

ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

3702 HSTA HB 455 - HB 458 578

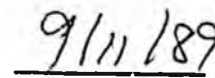


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STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SB-116
 Title : An Act relating to the compensation of legislators; and providing for an effective date

Sponsor : Jt Spec Committee on Legislative Salaries
 Requestor : Senator Mitch Abood
 Date of Request : 1-2-86

FISCAL DETAIL

Agency Affected : Legislative Affairs
 BRU : Legislative Council

Components : Legislators' Salaries and Allowances; Senate Leadership; House Leadership; Council & Subcommittees

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	-0-	<618.5>	<1,316.1>	<1,316.1>		
TRAVEL	-0-	807.3	839.6	839.6		
CONTRACTUAL	-0-	120.0	120.0	120.0		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	308.8	<356.5>	<356.5>		

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	308.8	<356.5>	<356.5>		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This bill reduces the monthly salary of legislators from \$3,900 to \$2,500; reinstates per diem during session at a higher rate; raises the annual allowance for postage, stationery, and other related legislative expenses from \$4,000 annually to \$6,000; and reinstates out-of-session per diem at a higher rate.
 (See Attachment)

Prepared by : Pamela A. Stoops, Manager *Pamela A. Stoops* Phone : (907)465-3850
 Division : Administrative Services Date : 1-15-86

Approved by Executive Director : Warren W. Endicott *Warren W. Endicott* Date : 1-15-86
 Agency : Legislative Affairs Agency

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. SB 114.

FY 87 shows an increase over existing law because this bill goes into effect January 19, 1987, and the higher salary is in effect for 6½ months plus per diem going into effect January 19, 1987. Five days of per diem is the difference between the FY 87 and FY 88 and FY 89 travel totals.

The legislative per diem in this bill is the rate established for employees of the Federal Government in Juneau. Currently that rate is \$109 a day. Before July 21, 1983, when legislators were eligible for per diem, the rate according to law was using the State per diem rate for Juneau. Currently that rate is \$80 a day.

This bill also reinstates per diem for legislators out of session at the higher Federal rate instead of the State rate. Presently legislators are reimbursed for actual expenses since per diem was repealed effective 7-21-83.

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST
Bill/Resolution No.: HB 455
Title: An Act Relating to
Compensation for Legislators

FISCAL DETAIL
Agency Affected: Department of Administration
BRU: Retirement & Benefits

Sponsor: Larson
Requestor:
Date of Request:

Components: EPORS

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
PERSONAL SERVICES						
RETIREMENT & BENEFITS						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	-0-	[59.2]	[153.5]	[165.7]	[179.0]	[193.3]
TR3 MATCH						
TOTAL OPERATING	-0-	[59.2]	[153.5]	[165.7]	[179.0]	[193.3]
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	[59.2]	[153.5]	[165.7]	[179.0]	[193.3]
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	[59.2]	[153.5]	[165.7]	[179.0]	[193.3]

POSITIONS:	-0-	-0-	-0-	-0-	-0-	-0-
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

(see attached)

Prepared By: J. K. Humphreys, Director Phone: 465-4470
 Division: Retirement & Benefits Date: 1/15/86
 Approved by Commissioner: Eleanor Andrews Date: 1/22/86
 Agency: Department of Administration

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

House Bill 455
Fiscal Note Analysis
Prepared by Division of Retirement & Benefits

January 15, 1986

Analysis: Passage of this bill would decrease the current monthly salary for legislators and would consequently reduce monthly benefit payments to some members of the Elected Public Officers Retirement System (EPORS). Seventeen current EPORS retirees would receive reduced benefits and, for this analysis, we have estimated that three of the five members eligible to retire in FY 87 would also be affected by this bill.

The FY 87 savings to the state of \$59.2 is calculated by applying the reduction in salary to the EPORS benefit formula and recalculating the FY 87 cost for each EPORS retiree.

The savings for FY 87 are projected for five months. Savings in successive fiscal years are for full years and increase at a rate of 8%.

This fiscal note reflects cost savings relating to EPORS only. Savings in PERS and TRS benefits will presumably be reflected in the fiscal note prepared by Legislative Affairs Agency in the Personal Services Component since these costs are charged as a percent of salary.



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Signature of Camera Operator


Date

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STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF LAW

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 21, 1986

Honorable Katie Hurley, Chair
House State Affairs Committee
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

MAR 21 1986

Re: SSHB 458 (adoption of
regulations)
Our file: 66-3-86-0343

Dear Representative Hurley:

Since this bill has been scheduled for another hearing before your committee today, I wanted to get the following additional information to you: some comments on Representative Pignalberi's March 10, 1986 "Peterson Memo Rebuttal" (i.e., his comments on my February 27, 1986 memo to the governor's director of legislative relations, Jim Ayers, copies of which were distributed to your committee and Representative Pignalberi), and fiscal notes, etc., from various departments.

For your convenience, here is a listing of the attachments to this letter:

Appendix 1, Department of Administration, February 25, 1986 fiscal note;

Appendix 2, Department of Community and Regional Affairs, February 20, 1986 fiscal note;

Appendix 3, Department of Education, March 20, 1986 fiscal note;

Appendix 4, Department of Environmental Conservation, March 21, 1986 fiscal note;

Appendix 5, Department of Fish and Game, March 20, 1986 fiscal note and bill analysis;

Appendix 6, Department of Health and Social Services, March 21, 1986 fiscal note;

Appendix 7, Department of Labor, March 7, 1986 fiscal note and position paper;

Appendix 8, Department of Law, February 27, 1986 fiscal note;

Appendix 9, Department of Natural Resources, Division of Oil & Gas, March 20, 1986 fiscal note, with comments in memo form;

Appendix 10, Department of Public Safety, March 18, 1986 fiscal note;

Appendix 11, draft revised version of sec. 2 of SSHB 458.

It is very likely that fiscal notes from other departments, and from other divisions within the Department of Natural Resources, will be forthcoming.

I am not really qualified to comment on the fiscal notes. As mentioned in my February 27, 1986 memo to Jim Ayers, I can only give some general clues as to fiscal impact -- no specifics. It is my opinion that the costs of SSHB 458 will be substantial. I have tried to suggest some of the reasons for that in my earlier memo.

