assumption that at least five public hearings can be expected regarding regulation changes by the Alaska Public Offices Commission and the Division of General Services & Supply. A proposed regulation requiring a public hearing requires an additional six hours of additional tasks, as required by this Bill. Five of these twenty-eight regulation changes will thus require $5 \times 6 = 30$ hours.

2. $441.0 + 30 = 471.0$ emp. hours \div 47 weeks = 10.0 emp hrs/wk.

COMPUTATION APPENDAGE of FISCAL NOTE ANALYSIS
FOR SSHB 458

1. Additional Staff Requirements Analysis

a. General Government Unit (GGU)

Hours per Year	=	1,950 hours per year
Annual Leave	=	(75)
Five Days Sick Leave	=	(37.5)
Holidays (ten days)	=	<u>(75)</u>
Employee Annual Hours Worked	=	1,762.5 hours per year

1,762.5 hours per year ÷ 37.5 hours per week = 47 weeks per year

b. Staff--one part-time Administrative Assistant I, Range 12

\$17.75 per hour X 10 hours per week X 52 weeks	= \$6,630.00
Benefits for less than 15 hours per week: 11.16%	= <u>\$ 739.91</u>

TOTAL: \$7,369.91

2. Other Costs Analysis

Contractual Total: \$3,094

Copier per Duplicating--\$294

Assume 28 regulations to be published at two pages each to meet criteria as established by AS 44.62.200, mailed to 25 interested/affected parties in addition to the Legislature as required by law (AS 44.62.190)

28 regulations X 2 pages X 150 parties X \$.035 = \$294

Advertising--\$2,800

Current charges for the publishing of advertisements in Fairbanks, Anchorage, and Juneau average \$75 per day for a 2" X 2" advertisement. The size of the advertisement currently required to contain the necessary information averages 2" X 6" and costs an average of \$225. The required size would increase due to the required additional information (AS 44.62.190 and AS 44.62.200) and an average regulation advertisement would increase to 2" X 10" at an average cost of \$325.

28 regulations X (\$325 increased size - \$225 current size) = \$2,800

Position Title Administrative Assistant I			No. of Positions 1	Range/Step 12A	Barg Unit G	Gov.	Approv.	Disapp
Time Status Part-time	Staff Months 3.2	RP Number	Location Juneau		Electon District 4	Leg.		
Justification								
Duties would include, but not be limited to:								
<ul style="list-style-type: none"> a) maintenance of file of proposed action; b) log of filed items; c) preparation of financial estimate; d) preparation of initial justification of need; e) preparation of final justification of need; f) preparation of reason of denials; and g) publishing in accordance with AS 44.62.190. 								
Type of Expenditure			Amount					
1	2	3						
Salary	6,630							
Benefits	739							
Premium Pay	0							
Other	0							
Total Personal Services		7,369						
Travel		0						
Contractual		3,094						
Commodities		0						
Equipment		0						
Other		0						
Total Cost		10,463						
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	10,463					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only Key Number _____								

14/1D1/0225-01/1

**Request For
New Position**

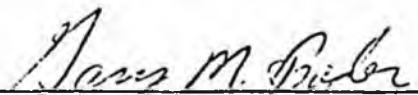
Agency Department of Administration
 BRU Administrative Services
 Component _____

Page _____ of _____
 Revised Date _____

FY 87

Position Paper
SSHB 458

This bill makes myriad changes to the establishment, abolition, or modification of regulations under the Administrative Procedures Act. The department cannot support the bill in its present form because it provides too many stumbling blocks for the efficient operation of State government. One primary objection to the bill is the matter of AS 44.62.195(b), which requires that each agency prepare a financial impact statement on all individuals and entities who will be affected by the regulations. Although the above citation allows the maker of regulations to show a typical example of the financial impact on a single individual or entity, it requires that an estimate be made with regard to the total impact on all individuals and entities. These estimates would be unreliable. It should be kept in mind that there is already a requirement that a fiscal note be prepared regarding the impact on State. One of the purposes of public input on regulations is to ascertain the financial impact on those affected. This bill requires that such an assessment be made prior to public notice on public input. Administrative regulations are similar in nature to statutes in the manner that they are passed. Both statutes and regulations require a period of public testimony at which individuals or entities have an opportunity to advise the body in question concerning the financial impact as well as other considerations that the proposed statutes/regulations will have on the individual or entity represented. I am unaware of any mandatory statement of financial impact on the public prior to passage of legislation. The Executive Branch does not require such statements prior to the amendment or abolition of regulations for the same reason. The department has no aversion to publishing or otherwise making available to the public a justification of need for the regulations as long as that justification does not require a financial impact statement.



Gary Bader, Director
Division of Administrative Services
Department of Administration

2/25/86

Date



Commissioner Eleanor Andrews
Department of Administration

2/25/86

Date

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
207-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 31, 1986

SUBJECT: Sectional analysis of SSHB 458
TO: Representative Marco Pignaiberi
FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional analysis of SSHB 458. The sponsor substitute as drafted contains a number of changes from the information provided in your work request. Please let me know if the draft needs to be rewritten.

Section 1 amends AS 44.62.190, which requires publication of notices of proposed actions in a variety of forms, to prohibit an agency from adopting a regulation if more than one year has elapsed since the first publication of the notice.

Section 2 adds a new subsection to AS 44.62.195, which requires that agencies prepare fiscal notes on regulations, to also require financial estimates of the impact of the regulation on individuals and entities.

Section 3 amends AS 44.62.200, which requires certain information to be included in the notices of proposed action, to also require summaries of the initial statement of reasons (provided for in section 4 of the draft) and financial estimates.

Section 4 requires an agency prepare an initial justification of need when it files a notice of proposed action for a regulation and a final justification of need when it submits a regulation to the lieutenant governor for filing. Subsection (c) limits the requirement for justifications by exempting regulations on laws for which the agency has not previously adopted a regulation.

Section 5 adds new subsections to AS 44.62.210, which provides for public hearings on regulation adoption. Subsection (c) requires an agency to hold a public hearing if

one is requested at least 10 days before the end of the initial comment period by at least 10 persons. Subsection (d) prohibits an agency from adding documents to the record of a proceeding after the end of the public comment period unless an opportunity for further comment is provided.

Section 6 requires an agency to explain its reasons for denying a petition for a regulation.

Section 7 requires agencies to maintain complete files on regulation-making proceedings and to also maintain a log of the items that are part of the file. Subsection (c) provides that the file is a public record. As such, its contents would be admissible in proceedings to the extent permitted by rules of evidence applicable to the proceeding.

Section 8 permits a court to invalidate a regulation if the agency has not prepared a justification of need when required or if the justification fails to present sufficient facts. It does not distinguish between initial and final justifications of need.

Section 9 defines "document."

Section 10 addresses when the sections of the bill apply to regulations that have not been submitted to the lieutenant governor for filing. The sections that apply to pending proceedings are

AS 44.62.190, requiring republication of a notice of proposed action after one year

AS 44.62.205(b) and (c), requiring an agency to prepare a final statement of reasons when a regulation is submitted for filing

AS 44.62.210(c) and (d), requiring public hearings on request and limiting addition of documents to the record

AS 44.62.640(a), defining "document"

Sec. 11 precludes application of sections of the bill to regulations for which a notice of proposed action has been published before July 1, 1986. Those sections are

Representative Pignalberi
Page 3
January 31, 1986

AS 44.62.195(b), requiring the agency to prepare a financial estimate

AS 44.62.200(a) requiring publication of the financial estimate and the initial statement of reasons

AS 44.62.205(a) requiring an agency to prepare an initial statement of reasons

AS 44.62.275, requiring an agency to maintain a file of the regulation proceedings

AS 44.62.300, concerning court review

Section 12 makes the Act effective July 1, 1986.

If I may be of further assistance, please advise.

TC:mkr
M2:118



Official Business

Alaska State Legislature

House

Pouch V
State Capitol
Juneau, Alaska 99811

February 10, 1986

Representative Katie Hurley, Chairwoman
House State Affairs Committee
Capitol, Rm 102
P.O. Box V
Juneau, AK 99811

RE: HB458 (SSHB458)

Dear Katie:

I am requesting that you calendar the above-referenced bill for hearing before your committee.

Attached is a copy of SSHB458, an act relating to adoption of regulations, along with a copy of the sectional analysis of this bill. The sponsor substitute is a more comprehensive bill than the original. It relates to the procedures required for adoption of regulations. Initially, my original bill (also attached for your reference) required that justification of need be given in the adoption process so that people would have a better understanding of why the proposed regulation was needed.

After receiving input from others, we have developed a revised bill which not only requires justification of need, but also includes the following:

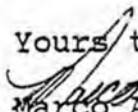
1. Puts time limits on adoption of regulations,
2. Requires a financial estimate of cost or savings that will be incurred by those directly affected,
3. Requires a hearing if at least 10 persons make a request for one,
4. Requires that records be kept of all written or electronic testimony that is received.

I feel this is a good bill since, all too often, regulations are passed without the people understanding why or without the people being assured that their testimony has even been seen or considered.

I would appreciate your consideration in hearing this.

Thank you.

Yours truly,


Marco A. Pignalberi
Representative
MAP:mep
enc.

POSITION PAPER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

BILL No. SSHB 458

DATE March 21, 1986

TITLE: Adoption of Administrative Regulations

For reasons set out below, the Department of Environmental Conservation

(1) supports, and already adheres to, the concept set out in Section 1 of this bill (requiring final action within one year of publication of notice);

(2) opposes Sections 2, 3, 4, and 5 (requiring a financial estimate and a justification of need, adding nondiscretionary hearing requirements, and limiting changes after public comment);

(3) supports the amendment in Section 6 (requiring statement of the reason for denying a request for regulatory change);

(4) supports, with qualification, and already adheres to, the concept set out in Section 7 (requiring the maintenance of regulations files);

(5) opposes Section 8;

(6) seeks clarification of the definition of "document" set out in Section 9; and

(7) has no comment on the remaining sections of the bill.

COMMENTS

Section 1

This agency already adheres to the so-called "one-year rule" described in the Drafting Manual for Administrative Regulations (Department of Law, 9th ed., 1985), page 6, last paragraph, and page 30, last paragraph. We have no objection to that standard being made a part of the law. We would, however, favor the inclusion of a measure that would exempt from the re-notice requirement an agency which has made every good-faith effort to comply, but which has been hampered by deliberate "nuisance" attempts by special-interest groups or disgruntled individuals to delay or foil a project by requesting a hearing under Section 5, or pursuing litigation for failure to properly comply with Sections 2, 3, or 4.

Section 2

To produce any meaningful estimates of cost or savings that "will be incurred by individuals and entities directly affected" by a proposed action, we would require the contractual services of an economist. Even such expert, albeit costly, information is of questionable value since that information is best received from those actually affected, and provision of such information has historically been considered a vital part of the public comment process.

It should be remembered that environmental matters are increasingly subject to a much greater public scrutiny as awareness grows of the seriousness of environmental degradation. Regulatory actions which are vehemently opposed by some are aggressively supported by others. The other side of the regulatory/economic impact issue was expressed by a private citizen during a 1984 public comment period as follows: "The cost of doing business in Alaska should always include the cost of maintaining the quality of our environment. It's shameful to consider otherwise."

Section 3

For many of our programs, we are bound by, and in all of our efforts we subscribe to, the philosophy set out in federal public participation regulations:

[Public information, public notification, and public consultation] requirements are intended to foster public awareness and open processes of government decisionmaking. . . .

Public participation is that part of the decision-making process through which responsible officials become aware of public attitudes by providing ample opportunity for interested and affected parties to communicate their views. Public participation includes providing access to the decision-making process, seeking input from and conducting dialogue with the public, assimilating public viewpoints and preferences, and demonstrating that those viewpoints and preferences have been considered by the decision-making official. Disagreement on significant issues is to be expected among government agencies and the diverse groups interested in and affected by public policy decisions. Public agencies should encourage full presentation of issues at an early stage so that they can be resolved and timely decisions can be made. In the course of this process, responsible officials should make special efforts to encourage and assist participation by citizens representing

themselves and by others whose resources and access to decision-making may be relatively limited. (40 C.F.R., Part 25 -- Public Participation in Programs Under The Resource Conservation and Recovery Act, The Safe Drinking Water Act, and The Clean Water Act)

We take very seriously our responsibility to provide meaningful informative summaries of proposed agency action (see example at Attachment A). As mentioned, many of our public notices are subject to federal scrutiny, and federal funding hinges on strict adherence to federal regulations (see example at Attachment B). We do not believe that the addition of a justification of need summary or a financial estimate would provide a public benefit commensurate with the expenditure of public funds necessary to create that addition. The "reasonably necessary" requirement now contained in AS 44.62.030--and subject to judicial review under AS 44.62.300--should suffice.

