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7264 HOUSE STATE AFFAIRS



Official Business

Alaska State Legislature

From Gruenberg

Pouch V
State Capitol
Juneau, Alaska 99811

April 22, 1992

Hon. John B. "Jack" Coghill
Lt. Governor
State of Alaska
Juneau, Alaska 99811


Dear. Lt. Governor Coghill:

Enclosed are two opinions from the Division of Legal Services discussing whether the lieutenant governor and the Division of Elections have the legal authority to adopt regulations implementing party rules closing the primary election. The opinions conclude that the lieutenant governor and the division lack the authority to do so under present law.

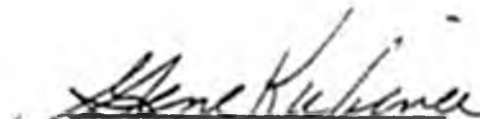
The legislature has before it two bills that would deal with the primary closure problem in very different ways. Both are constitutional under Tashjian. However we have not passed either of these proposals.

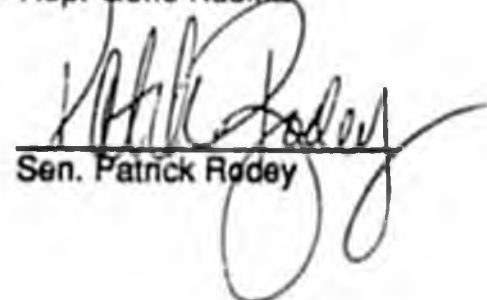
Unless and until the legislature passes legislation authorizing the implementation of restrictive party rules, we respectfully request you not to exceed your statutory authority.

Sincerely,


Rep. Max F. Gruenberg


Rep. Mike Miller


Rep. Gene Kubina


Sen. Patrick Rodey

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
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240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 13, 1992

SUBJECT: Present Ability of Lieutenant Governor to Promulgate Elections Rules That Complied With Tashjian Decision (Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey *RGC* 3-13-92
Legislative Counsel

I. INTRODUCTION

You have asked for a discussion of the authority of the Lieutenant Governor of Alaska and the Division of Elections to adopt regulations to make Alaska's elections procedures comply with the U.S. Supreme Court's ruling in Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

II. SUMMARY

The Lieutenant Governor and the Division of Elections probably lack authority to adopt regulations to make Alaska's primary election law comply with the Tashjian decision. No statute or constitutional provision appears to give the Lieutenant Governor or the Division of Elections the power to adopt regulations that make new election law.

The details behind this conclusion are provided in section IV of this memorandum.

III. FACTS

Alaska law currently provides for a "blanket" primary. In a blanket primary, all voters receive the same ballot and each voter may vote for any candidate regardless of party affiliation.

The Republican Party of Alaska, however, has adopted a conflicting rule that closes the voting for Republican candidates in primary elections to all voters except

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Republicans and independents. Furthermore, the United States Supreme Court ruled in the Tashjian case that such a party rule is a constitutionally-protected exercise of the right of association. When such a party rule conflicts with a state election statute, it is the statute which must yield.

There had been some question as to whether the Tashjian case applied in Alaska, but a February 28, 1992 memorandum of Attorney General Charles E. Cole concluded that Tashjian was applicable and that "a court would hold that the Republican Party's rule limiting participation in the selection of the party's candidates must be implemented, notwithstanding its conflict with Alaska's blanket primary statutes "

IV. DISCUSSION

The difficult practical question is how to implement the Republican Party's rule. Neither the Lieutenant Governor nor the Division of Elections would appear to have the power to adopt regulations that would meet the participation requirements of the Republican Party rule.

1. The Requirement that Rule-Making Be Authorized. Under Alaska law, administrative rule-making requires a statutory or constitutional grant of authority. For example, Alaska's Administrative Procedure Act (APA) provides that "[t]o be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law," AS 44.62-020.

Court decisions have been consistent with that formulation. For example, in Rutter v. State, 668 P.2d 1343, 1349 (1983) the Alaska Supreme Court ruled that "[a]dministrative agencies are creatures of statute, deriving from the legislature the authority for the exercise of any power they claim." In a similar vein, the decision of State v. Alveska Pipeline Service Co., 723 P.2d 76, 78 (Alaska 1986) ruled that "[r]egulations promulgated by an executive department must be authorized by statute."

In sum, it would seem that the Lieutenant Governor or the Division of Elections could only adopt regulations accommodating the Republican Party rule if some provision of law gave the Lieutenant Governor or the Division of Elections the power to do so.

2. The Lieutenant Governor and the Division of Elections Lack Authorization. There does not appear, however, to be any provision in either the Alaska Constitution or the Alaska Statutes which would authorize the Lieutenant Governor or the Division of Elections to adopt regulations that essentially made new primary election law.

For example, art. III, § 7 of the Alaska Constitution only states that the lieutenant governor "shall perform such duties as may be prescribed by law and as may be

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delegated to him by the governor." That provision does not authorize adoption of regulations that would change the essential nature of Alaska's primary election system.

Statutory provisions also would not authorize the lieutenant governor to adopt such regulations. AS 44.19.020 states that "[t]he lieutenant governor shall administer state election laws," and AS 15.10.10⁵(a) provides that "[t]he lieutenant governor shall control and supervise the division of elections," but these statutes only authorize administrative functions of a ministerial nature. They would not authorize adoption of regulations that were inconsistent with Alaska's primary election statutes.

In this connection, the Alaska Supreme Court ruled in State v. Anderson, 749 P.2d 1342, 1344 (1988) that the validity of a regulation partly depends on "whether it directly conflicts with any other statute." Regulations from the lieutenant governor implementing a closed Republican primary would conflict with existing statutes. As Attorney General Cole noted in his February 28, 1992 memorandum:

Alaska has a "blanket" primary, in which all voters select the nominees of all parties. Under AS 15.25.010 - 15.25.130, all candidates of all political parties run on one ballot, and any registered voters, regardless of party affiliation, can vote for any candidate. The only restriction is that voters may cast only one vote for each office on the ballot.

[footnote omitted]

A regulation that conflicted with AS 15.25's provision of an open primary would not be statutorily authorized.

The same principle would apply to regulations that the Division of Elections might adopt under AS 15.07.070, AS 15.10.020, 15.10.030, AS 15.15.010, 15.15.060, 15.15.350, 15.15.361, and 15.15.370. Regulations adopted pursuant to those enabling sections must be consistent with Alaska's existing statutory provision of a blanket primary. In any event, the subject matter of regulations authorized by those statutes does not include the qualification of a voter to vote for particular candidates in a primary election.

In sum, the lieutenant governor and Division of Elections lack constitutional or statutory authority to provide by regulation for a closed Republican primary election.

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V. CONCLUSION

The lieutenant governor and the Division of Elections probably lack the authority to conform Alaska's primary elections to the Tashjian decision's requirements by means of regulation.

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MEMORANDUM

March 30, 1992

SUBJECT: Supplemental Discussion of Regulations
Implementing Closed Primary Elections
(Work Order No. 7-LS1188)

TO: Representative Max Gruenberg
Attention: Stan Robbins

FROM: Robert Glennon Casey
Legislative Counsel

RGC 3-30-92

I. INTRODUCTION

This memorandum reconsiders the opinion expressed in an earlier memorandum from the Division of Legal Services, dated March 13, 1992. That earlier memorandum concluded that neither the Lieutenant Governor of Alaska nor the Division of Elections possessed the authority to adopt regulations that conflicted with the open (or "blanket") primary system provided in AS 15.25.010 - 15.25.130.

II. SUMMARY

The original opinion stands. Regulations would be unauthorized for reasons given in the previous memorandum and also for reasons given below.

III. DISCUSSION

The impetus for this discussion is a December 3, 1991 memorandum of the Department of Law. Pages 4 and 5 of that memorandum indicated that under Denardo v. State, 741 P.2d 1197 (Alaska 1987) the Division of Elections might possess authority to adopt regulations authorizing a closed primary. (Copies of the Denardo decision and the memorandum of the Department of Law accompany this memorandum.)

Denardo, however, seems to stand for the opposite conclusion. The Denardo ruling probably means that such regulations are unauthorized, if they conflict with either a currently effective statute or a currently effective statement of legislative intent.

In Denardo, a regulation was upheld, but it is important to examine the reasons why the court reached its result in that case. The Denardo court upheld the regulation because: (1) the regulation did not conflict with any statute in effect at the time the regulation was promulgated, (2) there were clear statements of legislative support for the substance of the regulation (thereby enabling the court to conclude that the regulation was within an express or implied delegation of rule-making authority under AS 15.15.010), and (3) the regulation was neither arbitrary nor unreasonable. The first two of these criteria would not attend an immediate adoption of regulations that facilitated closed primary elections.

First, the statute requiring an open (or "blanket") primary election, AS 15.25.060, continues to be in effect. Unlike the statute in Denardo, this statute has not been judicially invalidated. It is beside the point that a court would probably rule AS 15.25.060's mandate of open ("blanket") primary election balloting unconstitutional in certain factual settings. Statutes that are "probably unconstitutional" continue to be in effect until a court rules them unconstitutional. AS 15.25.060 is a currently effective statute, and "agency rules cannot amend a statute," Denardo, 741 P.2d at 1198.

Second, the Alaska Legislature has not stated any support for closed primary balloting. Absent such a statement of support, it is difficult to find in AS 15.15.010 an express or implied delegation of authority to adopt regulations that would conflict with AS 15.25.060.

There was legislative support for the regulation in Denardo, but the facts of that case differed from the current situation: (1) the legislature had passed a law that accorded with the regulation subsequently adopted by the Division of Elections, (2) the regulation merely filled the period prior to the statute's effective date, and (3) the regulation did not conflict with any currently-effective statute.