Regarding Appendix 11, Representative Pignalberi, his assistant, Deborah Bonito, the Department of Law's legal text editor, B.J. Jordan, and I met on March 13, 1986 to discuss the bill. We got as far as sec. 2, and I believe that Appendix 11 incorporates changes that we agreed upon. This does not mean that the Administration supports even this revised sec. 2. The revised version addresses some of the problems of, and is much better than, the original; thus, it is more acceptable.

However, before supporting a change in the law, we would like to be able to identify a problem in the current law and would like to feel assured that the proposal is a good solution to that problem. Notwithstanding generalized complaints about there being "too many" regulations, I am not aware of any particular problem stemming from an absence of the financial estimate required by sec. 2. In addition, it is not at all clear that there will be one bit of public benefit derived from the information that will cost a great deal to provide.

Here are some comments on Representative Pignalberi's March 10 material:

1. Representative Pignalberi emphasizes the fact that only an "estimate" of the financial impact of a regulation is

required by sec. 2. However, even an estimate is not a guess. We are assuming that if the legislature were to pass such a requirement, it would expect the agency to do the research and make the analysis necessary to present a responsible and accurate package of information to the public -- especially since the potential for litigation is great. And the kind of information required is not readily available. Moreover, typically, it comes from the regulated entities and is not given to them.

2. Representative Pignalberi suggests that it is easy to discern entities that are "directly affected" by a regulation, because the agencies "know the territory." Certainly, they know the territory. But often they do not know the legislative intent. For example, when a regulation sets an opening date for a particular fishery, the Board of Fisheries could probably find from the Commercial Fisheries Entry Commission the number of boats and the amount of gear and thus the number of actual fishing "entities" that would be affected, but would floating fish-processing plants be considered "directly affected"? Certainly, they are affected. Are they "directly affected"? Would sec. 2 require an analysis of the regulation's effect upon them as well as upon the people doing the fishing? How about the effect upon a shore-based processor? Or take another example: if a safety regulation were to require two fire escapes on all day care centers of more than two stories, it would be relatively easy to find the number of currently licensed day care centers, and perhaps it would be as easy to find which ones of those were taller than two stories. But is a person who has not yet begun operation as a day care center, although he plans to do so, an entity that is "directly affected"? How about someone whose application for the day care license is pending? Arguments could be made on both sides of the issue of whether such an individual's situation must be taken into account by the agency in preparing its financial estimate.
3. Representative Pignalberi's comments regarding opening and closing dates for hunting and fishing seasons are mistaken. The respective boards do indeed set such dates by the regular regulations process. See, for just one example, 5 AAC 18.310, which sets the season for taking salmon in the Kodiak area.
4. Representative Pignalberi suggests that the legislature has imposed no such requirement on itself because it, as distinct from the executive branch, is a "deliberative" body. He mentions debate and research. Clearly, those two

activities do not distinguish the legislature's processing of a bill from the executive's processing of a regulation. It goes without saying that, in addition to complying with the formal, statutory requirements for public comment, hearings, and consideration of testimony, the executive agencies engage in a substantial amount of research and debate. Consider, for example, the 109 days of meetings by the Boards of Fisheries and Game in FY 85. (See Appendix 5.)

5. With regard to sec. 4, Representative Pignalberi takes issue with my reference to the official commentary under Section 3-105 of the National Conference of Commissioners on Uniform State Laws' Model State Administrative Procedure Act. Specifically, he suggests that "informed disagreement" may be good. He may well be right. But, when that disagreement develops into litigation over whether an agency's "justification of need" is sufficiently accurate or persuasive, then we are talking about another matter. Litigation, of course, is expensive. Litigation that can shut down a popular program because of a technical, procedural defect (a debatable one at that) can be even more expensive.
6. I do not quite understand Representative Pignalberi's comments on the "retroactive application of regs." Perhaps he is referring to the paragraph that begins at the bottom of page 4 and continues on page 5 of my February 27 memo to Jim Ayers. The change from the current situation that SSHB 458 would make is the requirement that an agency's justification be set out in writing and the effect that that written justification would serve by providing a basis for litigation stemming from the application of a new regulation to an even newer problem -- one not contemplated at the time the regulation was adopted, but to which the regulation could very appropriately apply.
7. I have just learned that Representative Pignalberi is preparing a revised set of amendments to the bill. As I write this letter, I have not yet seen those amendments, but I understand that they will supersede the March 10 (and other?) amendments offered by Representative Pignalberi. Therefore, I will not comment on the earlier amendments, and cannot comment on the new ones, at this time.

SUMMARY

It is difficult to pinpoint any particular problem to which this bill is directed. It is also difficult to detect any

worthwhile information flowing to the public from the very troublesome secs. 2 and 4. Yet those very sections would impose great financial burdens on a wide range of executive-branch agencies -- especially those trying to do the most conscientious job when adopting regulations.

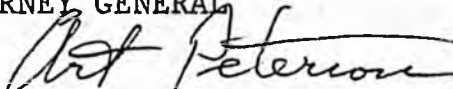
Whether my comments about costs, or whether any of the attached fiscal notes, are absolutely accurate, it should be clear that the costs to a conscientious, regulation-adopting agency will be substantial. With the state's current financial situation, this is hardly a time to be creating new procedures that will give rise to new costs with such hazy, if any, benefit to the public.

As mentioned in my February 27 memo to Jim Ayers, there are provisions in this bill that are acceptable. And, as I have indicated, we will be happy to continue working with Representative Pignalberi to try to define any problem and develop appropriate amendatory language.

Once again, thank you for this opportunity to offer our comments.

Yours truly,

HAROLD M. BROWN
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

AHP:md

cc w/out enc.: Dept. Heads

cc w/enc.: Jim Ayers, Director
Legislative Relations
Governor's Office

P.S. I have just received Representative Pignalberi's new set of amendments, and will try to comment on them at this afternoon's hearing.