Section 4

In many instances, our "justification of need" is a mandate of federal law. For example, when the U.S. Environmental Protection Agency amended its Water Quality Standards in 1983, the practical effect of that revision was to nullify Alaska's process for the reclassification of state waters. That nullification amounts to a mandate that we develop amendments to Alaska's Water Quality Standards that will be consistent with federal law and will meet EPA approval. Similarly, Alaska must amend its Air Quality regulations to make them consistent with federal regulations as is more thoroughly explained in Attachment B.

For other matters, such as requiring pull dates on milk, requiring certain standards in safe food preparation and storage, or increasing sanitation requirements for public accommodations, we would be required to hire a Research Analyst if the information required by this section is to have any real significance, and if it is to withstand a court challenge.

The description of "practical and reasonable alternatives" to a proposed action, if that description is to be accurate, could involve substantial research into very technical areas, not to mention some highly esoteric "expert" guesswork as well. Again, during the public comment period, those affected by regulatory changes often come forward with suggestions that are thereafter incorporated into the adopted version of the regulations (although such incorporation would be more difficult under subsection (d) of Section 5).

Likewise, the requirement under (a)(3) that we "identify each document upon which the agency is relying in proposing the action" would be impossible to meet in any but a general way. (See, for example, the list of documents in Attachment C which represents only one subsection of one regulation.) Background documents such as the Code of Federal Regulations, the Clean Water Act, countless technical documents, and volumes of scientific textbooks would be a mere beginning of the required list.

The requirements of (b)(2) and (b)(3) are already being substantially met by this department as a result of federal public participation requirements mentioned earlier (see the example at Attachment D).

Section 5

We generally hold a formal public hearing when the need for such a hearing is indicated by using the guidelines set out on pages 5 and 6 of the Drafting Manual for Administrative Regulations. If subsection (c) were amended to include a showing of good cause, or some other grant of discretion to the agency, we would be less concerned that this mechanism might be abused by someone who was bent on delaying or preventing the promulgation of certain regulations. Certainly controversial matters should be given a public forum. And as one commenter recently told us: "Your department is involved in things that terrify people. You have an obligation to explain why you are doing what you are doing." We agree.

We believe that subsection (d) would cripple our effectiveness to carry out the mandate of AS 46.03.010 to "conserve, improve and protect [Alaska's] natural resources and environment and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being." (Emphasis supplied)

If regulations ultimately adopted are within the scope of the public notice, as is now required by AS 44.62.200, that should be adequate. It is not too difficult to imagine a series of public comment periods when valuable information is obtained from first one, then a subsequent comment period, requiring yet another opportunity for public comment if we wish to incorporate the information garnered.

Section 6

We do not object to the addition of a requirement to include the reasons for any denial of a petition to adopt, amend, or repeal a regulation of the department.

Section 7

With the exception of subsection (a)(6), we support the concept behind this amendment. As pointed out in our discussion of Section 4 above, we rely on a myriad of technical documents and texts. A requirement that those "documents" be kept in a file with each separate action is impractical and costly. A narrower definition of "documents" is needed. We presently retain for our own informal reference all public notices, written comments, responsiveness summaries, cassette recordings of oral hearings, and other such information. After ten years, those records are transferred as permanent files to Archives.

The more formal file maintenance envisioned by this section would require the hiring of a clerk to assure the integrity of the files.

Section 8

We strongly oppose this section in that it would encourage litigation. Furthermore, failure to meet the existing provision in AS 44.62.030 that a regulation be "reasonably necessary" ought to offer sufficient grounds for court review under the existing AS 44.62.300.

Section 9

As mentioned before, such a broad definition of "documents" would impose impossible record-keeping burdens.



Bill Ross - Commissioner

Department of Environmental Conservation

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

BILL SHEFFIELD, GOVERNOR

Telephone: (907) 465-2653

Address: Pouch 0
Juneau, Alaska 99811

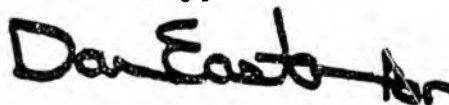
August 6, 1984

Dear Alaskan:

We are proposing two changes to the Wastewater Disposal Regulations (18 AAC 72). The changes are described in the attached public notice and development document. The public notice will soon appear in the Ketchikan, Juneau, Kenai, Anchorage and Fairbanks newspapers.

Knowing of your interest in these regulations, we hope you will take the time to comment on the proposed amendments -- either by writing us or testifying at one of the public hearings. Please note that we must receive your written comments by October 12, 1984. Thank you for your interest.

Sincerely,



Randy Bayliss
Chief
Water Quality Management

RB/DE/bb

PUBLIC NOTICE
STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

The Department of Environmental Conservation, under authority vested by AS 46.03.020(10), proposes to amend regulations in Title 18 of the Alaska Administrative Code, dealing with Wastewater Disposal to implement AS 46.03.050 - AS 46.03.120 as follows:

18 AAC 72 is proposed to be amended as follows:

- (1) "Primary treatment" of wastewater is currently defined in the Wastewater Disposal Regulations as removal of "substantially all floating and settleable solids." It is proposed to amend this definition to add the use of fine screens with 0.04-inch openings, or smaller, as primary treatment.
- (2) The regulations require that plans for subdivisions be reviewed by the department to ascertain whether the proposed means of wastewater disposal meet the other requirements of 18 AAC 72. Subdivisions of five or fewer lots, termed "isolated subdivisions," must comply with 18 AAC 72, but are currently exempted from the plan review requirement. The proposed amendment would remove the plan review exemption for isolated subdivisions. Plans for all subdivisions would be reviewed by the department.

This action is not expected to require an increased appropriation.

Interested persons may present oral or written statements relevant to the proposed action at hearings to be held as follows:

Ketchikan - 7:00 p.m. on September 18, 1984 at the City Assembly Chambers
Juneau - 7:00 p.m. on September 20, 1984 in the Egan Room of Centennial Hall
Anchorage - 7:00 p.m. on September 25, 1984 in the Williwaw Room of the
William A. Egan Convention Center
Soldotna - 7:00 p.m. on September 26, 1984 at the Kenai Borough Assembly
Chambers
Fairbanks - 7:00 p.m. on September 27, 1984 at the Public Library,
1215 Cowles St.

In addition, written statements or arguments may be sent to the Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, Alaska 99811 to be received no later than October 12, 1984. Copies of the proposed regulations may be obtained by writing to the address above.

The Department of Environmental Conservation upon its own motion or at the instance of any interested person, may, after the deadline stated above, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

DATE:

PROPOSED CHANGES TO THE
WASTEWATER DISPOSAL REGULATIONS
AUGUST 1984

The Alaska Department of Environmental Conservation is proposing changes to its Wastewater Disposal Regulations (18 AAC 72). The changes are two-fold: 1) Revising the definition of "primary treatment" to specifically include fine screens, and 2) removing the existing provision that excludes plans for subdivisions of five, or fewer, lots (isolated subdivisions) from the need for review by the department. Other than their concurrent proposal these two changes are unrelated. They are discussed separately below.

Definition of Primary Treatment

Engineering texts define primary treatment as the physical or chemical processes used in the preliminary treatment of wastewater. Inherent in such definitions is the assumption that primary, or preliminary, treatment is followed by secondary, or biological, treatment. In certain situations though, primary treatment may, in fact, be the final step in the treatment process.

At present, 18 AAC 72 defines "primary treatment" as removal of "substantially all floating and settleable solids." This regulation also lists situations in which primary treatment may be all that is needed prior to discharge to the receiving environment. Specifically, the department may waive requirements for higher-than-primary treatment when:

1. a domestic wastewater discharge is to marine waters;
2. a domestic wastewater discharge is to the surface of lands;
3. domestic wastewater is to be injected into subsurface waters; or
4. graywater (wastewater from laundry, kitchen, sink, shower or bath, but does not contain human or animal sewage) is discharged to fresh waters.

A relatively recent innovation in primary treatment of domestic wastewater is the use of fine screens to replace sedimentation tanks or clarifiers. These screens are usually made of stainless steel and have 0.01- to 0.10-inch openings. There are two general types, rotating drums and static inclined screens, through which the wastewater stream passes.

When primary treatment is to be followed by biological treatment, manufacturers recommend screens with 0.06-inch openings. As the opening sizes get smaller, more solids are removed. However, openings smaller than 0.04 inches collect grease, and clog. This effect, called blinding, causes water to pass over, instead of through, the screens and to be collected with the screened material. For this reason, engineers and manufacturers are now often recommending screens with 0.04-inch openings when screening is to be the final step in the treatment process.

Removal efficiencies for screens vary widely, depending on certain factors. As already noted, screen size is one factor. Others appear related to the amount of energy available to physically break down and dissolve solids. For example, in collection systems that involve a large amount of pumping, solids are more readily dissolved or broken down into sizes that will pass through a screen. Lower solids removal results. As a general rule, screens remove only a small part of the biochemical oxygen demand (BOD). This is true of most primary treatment.

For 0.06-inch screens, expected removal efficiencies are:

	Removal Efficiency
Total Suspended Solids	10-30%
Settleable Solids	20-30%
Floating Solids	80-100%
BOD	5-25%

Removal efficiencies for 0.04-inch screens are slightly better. With an expected settleable solids removal efficiency of 20 - 30%, fine screens may not appear to meet the existing definition of primary treatment in 18 AAC 72 calling for removal of substantially all settleable solids. However, it is the department's position that fine screens with openings of 0.04 inches or less should constitute primary treatment. The Wastewater Disposal Regulations should allow use of such screens in the five cases where less-than-secondary treatment may be appropriate (listed previously) and where screens are sufficient to protect health and the receiving environment.

To this end, the department proposes to amend the definition of primary treatment to specifically include screens with 0.04-inch openings, as follows. Wording to be added is underlined.

18 AAC 72.990 DEFINITIONS. (37) "primary treatment" means wastewater treatment where substantially all floating and settleable solids are removed, or the use of fine screens with 0.04-inch openings or smaller;

This proposed change would not affect the number of instances when less-than-secondary treatment would be appropriate. Nor would the change allow water quality standards to be violated in receiving waters.

Subdivision Plan Review

18 AAC 72 requires that plans for subdivisions be submitted to, and approved by, the department. DEC reviews these plans to ensure that the proposed means of sewage disposal meets the criteria of 18 AAC 72. Soil types, topography, location of water bodies, lot sizes, proposed sources of drinking water, and capacities of treatment systems, are some of the factors considered in these reviews.

At present, subdivisions of five or fewer lots -- termed "isolated subdivisions" in the regulations -- are exempted from the plan review requirement. The department has found that although the number of lots in an isolated subdivision may be small, the number of these small subdivisions is large. The net effect is that a large number of lots are subdivided without plan review.

Though exempted from the plan review requirement, wastewater disposal systems eventually built on lots in isolated subdivisions must still meet the requirements of 18 AAC 72 for the homes to be eligible for AHFC financing. In some cases owners of lots in isolated subdivisions that have not been reviewed by the department are unaware of restrictions that may exist to on-lot sewage disposal. It often comes as an unwelcome surprise when the department must inform a landowner that conventional means of on-lot sewage disposal won't work and that a more expensive, complex or inconvenient system is required for the home to be eligible for AHFC financing. If the subdivision plans had been reviewed earlier, restrictions to on-lot sewage disposal would have been noted on the subdivision plat for the information of prospective buyers.

To correct this, the department proposes to amend 18 AAC 72 to remove wording that exempts plans for subdivisions of five lots or less from review requirements. The specific changes are as follows. Wording to be deleted is shown with a line through it.

18 AAC 72.065. SUBDIVISION PLAN REVIEW. (a) A person proposing a subdivision, ~~except an isolated subdivision,~~ shall submit the following information to the department within five days after the submission of a proposed subdivision plat to a platting authority or, where no plat is filed, 60 days before subdividing...

18 AAC 72.990. DEFINITIONS. (27) "isolated subdivision" means the subdivision of a parcel of land into five or fewer lots which is not part of a subdivision plan or scheme involving more than five lots; a subdivision is ~~not~~ an isolated subdivision if the subdivider, or persons acting in concert with the subdivider, have, within the preceding five years, subdivided land so that the total number of lots created by the subdivision and within two miles of the subdivision exceeds five;

With adoption of these changes, plans for all subdivisions would be reviewed by the department.