In the present case, by contrast, the Alaska Legislature has not enacted a law supportive of closed primaries. Instead, the legislature's only statement appears to be AS 15.25.060 - a statute opposed to closed primary balloting and certainly not a delegation of power to adopt a contrary regulation. So, the facts that enabled the Denardo regulation to be upheld are reversed in the present case, and regulations from the Division of Elections would be unauthorized.

IV. CONCLUSION

In conclusion, a regulation facilitating closed primary election balloting would conflict with a currently effective statute and would also lack any expression of legislative support. Under both Denardo and the authorities cited in this office's previous memorandum, such a regulation is not authorized.

Daniel R. DENARDO, Appellant,

v.

STATE of Alaska, Appellee.

No. S-1679.

Supreme Court of Alaska.

Sept. 11, 1987.

Independent gubernatorial candidate brought action challenging Alaska Division of Elections' refusal to place his name on the ballot. The Superior Court, Third Judicial District, Anchorage, Brian C. Shortell, J., sustained Division's actions, and appeal was taken. The Supreme Court, Compton, J., held that: (1) Division's action, in promulgating rule regarding number of names needed on nominating petitions for independent candidates, did not constitute improper attempt to amend an unconstitutional statute, and (2) regulation as to number of names required on petitions was valid.

Affirmed.

1. Elections ¶21

Statutes ¶133

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least three percent of number of votes cast in preceding general election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule did not constitute an impermissible attempt to amend an unconstitutional statute; three percent provision became null and void upon its being declared unconstitutional, and Division's action was taken when legislature did not act to amend statute until after nomination petition deadline for gubernatorial election had passed. AS 15.25.180.

2. Elections ¶71

After state statute requiring independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in previous general

election was declared unconstitutional, State Division of Elections' promulgation of a one percent rule was consistent with delegating statute and reasonably necessary for administration of state elections; legislature did not immediately act to amend statute after three percent provision was declared unconstitutional, but had previously expressed its desire to place some limitation on access to the gubernatorial ballot. AS 15.25.160.

3. Action ¶6

Superior court properly determined that issue of write-in gubernatorial candidate access to a voter information pamphlet was not ripe for decision; despite allegation that State Division of Elections had informally indicated that such candidates would not have access to the pamphlet, there was no indication that any attempt to wage a write-in campaign had actually been made.

Daniel R. DeNardo, Anchorage, pro se.

Susan D. Cox, Asst. Atty. Gen., Grace Berg Schaible, Atty. Gen., Juneau, for appellee.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

COMPTON, Justice.

Daniel R. DeNardo claims that the Alaska Division of Elections (Division) improperly refused to place his name on the ballot for the 1986 gubernatorial election. The division based its action on DeNardo's failure to comply with then § AAC 2K.180 (RCY 12/19/85), which required independent gubernatorial candidates to submit nominating petitions signed by qualified voters equal in number to at least one percent of those voting in the previous general election. DeNardo asserts that the regulation was invalid. The superior court sustained the actions of the division. We affirm.

L. VALIDITY OF 6 AAC 25.160.

Alaska Administrative Code Title 6, Section 25.160, was adopted pursuant to authority delegated to the director of elections by AS 15.15.010. That statute provides that the director "may issue regulations under the Administrative Procedure Act ... necessary for the administration of state elections." DeNardo does not claim that the director failed in any way to comply with the provisions of Alaska's Administrative Procedure Act (APA) in promulgating 6 AAC 25.160. Nor does DeNardo challenge the substance of the regulation or the legislature's power to enact such a rule.¹

Instead, DeNardo claims that the division had no power "to make election laws." DeNardo argues that 6 AAC 25.160 was a void attempt by the division to amend former AS 15.25.160, which this court held unconstitutional in *Vogler v. Miller*, 651 P.2d 1, 5-6 (Alaska 1982) (*Vogler I*). AS 15.25.160 provided that a gubernatorial candidate who did not represent a political party² had to be nominated by petition signed by qualified voters equal in number to at least three percent of the number of votes cast in the preceding general election. Ch. 82, § 5.53, SLA 1980; ch. 100, § 182, SLA 1980; see also *Vogler I*, 651 P.2d at 2.

In *Vogler I*, we recognized as legitimate the state's justifications for the statute, including the desire to eliminate voter confusion that would result from having a multitude of candidates on the ballot. 651 P.2d at 4. We nevertheless found that none of these explanations justified the increase from the equivalent of a one percent³ to a three percent signature requirement. Since the state failed to show that a one percent requirement would be any less effective in achieving the purported goals of the statute, we found that the state had not shown the compelling interest required

1. Indeed, the legislature has since enacted a statutory one percent signature requirement. AS 15.25.160.

2. "Political party" is defined as an organized group of voters that had polled a certain percentage of votes in the preceding gubernatorial election. Prior to 1983, the statutory percentage was 10%. This was found to be an unconstitu-

to save the three percent provision. *Id.* at 5-6.

The statute was not amended to comport with the one percent rule implicitly approved in *Vogler I* until June 6, 1986, five days after the filing deadline for nonparty candidates' nomination petitions for the 1986 gubernatorial election. Chapter 85, § 46, SLA 1986; AS 15.25.160. When it became clear that the legislature would not act in time, the division of elections promulgated 6 AAC 25.160 to govern the 1986 election.

[1] DeNardo relies on *State v. Marshall*, 633 P.2d 227, 233-34 n. 19 (Alaska 1981,) in support of his argument that the division's adoption of 6 AAC 25.160 was in effect an attempt to amend an unconstitutional statute. This reliance is misplaced. It is clear, as DeNardo argues, that agency rules cannot amend a statute. See *id.* But, contrary to DeNardo's apparent position, the fact that the legislature has at some point enacted legislation dealing with a particular topic does not forever foreclose the legislature from delegating authority to an agency to make rules affecting the same topic.

This court has soundly rejected such an argument. In *Kelly v. Zamarella*, 486 P.2d 906 (Alaska 1971), we stated:

When administrative rule-making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. We have held that, under proper standards, such delegations of legislative power to administrative agencies are constitutional. *Boehl v. Sabre Jet Room, Inc.*, 349 P.2d 535 (Alaska 1960).

Id. 489 P.2d at 909.

In *Boehl*, the following language appears:

dinal restriction on access to the ballot. *Vogler v. Miller*, 640 P.2d 1192, 1193-94 (Alaska 1982) (*Vogler II*). In 1984, the percentage was lowered to 3%. Ch. 25, § 34, SLA 1984.

3. The statute had previously required 1000 signatures, slightly less than 1% of the votes cast in 1978. *Vogler I*, 651 P.2d at 5 n. 10.

[P]rovision is made [in the Alaska Constitution] for creation by the legislature of regulatory agencies that are not under the supervision of the executive. Alaska Constitution, Art. 111, §§ 22, 24, 26. Such agencies would obviously have the function of exercising authority and control in places where the legislature has decided not to exercise all the authority and control itself. This would be a delegation of legislative power and the constitution provides for it.

Id. 349 P.2d at 588 (footnote integrated into text).

The three percent provision of former AS 15.25.160 became null and void upon this court's decision in *Vogler I*, 651 P.2d at 5-6. The division's subsequent regulatory enactments could not "amend" a void statute. Rather, the division stepped in to address a question regarding which the legislature implicitly decided not to exercise all of its authority and control.

Thus DeNardo's argument that the division generally has no power to make election laws is without merit. The legislature is constitutionally empowered to delegate legislative authority to regulatory agencies under certain circumstances.

[2] The question remains whether the specific regulation actually adopted by the division is valid. Resolution of this question involves a two-part inquiry: first, is the regulation consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency,⁴ and second, is the regulation reasonable and not arbitrary. *Kelly*, 486 P.2d at 911.

The relevant delegating statute provides: The director [of elections] shall provide general administrative supervision over the conduct of state elections, and may issue regulations under the Administrative Procedure Act ... necessary for the administration of state elections.

AS 15.15.010. The delegation of authority is further limited by the APA:

4. This aspect of review insures that the agency has not exceeded the power delegated by the

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030. Thus, 6 AAC 25.160 was valid if it was consistent with relevant statutes and reasonably necessary for the administration of state elections. After *Vogler I*, there was no effective statute governing the number of signatures required for a nominating petition. Moreover, the legislature had previously expressed its desire to place some limitation on access to the gubernatorial ballot by enacting former AS 15.25.160. We recognized this as a legitimate concern in noting "[t]hat 'laundry list' ballots discourage voter participation and confuse and frustrate those who do participate." *Vogler I*, 651 P.2d at 5, quoting *Lubin v. Pawlak*, 415 U.S. 709, 715, 94 S.Ct. 1815, 1819, 39 L.Ed.2d 702, 708 (1974). In addition, the legislature has confirmed its continued approval of the policy of limiting access to the ballot by enacting the new AS 15.25.160, which is virtually identical to 6 AAC 25.160. Thus, 6 AAC 25.160 did not conflict with any statute in effect and was consistent with the expressed legislative intent.

Moreover, by implicitly approving a one percent voter signature requirement in *Vogler I*, we have already found the rule to be neither unreasonable nor arbitrary. *Vogler I*, 651 P.2d at 5-6.

6 AAC 25.160 was validly enacted. DeNardo failed to comply therewith and the division properly rejected his nominating petition.