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>Pignalberi, Cato, Marrou & Shultz</u> Components: _____ Requestor: _____ Date of Request: _____	

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
OPERATING						
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
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REVENUE	0	0	0	0	0	0
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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

LEGISLATIVE
FEB 26 1986

GOVERNOR'S OFFICE

Prepared By: Gary M. Bader *Gary M. Bader* Phone: 465-2277
 Division: Administrative Services Date: February 25, 1986

Approved by Commissioner: Eleanor Andrews *Eleanor Andrews* Date: _____
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

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

APPENDIX 1
Page 1 of 5

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

\$12.75 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		
Time Status Part-time	Staff Months 3.2	RP Number

No. of Positions 1	Range/Step 12A	Bag Unit G	Gov.	Approv.	Disapp.
Location Juneau		Election District 4	Leg.		

Justification

Duties would include, but not be limited to:

- maintenance of file of proposed action;
- log of filed items;
- preparation of financial estimate;
- preparation of initial justification of need;
- preparation of final justification of need;
- preparation of reason of denials; and
- publishing in accordance with AS 44.62.190.

Type of Expenditure	2	Amount
1		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

APPENDIX 1
Page 5 of 5

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title : An act relating to the adoption
of regulations
 Sponsor : Rep. Pignalberi
 Requestor : House State Affairs Comm.
 Date of Request : 3/14/86

FISCAL DETAIL

Agency Affected : Community & Regional Affairs
 BRU : _____
 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL		17.2	18.0	18.8	19.7	20.5
CONTRACTUAL		44.5	46.4	48.4	50.3	52.6
SUPPLIES		2.5	2.5	2.6	2.8	2.9
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		64.2	66.9	69.8	72.8	76.0

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		64.2	66.9	69.8	72.8	76.0
FEDERAL FUNDS						
OTHER						
TOTAL		64.2	66.9	69.8	72.8	76.0

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached fiscal analysis by division within DCRA.

Prepared by: Jennifer Fate Phone: 465-4700
 Division: Commissioner's Office Date: 3/20/86
 Approved by Commissioner: Emil Notti Date: 3/20/86
 Agency: Community and Regional Affairs

Distribution (by Agency preparing fiscal note):

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

APPENDIX 2
 Page 1 of 4

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

MUNICIPAL AND REGIONAL ASSISTANCE DIVISION:

Regulation drafting is done on an intermittent basis by the Division of Municipal and Regional Assistance, so it is difficult to predict the exact impact of this bill. However, it is clear that the task of drafting regulations will be made more difficult, time-consuming and expensive if this measure is enacted. The task of predicting financial impacts and justifying in great detail the need for a regulation amendment will be the most costly provisions.

Based on the assumption that three regulation adoption and amendment processes will be required each fiscal year, the following is an estimate of additional costs which will be incurred:

<u>Travel</u>	3,000
6 trips @ \$500 (includes per diem) Travel required to conduct hearings and prepare justifications and financial impact statements.	
<u>Contractual</u>	15,400
Professional Services	11,250
(90 hrs of contractual legal time at \$125/hr to assist Division in fully complying with additional requirements)	
Communications	2,500
(toll calls, postage for questionnaires, notices, etc., to ascertain financial impacts & alternatives)	
Photocopying/Printing	750
Advertising	900
<u>Supplies</u>	500

This fiscal note reflects the desire to preclude the hiring of additional staff and, therefore, relies on contractual professional services to do the additional work to ensure compliance with the intent of this bill. An annual inflation factor of 4% is assumed and applied in subsequent fiscal years.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

HOUSING ASSISTANCE DIVISION:

If this piece of legislation were to pass, it would require a considerable amount of research time because of the necessity of preparing a financial estimate of the cost or savings that could be incurred due to a regulation change. Additional staff time could be substantial, however the Department probably could absorb the extra work. In this case, no new positions would be needed.

Because of the way this bill is worded, it is possible that holding public hearings would become the norm. If 10 interested persons requested an oral hearing before the end of the initial comment period, the Division would have to hold oral hearings for the most minor change to the regulations. It is probable that in the future, regulation changes would all require oral hearings whether or not the change was substantial or just a housekeeping matter.

Oral hearings are quite expensive. This fiscal note is a projection based on holding public, oral hearings in Juneau, Fairbanks and Nome for two regulation changes per year. This includes publishing notices in local newspapers, travel and per diem costs and rental of hearing facilities.

It is not unusual for the Division to require regulation changes two times in one year. We probably will require three in FY86. Early in FY86 we required an emergency regulation change so that rental could take place in Kodiak low income housing. We are currently in process of preparing the publication notice for a number of minor regulation changes. In addition we are studying another possible change which would improve the management of the program.

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

The Division of Community Development is involved with drafting or updating regulations on an irregular basis. During some years this activity constitutes a major responsibility. At other times there is little action involving regulations. Therefore, it is difficult to estimate the actual fiscal impact that the passage of SSHB 458 would have.

For purposes of responding to this request we are assuming that DCD will be involved with three separate regulation draftings or updates during each of the coming five (5) years. Under the present system we would estimate that this activity would require the equivalent of one staff person's full time attention for ninety (90) days. We would also estimate that the new requirements included in SSHB 458 would increase the activity by one third, or the equivalent of one person's full time attention for thirty (30) days. Because the increased activity has legal implications we would want to budget for 150 hours of contractual legal services.

We estimate that each of the three separate legal activities would require at least three and a half (3 1/2) trips, so we have included a total of ten (10). We also estimate that the combined cost of supplies itemized in the fiscal note would cost \$2,000.00. The cost increase for each year reflects a 4% increment. We believe our estimates are probably conservative.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SSHB-458
 Title: adoption of regulations

 Sponsor: Pignalberi, et al
 Requestor: Sponsor
 Date of Request: March 20, 1986

FISCAL DETAIL

Agency Affected: Department of Education
 BRU: Executive Administration

 Components: Commissioner's Office

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						

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This is not a zero fiscal note. Costs associated with the bill, particularly sections 2 and 4, will be substantial, but indeterminate.