NOTICE OF PROPOSED CHANGES
IN THE AIR QUALITY REGULATIONS OF THE
ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Notice is given that the Alaska Department of Environmental Conservation, under authority vested by AS 46.03.020 and AS 46.03.140, proposes to adopt and amend regulations in Title 18 of the Alaska Administrative Code, dealing with air quality (18 AAC 50). The subject regulations address two separate topics: guidance for industrial development in areas that are not in compliance with National Ambient Air Quality Standards, and the use of tall stacks for dispersing air pollutants instead of installing additional air pollution control equipment.

Amendments to 18 AAC 50 are proposed, including

1. The addition of new provisions as described below;
2. The repeal and readoption of 18 AAC 50.900; and
3. Any other necessary amendments to 18 AAC 50 relating to air quality which are appropriate after review of public comments.

The period during which the public is invited to comment on the proposed actions has been extended and an additional public hearing has been scheduled. A deadline of March 27, 1986, was specified in a prior notice on this action which was first published on February 25, 1986. The deadline has been extended until April 25, 1986.

INDUSTRIAL DEVELOPMENT IN NONATTAINMENT AREAS

Federal law requires that areas that have not attained compliance with National Ambient Air Quality Standards be brought into compliance by December 31, 1987, and that if construction is to be performed in these nonattainment areas, regulations be developed to provide guidance for the proposed construction. There are presently two nonattainment areas in Alaska. The Anchorage and Fairbanks-North Pole urban areas are both in nonattainment of the ambient air quality standards for carbon monoxide. An addition to the State Air Quality Control Regulations (18 AAC 50) now being proposed makes it possible to construct or modify a facility emitting over 100 tons per year of a pollutant for which the area is declared in nonattainment without increasing the pollutant levels in the area.

Sources, owners or operators will be required to submit a detailed demonstration that emissions of any nonattainment air contaminant will not exceed the applicable emissions allowance and will be controlled to a level (rate) which represents the lowest achievable emission rate. Procedures on how to perform emission calculations, apply emission offsets and exceptions are detailed in the proposed amendments.

STACK HEIGHT REGULATIONS

Federal regulations were recently amended limiting the extent to which industries can disperse pollutants into the atmosphere through tall stacks instead of installing effective control equipment to reduce emissions of the air pollutants. The State of Alaska is required to change its regulations to be consistent with the federal requirements. The regulation changes will not affect any existing industrial sources in Alaska but could affect new facilities.

The regulations continue to allow the use of stacks within guidelines established as good engineering practice but this definition is refined and clarified. Provisions are being deleted which automatically allowed sources to build stacks exceeding the good engineering practice height to avoid causing high pollution concentrations on elevated terrain such as hillsides and cliffs downwind of the source. The new rules require that stacks near these terrain features must reduce their emissions through constant controls rather than use dispersion techniques. The definition of what is a prohibited dispersion technique and terms related to good engineering practice have been expanded and clarified.

OPPORTUNITY FOR PUBLIC PARTICIPATION

Notice is also given that any person interested may present oral or written statements or arguments relevant to the proposed action at a public hearing commencing at 4:00 p.m. and continuing until all persons have been heard at the following location on the date indicated:

<u>CITY</u>	<u>LOCATION</u>	<u>DATE</u>	<u>TIME</u>
Anchorage	Dept. of Environmental Conservation 437 "E" Street, Second Floor	April 23	4:00 p.m.

In addition, written statements or arguments may be sent to Leonard D. Verrelli, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, for inclusion in the record if received before 4:30 p.m. on April 25, 1986.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained at the offices of the Alaska Department of Environmental Conservation:

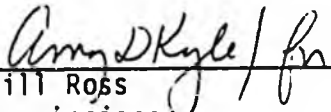
Central Office
P.O. Box 0
3220 Hospital Drive
Juneau, Alaska 99801

Southcentral Regional Office
437 "E" Street, Second Floor
Anchorage, Alaska 99501

Northern Regional Office
675 7th Avenue, Station I
Fairbanks, Alaska 99707

The Department of Environmental Conservation, upon its own motion or at the instance of any interested person, may, at the hearing or after it, adopt proposals within the scope of this notice without further notice or may decide to take no action on them.

Dated at Juneau, Alaska, this 12th day of March, 1986.



Bill Ross
Commissioner

ing and dis- ment required by 18 AAC 72.029(a)(1) must ensure that

partment re- (1) the discharger has legal authority to use the lands for the discharge;

t must show (2) the lands used for treatment are protected against public access;

to determine (3) the topography, hydrology, geology, and soil characteristics of the land treatment area are adequate to protect existing and potential water and land uses outside the defined treatment area, including subsistence, housing, education, industry, recreation, and agriculture; and

when similar (4) the method of discharge prevents disease transmission.

l conditions (i) An accurate and complete set of as-built engineering plans for sewers, disposal systems, or treatment works designed to serve 100 or more persons per day must be submitted to the department within 90 days after the project's startup date. The department will, in its discretion, waive this requirement if it has made an on-site inspection and finds that the system was built as approved.

on; (j) A person may install a package plant only if the department finds, after review of submitted data, that the plant can treat domestic wastewater for at least one year under expected conditions or that the plant meets or exceeds the National Sanitation Foundation certification criteria. (Eff. 8/10/73, Reg. 47; am 2/3/77, Reg. 61; am 3/4/78, Reg. 65; am 12/30/82, Reg. 84)
 Authority: AS 16.10.010 AS 46.03.090
 AS 46.03.020 AS 46.03.720
 AS 46.03.050

Editor's Note: The certification criteria of the National Sanitation Foundation are available from the Foundation at P.O. Box 1468, NSF Building, Ann Arbor, Michigan 48106. In reviewing plans submitted under this section, the department uses, among references, the design criteria contained in

(1) Sewage Wastewater Treatment Plant Design, Manual of Practice Number 8, 1977, and Design and Construction of Sanitary and Storm Sewers, Manual of Practice Number 9, 1976, Water Pollution Control Federation, 2626 Pennsylvania Avenue, Washington, D.C. 20037;

(2) Glossary - Water and Wastewater Control Engineering, Manual of Operation Number 22, Joint Editorial Board, American Public Health Association, American Society of Civil

Engineers, American Water Works Association, and Water Pollution Control Federation, 1969, Water Pollution Control Federation, 2626 Pennsylvania Avenue, Washington, D.C. 20037;

(3) Wastewater Engineering: Collection, Treatment, Disposal, Metcalf and Eddy, Inc., 1972, McGraw-Hill Book Company, New York, New York;

(4) Recommended Standards for Sewage Works, 1978 Edition, Great Lakes-Upper Mississippi River Board of State Sanitary Engineers, Health Education Service, Inc., P. O. Box 7126, Albany, New York 12224;

(5) Environmental Engineering and Sanitation, Second Edition, Joseph A. Salvato, Jr., 1972, John Wiley & Sons, Inc., New York, New York;

(6) Wastewater Engineering: Treatment, Disposal, Reuse, Second Edition Metcalf & Eddy, Inc., revised by George Tchobanoglous, 1979, McGraw-Hill Book Company, New York, New York;

(7) Cold Climate Utilities Delivery Design Manual, EPA-600/8-79-027, Sept. 1979, U.S. Environmental Protection Agency, Environmental Research Laboratory; Corvallis, Oregon 97330;

(8) A 1979 State of the Art Manual of On-Site Wastewater Management, 1979, The National Environmental Health Association, 1200 Lincoln St., Suite 704, Denver, Colorado 80203;

(9) Design Manual Onsite Wastewater Treatment and Disposal Systems, Oct. 1980, U.S. Environmental Protection Agency, Office of Research and Development, Technology Transfer, Cincinnati, Ohio 45268;

(10) Mixing in Inland and Coastal Waters, H.B. Fischer, E.J. List, R.C.Y. Koh, J. Imberger, N.H. Brooks, 1979, Academic Press, Inc., 111 Fifth Ave., New York, New York 10003; and

(11) Uniform Plumbing Code, 1982 edition, Appendix I, pages 180 through 194, International Association of Plumbing and Mechanical Officials, 5032 Alhambra Ave., Los Angeles, California 90032, Library of Congress Number 78-073977.

These reference materials may be reviewed in the department's regional offices.

18 AAC 72.063. DELEGATION OF SYSTEM PLAN REVIEW. (a) A municipality may petition the department to delegate the exercise of plan review under 18 AAC 72.060 within its jurisdiction. The petition must contain a

(1) copy of ordinances governing sewers, wastewater disposal systems, and treatment works;

(2) description of pertinent administrative and judicial enforcement processes available to the municipality; and

SUMMARY RESPONSE TO PUBLIC COMMENT

ON

ALASKA WATER QUALITY STANDARDS

March 1986

ALASKA DEPARTMENT OF ENVIRONMENTAL CONSERVATION

WATER POLLUTION CONTROL PROGRAM

SUMMARY RESPONSE TO PUBLIC COMMENT
ON
ALASKA WATER QUALITY STANDARDS
FEBRUARY 1986

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Summary Response to Public Comment

on

Alaska Water Quality Standards

I. INTRODUCTION.

As part of its ongoing review, the department issued a public notice requesting suggestions to improve on Alaska's water quality standards (18 AAC 70). A copy of the notice appears on the next page. The announcement was mailed to all persons on the department's water quality standard mailing list and printed in Juneau, Fairbanks, and Anchorage newspapers. A total of ten persons responded to the announcements with many excellent comments.

Following is a summary of the department's response to public comments on the water quality standards. Every comment was carefully considered. Many suggestions were embraced and proposed as amendments. Other comments were noted and may be considered for further study. A few comments were rejected, but were, nevertheless, appreciated.

For the most part, public comments and the department's responses have been grouped by the section of the water quality standards to which they apply. Those comments and responses that could not be grouped by section, are grouped under a "general" heading.

II. PUBLIC COMMENT AND RESPONSE

1. Antidegradation.

Comment: It was suggested that 18 AAC 70.010(c)(1) be modified to include criteria for determining that reducing water quality is justified because of necessary economic or social development. It was also suggested that we indicate who has the authority to make this determination.

Response: Before addressing this comment, it is important to discuss the purpose and applicability of the antidegradation clause (18 AAC 70.010), of which 18 AAC 70.010(c)(1) is a part. The antidegradation clause is required by the Clean Water Act and sets conditions that must be met before waters with natural high quality can be degraded. In Alaska, these conditions are: 1) The reduction in water quality must not harm present or potential uses. 2) All wastes must be treated before discharge. 3) And, reducing water quality must be justified because of necessary economic or social development.

PUBLIC NOTICE
STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

During the next few months, the Alaska Department of Environmental Conservation will be reviewing Sections 55 and 58 of the Alaska Water Quality Standards, 18 AAC 70. These two sections concern procedures for reclassifying water bodies for different uses. They may need to be re-written as a result of recent changes in federal water pollution laws.

In addition, federal law requires that the State begin reviewing the rest of 18 AAC 70 before 1985. The purpose will be to evaluate the scientific merit and adequacy of other sections and recommend any needed changes. We plan to start this process soon.

We'd like to get your comments on which parts of the standards need re-viewing besides the reclassification sections. Your comments will be most helpful if they:

- 1) pinpoint any parts of the standards that are hard to understand, and suggest better wording; and
- 2) identify any criteria that you think do not adequately protect water uses. Tell why you think so, and cite any scientific studies that support your comments.

Remember that the water quality criteria found in 18 AAC 70 set limits on pollutant levels. Their purpose is to protect specific uses of each water body. To be considered, all comments on criteria must relate to this legal purpose of protecting water uses. Whether or not a criterion can be met is not a factor in setting or changing water quality criteria.

Copies of the existing standards, 18 AAC 70, can be obtained from the nearest DEC office. In addition, you can request copies from the address below or by calling (907) 465-2653.

All comments will be carefully considered. Later notices will give the public ample time to comment on any changes proposed as a result of this notice or a departmental review. Your comments must be mailed by June 11, 1984. Please send them to:

Alaska Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
Attn: Ellen Fritts

Richard A. Neve'
Commissioner

It is important to note that "necessary economic or social development" is one of three conditions that must be met. It should also be noted that under the antidegradation clause, water quality can only be degraded from the very high natural quality to the high quality necessary to meet the water quality criteria and protect the uses for which a water body is designated. Thus, "necessary economic or social development" cannot be used as the sole criterion for degrading water quality, nor is it a criterion that can be used to degrade water quality to a level that would harm aquatic life or other uses for which a water body is protected.