II. ISSUES RELATING TO ACCESS OF WRITE-IN CANDIDATES TO VOTERS.

The superior court concluded that issues relating to the propriety of the division's legislation. *Kelly*, 486 P.2d at 911.

alleged refusal to include write-in candidates in voter information pamphlets were not ripe for decision. These issues were dismissed without prejudice. At the time of the hearing on DeNardo's "writ of mandamus," the pamphlet deadlines were still months away.

Apparently, the only pertinent information before the superior court was DeNardo's affidavit which stated: "Unofficially through the Division of Elections, Mr. DeNardo was informed that a write-in candidate would not have access to the election pamphlet." In its oral decision, the superior court deferred the issue of write-in candidate access to the voter information pamphlet, and invited each side to brief the question.

[3] DeNardo chose to appeal instead, arguing that the dismissal without prejudice was error because the access issue was "inextricably intertwined" with the nomination petition question. It cannot be determined from the record, however, whether DeNardo in fact attempted to wage a write-in campaign. It is thus impossible to discern the factual posture of this claim. The superior court wisely recognized this claim as unripe for judicial determination and declined to address it. We do likewise.

III. CONCLUSION.

The division of elections acted within the scope of the authority delegated to it by the legislature when it enacted 6 AAC 25.160. DeNardo failed to comply with its provisions and the division properly rejected his petition. The superior court correctly found that DeNardo's claims relating to his write-in candidacy were not ripe for review.⁴

The superior court's decision is **AFFIRMED**.



4. The division also argues that DeNardo's claim is moot. In view of our disposition regarding

Carlos RODRIQUEZ, Appellant,

v.

STATE of Alaska, Appellee.

No. A-322.

Court of Appeals of Alaska.

Aug. 7, 1987.

Defendant was convicted in the Superior Court, Third Judicial District, Ralph E. Moody, J., of lewd and lascivious acts toward children and contributing to delinquency of a minor. Defendant appealed. The Court of Appeals, Coats, J., held that: (1) testimony of expert on sexually exploited children was admissible; (2) testimony of police officers called by defendant was not admissible; (3) sentence for attempted rape was excessive; and (4) defense counsel was not ineffective.

Affirmed in part, and reversed and remanded in part.

1. Criminal Law §-463

Testimony by expert witness which provides useful background information to aid jury in evaluating testimony of another witness is admissible.

2. Criminal Law §-463

Testimony of social worker, to the effect that testimony of alleged sexual abuse victims was consistent with patterns exhibited by sexually exploited children he had observed while working with children who had been exploited through child pornography or prostitution and child sex rings, was admissible as background information.

3. Evidence §-23

Testimony of police officers, who had been in defendant's home approximately five years before trial and who did not make thorough search of defendant's residence, to the effect that they had not seen drugs, pornography, or film-making equip-

the validity of the regulation, we do not address the mootness issue.

MEMORANDUM

State of Alaska

Department of Law

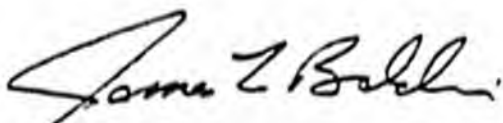
TO Elizabeth A. Ziegler
Deputy Director
Division of Elections
Office of the Governor

DATE December 3, 1991

FILE NO 663-92-0209

TEL NO 465-3600

SUBJECT Implementation of
closed primary
procedures



FROM James L. Baldwin
Assistant Attorney General
Governmental Affairs-Juneau

You requested our advice concerning a number of issues that are related to proposals by the major political parties in the state to close their primaries to members of competing political parties. Because you need this memorandum to help prepare for a meeting of the House State Affairs Committee to be held on November 13, 1991, we limit our opinion to your question concerning the power of the director of the division of elections to implement a closed primary by administrative regulation. It is your intent to administer a primary election that is consistent with the right of free association accorded to political parties even if provisions of state law applicable to the administration of primary elections permit a voter to cast a ballot that sets out candidates without regard to party affiliation.

You propose to establish new primary election procedures at the earliest possible date. You would like to implement new primary procedures early in the 1992 general election year. However, your timetable may be too aggressive to assure that the new procedures are properly supported by statute and regulation. The legislature would be unable to convene, consider, and enact amendments to the election code if there is not sufficient authority to accomplish your goals.

Your concern is whether the director may proceed in the absence of amendments to the election code to change primary election procedures and prescribe the form of the ballot so that the political parties control who may nominate candidates. We believe that it is prudent for the division to expeditiously pursue a resolution of the closed primary question both legislatively and by administrative means. Unlike the previous administration, you wish to acquiesce in the desire of a political party to nominate candidates using a primary ballot that may be voted only by persons admitted by the party. While we believe that there remains some question as to the proper interpretation of the rules of the Republican Party of Alaska, you can clarify this interpretation through the adoption of administrative regulations. However, before this can be done, it must be determined whether the division

has sufficient authority to adopt regulations that establish a closed primary election.

Existing law requires the division to prepare the primary ballot in a certain manner. The election code provides:

The primary election ballot shall be prepared and distributed by the director in the manner prescribed for general election ballots except as specifically provided otherwise for the primary election. The director shall place the names of all candidates who have properly filed in groups according to offices filed for, without regard to party affiliation.

AS 15.25.060 (emphasis added). The foregoing provision appears to preclude the use of separate ballots that are limited solely to the candidates of a single political party. It must be remembered that this provision was added to the election code to end the practice of presenting a ballot that required voters to vote only for the candidates of one political party. Elsewhere, the election code grants the director of the division elections the power to

prepare all official ballots to facilitate fairness, simplicity, and clarity in the voting procedure, to reflect most accurately the intent of the voter, and to expedite the administration of elections.

AS 15.15.030. The code also grants the director the power to "determine the size of the ballot, the type of print, necessary additional instruction notes to voters, and other similar matters of form not provided by law." AS 15.15.030(1).

The provisions of the election code that are specific to the form of the primary election ballot are probably void when the members of a political party desire to restrict those who may associate with them for the purpose of nominating candidates for public office. The United States Supreme Court reaffirmed the First Amendment rights of political parties to be free from statutes that restrict their power to associate with whomever they wish when nominating candidates. Tashjian v. Republican Party of Connecticut, 479 U.S. 208 (1986).

There appears to be no overriding state interest that can be articulated to perpetuate an open primary system when recognized political parties adopt conflicting rules. However, it is unclear how the Tashjian decision will be applied to the type of open "blanket" primary required by existing state law. It is possible, though not probable, that a court would find that an open "blanket"

primary does not burden associational rights. Until there is a federal case on point, this eventuality cannot be ruled out. It is also possible that AS 15.25.060 can be construed to apply only when political parties have not exercised their constitutional rights to limit access to the nominating process. One thing remains certain; it would be advisable to amend AS 15.25.060 to allow for the implementation of associational rules of political parties that do not infringe upon legitimate state interests in the administration of elections.

Even though Tashjian places heavy emphasis on the associational rights of political parties, we believe there may be an overriding state interest in having the parties act promptly and with clarity in the way they define who may associate with them. The U.S. Supreme Court has acknowledged that "it is clear that preservation of the integrity of the electoral process is a legitimate and valid state goal." Rosario v. Rockefeller, 410 U.S. 752, 761 (1973); see also, American Party of Texas v. White, 415 U.S. 767, 779 (1973). State law may interfere with a political party's internal affairs when necessary to ensure that elections are fair and honest. Storer v. Brown, 415 U.S. 724, 730 (1973).

We reviewed a draft committee substitute currently under consideration by the House State Affairs Committee. This bill would require political parties to adopt and deliver any party rules that would materially affect the nominating process by March 1 of the primary election year. The purpose of imposing a deadline for action is to permit preclearance of the change in voting requirements by the U.S. Justice Department, allow for voter education, and give adequate time to the division of elections to implement the changes. While these interests appear to be compelling, it is possible that a minor, recognized political party could contest the validity of the March 1 date. There is precedent for the proposition that early deadlines for the declaration of candidacy improperly restrict free speech and associational rights of nonparty candidates. Sigler v. State, JAN-88-8695 (Alaska Super. Mem. of Decision, Sept. 12, 1988). The harm encountered in Sigler was that the early declaration date improperly distanced nonparty candidates from the time of spirited public debate and the resultant attention of voters. Perhaps a minor recognized party could argue that it should be allowed to adopt rules which permit it to nominate candidates by convention held at or near the filing deadline for candidates for reasons similar to those advanced by Sigler. We believe that the concept of a deadline is supportable as a reasonable burden calculated to promote the electoral process. However, the division must fully document reasons for the cut-off date. The documentation will be essential in upholding the state's burden of proving that there is basis for the restriction.

Based on the foregoing, we conclude that existing provisions of the election code specifying the content of the primary election ballot are not operative when a political party opts to close its primary. In the absence of a specific statute, sufficient authority exists for the director to administratively implement new procedures for a closed primary. The basic standard applicable to the power of an administrative agency to adopt regulations is set out in the Administrative Procedure Act (APA). The APA provides:

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

AS 44.62.030. The director is given broad legislative power to adopt administrative regulations. She may "adopt regulations under the Administrative Procedure Act (AS 44.62) necessary for the administration of elections." AS 15.15.010. Given our determination that Tashjian makes AS 15.25.060 inoperative under certain conditions, it appears that AS 15.15.010 grants sufficient authority to implement a closed primary by administrative regulation. See, e.g., Denardo v. State, 741 P.2d 1197 (Alaska 1987) (regulation requiring independent gubernatorial candidates to submit nominating petitions signed by one percent of qualified voters held to be valid when adopted after court found statutory requirement void).