Prepared by: Steve Hole  Phone: 465-2800
 Division: Commissioner's Office Date: March 20, 1986

Approved by Commissioner: Marshall L. Lind Date: March 20, 1986
 Agency: Department of Education

Distribution (by Agency preparing fiscal note):

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

APPENDIX 3
Page 1 of 1

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title: Adoption of regulations

 Sponsor: Pignalberi, Cato, Marrou, Shultz
 Requestor: State Affairs
 Date of Request: 3/21/86

FISCAL DETAIL

Agency Affected: ADEC
 BRU: Commissioner's Office

 Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		82.5	83.0	83.5	84.0	84.5
TRAVEL		1.5	1.5	1.5	1.5	1.5
CONTRACTUAL		80.0	75.0	75.0	75.0	80.0
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.6	.5	.5	.5	.5
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		169.1	161.6	162.2	162.8	168.4

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		169.1	161.6	162.2	162.8	168.4
FEDERAL FUNDS						
OTHER						
TOTAL		169.1	161.6	162.2	162.8	168.4

POSITIONS :

FULL-TIME		2				
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached

Prepared by: Billie Trent
 Division: Commissioner's Office

Phone: 465-2600
 Date: 3/21/86

Approved by Commissioner: Bill Ross
 Agency: Environmental Conservation

Date: 3/21/86

Distribution (by Agency preparing fiscal note):

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

APPENDIX 4
 Page 1 of 4

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

For this department to comply with the provisions of this bill, it will be necessary to add two new positions as reflected in the attached requests. The additional research, analyses, and documentation cannot be done with present staff; and this agency lacks the expertise necessary to accomplish the economic impact/justification of need aspects of the legislation.

Contractual services are based on an estimate of 20 contracts per year, 10 of which would be of major proportions (such as the tri-ennial review of Water Quality Standards mandated by federal law).

APPENDIX 4
Page 2 of 4

Position Title Clerk Typist III			No. of Positions 1	Range/Step CA	Barg. Unit GCU	Gov.	Approv.	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 imposed by this legislation. 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, including the integrity of the files.</p> <p>This person would make sure all correspondence was properly handled, 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, etc. would be a one-time cost.</p> <p>It is estimated that one new filing cabinet would be needed each year to meet the filing requirements of this bill.</p>					
1	2	3						
Salary	20,316							
Benefits	7,702							
Premium Pay								
Other								
Total Personal Services		28,018						
Travel								
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					
			Other					
For B&M Use Only								
Key Number								

APPENDIX 4, Page 4 of 4

**Request For
New Position**

Agency Environmental Conservation
 BRU Commissioner's Office
 Component Commissioner's Office

Page 4 of 4
 Revised Date _____

FY 87

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB 458
 Title : An Act relating to adoption of regulations and providing for an effective date
 Sponsor : Pignalberi, Cato, Marrou &
 Requestor : Shultz
 Date of request : _____

FISCAL DETAIL

Agency Affected : Fish and Game
 BRU : Boards
 Components : Boards of Fisheries and Game

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		635.8	693.6	756.6	325.4	334.5
TRAVEL		66.2	72.8	80.1	85.3	90.8
CONTRACTUAL		20.9	23.0	25.3	27.3	30.1
SUPPLIES		6.5	7.1	7.7	8.3	8.9
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		732.4	796.5	869.7	946.3	964.3

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		732.4	796.5	869.7	946.8	964.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		11	11	11	11	11
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attachment.

Prepared by : Beth Stewart, Director
 Division : Boards

Phone : 465-4110
 Date : March 20, 1986

Approved by Commissioner : *[Signature]*
 Agency : Department of Fish and Game

Date : 3/20/86

Distribution (by Agency preparing fiscal note) :

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

APPENDIX 5
 Page 1 of 9

HB 453--Fiscal Note Analysis

This funding would allow two teams to conduct economic surveys and analyze fisheries and game economic data. One team would be based in Juneau, the other in Anchorage. Each team would consist of an Economist III, two Economist I's, a Systems Analyst II, Systems Programmer I, and a Clerk Typist III. The teams would undertake economic research regarding the effect of proposed fishing regulations on sport and commercial fishermen, and hunting and trapping, as well as on communities affected by the regulation. Information would be gathered from all available sources, processed and synthesized by computer, and provided to the Board of Fisheries and the Board of Game. Thereafter, the board would be able to make allocative decisions on competing demands for finite fishery and wildlife resources consistent with the proposed legislation.

Position Title Systems Programmer I			No. of Positions 2	Range/Step 17 A	Barg. Unit GGU	Gov.	Approv.	Disopp.
Time Status	Staff Months 12 (x 2)	RP Number	Location Jnu/Anch		Election District	Leg.		
Justification								
Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note.								
Type of Expenditure		per/mo.	Amount					
1		2	3					
Salary		2,895.0						
Benefits		493.9						
Premium Pay		177.5						
Other		227.2						
Total Personal Services		45.5 x 2	91.0					
Travel								
Contractual								
Commodities								
Equipment		.9 x 2	1.8					
Other								
Total Cost			92.8					
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004		92.8				
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&M Use Only Key Number _____								

APPENDIX 5
Page 3 of 9

**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87

Position Title Systems Analyst II			No. of Positions 2	Range/Step 20 A	Barg. Unit EGU	Gov.	Approv.	Disapp.
Time Status	Staff Months 12 (x 2)	RP Number	Location Jnu/Anch		Election District	Leg.		
Type of Expenditure per /mo.			Justification					
			Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note.					
1	2	3						
Salary	3,564.0							
Benefits	608.0							
Premium Pay	218.5							
Other	227.2							
Total Personal Services	55.4x2	110.8						
Travel								
Contractual								
Commodities	0.5x2	1.0						
Equipment	7.4x2	14.8						
Other								
Total Cost		126.6						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		126.6					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only								
Key Number _____								

APPENDIX 5
Page 4 of 9

**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87

Position Title Clerk Typist III (two positions)			No. of Positions 2	Range/Step 8 A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status	Staff Months 12 (x 2)	KP Number	Location Jnu/Anch		Election District	Leg.		
Type of Expenditure			Justification					
1 per/mo		2	Amount 3					
Salary	1.631.0		Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note.					
Benefits	278.3							
Premium Pay	100.0							
Other	227.2							
Total Personal Services	26.8x2	53.6						
Travel								
Contractual								
Commodities	0.5x2		1.0					
Equipment	0.5x2		1.0					
Other								
Total Cost			55.6					
Receipt Code	Funding Source							
	Federal Receipts	1002						
	G. F. Match	1003						
	General Funds	1004	55.6					
	I-A Receipts	1005						
	Program Receipts	1028						
	CIP Receipts	1061						
	Other							
For B&M Use Only								
Key Number								