The requirement for "necessary economic or social development" ensures that high quality waters are not degraded as a result of activities that do not have economic or social value. Such wording is found in EPA regulations (40 CFR 35.131.12(a)(2)) and guidance on water quality standards (Water Quality Standards Handbook). While "necessary economic or social development" could be further defined, the department believes that the intent of this phrase to preclude degradation from activities without social or economic value is clear. The department also believes that the existing wording requiring a person to show necessary economic or social development "to the department's satisfaction" indicates that it is the department that has the authority to make such determinations.

2. Classification

Comment: One person suggested that the classification of waters in section 50 be revised to exclude certain uses precluded by natural conditions. The comment notes that sufficient existing information is available in some areas to make such determinations.

Response: The department would like to be able to classify in detail Alaska's waters for water quality standard purposes. However, there is little information on the uses or potential uses of the vast majority of our waters. In the few cases where detailed information exists, such information must be compiled to EPA's satisfaction, and must constitute a complete use-attainability analysis before uses can be excluded. For the purposes of this review, the department decided to concentrate on developing a better classifying procedure rather than pursue detailed classification of a few water bodies.

3. Criteria

Several comments were received on the water quality criteria shown in the table of section 20(b).

Comment: One person suggested that the maximum temperature of 20°C given in the criterion for growth and propagation of fish in freshwater may be unnecessarily low. The commenter cites literature that, for anadromous salmonids, 13-15°C is optimal and 25°C is lethal.

Response: This comment is appreciated. One paper was cited as a basis for this suggestion. The department feels that a detailed study of current literature is needed before a change to this

criterion should be proposed. The study should include a review of all recent literature. Then, if on the basis of recent scientific information a change is warranted, it could be proposed. The department will pursue such a study if funds permit.

Comment: It was noted that the methods for measuring sediment as a water quality parameter are poorly defined. Along these same lines, it was also suggested that the department add water quality criteria for settleable matter and suspended matter.

Response: The Department has recently completed review of the criteria for turbidity and sediment. (Alaska Particulates Criteria Review by L. A. Peterson and Associates, November 1985). This study recommended a number of changes to the criteria. The results of the study are still under review and have not been addressed in this revision to the water quality standards. This issue will be addressed at a future date.

Comment: One person noted that criteria for toxic and deleterious substances cite the Alaska Drinking Water Standards as one of three limits on concentration. The commenter states that since the drinking water standards do not set a maximum contaminant level for aromatic hydrocarbons, they should not be referenced in these criteria.

Response: It is important to recognize that there are many other toxic and deleterious substances besides aromatic hydrocarbons. The drinking water standards set maximum contaminant levels (MCLs) for many of these. In addition, there is no disadvantage in those cases where there is no drinking water MCL for a substance. There are always two other limits that apply.

Comment: One commenter noted that aromatic hydrocarbons are limited both as toxic and deleterious substances and as petroleum hydrocarbons. The commenter goes on to suggest that the limit on aromatic hydrocarbons as petroleum hydrocarbons is far less than the limit on these compounds as toxic and deleterious substances.

Response: The department finds no problem with classifying aromatic hydrocarbons as both petroleum hydrocarbons and as a toxic and deleterious substance. A similar situation exists for particulate matter which may be considered turbidity, sediment or residue. This double limit ensures that any single aromatic hydrocarbon, like benzene, will have no detrimental effect as a toxic substance and that the combination of the aromatic hydrocarbons as petroleum hydrocarbons will have no detrimental effect.

Comment: Another comment was that aromatic hydrocarbons be defined as benzene, toluene, ethyl benzene, naphthalene, and polynuclear. It was also suggested that the limits for total aromatic hydrocarbons and the methods of determination follow EPA guidelines.

Response: The department prefers to use the definition of aromatic hydrocarbons consistent with scientific literature. This definition includes benzene, toluene, ethyl benzene, naphthalene, polynuclear aromatic hydrocarbons and other water-accommodated compounds having at least one aromatic ring.

The criteria for total aromatic hydrocarbons have been reviewed and approved by EPA. The EPA guidelines entitled Quality Criteria For Water cite lower-limit acutely toxic values for individual compounds. These limits are not appropriate as water quality standards. Water quality standards are based on lower-limit chronically toxic values.

Comment: One person urged that the water quality criteria be consistent with "criteria accepted at a National level." The criteria for total hydrocarbons and total aromatic hydrocarbons were cited as examples of state criteria more stringent than other states' and federal guidelines.

Response: The department holds that Alaska's water quality criteria are consistent with those of other states and national guidance. The department does not agree that the criteria for total hydrocarbons and total aromatic hydrocarbons are inconsistent with national guidance (EPA Quality Criteria for Water - see preceding comment and response).

Comment: One respondent suggested adding wording to the criteria for hydrocarbons to protect growth and propagation of fish in marine and fresh waters, harvesting mollusks in marine waters, and aquaculture in marine and fresh waters from the effects of hydrocarbons sorbed to organic and inorganic particulates.

Response: The department is viewing the particulates criteria at this time. (see response on page 5) The department proposes to add wording to further protect water quality for harvesting mollusks, however, this change should occur when the comprehensive review of particulates is completed.

4. Definitions

A few comments were received on the definitions of terms in the standards.

Comment: One person noted that the definition of "zones of deposit" is missing from section 110.

Response: The department considered proposing the addition of a definition for "zone of deposit," but believes that the terms as used in the water quality standards have the same meaning as found in common usage. In addition, the meaning of "zones of deposit" is clearly defined in section 33 by the context in which it is used.

Comment: One person suggested that no changes be made to the list of definitions (section 110).

Response: This comment was considered. The department reviewed the definitions on the premise that they are basically sound and that changes should be made only to correct inaccuracies or effect substantial improvements.

Comment: It was suggested that the definition of nonpoint source pollution be changed to: "Sources from which pollutants discharged are resultant from natural processes, such as precipitation, seepage, percolation, and runoff, which are not traceable to any discrete or identifiable facility."

Response: "Nonpoint source" is presently defined as "any source of pollution other than a point source." "Point source" is defined as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged." The Clean Water Act definition of "point source" is the same as the state's except it includes discharges from discrete fissures and concentrated animal feeding operations, and specifically excludes return flows from irrigated agriculture. "Non-point" pollution is not defined in the Clean Water Act.

The department believes the suggested definition is probably technically sound. Legally, however, there is a need to ensure that all sources of pollution are included as either point or nonpoint sources. The existing definitions clearly accomplish this. It is conceivable that by using the existing definition of point source and the suggested definition of nonpoint source that certain sources of pollution might fit neither definition--they may be neither point nor nonpoint. To avoid this, the department feels that the existing definition should be retained as the legal definition. However, the department may use the suggested definition when a technical, or more explanatory definition is called for.

Comment: It was suggested that EPA definitions for "water quality standards" "designated use" and "existing use" be added to the definitions.

Response: EPA defines water quality standards in 40 CFR 131.3 as "provisions of State or Federal law which consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the [Clean Water] Act." The department does not feel that this definition, with its references to federal law and a generally federal perspective, is entirely applicable to state regulations. 18 AAC 70.010(b) states that "water quality standards constitute the degree of degradation which must not be exceeded in a water body." The department feels that this usage in the text of the regulations better defines the phrase than the federal definition. However, the department does

agree that further explanation of the water quality standard concept would enhance public understanding. The department will consider the inclusion of an introductory letter which would help explain the water quality standards concept.

EPA defines "existing uses" as those "actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards." "Designated uses" are defined as "those uses specified in water quality standards for each water body or segment whether or not they are being attained." 18 AAC 70 does not use the terms "existing use" or "designated uses." Thus, the need to define them is moot. However, in proposing changes to the reclassification procedure, the department will consider the need to be consistent with such federal definitions.

5. Editorial

Several persons made suggestions pertaining to the clarity of the water quality standards without addressing their content. The focus of these comments was that editing the standards to improve readability may not be as important as supplementing them with an explanation of the where's, when's, how's, and why's of the standards. Specific comments follow.

Comment: One person suggested that the standards should not be edited because it would unnecessarily extend the review process.

Response: While editing the standards will probably extend the review process, the department feels that the benefit will justify any delays. The department can make editorial changes at any time without public review or comment. The extent of the proposed editing changes, however, make it prudent to involve the public.

The editing is proposed to benefit the public. Consequently, the public's comments on our success are of utmost importance.

Comment: One person suggested adding wording to section 20 to indicate whether the use classes are listed in order of priority.

Response: The heading above the tables in 18 AAC 70.20(b) states "the water quality criteria when used in combination with the water use designation constitute the water quality standard for a particular water body." The department will consider adding a statement that clarifies that there is no priority of use classes in the tables.

Comment: It was pointed out that the water quality standards "comprise difficult concepts and complex subject matter." And, it is for this reason that the standards may be hard to understand not because of specific wording. To enhance public understanding, it was suggested that the department publish a guide on the history and purpose of the standards, how they are used, the review procedure, and common points of confusion. Similarly, it was suggested in another set of comments that there is a need to explain the water quality standards. The department was urged to include an introduction or

preamble to the next printing of the standards. It was also recommended that the department publish a list of the most stringent criteria for each parameter as a supplement to the standards. This list would be a synopsis of the water quality standards for Alaskan waters.

Response: As a result of these comments, the department will consider drafting an introductory letter explaining how the water quality standards are used and which standards are the most stringent. This letter would accompany the standards upon distribution to the public.

Comment: One commenter proposed changes to the organization of the text to make the standards a more useable and easily understood document.

Response: Changing the organization of a set of regulations can be confusing. The process of switching one section with another is actually accomplished by deleting both sections and adding two new sections. While the organization proposed by this respondent is sensible and probably an improvement over the existing one, the end result of a number of deleted and new sections would be confusing. The comment was carefully considered, and is appreciated, but no reorganization is proposed.

6. General

Comments of a general nature are discussed below.

Comment: A general comment from one person voiced the position that the standards must remain strong and need not be changed.

Response: This comment was considered, but certainly strength lies in accuracy.

Comment: One person suggested holding workshops on specific parts of the standards under revision.

Response: The department believes that workshops are a valuable means to inform the public, solicit public input, gather technical data from experts, and generally provide a forum for exchanging information. Workshops are most appropriate and beneficial when developing changes to either technical provisions or highly controversial parts of the standards. Due to present time constraints, the department will not be able to conduct workshops at this time, but will consider holding workshops in the future.

7. Reclassification

Several persons commented on the provisions for reclassifying the state's waters. A summary of those comments and the department's response follows.

Comment: One person suggested that this review would be an excellent opportunity to reclassify some of the state's waters based on available data.

Response: While this comment was carefully considered, the department believes that reclassification under existing procedures would not necessarily meet with federal approval. The scope of the review and subsequent proposed amendments are limited to establishing a new, federally approvable reclassification procedure instead of actually reclassifying certain waters. Once a viable procedure is established, actual reclassification, where appropriate, can follow.

Comment: It was suggested that the reclassification procedure "be based on technical data, with public input for information only."

Response: Certainly the role of the public in reclassifying waters must remain a strong one. The public is a valuable source of information on various uses of water bodies and other information that might be considered technical data. If the suggestion is construed to mean that technical data would be gathered prior to reclassification, (in addition to soliciting information from the public) then the department agrees. Federal law now requires a structured scientific assessment prior to any reclassification to exclude protected uses. In this way, a requirement for technical analyses prior to reclassification now exists.

Comment: One respondent stated that the reclassification procedure can take 5 to 16 months to complete, and that this is too long. The department agrees that the existing reclassification procedure is needlessly long and complex. At the same time though, the procedure must include ample time for public review and comment as well as sufficient flexibility to extend time constraints for particularly complex or controversial situations. Partly as a result of this comment, the department proposes to amend the reclassification procedure. The department also proposes to shorten the processing time for reclassification by going to public notice and comment for amending section 50 (Classification of state waters) when the department conducts a public hearing on the corresponding use attainability analysis.

Comment: One person stated that the federal requirement for use-attainability analyses could be accomplished administratively without a change to section 55.

Response: This comment correctly points out that federal law need not necessarily be restated in state regulations. However, in this case, the department believes that it is important to reference the appropriate federal regulations to persons requesting reclassification since the federal regulation will guide the outcome of the reclassification request.