We would be remiss in our duties if we did not point out that contrary legal arguments could be made. It could be argued that the existence of AS 15.25.060 makes it plain the legislature did not intend to commit the formulation of the primary ballot to agency discretion. Support for this argument can be found in AS 15.15.030(1), which allows the director to determine matters of ballot form "not provided by law." The intent to commit to agency discretion is a necessary element for determining whether a regulation is valid. Kelly v. Zamarelli, 486 P.2d 906, 909 (Alaska 1971). We believe that a court would defer to the broad grant of legislative rule-making power conferred by AS 15.15.010, especially if the legislature fails to amend the election code after given a reasonable opportunity to do so. However, the fact that the regulations could be questioned justifies the effort to have the legislature take action to amend the election code.

Elizabeth A. Ziegler
Our File #: 663-92-0209

December 3, 1991
Page 5

We hope this memorandum will assist you in presenting your comments to the House State Affairs Committee.

JLB:ck



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: April 29, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HB 327 - Relating to Primary Elections
 HJR 74 - Relating to Open Primary Elections
 HB 526 - Relating to Contractors and Local Public Works

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Ann Boudreau	occ. licensing					<input checked="" type="radio"/>	N	526
Laura Gaiser	ELECTIONS					<input checked="" type="radio"/>	N	327
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	



House State Affairs Committee

Representative Gene Kubina, Chair

topic 92-10

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HB 327 - Relating to Primary Elections
print & file state affairs
work session

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING /ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
<i>CONNIE ZAWACKI</i>	<i>UNION RPA</i>	<i>10 Box 243732</i>	<i>99524</i>			Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

C.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 17, 1992

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

- HB 327 - Relating to Primary Election
- HJR 13 - Relating to Run-Off-Election:
Gov. & Lt. Gov.
- HJR 45 - Relating to Reapportionment Board
and Reapportionment

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections	P.O. B. A F Juneau	99811		4611	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 327
CHARLES THICKSTON	✓	✓	99811		4611	<input type="radio"/> Y	<input checked="" type="radio"/> N	
Norma Jean Jones	Elections	✓	✓		4611	<input type="radio"/> Y	<input checked="" type="radio"/> N	
TOM ANDERSON	REP. MARTIN					<input type="radio"/> Y	<input checked="" type="radio"/> N	ALL
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	
						<input type="radio"/> Y	<input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

SUBJECT OF MEETING:

DATE:

PLACE:

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Chip Wayne	Self	3294 Pioneer Ave Juneau AK	99804	586-1687	526-2202	<input type="radio"/>	N	HB 327
Rhond Roberts	Chairman sic Reno penalty					<input checked="" type="radio"/>	N	327
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	
						<input type="radio"/>	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 24, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

*HB 183 - Relating to Fair Campaign Practices Code
 HB 288 - Relating to Giving of Cash by Public Officers
 HB 327 - Relating to Primary Elections
 Other bills previously heard

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Norma Jean Johnson	Div. of Electric	PO Box 110517 Juneau 99811			465-4611	Y	(N)	
Elizabeth Ziegler	Div. Elec.	"			"	(Y)	N	NB 327
Chip Wagoner	Self	3294 Pioneer Ave Juneau	99801	536-1683	536-1683	Y	N	I may discuss during hearing re testimony 327
JOHN BAGUINE	Dist. of LAW	PO Box R Juneau	99811	536-1683	465-3600	Y	N	TO ANSWER YOUR QUESTIONS, IF ANY MORE
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

1.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 9, 1992

PLACE: Capitol, Room 102

SUBJECT OF MEETING:

- HB 327 - Primary Elections
- HB 404 - Filing Deadline for Certain Candidates
- HB 195 - Campaign Finance Reform
- SCR 30 - Support Open Primary Elections
- SB 8 - Annuity Program Amendments

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
BOB STALNAKER	RETIREMENT & BENEFITS				4470	Y	N	IF NEEDED SB 8
Paul Terrel	Sen. Kubina				1200	Y	N	IF needed
Laura A. Glaiser	Elections	P.O. Box 110017 Juneau.	99801		3611	(Y)	N	If asked HB 327
Brodie Miles	APOC				4864	(Y)	N	IF HB 195 question
Bill Stoltz	Sen. Cotten					Y	N	scr 30
Rep David Finkelstein						Y	N	
David Dierdorff	Legal Services					Y	N	
Catherine Reardon	Rep. Finkelstein					Y	N	
Charlotte Thickett	Dir of Div. Elect.					Y	N	
						Y	N	
						Y	N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 19, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HB 327 - Relating to Primary Elections
 *HCR 50 - Relating to Support Open Primary Elections
 HJR 13 - Relating to Run-Off Election: Gov. & Lt. Gov.
 HB 195 - Relating to Campaign Finance Reform
 HB 332 - Relating to Reporting/Campaign Financing - APOC

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Chip Thomas	Self	#2 Marine Way Juneau				<input checked="" type="checkbox"/> Y	N HB 327 / HSR 13
Chip Wayner	"	3294 Pioneer Ave Juneau				<input checked="" type="checkbox"/> Y	N HB 327
JOHN GARVINE	DEPT OF LAW	PO BOX K, JUNEAU	99801		465-3000	<input checked="" type="checkbox"/> Y	N "
Laura A. Glaiser	Elections	PO Box 110017 Juneau	99801		465-4611	<input checked="" type="checkbox"/> Y	N "
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N
						<input type="checkbox"/> Y	N

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House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- HCR 16 - Relating to Bone Marrow Donor Week
- HB 327 - Relating to Primary Elections
- HB 301 - Relating to Regular Legislative Sessions
- HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 404
Deborah Behr	Law	Dept of LAW P.O. Box K, Juneau	99801	7	465-3600	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 329
Larry Martin	Leg.					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 301
Ann Boudreau	occ. LIC.	Commerce				<input type="radio"/> Y <input checked="" type="radio"/> N	
JOAN SAUVINE	LAW	PO BOX Y JUNO	99801		465-3621	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327 HB 327
Bob Casey	Leg. Affairs	P.O. Box Y Juneau	99801		2450	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327
						<input type="radio"/> Y <input checked="" type="radio"/> N	
						<input type="radio"/> Y <input checked="" type="radio"/> N	
						<input type="radio"/> Y <input checked="" type="radio"/> N	
						<input type="radio"/> Y <input checked="" type="radio"/> N	
						<input type="radio"/> Y <input checked="" type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 4, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 534 - Relating to Civil and Human Rights
- HB 327 - Relating to Primary Elections
- HB 404 - Relating to Filing Deadline for Certain Candidates

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Bob Casey	Leg. Affairs	P.O. Box 4	99511	0	2450	Y	N	116 327
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	
						Y	N	

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House State Affairs Committee

Representative Gene Kubina, Chair

DATE: March 4, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HB 195 - Relating to Campaign Finance Reform
 HB 300 - Relating to Approp: Study Privatizing State Services
 HB 332 - Relating to Reporting/Campaign Financing - APOC
 HB 459 - Relating to Salaries of Executive Directors

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ MIKE McMullen	Dept. of Admin	Box 110201 Juneau, Ak	99811		465-4450	(Y) N	HB 459
✓ Lloyd James	Corrections					(Y) N	HB 459
✓ Sam Trivette	Public Affairs	Box 112000	99811		3384	(Y) N	HB 459
Diane Schenker	Corrections	MS 2000		3376	3376	Y (N)	HB 459
Laura Abiser	Elections	Box 110017 Juneau 99801			4611	(Y) N	IF ASKED HB 327
THEA FAGGINE	Leg	Po Box K -JAN 99811			3600	IF ASKED Y N	
✓ (61) LYONIAN	Leg					Y N	HB 459
						Y N	
						Y N	
						Y N	
						Y N	

H B

3 2 8

HOUSE COMMITTEE REPORT

(7) Date Referred: May 14, 1991 FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 2/12/92

The STATE AFFAIRS Committee considered: HB 328

HOUSE BILL NO. 328 PUBLIC COMMENT ON PROPOSED REGULATIONS

"An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

RECOMMENDATIONS: the same title
 be replaced with CS HB 328 (SFA) a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date)
 Indeterminate LOW
 fiscal impact DEED fiscal note(s) _____
 zero fiscal note BY (MS, DR, LMR, DS, DFC, CISA, DOL) zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Eugene G. Kubisa</i>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i>	<input checked="" type="checkbox"/>				
<i>Chris McCord</i>	<input checked="" type="checkbox"/>				
<i>Tommy</i>	<input checked="" type="checkbox"/>				

Eugene G. Kubisa
CHAIRMAN'S SIGNATURE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: 24-Jan-92 Department Affected: Natural Resources
 Title: Notice & Public Comment BRU: Management & Administration
Requirements Components: Commissioner's Office
 Sponsor: Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO. 423

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
Funding Source:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
Funding Source:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of Current year impact:

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Carol Wilson Phone: 465-2400
 Division: Commissioner's Office Date: 24-Jan-92

Approved by Commissioner: Harold C. Heine Date: 24-Jan-92
 Agency: Department of Natural Resources

Distribution (by preparer) : Legislative Finance, legislative Sponsor, Requestor, OMB.

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO : HB 328

Revision Date: _____
 Title: "An Act relating to the notice and public comment requirements for... regulations."
 Sponsor: House Judiciary Committee
 Requestor: House State Affairs

Department Affected: Labor
 BRU: All
 Component: All

COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Arbe Williams, Special Assistant *AW* Phone: 485-2700
 Division: Commissioner's Office Date: 1/24/92
 Approved by Commissioner: John Abshire, Acting Commissioner
 Agency: Department of Labor Date: 1/24/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies)

Bill No: House Bill No. 328

Date:

January 24, 1992

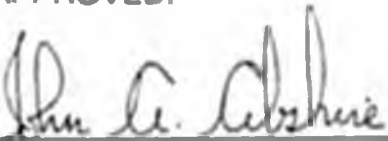
Title: "An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations."