APPENDIX 5
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**Request For
New Position**

Agency Fish and Game
 DRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date

FY 87

Position Title Economist I			No. of Positions 3	Range/Step 18 A	Bar. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12 (x 3)	RP Number	Location Jnu/Anch		Election District	Leg.		
Type of Expenditure			Justification					
1		2	3					
Salary		4,969.5						
Benefits		847.8						
Premium Pay		304.7						
Other		340.8						
Total Personal Services		155.1						
Travel		12.1						
Contractual		1.5						
Commodities		4.8						
Equipment								
Other								
Total Cost		173.4						
Receipt Code		Funding Source						
		Federal Receipts 1002						
		G. F. Match 1003						
		General Funds 1004		173.4				
		I-A Receipts 1005						
		Program Receipts 1028						
		CIP Receipts 1061						
		Other						
For B&M Use Only Key Number _____								

APPENDIX 5
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**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date

FY 87

Position Title Economist III (two positions)			No. of Positions 2	Range/Step 21 A	Barg. Unit GU	Gov.	Approv.	Disapp.
Time Status	Staff Months 12 (x 2)	RP Number	Location Jnu/Anch	Election District		Leg.		
Type of Expenditure			Justification					
Amount			Staffing necessary to implement HB 458. See Bill Analysis and Fiscal Note.					
1	2	3						
Salary	3,812.0							
Benefits	650.3							
Premium Pay	233.7							
Other	227.2							
Total Personal Services	59.1 x 2	118.2						
Travel	4.0 x 2	8.0						
Contractual	9.5 x 2	19.0						
Commodities	1.0 x 2	2.0						
Equipment	1.2 x 2	2.4						
Other								
Total Cost		149.6						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004		149.6					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

APPENDIX 5
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**Request For
New Position**

Agency Fish and Game
 BRU Boards of Fisheries & Game
 Component Administration & Support

Page 1 of 1
 Revised Date _____

FY 87



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

DEPARTMENT Fish and Game	DIVISION Boards	BILL NUMBER HB 458	SPONSOR Pignalberi, Cato, Marrou, and Shultz
DEPARTMENT POSITION Neutral			
PREPARED BY Beth Stewart	DATE 3/20/86	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 3/20/86

SUMMARY

OTHER AGENCIES AFFECTED BY BILL DNR, DEC, CED, CRA, HSS, DOL, DOR, DOT/PF	CONSTITUENT GROUP(S) AFFECTED BY BILL Fishermen and Hunters
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT
Introduced in 1986 by Pignalberi, Cato, Marrou and Shultz.

ANALYSIS OF BILL/PROGRAM EFFECTS
Currently, the Board of Fisheries meets at least five times annually to hold extensive public hearings and make decisions on proposed changes to its regulations. The Board of Game meets at least twice annually for the same purposes. During FY 85, the two boards considered 1,246 proposals and 39 petitions for regulatory change. By far, the majority of these changes were allocative in nature. In order to conduct business during FY 85, if the proposed legislation had been in effect, the boards would have undertaken over 300 economic impact analyses and summaries for everyone concerned (individuals, communities, businesses and the state as a whole) and written summaries for each of the 1,285 issues, and reconstructed the current boards filing system. This undertaking would not only require increased staffing (estimate 11 permanent, fulltime positions), but would vastly extend the length of time the boards meet. During FY 85, the boards met 109 days.

Under the bill, the boards would determine the economic effect a regulation would have on individuals and other entities directly affected by the proposed action. Such analyses would necessarily have to occur before the

AMENDMENTS PROPOSED (CONTINUED)

boards would decide on a regulation to become effective. We estimate a six-month delay for a regulation to become effective from introducing economic procedural requirements to the existing administrative process.

In the absence of the funding necessary to implement this legislation, the department and board staff would be unable to provide the information necessary for the boards to allocate resources among competing demands.

In addition to the boards' regulations for fishing, hunting, and trapping, the Commissioner has limited regulatory authorities for protection of fish and wildlife. Costs comparable to those incurred in the board process could be anticipated.

For this analysis, we have assumed that in-season openings and closures under the Commissioner's emergency order (EO) authority would not be subject to the requirements of the bill. These uses of EO authority occur within the management plans, seasons, and other regulatory measures adopted by the boards. If these EO openings and closures must be accompanied by economic analyses, EO in-season management would not be feasible. This EO authority is essential to the maintenance and proper utilization of fish and wildlife resources given the annual fluctuation in resource availability.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title : An Act relating to the adoption of regulations
 Sponsor : Pignalheri, Cato, Marrou, Shultz
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected: Health & Soc. Services
 BRU: DHSS Administrative Services
 Components: Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		113.6	117.6	121.7	126.0	130.4
TRAVL.		9.5	9.8	10.2	10.6	11.0
CONTRACTUAL		8.3	8.6	8.9	9.2	9.5
SUPPLIES		.6	.7	.8	.9	1.0
EQUIPMENT		14.9				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		146.9	136.7	141.6	146.7	151.9

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		146.9	136.7	141.6	146.7	151.9
FEDERAL FUNDS						
OTHER						
TOTAL		146.9	136.7	141.6	146.7	151.9

POSITIONS :

FULL-TIME		3	3	3	3	3
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See Attached.

Prepared by: Joanne C. Clark *JCC*
 Division: Budget & Finance

Phone: 465-3082
 Date: 3/20/86

Approved by Commissioner: *John R. Poy*
 Agency: Health & Social Services

Date: 3/21/86

Distribution (by Agency preparing fiscal note):

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

APPENDIX 6
 Page 1 of 5

An assumption is made that the Department has an average of 10 major new regulations or regulations amendment projects yearly and 20 smaller or emergency regulations projects yearly.

A team of three new staff persons would be needed to work with the Special Assistant to the Commissioner for Legal Affairs. This team would aid staff of the divisions promulgating regulations in preparing the financial estimates required in section 2 of the bill and the initial and final justification required in section 4.