Comment: Another comment on the reclassification procedure was to change it to allow the department to initiate and conclude reclassification actions.

Response: Under the proposed regulations, the department will have the discretion to initiate reclassification procedures. EPA must give final approval to all department decisions on reclassification.

8. Reclassification Criteria

Comment: One respondent focused on the difficulty of preparing reclassification petitions to show uses such as aquaculture, seafood processing, growth and propagation of fish and harvesting of mollusks don't exist.

Response: It is difficult to use the existing reclassification criteria. These are, by necessity, very broad definitions. The thrust of the federal regulation is to require a use attainability analysis on all requests for reclassification that would eliminate uses. Since these studies determine the presence or absence of a use on a case by case basis, the department proposes to repeal the section.

9. Short-term Variance

Comment: One person pointed out that due to the nature of nonpoint sources of water pollution, best management practices (BMPs), as opposed to short-term variances, are the appropriate control.

Response: We agree that BMPs are the proper long-term control for nonpoint sources of pollution. However, for short-term activities, like constructing a bridge, a short-term variance may be the most appropriate control. The standards provide for the use of either short-term variances or BMPs to control nonpoint pollution.

10. Thermal Discharges

Comment: One person stated that section 34 on thermal discharges "instead of issuing a permit or short-term variance...automatically allows for reclassification of the waters without a public hearing."

Response: The department can not agree with this comment. Section 34 does not preclude issuing a permit or short-term variance, and, in fact, one or the other would be required for any thermal discharge. The same section also states that there must be opportunity for public hearing.

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574
Jan. 19, 1986

House State Affairs Committee ✓
House Judiciary Committee ✓
Fouch ✓

Tuneau, AK. 99811

Dear Committee Members,

This is a letter of support for HB 452 pertaining to agency justification of need when proposing regulations.

I am enclosing some correspondence

that indicates the psychology board did

not take "need" into account when

they recently proposed new regulations.

The only question that I have at this time

concerns the word "law" in Sec.

44.62.05(b) on page 2, lines 6-9. Does

"law" refer to a complete chapter such

as Chapter 86 or also to sections,

sub-sections and paragraphs?

Sincerely yours,

Robert M. Arvidson

Robert M. Arvidson

Enc: AS stated
cc: Rep. Cato

-over-


**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

DIVISION OF OCCUPATIONAL LICENSING

POUCH 2
JUNEAU ALASKA 99811
PHONE: (907) 465-2534

DATE: December 17, 1985

TO: Board of Psychologist and Psychological
Associate Examiners

FROM: Kevin D. Henderson 
Regulations Specialist

RE: Proposed regulations 12 AAC 60.910

I have enclosed a copy of all comments received to date concerning the proposed adoption of 12 AAC 60.910, PERSONS NOT EXEMPT FROM LICENSURE. Officially, the period for public comment ended December 13, however, because of the great interest in this proposal, I have notified several persons that I will be accepting comments through March 3, 1986, three days prior to your next meeting. The written comment received following this letter will be periodically mailed to each of you. Because of the overwhelmingly negative reaction to this proposal, the board should take no further action to adopt it until the board meets to discuss it again. Any subsequent proposal of the board should be renoticed and include a public hearing.

Please read all of these comments carefully before your next meeting. Many valid concerns and unanswered questions are addressed. It appears that the board's authority to promulgate such a regulation is still questionable in light of AS 44.62.030, which states, "No regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute" (emphasis mine). In the opinion of school psychologists and vocational rehabilitation counselors, licensing or supervision by a licensed clinical psychologist is completely unnecessary and, considering those as specialized fields, even inappropriate. If it was the board's intent that these professions continue to be exempt from licensure or supervision, then the proposed regulation is unclear and will need to be rewritten. The board needs to define work "of a psychological nature."

Of even greater concern is the fiscal impact such a regulation would have on public and private agencies alike. Education and social service agencies are commonly underfunded and the burden of adding a licensed psychologist to the staff must be adequately considered by the board. This proposal would have to be "reasonably necessary" despite the increased cost to the State and the public. I believe the burden of proof is on the board in this regard.

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574
Jan. 19, 1986

House State Affairs Committee ✓
House Judiciary Committee
Pouch ✓
Juneau, AK. 99811

Re: HB 458

Dear Committee Members,

This is a letter of support for HB 458 pertaining to agency justification of need when proposing regulations.

I am enclosing some correspondence that indicates the psychology board did not take "need" into account when they recently proposed new regulations.

The only question that I have at this time concerns the word "law" in Sec.

44.62.05 (b) on page 2, lines 6-9. Does "law" refer to a complete chapter such as Chapter 86 or also to sections, sub-sections and paragraphs?

Sincerely yours,

Robert M. Arvidson
Robert M. Arvidson

Enc: AS stated
cc: Rep. Cato

-over-

ROBERT M. ARVIDSON
Box 258
Cordova, Alaska 99574

Jan 17, 1986

Sen. Bettye Fahrenkamp
Chair, Senate HESS
Pouch 7
Juneau, Alaska 99811

Re: Senate Bill 251 and Public opposition to proposed psychology regulations.

Dear Senator Fahrenkamp,

I have recently reviewed the public response to regulations proposed by the psychology board that would restrict exemptions to the psychology practice act. These proposed regulations were public noticed Oct. 29, 1985. The public, including licensed psychologists, educators, state officials and concerned ~~concerned~~ citizens, is strongly opposed to the proposed regulations.

My count indicates that 61 (sixty one) letters express opposition to the proposal. Many of these letters have multiple signatures and represent organizations. Only 4 (four) letters support the psychology boards' attempt to require licensure or supervision of currently exempt agency employees (12AAC60.910 referenced to AS 08.26.130).

I believe that many of these letters can be viewed as support for SB 251, either indirectly or directly. For example, Dr. Kenneth Green, a licensed psychologist and Asst. Professor of Psychology at the University of Alaska -Fairbanks states, "Alaska has too many mental health problems to unduly restrict the practice of psychology. I think that the present Alaska Psychology Regulations are unduly restrictive and elitist, and serve to penalize the consumer by making therapy and counseling too expensive."

I am enclosing a sample of 15 of the letters (copies) opposed to the restrictive regulations. I feel that these letters support the continued delivery and development of maximum mental ~~services~~ ^{services} in the state.

I am also enclosing a proportional sample of the letters supporting the psychology board's restrictive proposal. This sample consists of a copy of one letter.

Looking to the future, I am sending a copy of the above information to the House HESS Committee and I am asking that they keep it on file for reference to SB 251.

Best wishes for the session.

Sincerely yours,



Robert M. Arvidson

Encs: As stated

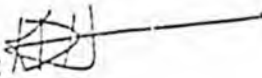
cc: Senator Kerttula
House HESS Committee

HESS

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

POUCH D
JUNEAU, ALASKA 99811
PHONE: (907) 465-2534

DIVISION OF OCCUPATIONAL LICENSING

DATE: December 17, 1985
TO: Board of Psychologist and Psychological
Associate Examiners
FROM: Kevin D. Henderson 
Regulations Specialist
RE: Proposed regulations 12 AAC 60.910

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Please read all of these comments carefully before your next meeting. Many valid concerns and unanswered questions are addressed. It appears that the board's authority to promulgate such a regulation is still questionable in light of AS 44.62.030, which states, "No regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute" (emphasis mine). In the opinion of school psychologists and vocational rehabilitation counselors, licensing or supervision by a licensed clinical psychologist is completely unnecessary and, considering those as specialized fields, even inappropriate. If it was the board's intent that these professions continue to be exempt from licensure or supervision, then the proposed regulation is unclear and will need to be rewritten. The board needs to define work "of a psychological nature."

Of even greater concern is the fiscal impact such a regulation would have on public and private agencies alike. Education and social service agencies are commonly underfunded and the burden of adding a licensed psychologist to the staff must be adequately considered by the board. This proposal would have to be "reasonably necessary" despite the increased cost to the State and the public. I believe the burden of proof is on the board in this regard.

December 17, 1935

Finally, several sources have indicated that there is already a shortage of licensed psychologists available in this State. What effect would this regulation have on the available counseling provided to low income citizens of the State, especially those who would have to pay higher fees or who would find themselves without any service at all because the appropriate supervision of counselors or teachers was not available?

Considering the controversial nature of this proposal, a teleconference public hearing is warranted. I recommend, however, that a hearing be held only after the board has been able to meet together to evaluate the public comments received so far and to address the unanswered questions they raise. Better still would be to drop this proposal and continue to seek legislative change to the statute. While that has been unsuccessful so far, it is still the only way the board will clearly have the specific authority to require the licensure and supervision you feel necessary to protect the health and welfare of those seeking psychological help. The ramification of this proposal, however, appears more complex and far reaching than this simple regulation has adequately addressed.

Please contact me if you have further concerns regarding this or other proposed regulations.

KDH/dg13902D
121785c

cc: Loren Lounsbury, Commissioner
Richard Long, Acting Director
Senator Jay Kerttula
Senator Bettye Fahrenkamp
Representative Virginia Collins
Representative Max Gruenberg
Kay E.M. Gouwens, Assistant Attorney General
All interested parties



Resource Development Council for Alaska, Inc.

807 "G" Street, Suite 200, Anchorage, Alaska 99501-3440
Box 100516, Anchorage, Alaska 99510-0516 - 907/276-0700

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February 14, 1986

FEB 25 1986

Representative Katie Hurley
Alaska State House of Representatives
Pouch V
Juneau, AK 99811

Dear Katie:

The House State Affairs Committee is the first committee referral for a piece of legislation the Resource Development Council strongly supports, SSHB 458.

The goal of this legislation is to force administrative agencies to fully disclose the impacts of proposed regulations to the public. This bill will generate better public input for agencies proposing, amending or deleting regulations.

The Resource Development Council has consistently supported legislation which improves the regulatory process. One obvious element of any such program must include a positive and informative process for the adoption of new or changed regulations. SSHB 458 speaks directly to this issue.

During the last six months a group within RDC has been working on language we think would improve the Administrative Procedures Act. Following are the significant points of our proposal included in SSHB 458.

1) Estimates of the costs or savings which will be incurred by private persons and entities directly affected as a result of the regulatory change will be included in the public record. We want to shed light on the monetary impacts that seemingly "harmless" regulations have on the private sector. With this cost/benefit information, the merits of a regulatory change can be better evaluated.

2) An agency must hold a public hearing on a regulatory change if a hearing is specifically requested by at least ten individuals. This will mandate broader public involvement in regulatory issues where demonstrated concern exists.

3) Agencies must adopt proposed regulations within one year. At present, an agency can promulgate regulations, withdraw them, and then adopt them years later without notice. We want to limit the time between initial promulgation and adoption to one year. After a year, proposed regulations must be resubmitted for public review.

Representative Katie Hurley
February 14, 1986
page 2


- 4) If an agency chooses to deny a petition requesting a regulatory change it must defend its position with a statement of reasons for the denial.
- 5) Every agency must keep a complete record of all public comment on regulatory changes. This record will be available to the public.
- 6) An agency promulgating a proposed regulatory change must prepare a statement of the justification of need. This statement must include a description of the problem the regulation addresses, the purpose of the regulation, identification of the support material on which the regulation relies and a description of potential alternatives.
- 7) Any agency must prepare a final statement of justification of need concerning adopted regulations which would include the complete text of the regulation, a summary of each comment and objection and a defense of the adopted regulation against the proposed objections or amendments.

We are basically attempting to change the Administrative Procedures Act to insure that regulatory changes are well thought out, necessary and defensible. We feel this process needs to take place with as much public oversight as is reasonable. Our goal is not necessarily to see fewer regulations generated--although that may be the impact; we are interested in seeing better regulations.

The Resource Development Council would appreciate an opportunity to present testimony on this bill to a hearing of the House State Affairs Committee as soon as possible. A timely hearing before your committee is obviously essential to the success of the ideas contained in this bill.

Thank you for your consideration,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.