Contact: Arbe Williams
465-2700

House Bill No. 328 adds a new section to AS 44.62 that if a state agency rewrites a proposed regulation, amendment of a regulation, or order of repeal that changes the substance of the regulation, amendment, or order, the agency shall provide notice and opportunity for public comment under AS 44.62.190, 44.62.220, and 44.62.210 for the rewritten regulation, amendment, or order of repeal.

HB 328 will require agencies to provide notice and opportunity for public comment if a substantive change is made to proposed regulations, amendments or orders of repeal. The Department of Labor currently follows a policy that requires notice and public comment when a substantial change is made to its proposed regulations. As changes that affect the substance of the regulation, amendment, or order are not defined, HB 328 does not provide adequate direction to the Department to revise its current practice. Therefore, HB 328 would have no apparent effect on the Department's regulation procedures.

APPROVED:



John A. Abshire, Acting Commissioner
Department of Labor

POSITION PAPER/Department of Labor

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Public Safety
 Title: An Act relating to public BRU: DPS Statewide Support
notice of proposed regulations Component: Commissioner's Office
 Sponsor: House Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO.

5	2	3
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EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
-------------------------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

It is impossible to predict how often substantive changes requiring "re-notice" of regulations under this bill would be made.

Prepared By: Gayle A. Horetzki Phone: 465-4322
 Division: Commissioner's Office Date: 1/28/92
 Approved by Commissioner: *G. Horetzki* for Richard L. Burton
 Agency: Department of Public Safety Date: 1/28/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

JAN 28 1992

Revision Date: _____ Department Affected: Environmental Conservation
 Title: Notice and Public Comment BRU: Administration
Requirements for Regulations Component: Office of the Commissioner
 Sponsor: (H) Judiciary
 Requestor: (H) State Affairs COMPONENT SERIAL NO.

	6	3	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Janice Adair Phone: 465-5050
 Division: Commissioner's Office Date: 1/27/92
 Approved by Commissioner: Janice Adair for John Sender
 Agency: Environmental Conservation Date: 1/28/92

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____
 Title: Public Comment on Proposed Regulations.
 Sponsor: House Judiciary Committee
 Requestor: (H) State Affairs

Department Affected: Community and Regional Affairs
 BRU: _____
 Component: _____
 COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Ronald Henderson
 Division: Administrative Services Division

Phone: 465-4708
 Date: 1/27/92

Approved by Commissioner: Ear Bethel
 Agency: Department of Community and Regional Affairs

Date: 1/27/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Education
 Title: An Act relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations. BRU: Executive Administration
 Sponsor: _____ Component: Executive Administration
 Requestor: Judiciary Committee COMPONENT SERIAL NO.

1	8	9
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State Affairs

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

The Department currently confers with the Attorney General's Office to determine if rewriting changed the "substance" of regulations. If the answer is yes, the public notice process renewed.

Prepared By: Nike Maher Phone: 465-2800
 Division: Commissioner's Office Date: 1/24/92
 Approved by Commissioner: *Jerry Covey* Jerry Covey
 Agency: Education Date: 1/24/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Department of Law
 Title: "...relating to the notice and public comment requirements...regulations." BRU: Legal Services
 Component: Operations
 Sponsor: House Judiciary Committee
 Requestor: House State Affairs Committee COMPONENT SERIAL NO.

		9	3
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	****	****	****	****	****	****

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	****	****	****	****	****	****
FEDERAL FUNDS						
OTHER						
FUND SOURCE:						
TOTAL						

POSITIONS:

FULL-TIME	****	****	****	****	****	****
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: January 24, 1992
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: January 24, 1992

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

This bill amends AS 44.62 to require that when an agency has proposed adoption, amendment, or repeal of a regulation, the agency must go through a second public review process if the agency made substantive changes in the regulation proposal as a result of the initial public review. We cannot predict how often this may occur if this bill is approved. To the extent that it cause extensive re-review by our legislation and regulations text editor, significant delays in the adoption of regulations changes will occur. At some point, this could result in the department having to increase its text editing staff. There will likewise be additional burdens for those departments that propose new regulations or regulations changes that could delay implementation of new legislation.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

FISCAL NOTE

BILL NO. HB 328

Revision Date: _____ Department Affected: Commerce & Economic Development
 Title: Relating to the notice and public comment requirements for the adoption, amendment & repeal of reg. BRU: Occupational Licensing
 Component: Administration
 Sponsor: House Judiciary Committee
 Requestor: House State Affairs COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	6.5	6.5	6.5	6.5	6.5	6.5
SUPPLIES	1.2	1.2	1.2	1.2	1.2	1.2
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	7.7	7.7	7.7	7.7	7.7	7.7

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
OTHER - GF/PR	7.7	7.7	7.7	7.7	7.7	7.7
TOTAL	7.7	7.7	7.7	7.7	7.7	7.7

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME	0.0	0.0	0.0	0.0	0.0	0.0
TEMPORARY	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

HB 328 amends existing statutes (AS 44.62.200) to require that agencies provide additional notices for public comment if a regulation project is rewritten, amended or repealed and the content of the project varies from the subject matter that was originally provided in the first public notice.

Prepared By: Jennifer Strickler Phone: 465-2144
 Division: Occupational Licensing Date: 01/29/92
 Approved by Commissioner: Glen A. Ols
 Agency: Department of Commerce & Economic Development Date: 1/29/92

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 328

The Division of Occupational Licensing produces an average of eighteen (18) new regulation projects each year. Regulation projects are often amended by licensing boards at meetings held during the year. Therefore, assuming that at least half of the regulation projects will fall under this bill, at least nine (9) projects will require a second public notice. An average of 400 notices in addition to publication in major newspapers, consisting of at least 15 pages per project, will also be necessary. This fiscal note addresses the following anticipated costs:

CONTRACTUAL:

Average cost of publishing a regulations notice
in three newspapers (\$620.00) x 9 projects per year: \$5,580.00

Postage for 400 notices on interested persons list: \$580.00

Copying costs of the regulation projects: \$360.00

Sub-total: \$6,520.00

SUPPLIES: Paper, envelopes, etc.: \$1,200.00

TOTAL COSTS: \$7,720.00

New revenues are not anticipated to be collected as a result of this bill.

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: _____ Department Affected: Revenue
 Title: An Act relating to the notice and public comment for regulations BRU: Administration and Support
 Component: Administrative Services Division
 Sponsor: Judiciary Committee
 Requestor: State Affairs COMPONENT SERIAL NO.

0	1	2	5
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.) We are unable to estimate the number of regulations that could be affected without further definition of "change of substance" as stated in Sec. 44.62.215. The estimated contractual expenditures for full notice and public proceedings for new regulations in the Department of Revenue is 3.0. This does not include the additional personal services that could be required.

Prepared By: Jacelynn McGill, Director Phone: 465-2313
 Division: Administrative Services Division Date: JANUARY 25, 1992
 Approved by Commissioner: Donald R. ...
 Agency: Department of Revenue Date: 1/25/92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. H.R. 328

Revision Date: _____ Department Affected: Department of Corrections
 Title: "An Act relating to notice and comment for...regulations..." BRU: Administration and Support
 Component: Administrative Services
 Sponsor: House Judiciary
 Requestor: House State Affairs COMPONENT SERIAL NO.

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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						

REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) The Department of Corrections generally adopts, amends, or appeals regulations less frequently than once per year. Public comments are generally requested in writing rather than at hearings. Therefore, anticipated fiscal impact is negligible.

Prepared By: Carl Nickel, Director *Carl Nickel* Phone: 465-3376
 Division: Administrative Services Date: 1-24-92
 Approved by Commissioner: Lloyd Hames, Commissioner *Lloyd Hames*
 Agency: Department of Corrections Date: 1-24-92

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: February 6, 1992
Title: "...relating to the notice and public comment requirements for...regulations"
Sponsor: House Judiciary Committee
Requestor: House State Affairs Committee

Department Affected: Community and Regional Affairs
BRU: _____
Component: _____

COMPONENT SERIAL NO.

0	0	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	*0	*0	*0	*0	*0	*0
CAPITAL						

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	*0	*0	*0	*0	*0	*0
FEDERAL FUNDS						
OTHER FUND SOURCE:						
TOTAL	*0	*0	*0	*0	*0	*0

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 * It is impossible to determine the true impact of this bill because that will depend on the amount of regulatory activity in any given year, and whether draft regulations are changed during the adoption process. Fiscal impact, as well as delay, could be considerable since any change in substance would trigger the renounce requirement and the costs of readvertising.

Prepared By: Ronald Hennelsson
Division: Administrative Services Division

Phone: 465-4708
Date: 2/11/92

Approved by Commissioner: [Signature]
Agency: Department of Community and Regional Affairs

Date: 2-16-92

CS FOR HOUSE BILL NO. 328 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the notice and public comment requirements for the adoption,
2 amendment, and repeal of regulations."

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

4 • Section 1. LEGISLATIVE STATEMENT OF INTENT. The phrase "significant change in the
5 substance" is not defined in AS 44.62.215, enacted by sec. 3 of this Act, because under the principles
6 of administrative law the courts have deferred to the interpretation of the executive branch on what is
7 considered a significant change and have balanced this decision with the public's right to know.