Summary of Costs--FY 87

Personal Services - salary, benefits, overtime for 3 staff	113.6
Travel - for hearings, meeting with affected public	9.5
Contractual - communications, risk management, equipment maint.	8.6
Supplies - office supplies	.3
Equipment - 3 desks, 3 chairs, 3 calculators, 1 IBM Displaywriter, 1 bookcase, 1 file cabinet	<u>14.9</u>
Total	146.9

Costs for years beyond FY 87 are adjusted by 3.5% yearly. Equipment costs are one time only.

Position Title Management Analyst III			No. of Positions 1	Range/Step 18A	Org. Unit CCU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location AWA	Election District		Leg.		
Type of Expenditure			Justification					
Amount			<p>This position would work with the Special Assistant and division staff to determine financial effect of regulations on the population. This person would have to attend hearings, talk to persons potentially affected by regulations, and work with the Program Budget Analyst to cost out impacts. This person would also work on preparation of initial and final justification.</p>					
1	2	3						
Salary	37,356							
Benefits	9,182							
Premium Pay								
Other								
Total Personal Services		46.5						
Travel		7.0						
Contractual		3.5						
Commodities		2						
Equipment		1.6						
Other								
Total Cost		58.8						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G. F. Match 1003							
	General Funds 1004							
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For B&M Use Only Key Number _____								

APPENDIX 6, Page 4 of 5

Request For New Position

Agency Health & Social Services
 BRU DHSS Admin. Services
 Component Commissioner's Office

Page	of
Revised Date	

FY 87

STATE OF ALASKA 136 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations..."
 Sponsor : Pignalberi et, al
 Requestor : State Affairs
 Date of Request : 2/11/86

FISCAL DETAIL

Agency Affected : Labor
 BRU : Commissioner's Office
 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES		72.5	72.5	72.5	72.5	72.5
TRAVEL		0	0	0	0	0
CONTRACTUAL		48.5	50.4	52.4	54.5	56.7
SUPPLIES		1.5	1.6	1.7	1.8	1.9
EQUIPMENT		3.2	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	125.7	124.5	126.6	128.8	131.1

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		125.7	124.5	126.6	128.8	131.1
FEDERAL FUNDS						
OTHER						
TOTAL	0	125.7	124.5	126.6	128.8	131.1

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

Prepared by : ^{MS} Eileen Plate Phone : 465-2700
 Division : Commissioner's Office Date : 3/7/86

Approved by Commissioner : ^{MS} Jim Robison Date : 3/7/86
 Agency : Labor

Distribution (by Agency preparing fiscal note):

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

APPENDIX 7
Page 1 of 6

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 Regulations Specialist II			No. of Positions 1	Range/Step 16A	Barg. Unit GGU	Gov.	Approv.	Disapp.	
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.			
Type of Expenditure			Justification						
Amount			<p>This position would be responsible for coordinating the department's activity in meeting the requirements of this bill. The person would research all proposed regulations to ensure a preponderance of evidence would justify the need for the regulation. The person would contract with economic research firms to determine the economic impact of proposed regulations.</p> <p>Costs associated with this position would include average per-employee costs for contractual and commodities. The equipment expense for a desk, chair, etc. would be a one-time cost.</p>						
1	2	3							
Salary	33,660								
Benefits	10,775								
Premium Pay									
Other									
Total Personal Services		44,435							
Travel		0							
Contractual		2,000							
Commodities		500							
Equipment		1,600							
Other									
Total Cost		48,535							
Receipt Code	Funding Source								
	Federal Receipts	1002							
	G. F. Match	1003							
	General Funds	1004							48,535
	I-A Receipts	1005							
	Program Receipts	1028							
	CIP Receipts	1061							
	Other								
For B&M Use Only									
Key Number									

APPENDIX 7
Page 3 of 6

**Request For
New Position**

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

Page of
 Revised Date

FY 87

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU	Gov.	Approv.	Disapp.
Time Status PFT	Staff Months 12	RP Number	Location Juneau		Election District	Leg.		
Justification								
Type of Expenditure			Amount					
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					
			I-A Receipts 1005					
			Program Receipts 1028					
			CIP Receipts 1061					
			Other					
			32,618					
For B&M Use Only Key Number _____								

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.

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.

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 Contact

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 this 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
 BRU : 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 0
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.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SSHB 458
 Title: Adoption of regulations

Sponsor: Pignatelli, Cato, Marrou, Shultz
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Natural Resources
 BRU: Oil & Gas

Components: _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	0	21.4	21.4	21.4	21.4	21.4
TRAVEL	0	36.0	36.0	36.0	36.0	36.0
CONTRACTUAL	0	15.9	15.9	15.9	15.9	15.9
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL	0	73.3	73.3	73.3	73.3	73.3
----------------	---	------	------	------	------	------

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

FUNDING : (Thousands of Dollars)

GENERAL FUND	0	73.3	73.3	73.3	73.3	73.3
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary. DO&G anticipates promulgating/revising 3 packages of regulations per year. The above cost are VERY TENTATIVE. Actual costs would vary with the actual number of regulations packages, number of hearings requested and the location of the hearings.

These estimates do not include any inflation allowances.

Prepared by: Kristina O'Connor
 Division: Oil and Gas

Phone: 762-1243
 Date: March 20, 1986

Approved by Commissioner: Ned Farguhar
 Agency: Natural Resources

Date: 3/20/86

Distribution (by Agency preparing fiscal note):

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

APPENDIX 9
 Page 1 of 4

MEMORANDUM**State of Alaska**DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GASTO: Ned Farquhar
Special Asst., Commissioner's Office

DATE: March 20, 1986

FILE NO:

THRU: Kay Brown, Director

TELEPHONE NO: 561-2020

FROM: Kristina M. O'Connor *KMO*
Natural Resource Manager IISUBJECT: Fiscal Note and
Comments on SSHB 458

Division staff have reviewed this legislation and generated the following comments:

1. New AS 44.62.190 (d) proposes a one-year rule-of-thumb for staleness. This is unnecessary and redundant since AS 44.62.050 requires that when drafting regulations, the rules in the Drafting Manual for Administrative Regulations (Drafting Manual) be followed. The one-year rule of thumb for staleness is required by the Drafting Manual and has been for a number of years.
2. New AS 44.62.195 (b) proposes that a financial estimate of the total annual cost or savings that will be incurred by all individuals and entities directly affected by complying with the regulation be prepared. It would be virtually impossible to accomplish this. How can agencies know ALL of the affected parties and figure their costs/savings and also figure out how many parties/how much to figure for costs/savings for future years?
3. Amended AS 44.62.200 (a) (3) and new AS 44.62.205 will require a justification of need for the proposed regulations. AS 38.05.020 and AS 44.62 specifically allow the Commissioner to adopt necessary regulations. AS 44.62 sets forth the procedures that must be followed in order to adopt regulations. AS 44.62.220. Right to petition, specifically allows an individual or designated group to petition for amendment, adoption or repeal of a regulation if it is felt that there is sufficient need. The public does have two methods to facilitate change, one during the regulatory comment period and the other, to petition. The proposed amendment and new section are unnecessary, will cause delays and extra costs to agencies and possibly the public as well. This amended section and new subsection should not be adopted.
4. AS 44.62.210 (c) and (d) are proposed as new subsections. Will AS 44.62.210 (c) allow the use of teleconferencing for the public hearing? If so, the language should be added to the text. In case the community involved does not have teleconferencing capabilities, the agency would be required to send staff and a court reporter (since tape recordings at meetings are often inaudible, and notes could be later contested by stating that only select information was taken down) for the hearing. ~~Once again this will be a great expense to agencies.~~ Written or taped comments should provide adequate means for concerns to be expressed for such groups if teleconferencing is not possible.

APPENDIX 9
Page 2 of 4

AS 44.62.210 (d) seems to be unclear. Is it meaning to say that the agency may not accept comments from the public after the closing date, even if they were delayed because of the postal system? Is it saying that if more information is revealed supporting the justification for need that the agency must go back to notice and begin the process all over again? Or finally, is it saying that if the agency decides to accept public comment proposals or reject them, that in their decision making process the public must be allowed to review those decisions and another comment period will be required?

5. AS 44.62.230 proposes that if a petition requesting an adoption, amendment or repeal of a regulation is denied, the reasons for denial will be included in the agency's response. This sounds like a fair and reasonable requirement.
6. AS 44.62.275 proposes to require agencies to maintain a file of the proceedings concerning the adoption, amendment or repeal of a regulation. This is already being done. Is this going to mean that each proposed regulation will have to have its own file, or if it's part of a package of changes, will it be ok to have them all together in one file?

The contents of how the files are to be maintained would more appropriately be addressed in the Drafting Manual.

If the content material and how the files are to be maintained will be in the statute, then the following changes are necessary.

AS 44.62.275 (a) (1) should add the word "any" before "petitions..."
AS 44.62.275 (a) (3) and (4) should be deleted. See earlier comments for AS 44.62.205.

AS 44.62.275 (a) (5), (6), (7) and (8) are ok.

AS 44.62.275 (b) is unnecessary because documents are date stamped in and filed in order of date received and filed in categories. To maintain a log is just extra work that doesn't seem to accomplish anything. An affidavit seems unnecessary as well since the AG's are the ones that determine that the legal process has been followed.

AS 44.62.275 (c) regulatory files are open to public inspection under the Freedom of Information Act.

6. AS 44.62.300 (3) the addition of the proposed new subsection is unnecessary and will only tie up the agency's ability to implement and meet statutory requirements and needs (see the comments under AS 44.62.205).

Language should be added to the section placing a 60-day time limit for filing a judicial declaration after adoption, amendment or repeal. This is done by the feds. and many states.

March 20, 1986
Ned Farquhar
Page 3

FISCAL NOTE BACKGROUND INFORMATION:

Our estimate is very rough. The actual costs will vary with the real number of regulation packages generated, the number of additional notices deemed necessary, and the number and location of hearings requested by the public. We really have no firm grasp on what these numbers will be. However, we estimate that, on the average, the division produces about three packages of regulations each year. The proposed legislation (SSHB 458) could require an additional permanent part-time Natural Resource Officer II (Range 16, Step A) at a cost of about \$21,400 per year. We would anticipate having to issue three additional notices per year at a cost of \$3500 each, for a total of \$10,500. We would anticipate conducting three additional bush hearings for each package for a total of nine hearings. Travel and per diem for each hearing is estimated to cost about \$4000 per bush hearing. A court reporter's time and transcript generation is estimated to cost about \$550 per hearing for a total of \$4950, and translator services will cost about \$50 per hearing for a total of \$450 per year. We have not included the possible cost of an assistant attorney general's time to assist the division in complying with the new regulation procedures. We were unable to estimate the amount of time an AAG would be needed. The grand total is \$73,300 per year. Please keep in mind that this estimate is very rough, and is based on assumptions that can vary a great deal.

KO/05610

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : SSHB 458
 Title : "An Act relating to the adoption of regulations; and providing for an effective date."
 Sponsor : Rep. Pignalberi
 Requestor : House State Affairs
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Public Safety
 BRU : DPS Administration

 Components : Commissioner's Office

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		62.0	65.1	68.4	71.8	75.4
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		62.0	65.1	68.4	71.8	75.4

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

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

FUNDING : (Thousands of Dollars)

GENERAL FUND		62.0	65.1	68.4	71.8	75.4
FEDERAL FUNDS						
OTHER						
TOTAL		62.0	65.1	68.4	71.8	75.4

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

This Department's Division of Motor Vehicles and Fire Prevention are entities that most adopt, add, modify and/or repeal regulations. The Alaska Police Standards Council and the Council on Domestic Violence and Sexual Assault also have regulations that could be affected by the bill.

Prepared by : Frank Gorham, Inspector Phone : 465-4322
 Division : Commissioner's Office Date : 3/18/86

Approved by Commissioner : [Signature] Date : 3/18/86
 Agency : Public Safety

Distribution (by Agency preparing fiscal note) :

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

APPENDIX 10
 Page 1 of 2

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SSHB 458

The Department's approach in addressing the requirements of Section 2 and Section 4 of the bill will be to contract for the expertise to do an indepth analysis of the costs or the savings that will be incurred by individuals and entities directly affected by a proposed regulation action and prepare summaries and needs justification. It is deemed that a great deal of analytical input would be needed for regulation actions which would require research, data massaging and analytical documentation. An estimate of such need would cover the need for contractual support for three months out of a year.