Paula P. Easley
Executive Director

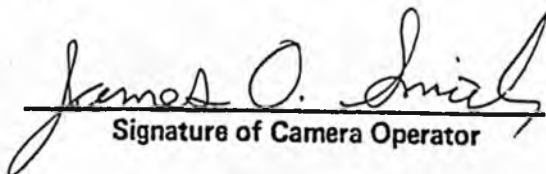
cc: Members, House State Affairs Committee
Representative Marco Pignalberi ✓
Phil Holdsworth

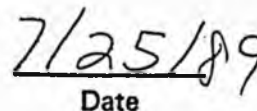


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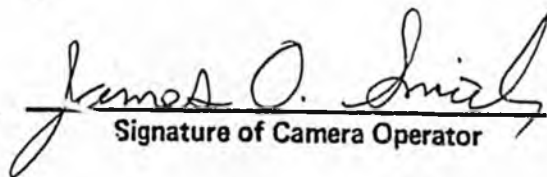

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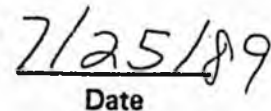


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Signature of Camera Operator


Date

HB

460

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House Judiciary	4/2/86	8am
" "	4/15/86	1:30 pm
" "	4/16/86	1:30 pm

Original sponsors: Hurley, Pourchot,
Thompson and Taylor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 460 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to off-road vehicles."

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

8 * Section 1. AS 05 is amended by adding a new chapter to read:

9 CHAPTER 40. OFF-ROAD VEHICLES.

10 Sec. 05.40.010. UNLAWFUL TO OPERATE UNREGISTERED VEHICLE.

11 Except for operation on the owner's private property, a person may not
12 operate an off-road vehicle unless the vehicle has been registered
13 with the Department of Public Safety as provided in this chapter.

14 Sec. 05.40.020. REGISTERED AND REGISTRATION FEE. (a) The owner
15 of an off-road vehicle subject to registration shall apply for regis-
16 tration under this chapter by properly completing a form provided by
17 the department. The fee for registration of a vehicle is \$15, and is
18 valid for two years. Fees collected under this section shall be
19 deposited by the Department of Revenue into the general fund.

20 (b) Off-road vehicles owned by the federal or state government
21 or a political subdivision of the federal or state government shall be
22 registered but are not required to pay a registration fee.

23 Sec. 05.40.030. REGISTRATION CERTIFICATE AND DECAL. Upon regis-
24 tration of an off-road vehicle, the registrant shall be issued a
25 registration certificate and a numbered decal containing the registra-
26 tion number of the vehicle. Once a vehicle has been issued a number,
27 it shall retain that number until the vehicle is destroyed, abandoned,
28 or permanently removed from the state. The numbered registration
29 decal shall be prominently displayed at a location prescribed by the

1 department.

2 Sec. 05.40.040. TRANSFER OF OWNERSHIP. The department shall
3 adopt regulations covering transfer of ownership of off-road vehicles.

4 Sec. 05.40.050. EDUCATION AND TRAINING PROGRAM. (a) The de-
5 partment shall establish and may approve off-road vehicle safety
6 education and training programs. The program shall include training
7 and dissemination of information and safety advice to the public
8 concerning vehicle maintenance, environmental protection, alcohol and
9 controlled substances laws, and emergency first aid procedures.

10 (b) A person who completes the training program shall receive an
11 off-road vehicle safety certificate.

12 Sec. 05.40.060. OFF-ROAD VEHICLE SAFETY FUND. There is created
13 a special account in the general fund known as the off-road vehicle
14 safety fund. The purpose of the fund shall be to support the educa-
15 tion and training program of this chapter. It is the intent of the
16 legislature that the fund consist of fees received under AS 05.40.020,
17 and that an amount equal to the fees received be appropriated for
18 off-road vehicle safety education and training under AS 05.40.050.

19 Sec. 05.40.070. OPERATING RESTRICTIONS. Not more than one
20 person may ride an off-road vehicle at the same time, unless the
21 off-road vehicle is specifically designed by the manufacturer to carry
22 more than one person.

23 Sec. 05.40.080. USE BY CERTAIN MINORS. (a) A person under the
24 age of 18 years may not operate an off-road vehicle on public land
25 unless the person has in possession a valid off-road vehicle safety
26 certificate.

27 (b) A person under the age of 18 years may not operate or ride
28 as a passenger on an off-road vehicle on public land unless the person

29 (1) wears a helmet that meets the requirements set out in

1 AS 28.05.081(c); and

2 (2) wears eye protection, unless the off-road vehicle is
3 equipped with a wind screen or windshield.

4 Sec. 05.40.090. SAFETY EQUIPMENT. An off-road vehicle is re-
5 quired to contain the following equipment:

6 (1) brakes adequate to control the movement of and to stop
7 and to hold the vehicle under normal conditions of operation;

8 (2) at least one head lamp so aimed and of sufficient
9 intensity to reveal persons and objects at a distance of at least 100
10 feet ahead during hours of darkness under normal atmospheric condi-
11 tions;

12 (3) at least one tail light of sufficient intensity to be
13 visible at a distance of 50 feet behind the vehicle during hours of
14 darkness under normal atmospheric conditions;

15 (4) a throttle that, when released by hand, will return the
16 engine speed to idle; and

17 (5) an exhaust muffler in good working order.

18 Sec. 05.40.100. RETAIL SALES. All off-road vehicles made after
19 July 1, 1986, and sold in the state must

20 (1) have a manufacturer's permanent identification number
21 stamped in letters and numbers on the vehicle in the form and at a
22 location prescribed by the department;

23 (2) be designed and made to provide an area to affix the
24 registration number; the area shall be at a location and of dimensions
25 prescribed by the department by regulation.

26 Sec. 05.40.110. HIGHWAY USE. An off-road vehicle may not be
27 driven on a roadway, as defined in AS 28.40.100(a), except for the
28 purpose of crossing the street or highway.

29 Sec. 05.40.120. PENALTY. A person who violates a provision of

1 this chapter or a regulation adopted under this chapter is guilty of
2 an infraction and may be punished as provided in AS 28.40.050(e).

3 Sec. 05.40.900. DEFINITIONS. In this chapter and in regula-
4 tions adopted under this chapter, unless the context otherwise re-
5 quires,

6 (1) "department" means the Department of Public Safety;

7 (2) "off-road vehicle" means a motorized vehicle with three
8 or four tires that has an engine displacement of less than 600 cubic
9 centimeters and total dry weight of less than 600 pounds.

10 * Sec. 2. AS 28.15.031(a) is amended to read:

11 (a) The department may not issue a driver's license to a person
12 who is under the age of 16 years, except that the department may issue
13 a permit or a certificate under AS 28.15.051 or a restricted license
14 under AS 28.15.121.

15 * Sec. 3. AS 28.15.051 is amended by adding a new subsection to read:

16 (f) The department may issue or approve issuance of a special
17 driver's certificate to a person who is at least 14 years of age for
18 the purpose of driving an off-road vehicle. The certificate may be
19 issued upon successful completion of an off-road vehicle education and
20 training program established under AS 05.40.050, and is valid for the
21 same period of time as a driver's license. The certificate is not
22 valid in a municipality that by ordinance prohibits the driving of an
23 off-road vehicle by a person under the age of 16 years; a borough may
24 adopt the ordinance on a nonareawide basis only, unless the power to
25 adopt it on an areawide basis is acquired under AS 29.35.300 - 29.35.-
26 330 or former AS 29.33.250 - 29.33.290.

Ford
4/15/86 ✓

Original sponsors: Hurley, Pourchot,
Thompson and Taylor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 460 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to off-road vehicles."

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

8 * Section 1. AS 05 is amended by adding a new chapter to read:

9 CHAPTER 40. OFF-ROAD VEHICLES.

10 Sec. 05.40.010. UNLAWFUL TO OPERATE UNREGISTERED VEHICLE.

11 Except for operation on the owner's private property, a person may not
12 operate an off-road vehicle unless the vehicle has been registered
13 with the Department of Public Safety as provided in this chapter.

14 Sec. 05.40.020. REGISTERED AND REGISTRATION FEE. (a) The owner
15 of an off-road vehicle subject to registration shall apply for regis-
16 tration under this chapter by properly completing a form provided by
17 the department. The fee for registration of a vehicle is \$15, and is
18 valid for two years. Fees collected under this section shall be
19 deposited by the Department of Revenue into the general fund.

20 (b) Off-road vehicles owned by the federal or state government
21 or a political subdivision of the federal or state government shall be
22 registered but are not required to pay a registration fee.

23 Sec. 05.40.030. REGISTRATION CERTIFICATE AND DECAL. Upon regis-
24 tration of an off-road vehicle, the registrant shall be issued a
25 registration certificate and a numbered decal containing the registra-
26 tion number of the vehicle. Once a vehicle has been issued a number,
27 it shall retain that number until the vehicle is destroyed, abandoned,
28 or permanently removed from the state. The numbered registration
29 decal shall be prominently displayed at a location prescribed by the

1 department.

2 Sec. 05.40.040. TRANSFER OF OWNERSHIP. The department shall
3 adopt regulations covering transfer of ownership of off-road vehicles.

4 Sec. 05.40.050. EDUCATION AND TRAINING PROGRAM. (a) The de-
5 partment shall establish and may approve off-road vehicle safety
6 education and training programs. The program shall include training
7 and dissemination of information and safety advice to the public
8 concerning vehicle maintenance, environmental protection, alcohol and
9 controlled substances laws, and emergency first aid procedures.

10 (b) A person who completes the training program shall receive an
11 off-road vehicle safety certificate.

12 Sec. 05.40.060. OFF-ROAD VEHICLE SAFETY FUND. There is created
13 a special account in the general fund known as the off-road vehicle
14 safety fund. The purpose of the fund shall be to support the educa-
15 tion and training program of this chapter. It is the intent of the
16 legislature that the fund consist of fees received under AS 05.40.020,
17 and that an amount equal to the fees received be appropriated for
18 off-road vehicle safety education and training under AS 05.40.050.

19 Sec. 05.40.070. OPERATING RESTRICTIONS. Not more than one
20 person may ride an off-road vehicle at the same time, unless the
21 off-road vehicle is specifically designed by the manufacturer to carry
22 more than one person.

23 Sec. 05.40.080. USE BY CERTAIN MINORS. (a) A person under the
24 age of 18 years may not operate an off-road vehicle on public land
25 unless the person has in possession a valid off-road vehicle safety
26 certificate.

27 (b) A person under the age of 18 years may not operate or ride
28 as a passenger on an off-road vehicle on public land unless the person

29 (1) wears a helmet that meets the requirements set out in

1 AS 28.05.081(c); and

2 (2) wears eye protection, unless the off-road vehicle is
3 equipped with a wind screen or windshield.

4 Sec. 05.40.090. SAFETY EQUIPMENT. An off-road vehicle is re-
5 quired to contain the following equipment:

6 (1) brakes adequate to control the movement of and to stop
7 and to hold the vehicle under normal conditions of operation;

8 (2) at least one head lamp so aimed and of sufficient
9 intensity to reveal persons and objects at a distance of at least 100
10 feet ahead during hours of darkness under normal atmospheric condi-
11 tions;

12 (3) at least one tail light of sufficient intensity to be
13 visible at a distance of 50 feet behind the vehicle during hours of
14 darkness under normal atmospheric conditions;

15 (4) a throttle that, when released by hand, will return the
16 engine speed to idle; and

17 (5) an exhaust muffler in good working order.

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19 July 1, 1986, and sold in the state must

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20 training program established under AS 05.40.050, and is valid for the
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22 valid in a municipality that by ordinance prohibits the driving of an
23 off-road vehicle by a person under the age of 16 years; a borough may
24 adopt the ordinance on a nonareawide basis only, unless the power to
25 adopt it on an areawide basis is acquired under AS 29.35.300 - 29.35.-
26 330 or former AS 29.33.250 - 29.33.290.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : C5HB 460 (Jud)
 Title : "An Act relating to off-road vehicles."
 Sponsor : Representative Hurley
 Requestor : House Judiciary
 Date of Request : 4/15/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Division of Motor Vehicles
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		89.3	93.8	98.4	103.4	108.5
TRAVEL		25.0	26.3	27.6	28.9	30.4
CONTRACTUAL		84.5	34.5	36.2	38.0	39.9
SUPPLIES		8.0	2.0	2.1	2.2	2.3
EQUIPMENT		31.0	1.0	1.1	1.1	1.2
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		237.8	157.6	165.4	173.6	182.3

CAPITAL						
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REVENUE		450.0	150.0	300.0	150.0	300.0
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FUNDING : (Thousands of Dollars)

GENERAL FUND		237.8	157.6	165.4	173.6	182.3
FEDERAL FUNDS						
OTHER						
TOTAL		237.8	157.6	165.4	173.6	182.3

POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles Admin Assistant
 Division : Commissioner's Office
 Approved by Commissioner : [Signature]
 Agency : Public Safety

Phone : 465-4336
 Date : 4/22/86
 Date : 4/24/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 460 (Jud)

The Revenue and Expenditure Analysis is based on the assumption that there are 30,000 ATVs to be registered and after the first year 10,000 will be registered annually. This number is only a rough estimate since there is no reliable method to determine the actual number. Also, the number of actual registrations could vary considerably depending on the actual enforcement effort put into the program.