8 • Sec. 2. AS 44.62.200(b) is amended to read:

9 (b) A regulation that is adopted, amended, or repealed may vary in content from the
10 summary specified in (a)(3) of this section if the subject matter of the regulation remains the
11 same and the [ORIGINAL] notice was written so as to assure that members of the public are
12 reasonably notified of the proposed subject of agency action in order for them to determine
13 whether their interests could be affected by agency action on that subject.

14 • Sec. 3. AS 44.62 is amended by adding a new section to read:

1 **Sec. 44.62.215. SUPPLEMENTAL NOTICE AND PUBLIC PROCEEDINGS. (a)**
2 Notwithstanding AS 44.62.200(b), if a state agency rewrites a proposed regulation, amendment
3 of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200,
4 and 44.62.210, and if the rewriting is a significant change in the substance of the regulation,
5 amendment, or order, before adoption the agency shall provide notice and opportunity for public
6 comment under AS 44.62.190, 44.62.200, and 44.62.210 for the rewritten regulation, amendment,
7 or order of repeal.

8 (b) If a state agency does not provide the notice and opportunity for public comment
9 under (a) of this section for a rewritten proposed regulation, amendment, or order of repeal, the
10 agency shall prepare a written explanation of the reasons why the requirement of (a) of this
11 section does not apply. When the final regulation, amendment, or order of repeal is published
12 in the Alaska Administrative Journal, the lieutenant governor shall include the agency explanation
13 with the text of the regulation, amendment, or order of repeal.

14 (c) Notwithstanding AS 44.62.300, if a court determines that notice and an opportunity
15 for public comment was required under (a) of this section for the rewriting of a proposed
16 regulation, amendment, or order of repeal, and if the state agency did not provide the notice and
17 opportunity for public comment, the court may order the relief that is appropriate under the
18 circumstances, including the invalidation of the regulation, amendment, or order of repeal.

19 (d) This section does not apply to regulations

- 20 (1) adopted by the Board of Fisheries or the Board of Game;
- 21 (2) adopted under AS 44.62.260 to make emergency regulations permanent; or
- 22 (3) that are necessary to meet federal requirements.

23 • **Sec. 4.** This Act applies to the adoption, amendment, or repeal of a regulation if the initial notice
24 under AS 44.62.190 of the adoption, amendment, or repeal is given on or after the effective date of this
25 Act.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

- 1031 W 4TH AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- KEY BANK BUILDING
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4879
PHONE: (907) 452-1568
FAX: (907) 456-1317
- PO BOX K - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

February 7, 1992

Hon. Dave Donley
Hon. Max Gruenberg
Alaska State Legislature
House of Representatives
P.O. Box V
Juneau, Alaska 99811

Dear Representative Donley and Representative Gruenberg:

Hayden Kaden stopped by and asked me to provide comments in writing on the most recent proposed committee substitute for HB 328 (relating to the notice and public comment requirements for the adoption, amendment, and repeal of regulations).

While the proposed committee substitute is an improvement, I continue to have legal concerns which I raised at the committee meeting.

I have drafted the attached two options, which improve the proposed committee substitute. Frankly, I'm more comfortable with the existing statute, because state agencies now have the discretion to issue supplemental notices if the adopting authority believes that substantial change was made. The present system avoids a potential legal challenge for the failure to renotice if a commissioner "guesses" wrong as to whether the rewrite was a "significant" change in substance.

Also, I wanted to propose technical changes to the proposed committee substitute to acknowledge the statutory requirement that emergency regulations must be made permanent within 120 days after their filing. It would be difficult for a state agency to hold public hearings and consider public comments twice during this period, if the supplemental notice requirement for substantial rewrite were applied to them. The language in a

Hon. Dave Donley, Rep., AK State Legislature
Hon. Max Gruenberg, Rep., AK State Legislature

February 7, 1992
Page 2

prior draft was confusing to me because it arguably implied that there was a notice requirement to adopt emergency regulations. Present statutes have no preadoption notice requirement for emergency regulations. To fix this problem, I propose the following amendment:

page 2, line 9:

(2) regulations that are necessary to meet federal requirements; and

(3) regulations adopted to make emergency regulations permanent under AS 44.62.260.

To clarify the intended timing of the supplemental notice, I propose the following amendment:
page 2, line 4, following "agency," insert:
, before adoption,

If you have questions, please let me know.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: *Deborah E. Behr*
Deborah E. Behr
Assistant Attorney General
and Regulations Attorney

DEB:cl

cc: Hon. Gene Kubina, Chair
House State Affairs Committee

Paul Fuhs, Senior Legislative Liaison
Office of the Governor

OPTION #1

After-the-fact Notice and Right of Petition

Sec. 44.62.215. SUPPLEMENTAL NOTICE. (a) If a state agency rewrites a proposed regulation, amendment of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the rewriting is a significant change in the substance of the regulation, amendment, or order, the agency shall provide notice as provided in (b) of this section after filing of the regulation, amendment, or order under AS 44.62.080.

(b) Within 10 days after the filing, the state agency shall give public notice of a filing described in (a) of this section. The notice under this subsection shall be distributed in the same manner as the notice of proposed action was required to be distributed in AS 44.62.190(a). The notice of filing must include

(1) a statement of significant changes made in the adoption, amendment, or repeal of the regulations; and

(2) an informative summary of the regulations filed.

(c) A person aggrieved by the regulatory change may petition the agency to take action regarding the regulation under AS 44.62.220.

(d) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate a regulation adopted under AS 44.62.010 - 44.62.300.

OPTION 92

Failure to do Pre-Adoption Notice Does not Nullify Regulations

AS 44.62.215(b) and (c)

(b) The failure to provide supplemental notice and public proceedings as provided in this section does not invalidate an action taken by an agency under AS 44.62.010 - 44.62.300.

(c) If the state agency fails to provide supplemental notice and public proceedings as provided in this section, the state agency shall report the noncompliance to the legislature and the governor by the following January 20 with an explanation of the failure to comply and proposed corrective action by the department to remedy the causes of the noncompliance.

Alaska State Legislature



House of Representatives
House Judiciary Committee
Chairman Dave Donley

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

MEMORANDUM

TO: Representative Gene Kubina, Chair
House State Affairs Committee

FROM: Representative Dave Donley, Chair DD
House Judiciary Committee

RE: Request for hearing on HB 328, "relating to the
notice and public comment requirements for the
adoption, amendment and repeal of regulations."

DATE: January 14, 1992

On behalf of the House Judiciary Committee, I am requesting a hearing on HB 328. This bill would remedy a problem with existing provisions of the Administrative Procedure Act relating to notice of adoption, amendment, or repeal of regulations.

At the present time, an agency need only give initial public notice of the adoption, amendment, or repeal of regulations. If, after giving notice, the agency substantially rewrites the regulation, amendment or order of repeal, it need not give notice of what often amounts to major, substantive changes in that which was originally noticed.

This bill would require new public notice the first time an agency substantially rewrites a proposed regulation, amendment, or order of repeal. We feel that this bill represents good public policy and will help prevent abuses of the regulatory process, without placing an onerous burden on an agency.

DD/hk

FISCAL NOTE

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 328

Revision Date: 3/6/92
 Title: An Act relating to the notice and public comment for regulations
 Sponsor: Judiciary Committee
 Requestor: House State Affairs Committee

Department Affected: Revenue
 BRU: Department wide
 Component: See attached

Component Serial No.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	36.0	36.0	36.0	36.0	36.0	36.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	36.0	36.0	36.0	36.0	36.0	36.0

CAPITAL						
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REVENUE FUND SOURCE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS	2.0	2.0	2.0	2.0	2.0	2.0
OTHER FUND SOURCE	9.0	9.0	9.0	9.0	9.0	9.0
TOTAL	36.0	36.0	36.0	36.0	36.0	36.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: See attached.

Prepared by: Tracy L. McGill Phone: 465-2313
 Division: Administrative Services Date: 3/6/92
 Approved by Commissioner: Darrel J. Reewinkel
 Agency: Revenue

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB326

Revision Date: 3/2/92 Department Affected: Revenue
 Title: An act relating to the notice BP#1: Department-wide boats REVENUE OPS
and public comment for regulations Component: see attached TREASURY
 Sponsor: Judiciary Committee
 Requestor: State Affairs COMPONENT SERIAL NO.

0	1	2	1
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	36.0	36.0	36.0	36.0	36.0	36.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	36.0	36.0	36.0	36.0	36.0	36.0

CAPITAL						
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REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

GENERAL FUND	25.0	25.0	25.0	25.0	25.0	25.0
FEDERAL FUNDS	2.0	2.0	2.0	2.0	2.0	2.0
OTHER	9.0	9.0	9.0	9.0	9.0	9.0
FUND SOURCE:						
TOTAL	36.0	36.0	36.0	36.0	36.0	36.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

See attached

Prepared By: Tracy L. McGill Phone: 465-2313
 Division: Administrative Services Date: 3/2/92
 Approved by Commissioner: Darrel J. Rexwinkel
 Agency: Department of Revenue Date: 3/2/92

Distribution (By preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Leg. Ctr., & Impacted Agency(ies).

HB 328 Fiscal Note Funding Analysis

Component	Component Number	Gen Fund	GF PGM	GF Match	Fed Funds	PFDF Funds	Total Funds
Child Support Enforcement	0111			1.0	2.0		3.0
Income and Excise Audit	0113	12.0					12.0
Oil and Gas Audit	0115	6.0					6.0
Alcohol Beverage Control	0100		3.0				3.0
Treasury Management	0121	3.0					3.0
Permanent Fund Dividend	0981					9.0	9.0
Total by Funding Source		21.0	3.0	1.0	2.0	9.0	36.0

7-LS1317D
Bannister
2/3/92

CS FOR HOUSE BILL NO. 328 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the notice and public comment requirements for the adoption,
2 amendment, and repeal of regulations."