Since the costs would be spread out amongst the various entities of the Department, the contractual costs would be placed in the Commissioner's office and dispersed as necessary.

A 5% inflation factor is added beginning FY 88.

<u>300 Contractual</u>		\$62.0
Regulation Analytical Diagnosis		
90 days @ \$100/day for 6 hrs.per day	\$54.0	
Incidental computer use	5.0	
Incidental travel related to above	3.0	

A M E N D M E N T

Offered in the HOUSE

BY _____

TO: SSB 458

Page 1, lines 16 -- 23:

Delete all material and substitute the following for it:

* Sec. 2. AS 44.62.195 is amended by adding new subsections to read:

(b) Except as provided in (c) of this section, if (1) the information is known or reasonably ascertainable, and (2) within 20 days after notice of a proposed regulation adoption is published, a written request is filed in the lieutenant governor's office by the governor, the Administrative Regulation Review Committee, the governing body of a political subdivision of the state, another state agency, or 300 persons signing the request, an agency planning to adopt a regulation shall prepare a financial estimate.

(c) The financial estimate required by (b) of this section must set out an estimate of (1) the cost or savings that will likely be incurred during a year by an individual or entity directly affected by the proposed regulation, in complying with that regulation, and (2) the aggregate cost or savings that will likely be incurred during a year by individuals or entities directly affected by the proposed regulation, in complying with that regulation. An estimate is not required for a proposed regulation for which no identifiable cost or savings will likely be incurred by those directly affected by the regulation.

(d) If the agency has made a good faith effort to comply with the requirements of (b) and (c) of this section, the regulation may not be invalidated on the ground that the contents of the estimate are insufficient or inaccurate.

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

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Telephone: (907) 465-2653

Address: Pouch 0
Juneau, Alaska 99811

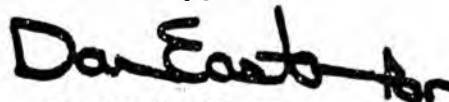
August 6, 1984

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 0, 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:

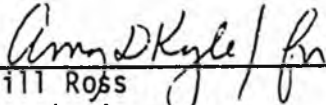
Central Office
P.O. Box 0
3220 Hospital Drive
Juneau, Alaska 99801

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 his chapter. the lands for the discharge;

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

o determine (3) the topography, hydrology, geology, and r domestic soil characteristics of the land treatment area are ng soil tests, adequate to protect existing and potential water ation tests and land uses outside the defined treatment area, including subsistence, housing, education, disposal 's into industry, recreation, and agriculture; and ll, in its dis- industry, recreation, and agriculture; and

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

d or failure (i) An accurate and complete set of as-built l conditions engineering plans for sewers, disposal systems, or treatment works designed to serve 100 or of proposed more persons per day must be submitted to the r treatment department within 90 days after the project's startup date. The department will, in its discre- 200 feet of tion, 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 handling and if the department finds, after review of sub- mitted 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

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

discretion, re- (1) Sewage Wastewater Treatment Plant Design, Manual of s, domestic Practice Number 8, 1977, and Design and Construction of Sanit- id disposal ary and Storm Sewers, Manual of Practice Number 9, 1976, operation in Water Pollution Control Federation, 2626 Pennsylvania Avenue, s. Washington, D.C. 20037;

age or gray- (2) Glossary - Water and Wastewater Control Engineering, imum treat- 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

—
ATTACHMENT D
—

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 rewritten 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 reviewing 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 preceeding 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 may 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. Importantly, 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 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 should 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.

Introduced: 2/10/86
Referred: State Affairs
and Judiciary

BY PIGNALBERI, CATO,
MARROU AND SHULTZ

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 458

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 the adoption of regulations; and
7 providing for an effective date."

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

9 * Section 1. AS 44.62.190 is amended by adding a new subsection to
10 read:

11 (d) An agency may not adopt, amend, or repeal a regulation if
12 more than one year has elapsed since the first publication of notice
13 of proposed action under this section. When more than one year has
14 elapsed, an agency may revive the proposed action by republication in
15 accordance with (a) of this section.

16 * Sec. 2. AS 44.62.195 is amended by adding a new subsection to read:

17 (b) The state agency shall prepare a financial estimate of the
18 cost or savings that will be incurred by individuals and entities
19 directly affected by the proposed action. The estimate shall include
20 the annual cost or savings that a representative individual or entity
21 would incur in complying with the proposed regulation and the total
22 annual cost or savings of all individuals and entities directly af-
23 fected.

24 * Sec. 3. AS 44.62.200(a) is amended to read:

25 (a) The notice of proposed adoption, amendment, or repeal of a
26 regulation shall include

27 (1) a statement of the time, place, and nature of proceed-
28 ings for adoption, amendment, or repeal of the regulation;

29 (2) reference to the authority under which the regulation

1 is proposed and a reference to the particular code section or other
2 provisions of law which are being implemented, interpreted, or made
3 specific;

4 (3) an informative summary of the proposed subject of
5 agency action, including a summary of the initial justification of
6 need unless the justification is excused under AS 44.62.205(c);

7 (4) other matters prescribed by a statute applicable to
8 the specific agency or to the specific regulation or class of regu-
9 lations;

10 (5) a summary of the fiscal information and financial
11 estimate required [TO BE PREPARED] under AS 44.62.195.

12 * Sec. 4. AS 44.62 is amended by adding a new section to read:

13 Sec. 44.62.205. JUSTIFICATIONS OF NEED. (a) Except as provided
14 in (c) of this section, when a state agency files a notice of proposed
15 action under AS 44.62.190, the agency shall make available to the
16 public an initial justification of need for the proposed action. The
17 initial justification shall

18 (1) describe the problem, condition, or circumstance the
19 regulation is intended to address;

20 (2) specify the purpose of the regulation and the factual
21 basis for the agency's determination that the regulation is reasonably
22 necessary to carry out the purpose;

23 (3) identify each document upon which the agency is relying
24 in proposing the action; and

25 (4) describe practical and reasonable alternatives to the
26 proposed action.

27 (b) Except as provided in (c) of this section, when a state
28 agency submits a regulation or order of repeal for filing with the
29 lieutenant governor under AS 44.62.040, the agency shall make