The second assumption is that the program will have an effective date of January 1, 1987.

Registration

The workload of 30,000 vehicle registrations spread over two years represents an overall workload increase of 2%. This can be absorbed at most offices with no increase, but many registrations will come from areas where this division has no offices. One position and related equipment will be added to the correspondence unit to perform this work.

The cost breakdown is as follows:

Personal Services		31.8
MVR II, Range 9		
Contractual		
Terminal, Printer Lease	2.5	
DP Costs	1.5	
Forms	<u>.5</u>	
		4.5
Equipment -- Desks, chair, etc.		<u>1.0</u>
	Total	<u>37.3</u>

Education and Training Program

The education and training program will be conducted by working with ATV manufacturers in establishing a training and testing curriculum. The Department's role the first year will be to train instructors who will in turn provide instructor training to individuals who will be certified to administer training and certify operators. The Department will continue in subsequent years by overseeing the programs established in cooperation with the University of Alaska Cooperative Extension Service, the Department of Education and private or non profit corporations who are authorized to conduct training and certify officers.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. C3HB 460 (Jud)

The cost breakdown is as follows:

Personal Services	57.5
Program Coordinator, Range 18	
Travel	25.0
Contractual	80.0
Printing	
HWCF	
Charters	
Office Space	
Utilities, etc.	30.0
Training Expenditure	50.0
(one year only)	
Supplies	8.0
Equipment	30.0
Vehicle	
PC	
Desk, Chairs, etc.	
Filing Cabinet	
Projectors	
Bookcase	
	Total
	<u>200.5</u>

A 5% inflation factor is included in subsequent fiscal year computations.

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSHB 460 (Jud)

Support

April 22, 1986

CSHB 460 (Jud) - "An Act relating to off-road vehicles."

The Department of Public Safety supports the passage of CSHB 460 (Jud). The primary reason for our support is that this bill would reduce the number of injuries and fatalities that are occurring as a result of individuals riding three- and four-wheel ATVs.

This bill provides for education and training of individuals who are 14 through 17 years of age before they can be certified as an operator of an ATV. Current law requires operators of ATVs to have a current Alaska driver's license before operating on any public property within the State of Alaska.

This bill further provides that operators who are 14 through 17 years of age must wear a helmet; the vehicle cannot be operated with more than one rider unless specifically designed for more; that the serial numbers be placed on the machine in a location specified by the Department; and that a space designated by the Department be made available for decals.

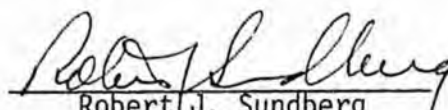
Both the Honda and Kawasaki distributors in Anchorage were contacted. They have no problem with the law.

This agency feels that the registration could primarily be done by mail, thus reducing the amount of inconvenience to owners and operators of ATVs. Training would be done the first year by establishing a program, and then bringing in individuals from throughout the state who would be trained as instructor certifiers. Those individuals in turn would train individuals as certifiers in various locations throughout rural Alaska. At present, the University of Alaska, through its community extension services, has a program in place to train operators in ATV safety. Additionally, there are 116 Village Public Safety Officers, in 113 villages, who could be trained to administer the training and certification.

The bill does require headlights, taillights, brakes, and springloaded throttles. All the manufacturers indicate that they would have no problem with this provision, as these are standard pieces of equipment on ATVs. It is the Department's belief that other ATVs sold in the past were also originally designed and sold with this equipment in place.

Serial numbers are now located in an area on the frame and engine which allows for inspection without tools or the necessity to upset the machine. The Department would only specify that serial numbers be accessible on new ATVs, as they are on the present machines.

Again, Honda Kawasaki distributors were unconcerned with this requirement.


Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : DRAFT CSHB 460 (Jud)
 Title : "An Act relating to off-road vehicles"
 Sponsor : Representative Hurley
 Requestor : House Judiciary
 Date of Request : 4/15/86

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : Division of Motor Vehicles
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

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CAPITAL						
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OTHER						
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POSITIONS :

FULL-TIME		2	2	2	2	2
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : Kathy Niles, Admin Assistant
 Division : Commissioner's Office

Phone : 465-4336
 Date : 4/15/86

Approved by Commissioner : *[Signature]*
 Agency : Public Safety

Date : 4/15/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. DRAFT CSHB 460 (Jud)

The Revenue and Expenditure Analysis is based on the assumption that there are 30,000 ATVs to be registered and after the first year 10,000 will be registered annually. This number is only a rough estimate since there is no reliable method to determine the actual number. Also, the number of actual registrations could vary considerably depending on the actual enforcement effort put into the program.

The second assumption is that the program will have an effective date of January 1, 1987.

Registration

The workload of 30,000 vehicle registrations spread over two years represents an overall workload increase of 2%. This can be absorbed at most offices with no increase, but many registrations will come from areas where this division has no offices. One position and related equipment will be added to the correspondence unit to perform this work.

The cost breakdown is as follows:

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Equipment -- Desks, chair, etc.		<u>1.0</u>
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Education and Training Program

The education and training program will be conducted by working with ATV manufacturers in establishing a training and testing curriculum. The Department's role the first year will be to train instructors who will in turn provide instructor training to individuals who will be certified to administer training and certify operators. The Department will continue in subsequent years by overseeing the programs established in cooperation with the University of Alaska Cooperative Extension Service, the Department of Education and private or non-profit corporations who are authorized to conduct training and certify officers.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. DRAFT CSHB 460 (Jud)

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Utilities, etc.	30.0
Training Expenditure	50.0
(one year only)	
Supplies	8.0
Equipment	30.0
Vehicle	
TC	
Desk, Chairs, etc.	
Filing Cabinet	
Projectors	
Bookcase	
	Total
	<u>200.5</u>

A 5% inflation factor is included in subsequent fiscal year computations.

Rep. M. M. Miller

April 4, 1986

Representative Katie Hurley
Alaska State Legislature
P.O. Box U
Juneau, Alaska 99811

Dear Representative Hurley,

As I said at the CPSC hearing "The 3-wheeler is the only means of transportation in some of our villages."

For instance, when a plane lands in the villages the people greet the plane with a 3-wheeler. Some of the airports are two or more miles from the village.

Imagine yourself landing at the village of Kokhanok, in the month of January, to conduct a hearing. The weather outside is -20 F, and a wind is blowing out of the north at 15 mph---just a breeze according to the weather report. The wind chill temperature is now down to -65 F, and any exposed flesh may get frost bitten within minutes. To get to the village you'll be heading straight North. It's going to be one cold walk!

The coat you are wearing just doesn't seem to keep you warm enough, and the wind is blowing straight through it. Thank goodness, here comes a 3-wheeler. But the driver is only about Eleven years old, and she doesn't have any eye protection on. Your wondering if she is wearing a helmet under that fur hat. The 3-wheeler she's driving is definitely unsafe! The headlight is broken and the brake lever is just hanging there. Your mind turns from these things to your feet, which are starting to feel like frozen blocks. The plane was too warm, your feet were sweating, and now they're beginning to freeze.

It seems as though you should almost be at the school by now, but you turn around to look back and see you've only covered about a quarter of a mile. This is when the 3-wheeler pulls up next to you and the driver asks, "want a ride?".

Well Representative Hurley, what will your decision be? Will you ride or walk? Do you think that something like what I've just described couldn't happen? Believe it or not this does happen.

Take a good look at your bill and think about what kind of impact it will have on the village lifestyle. Put yourself in the shoes of a villager for a minute, and imagine yourself depending on the 3-wheeler for transportation and work.

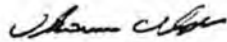
What other alternatives are available? How about encouraging village governments to pass local ordinances that will ensure safe operation of ATV's. This will give the villages an opportunity to tailor ordinances to fit their lifestyles.

An example of what their ordinance could contain is:

1. Age Restrictions
2. Helmet Use
3. Educational Requirements (licensing)
4. Curfews
5. Alcohol and Drug Laws
6. Enforcement of These Laws
7. Penalties for Breaking Laws

Please call or write me if you have any questions or comments.

Sincerely Yours,



Thomas Tilden,
Dillingham, AK 99576
842-2259

cc: Representative Adelheid Herrmann
Representative M. Mike Miller
Representative John Sund
Representative Don Clocksin
Representative Max F. Gruenberg
Representative Fritz Pettyjohn
Representative Randy Phillips
Representative Robin L. Taylor
Senator Fred F. Zharoff
Senator John C. Sackett
Senator Frank Ferguson

Alaska State Legislature

House of Representatives

Committee on Transportation



Rep. Bette Cato, Chairman

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4858

DATE: 19 MARCH 1986
TO: HOUSE TRANSPORTATION COMMITTEE MEMBERS
FROM: COMMITTEE STAFF
RE: BILL COMPARISON FOR CSHB 460 (TRSP)

The following is a comparison of the changes made to the new committee substitute for House Bill 460 (Trsp) dated March 18, 1986.

CSHB 460
2/19/86 draft

CSHB 460
3/18/86

Page 2, Lines 19-21
"Sec. 05.40.070 OPERATING
RESTRICTIONS. (a) A person may
not operate an off-road vehicle
on public land unless the person
wears a helmet that meets the
requirements set out in
AS 28.05.081(c)

deleted

Page 2, Lines 28 & 29
(1) has in possession a valid
off-road vehicle safety
certificate; and

(1) has in possession
a valid off-road
vehicle safety
certificate

(2) wears a helmet
that meets the
requirements set out
in AS 28.05.081(c)
and

Page 3, Lines 1 & 2
(2) wears eye, foot, and
hand protection prescribed
by the department by
regulation

(3) wears eye, foot,
and hand protection
prescribed by the
department by
regulation

Page 3, Lines 25 & 26
(3) include as part of the
retail sale a helmet that
meets the requirements of
AS 28.05.081(c)

Deleted

HOUSE

COMMITTEE REPORT

JUDICIARY

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: 20 MARCH 1986

The TRANSPORTATION Committee has considered HB 460

"An Act relating to off-road vehicles."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB 460 (TRSP) same title
- new title

and recommends _____

further referral to the _____ Committee

- and attaches:
- letter of intent
 - first fiscal note
 - new fiscal note
 - zero fiscal note

SIGNING DO PASS:

McQuinn

Bette Cato

Mike W.

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann Do Not Pass!

will be unenforceable in

rural Alaska

Bette Cato

Chairman

Original sponsors: Hurley, Pourchot
and Thompson

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 460 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to off-road vehicles."

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

8 * Section 1. AS 05 is amended by adding a new chapter to read:

9 CHAPTER 40. OFF-ROAD VEHICLES.

10 Sec. 05.40.010. UNLAWFUL TO OPERATE UNREGISTERED VEHICLE.

11 Except for operation on the owner's private property, a person may not
12 operate an off-road vehicle unless the vehicle has been registered
13 with the Department of Public Safety as provided in this chapter.

14 Sec. 05.40.020. REGISTERED AND REGISTRATION FEE. (a) The owner
15 of an off-road vehicle subject to registration shall apply for regis-
16 tration under this chapter by properly completing a form provided by
17 the department. The fee for registration of a vehicle is \$15, and is
18 valid for three years. Fees collected under this section shall be
19 deposited by the Department of Revenue into the general fund.

20 (b) Off-road vehicles owned by the federal or state government
21 or a political subdivision of the federal or state government shall be
22 registered but are not required to pay a registration fee.

23 Sec. 05.40.030. REGISTRATION CERTIFICATE AND DECAL. Upon regis-
24 tration of an off-road vehicle, the registrant shall be issued a
25 registration certificate and a numbered decal containing the registra-
26 tion number of the vehicle. Once a vehicle has been issued a number,
27 it shall retain that number until the vehicle is destroyed, abandoned,
28 or permanently removed from the state. The numbered registration
29 decal shall be prominently displayed at a location prescribed by the

1 department.

2 Sec. 05.40.040. TRANSFER OF OWNERSHIP. The department shall
3 adopt regulations covering transfer of ownership of off-road vehicles.

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6 education and training programs. The program shall include training
7 and dissemination of information and safety advice to the public
8 concerning vehicle maintenance, environmental protection, alcohol and
9 controlled substances laws, and emergency first aid procedures.