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

4 • Section 1. AS 44.62.200(b) is amended to read:

5 (b) A regulation that is adopted, amended, or repealed may vary in content from the
6 summary specified in (a)(3) of this section if the subject matter of the regulation remains the
7 same and the [ORIGINAL] notice was written so as to assure that members of the public are
8 reasonably notified of the proposed subject of agency action in order for them to determine
9 whether their interests could be affected by agency action on that subject.

10 • Sec. 2. AS 44.62 is amended by adding a new section to read:

11 Sec. 44.62.215. SUPPLEMENTAL NOTICE AND PUBLIC PROCEEDINGS.
12 Notwithstanding AS 44.62.200(b), if a state agency rewrites a proposed regulation, amendment
13 of a regulation, or order of repeal after the agency has complied with AS 44.62.190, 44.62.200,
14 and 44.62.210, and if the rewriting is a significant change in the substance of the regulation.

1 amendment, or order, the agency shall provide notice and opportunity for public comment under
2 AS 44.62.190, 44.62.200, and 44.62.210 for the rewritten regulation, amendment, or order of
3 repeal. This section does not apply to

4 (1) regulations adopted by the Board of Fisheries or the Board of Game;

5 (2) emergency regulations;

6 (3) regulations that must meet federally mandated deadlines.

7 • Sec. 3. This Act does not apply to the adoption, amendment, or repeal of a regulation, unless the
8 adoption, amendment, or repeal is begun under AS 44.62.180 - 44.62.290 on or after the effective date
9 of this Act.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 5, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:
 HCR 16 - Relating to Bone Marrow Donor Week
 HB 327 - Relating to Primary Elections
 HB 301 - Relating to Regular Legislative Sessions
 HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Elizabeth Ziegler	Elections					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 404
Deborah Behr	Law	Dept of Law P.O. Box K, Juneau	99801	7	465-3600	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 329
Larry Martin	Leg.					<input checked="" type="radio"/> Y <input type="radio"/> N	HB 301
Ann Bondreant	occ. LIC.	Commerce				<input type="radio"/> Y <input checked="" type="radio"/> N	
JOAN GARVINÉ	LAW	PO BOX Y JUNO	99801		465-3600	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327 HB 327
Bob Casey	Leg. Affairs	P.O. Box Y Juneau	99801		2450	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 327
						<input checked="" type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: January 27, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 301 - Relating to Regular Legislative Sessions
- *HB 328 - Relating to Public Comment on Proposed Regulations
- *HB 371 - Relating to Credited Service for Seasonal Employees

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Deborah Behr	Dept of LAW	P.O. Box R Juneau AK	99801		465-3600	<input checked="" type="radio"/>	<input type="radio"/>	HB 328
						<input type="radio"/>	<input checked="" type="radio"/>	
BOB STALWAKER	DIV. OF RETIREMENT	P.O. BOX CR JUNEAU		447	4470	<input checked="" type="radio"/>	<input type="radio"/>	HB 371
Laird A. Jones	ADFC- Div. of Bds	Po Box 25526 Juneau AK	99802 5526	48	4116	<input checked="" type="radio"/>	<input type="radio"/>	HB 328
						<input type="radio"/>	<input type="radio"/>	
						<input type="radio"/>	<input type="radio"/>	
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House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 12, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

HCR 16 - Relating to Bone Marrow Donor Week
 SCR 29 - Relating to Bone Marrow Donor Week
 HB 61 - Relating to Child Care

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
Rod Moline	REACH	P.O. Box 34197	99803	3-3526	9-7673	(Y) N	HB 324
Joe Ambrose	REP TAYLOR			4906		IF NEEDED (N)	HB 61
Donald Gull, Esq.	REACH	P.O. Box 34104	99803	42664	3-4441	(Y) N	HB 327
Deborah Behr	Dept of LAW	P.O. Box K, Juneau, P.E. Box 026 AK	99803		465-3300	(Y) N	HB 328
						Y N	
						Y N	
Wendie Smith		lunch 99517 3710 Woodland	99517		248-4777	Y N	HB 324
Stephen Morrison		lunch 2220 Nichols St	99508		271-1667	Y N	HB 324
						Y N	
						Y N	
						Y N	

C.



House State Affairs Committee

Representative Gene Kubina, Chair

DATE: February 12, 1992

PLACE: Capitol Room 102

SUBJECT OF MEETING:

- *HB 324 - Relating to Disabled Bidder Procurement
- *HCR 46 - Relating to Disabled American Veterans Day
- HB 327 - Relating to Primary Elections
- HB 328 - Relating to Public Comment on Proposed Regulations

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?		WHAT SUBJECT/ WHICH BILL?
Tom Wright	Spec. Comm. on Military & Vet Affairs	CAPITOL, RM 405 JUNEAU	99801		4527	<input checked="" type="radio"/> Y	<input type="radio"/> N	HCR 46
Anne McLeod	DOA	7th floor, SOB	99801		2250	<input type="radio"/> Y	<input checked="" type="radio"/> N	HB 61 HB 324
V Debraan Pettv	DOA GEN SV	# 504 110210 7th floor SOB	99801		2250	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 61 if needed HB 324
Stan Ridgeway	Loc Reps	501 W 10th St Suite 200	99801		2814	<input checked="" type="radio"/> Y	<input type="radio"/> N	HB 329
Dr. Bill Stoltze	Senator	Capitol Room 11			3711	<input checked="" type="radio"/> Y	<input type="radio"/> N	SJR 29
Robert Bartholomew	DOT IPF	3132 Channel Dr			3911	<input checked="" type="radio"/> Y	<input checked="" type="radio"/> N	HB 324
						<input type="radio"/> Y	<input type="radio"/> N	
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H B

3 3 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

Bill Number: HB 332
(to be published Date: 5/16/91)

Revision DMM: _____ Department Assigned: Dept. of Administration
Title: An Act relating to the Alaska Public Offices Commission BRU: Alaska Public Offices Commission
Requestor: DEPT. OF ADMINISTRATION Component: _____
Requestor: Governor William W. Wasko COMPONENT SERIAL NO. [] [] [] [] [] [] [] []

Expenditures/Revenue: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
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	0	0	0	0	0

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	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.)
There will be no fiscal impact.

Prepared by: Karen Burman, Legislative Director Phone: (907) 276-4276
Division: Alaska Public Offices Commission Date: 4/15/91

Approved by Commissioner: Jane Rabike, Alaska Public Offices Commission
Agency: Alaska Public Offices Commission Date: 4/15/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Recipient, OMB, & Impacted Agency(ies).
Rev 10/90 Page 1 of 1

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 16, 1991

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Speaker Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to reporting and disclosure requirements under the laws administered by the Alaska Public Offices Commission (APOC).

The bill has three main components: it amends the Alaska Campaign Disclosure Law, AS 15.13, the Regulation of Lobbying Law, AS 24.45, and the Conflict of Interest Law, AS 39.50. In doing so, it would raise certain thresholds of reporting, exempt certain persons and entities from filing, and simplify reporting requirements for lobbyists and persons who engage the services of a lobbyist.

The bill would raise the reporting thresholds under the Campaign Disclosure and Conflict of Interest laws. Campaign disclosure thresholds that trigger reporting of the names, occupations, and employers of contributors to a candidate or group and establish limits for cash contributions and expenditures would be raised from \$100 to \$250. Sections 1, 2, 4, and 5. More than a decade has passed since the Campaign Disclosure Law was adopted, and these amendments would raise thresholds to reflect inflation during this period. The changes would also provide campaigns with more flexibility in collecting and spending money.

The threshold for a public official to report sources of income on a conflict of interest statement would be raised from \$100 to \$1,000. This change would apply to all sources of income except gifts. Section 12. The change would take into account the inflation rate and require disclosure at a more reasonable level. This change would also eliminate reporting of minor income sources. A \$1,000 threshold would be required before a public official was required to report the identity of a trust or other fiduciary relation in which the person, spouse, or dependents

held a beneficial interest. Section 12. Additionally, the threshold for reporting loans and indebtedness on a conflict of interest statement would be raised from \$500 to \$1,000. Section 12. Language in AS 39.50.030(a) regarding the contents of a conflict of interest statement is deleted in sec. 11 of the bill. AS 39.50.030(b) specifies the information that must be included in a statement, making the language in subsec. (a) confusing and unnecessary.

The bill would provide exemptions from the Campaign Disclosure and Conflict of Interest reporting requirements. Campaigns that receive contributions and make expenditures of less than \$1,000 would be exempted from the reporting requirements of AS 15.13.040. Section 1. Accrued expenditures (defined as expenses incurred but not yet paid) that cumulatively total \$1,000 or less per payee would not have to be reported unless they were not paid within 90 days. Section 3. The bill would decrease the number of municipalities and boroughs subject to the conflict of interest reporting requirements by exempting any municipal officer in a municipality with a population of 1,000 or less from filing a conflict of interest statement. Section 13.

The bill amends the Campaign Disclosure law to eliminate the filing of 10-day post-election reports. Section 14. The 10-day reports usually cover a limited segment of a campaign's financial transactions and reveal activity that would be disclosed on the next required report.

The bill's changes to the Regulation of Lobbying law would eliminate the requirement of disclosure relating to exchanges between lobbyists and bona fide business entities owned or controlled by public officials. Section 14. Very few, if any, lobbyists report under this section and it does not generally constitute an area where a great element of influence is used.