10 (b) A person who completes the training program shall receive an
11 off-road vehicle safety certificate.

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14 safety fund. The purpose of the fund shall be to support the educa-
15 tion and training program of this chapter. It is the intent of the
16 legislature that the fund consist of fees received under AS 05.40.020,
17 and that an amount equal to the fees received be appropriated for
18 off-road vehicle safety education and training under AS 05.40.050.

19 Sec. 05.40.070. OPERATING RESTRICTIONS. Not more than one
20 person may ride an off-road vehicle at the same time, unless the
21 off-road vehicle is specifically designed by the manufacturer to carry
22 more than one person.

23 Sec. 05.40.080. OPERATION BY CERTAIN MINORS. (a) A person at
24 least 14 years of age and under the age of 18 years may not operate an
25 off-road vehicle on public land unless the person

26 (1) has in possession a valid off-road vehicle safety
27 certificate;

28 (2) wears a helmet that meets the requirements set out in
29 AS 28.05.081(c); and

1 (3) wears eye, foot, and hand protection prescribed by the
2 department by regulation.

3 Sec. 05.40.090. SAFETY EQUIPMENT. An off-road vehicle is re-
4 quired to contain the following equipment:

5 (1) brakes adequate to control the movement of and to stop
6 and to hold the vehicle under normal conditions of operation;

7 (2) at least one head lamp so aimed and of sufficient
8 intensity to reveal persons and objects at a distance of at least 100
9 feet ahead during hours of darkness under normal atmospheric condi-
10 tions;

11 (3) at least one tail light of sufficient intensity to be
12 visible at a distance of 50 feet behind the vehicle during hours of
13 darkness under normal atmospheric conditions;

14 (4) a throttle that, when released by hand, will return the
15 engine speed to idle; and

16 (5) an exhaust muffler in good working order.

17 Sec. 05.40.100. RETAIL SALES. All off-road vehicles made after
18 July 1, 1986, and sold in the state must

19 (1) have a manufacturer's permanent identification number
20 stamped in letters and numbers on the vehicle in the form and at a
21 location prescribed by the department;

22 (2) be designed and made to provide an area to affix the
23 registration number; the area shall be at a location and of dimensions
24 prescribed by the department by regulation.

25 Sec. 05.40.110. HIGHWAY USE. An off-road vehicle may not be
26 driven on a street or highway, except for the purpose of crossing the
27 street or highway.

28 Sec. 05.40.120. PENALTY. A person who violates a provision of
29 this chapter or a regulation adopted under this chapter is guilty of a

1 misdemeanor and, upon conviction, is punishable by a fine of not more
2 than \$500 for each offense.

3 Sec. 05.40.900. DEFINITIONS. In this chapter and in regula-
4 tions adopted under this chapter, unless the context otherwise re-
5 quires,

6 (1) "department" means the Department of Public Safety;

7 (2) "off-road vehicle" means a motorized vehicle with three
8 or four tires that has an engine displacement of less than 600 cubic
9 centimeters and total dry weight of less than 600 pounds.

10 * Sec. 2. AS 28.15.031(a) is amended to read:

11 (a) The department may not issue a driver's license to a person
12 who is under the age of 16 years, except that the department may issue
13 a permit or a certificate under AS 28.15.051 or a restricted license
14 under AS 28.15.121.

15 * Sec. 3. AS 28.15.051 is amended by adding a new subsection to read:

16 (f) The department may issue or approve issuance of a special
17 driver's certificate to a person who is at least 14 years of age for
18 the purpose of driving an off-road vehicle. The certificate may be
19 issued upon successful completion of an off-road vehicle education and
20 training program established under AS 05.40.050, and is valid for the
21 same period of time as a driver's license. The certificate is not
22 valid in a municipality that by ordinance prohibits the driving of an
23 off-road vehicle by a person under the age of 16 years; a borough may
24 adopt the ordinance on a nonareawide basis only, unless the power to
25 adopt it on an areawide basis is acquired under AS 29.35.300 - 29.35.-
26 330 or former AS 29.33.250 - 29.33.290.

Original sponsors: Hurley, Pourchot
and Thompson

1 IN THE HOUSE

BY THE TRANSPORTATION COMMITTEE

2 CS FOR HOUSE BILL NO. 460 (Transportation)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to off-road vehicles."

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

8 * Section 1. AS 05 is amended by adding a new chapter to read:

9 CHAPTER 40. OFF-ROAD VEHICLES.

10 Sec. 05.40.010. UNLAWFUL TO OPERATE UNREGISTERED VEHICLE.

11 Except for operation on the owner's private property, a person may not
12 operate an off-road vehicle unless the vehicle has been registered
13 with the Department of Public Safety as provided in this chapter.

14 Sec. 05.40.020. REGISTERED AND REGISTRATION FEE. (a) The owner
15 of an off-road vehicle subject to registration shall apply for regis-
16 tration under this chapter by properly completing a form provided by
17 the department. The fee for registration of a vehicle is \$15, and is
18 valid for three years. Fees collected under this section shall be
19 deposited by the Department of Revenue into the general fund.

20 (b) Off-road vehicles owned by the federal or state government
21 or a political subdivision of the federal or state government shall be
22 registered but are not required to pay a registration fee.

23 Sec. 05.40.030. REGISTRATION CERTIFICATE AND DECAL. Upon regis-
24 tration of an off-road vehicle, the registrant shall be issued a
25 registration certificate and a numbered decal containing the registra-
26 tion number of the vehicle. Once a vehicle has been issued a number,
27 it shall retain that number until the vehicle is destroyed, abandoned,
28 or permanently removed from the state. The numbered registration
29 decal shall be prominently displayed at a location prescribed by the

1 department.

2 Sec. 05.40.040. TRANSFER OF OWNERSHIP. The department shall
3 adopt regulations covering transfer of ownership of off-road vehicles.

4 Sec. 05.40.050. EDUCATION AND TRAINING PROGRAM. (a) The de-
5 partment shall establish and may approve off-road vehicle safety
6 education and training programs. The program shall include training
7 and dissemination of information and safety advice to the public
8 concerning vehicle maintenance, environmental protection, alcohol and
9 controlled substances laws, and emergency first aid procedures.

10 (b) A person who completes the training program shall receive an
11 off-road vehicle safety certificate.

12 Sec. 05.40.060. OFF-ROAD VEHICLE SAFETY FUND. There is created
13 a special account in the general fund known as the off-road vehicle
14 safety fund. The purpose of the fund shall be to support the educa-
15 tion and training program of this chapter. It is the intent of the
16 legislature that the fund consist of fees received under AS 05.40.020,
17 and that an amount equal to the fees received be appropriated for
18 off-road vehicle safety education and training under AS 05.40.050.

19 Sec. 05.40.070. OPERATING RESTRICTIONS. (a) A person may not
20 operate an off-road vehicle on public land unless the person wears a
21 helmet that meets the requirements set out in AS 28.05.081(c).

22 (b) Not more than one person may ride an off-road vehicle at the
23 same time, unless the off-road vehicle is specifically designed by the
24 manufacturer to carry more than one person.

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20 stamped in letters and numbers on the vehicle in the form and at a
21 location prescribed by the department;

22 (2) be designed and made to provide an area to affix the
23 registration number; the area shall be at a location and of dimensions
24 prescribed by the department by regulation;

25 (3) include as a part of the retail sale a helmet that
26 meets the requirements of AS 28.05.081(c).

27 Sec. 05.40.110. HIGHWAY USE. An off-road vehicle may not be
28 driven on a street or highway, except for the purpose of crossing the
29 street or highway.

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2 this chapter or a regulation adopted under this chapter is guilty of a
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25 off-road vehicle by a person under the age of 16 years; a borough may
26 adopt the ordinance on a nonareawide basis only, unless the power to
27 adopt it on an areawide basis is acquired under AS 29.35.300 -
28 29.35.330 or former AS 29.33.250 - 29.33.290.

3-wheeler hits, injures young girl

A 4-year-old girl who had been enjoying an afternoon of sledding was in critical condition at Fairbanks Memorial Hospital this morning after being hit head-on by a three-wheeler on the Noyes Slough.

Jennifer Gallagher suffered severe head and chest injuries late Thursday afternoon when the all-terrain vehicle crashed into her just behind 633 Noyes St.

The 14-year-old driver estimated he had been going about 40 mph.

Fairbanks City Police said the little girl was sliding down the slough embankment on a small saucer. Her aunt stood nearby watching. Neither of them saw the three-wheeler approaching from around a curve.

The 14-year-old driver told police he traveled on the slough often. When he didn't see anyone ahead of him Wednesday, he speeded up from third gear to fifth gear. He tried to brake when he saw the girl sliding toward him, but he could not stop.

After a preliminary investigation, police said it did not appear likely that any criminal charges would be filed against the young driver of the three-wheeler. Investigation continues.

Daily News Miner 3/15/86

Girl, 4, hit by ATV dies from injuries

A four-year-old girl who was hit head-on by a three-wheeler died Friday afternoon at the Fairbanks Memorial Hospital from injuries caused by the accident.

Jennifer Gallagher suffered severe head and chest injuries late Thursday afternoon after an all-terrain vehicle operated by a 14-year-old juvenile crashed into her just behind 633 Noyes Street. The girl was reportedly sledding on Noyes Slough when the accident occurred. She died from severe head injuries, according to hospital officials, at about 2:30 Friday afternoon.

The 14-year-old driver of the three-wheeler estimated his speed at about 40 mph, according to Fairbanks City Police.

Police said the girl was sliding down the slough embankment on a small saucer, with her aunt watching her nearby, when the all-terrain vehicle came around a curve. Police said neither of them saw the three-wheeler.

The driver said he used the slough for three-wheeler travel often. He said he didn't see anyone in front of him and speeded up, but was not able to brake fast enough when he saw the little girl on the saucer.

Norman J. Klingeiser, 50, died Wednesday afternoon at 4405 Woodriver Drive.

Alaska State Troopers said he suffered an apparent self-inflicted gunshot wound.

3/16/86

Obituaries *Daily News Miner*

JENNIFER S. GALLAGHER

Jennifer Susan Gallagher, 4-year-old daughter of James and Jeanne Gallagher, died Friday afternoon as a result of injuries sustained when she was hit by a three-wheeler vehicle Thursday.

Jennifer was born Jan. 25, 1982 in Fairbanks. She attended the Montessori School where everyone was her friend. She loved music and to sing and dance.

Surviving in addition to her parents are a brother, Aaron, 5, and a sister, Ashley, 8 months; grandparents Ruth and Moe Samuelson and Paul Woods Sr., and Joe and Mary Ann Gallagher, all of Fairbanks; great grandmothers, Addie Woods of Fairbanks and Barbara Hakes of Muscatine, Iowa; aunt and godmother, Ann Gallagher, and godfather, Mark Gregory, both of Fairbanks; an aunt, Sue Samuelson, and uncles David Samuelson, Jerry Woods and Paul Woods Jr., all of Fairbanks; and other relatives in Alaska and other states.

Services will be at 2 p.m. Monday at the St. Matthew's Episcopal Church, 1029 First Ave. The Rev. Roger Williams will officiate.



JENNIFER GALLAGHER

STEPHEN BIRMINGHAM

Burial arrangements are pending for Stephen Norris Birmingham, who died March 12 at Fairbanks Memorial Hospital at the age of 31.

Mr. Birmingham was a former

employee of the State Division of Fish and and Wildlife Protection and also worked as a police officer at Fairbanks International Airport. He was currently employed as an environmental assistant at the State Department of Transportation.

Mr. Birmingham leaves his wife, Kristi, and a son, Stephen Robert, both of North Pole; his parents, Jackie and Les Sewell of North Pole; a brother, Clarence Sewell of Fairbanks; two sisters, Valerie Cugini of Littleton, Colo., and Nita Armstrong of Fairbanks; his grandparents, Clarence and Thelma Cargill Sr. of Prattville, Ala.; two nephews, Kent Armstrong and Joshua Sewell, both of Fairbanks; one niece, April Brinkerhoff of Littleton; his wife's parents, Robert and Edna Woodbury of St. Maries, Idaho; his wife's sister, Dianna Blair of Fairbanks, and his wife's grandmother, Pauline Woodbury of St. Maries.

The family requests that memorials be made to the Kidney Unit at Fairbanks Memorial Hospital, 1650 Cowles St., 99701, or the American Diabetes Association, P.O. Box