The reporting requirements for persons who retain, employ, or contract for the services of a lobbyist would be simplified. A person would have to sign the lobbyist registration statement to verify the employment rather than be required to file a separate employer report. Section 8. A person who engages the services of a lobbyist would file an annual report 30 days after all lobbying activities are terminated or during the month following the fourth quarter of the calendar year, whichever occurs first, rather than filing the quarterly reports presently required under the law. Sections 9 and 10.

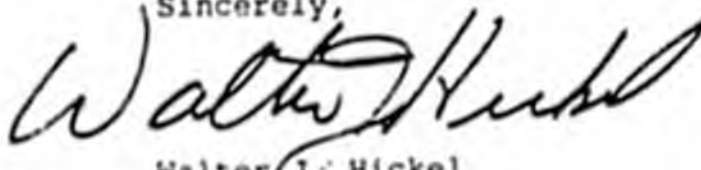
Summaries of the statements and reports of lobbyists would be prepared, published, and made available semi-annually rather than quarterly. Section 6. The lobbyist directory would be made available to the public and public officials but would no longer

be distributed to the Office of the Lieutenant Governor and the legislative reference library. The current provision that allows a lobbyist's photograph to be voluntarily submitted with the lobbyist's registration form is repealed in the bill, and the requirement that the APOC publish such photographs in the lobbyist directory is deleted. Sections 7 and 14. Further, the APOC would be required to notify only elected legislators of the standards of conduct contained in AS 24.60 as opposed to the present requirement to notify all candidates running for the legislature.

Finally, the changes in the bill would eliminate the need for a filer to report on a conflict of interest statement his or her parent's contracts with the state or the parent's natural resources leases. Section 12. It would require full disclosure if the public official has an interest in a partnership or professional corporation contracting with the state. Section 12. It would also require a filer to disclose the interest of a spouse in any natural resources lease. Section 12. The changes would eliminate reporting requirements of a filer's parents' interest and make the law consistent regarding disclosure of a spouse's interest. The bill also contains several other minor changes which would permit the agency to operate more effectively.

I urge your prompt and favorable action on this measure.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter J. Hickel". The signature is written in a cursive, flowing style with a large initial "W".

Walter J. Hickel
Governor

STATE OF ALASKA
1992 LEGISLATIVE SESSION

BILL NO. HB 882

Revision Date: December 3, 1991
 Title: An Act relating to reporting and disclosure requirements under various APOC laws
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Alaska Public Offices Commission
 Component: Alaska Public Offices Commission

COMPONENT SERIAL NO.

0	0	7	0
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
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	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE: Fund Source	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER FUND SOURCE: Fund Source	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: 0

ANALYSIS: (Attach a separate page if necessary.) There will be no fiscal impact

Prepared by: Jim Kench, Assistant Director
 Division: Alaska Public Offices Commission

Phone: (907) 275-4176
 Date: December 2, 1991

Approved by Commissioner: Nancy Bear Utter
 Agency: Administration

Date: 1/30/92

Distribution (by preparer): Leg. Fin., Legislative Sponsor, Requestor, OMB/DBR, Gov. Legs. Ctr., & Impacted Agency(ies)

BILL ANALYSIS

HB 332

This bill amends the Campaign Disclosure Law, AS 15.13 (Sections 1-5), the Regulation of Lobbying Law, AS 24.45 (Sections 6-10) and the Conflict of Interest Law, AS 39.50 (Sections 11-13). In so doing, it would raise certain thresholds of reporting, exempt certain persons and entities from filing and simplify some reporting requirements. This would facilitate filing by those subject to the law, reduce APOC's statutory requirements but retain the public interest in disclosure of information under the three laws.

CAMPAIGN DISCLOSURE

Section 1 and 2. AS 15.13.040(a). The bill raises the threshold of individual campaign contributions to be reported by candidates and groups from those over \$100 to over \$250 and eliminates reporting requirements for state or municipal candidates who do not receive or spend more than \$1,000 during a campaign for office.

Section 3. AS 15.13.040. Accrued expenditures, defined as expenses incurred but not yet paid, that cumulatively total \$1,000 or less per payee would not be reported unless they were not paid within 90 days.

Section 4 and 5. AS 15.13.070(b)(c). This raises the threshold for allowable cash contributions or expenditures from over \$100 to over \$250.

LOBBYING

Section 6. AS 24.45.031(b). This section would limit APOC's publication of lobbying activity summaries to twice a year instead of five times a year.

Section 7. AS 24.45.041(e). This would delete reference to the inclusion of a photograph of a lobbyist in the published directory. Copies would not be available to the public through the Lieutenant Governor's office or Legislative Reference Library.

Section 8. AS 24.45.061(a). The bill requires an employer of a lobbyist to sign the lobbyist's registration statement verifying employment instead of filing a separate statement.

Section 9 and 10. AS 24.45.061(b), AS 24.45.081. This bill reduces the number of reports filed by an employer of a lobbyist from four to one per year and sets a filing deadline.

CONFLICT OF INTEREST

Section 11 and 12. AS 39.50.030(a)(b). This bill: eliminates unnecessary language about assets and liabilities under \$500; raises the reporting threshold on sources of income from over \$100 to over \$1000, except for gifts which must be reported if over \$1000; establishes a threshold value of greater than \$1000 for reporting a beneficial interest in a trust; and increases the threshold of reportable loans from more than \$500 to more than \$1,000. Reporting requirements for state contracts and natural resource leases are made consistent and the filer is no longer required to report his or her parents' contracts or leases.

Section 13. AS 39.50. Municipal officers in a municipality with less than 1000 population would be exempted from filing Conflict of Interest Statements.

MISCELLANEOUS

Section 14. This section: a) eliminates the 10 day post election campaign report requirement for state and municipal candidates; b) eliminates the optional submission of a photograph by a lobbyist for the published directory; c) eliminates a lobbyist's requirement to report a business entity owned or managed by public officials with which the lobbyist has done business; d) eliminates from the lobbying law the requirement that civic organizations report contributions over \$100; e) eliminates mailout of AS 24.60 Standards of Conflict of Conduct to candidates for the legislature.

Section 15 establishes an effective date for this bill.

HH BB

3148

The Governor's transmittal letter, dated May 19, 1991, appears below:

"Dear Speaker Crussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would authorize the state to provide group life and health insurance for its employees by means of self-insurance.

Over the last several years, it has become clear that the state must act to contain the cost of its employee health benefits. The state has considered self-insurance, but the current statute, AS 39.30.090, does not authorize it. See 1989 Inf. Op. Att'y Gen. (March 14; 66J-89-230). This legislation is proposed to permit the state to self-insure, thereby increasing its flexibility in addressing the cost of group life and health insurance for its active employees.

The bill also authorizes self-insurance administrative costs to be paid from the group health and life benefits fund, and makes clear that the administrative costs of purchasing insurance are also to be paid from the fund.

Among the potential beneficial effects of self-insurance are (1) the reduction or elimination of insurance charges, (2) positive control of the medical plan by the state (including the use of incentive programs) rather than by the commercial insurance market, and (3) increased competition from medical benefits providers, which could result in decreased premiums and administrative costs.

We believe that this bill will significantly increase the ability of the state to keep the cost of employee benefits under control, and increase as well the state's bargaining power when it negotiates with its insurers. In view of its importance to approaching reviews of insurance policy renewal proposals, we urge your prompt and favorable action on this measure.

Sincerely,

/s/

Walter J. Hickel
Governor"

MEMORANDUM

State of Alaska
Department of Law

TO: Honorable John Andrews
Commissioner
Department of Administration

DATE: March 14, 1989
FILE NO: 663-89-0230
TEL NO: 465-3600
SUBJECT: Authority for self-
insurance and cafeteria
plan

FROM:

Virginia B. Ragle
Virginia B. Ragle
Assistant Attorney General
Governmental Affairs-Juneau

You have asked whether the Department of Administration (the department) has authority to provide group health insurance coverage for state employees by self-insuring or through cafeteria plan policies. There is no clear statutory authority for the department to provide the coverage by self-insuring. We recommend that legislation be introduced, or that a pending bill be amended, to establish authority for self-insurance, if the department chooses to pursue that method of providing group health coverage. We conclude that the department currently has authority to obtain a policy that provides insurance coverage through a cafeteria plan. However, depending upon how the cafeteria plan is implemented, regulatory and statutory changes may be required.

I. Self-insurance

The department is authorized by AS 19.30.090 to provide group insurance for employees. Under that statute, the department may obtain a policy or policies of group insurance for state employees, retirees, and employees of other participating governmental units. The statute sets out the kinds of coverage that may be provided in a policy, the persons who must be covered by a policy (unless exempt under regulations), and the manner in which the department must obtain the policy from insurance carriers.

The statute neither specifically prohibits nor specifically authorizes provision of group health coverage through self-insurance. However, the statute includes mandatory language such as, "The Department of Administration shall obtain the insurance policy from any insurer authorized to transact business in the state," and also requires that an opportunity to bid to provide the insurance benefits be made available to insurance carriers at least every five years. These provisions indicate that the legislature contemplated that liability for group coverage for state employees would be insured under policies obtained from insurance companies, with rates established competitively.

Hon. John Andrews, Commissioner
Department of Administration
663-89-0230

March 14, 1989
Page #2

AS 39.30.095 requires the commissioner of administration to establish a group health and life benefits fund. The language of AS 39.30.095 does not clearly authorize self-insurance. Although this statute provides that the department shall pay premiums and claims from the fund, the department is required to make the payments in accordance with insurance policies in effect under AS 39.35.090 and under the Supplemental Benefits System (SBS).

Legislative history does not shed much light on the purpose of AS 39.30.095. We have traced the origin of that section to "housekeeping" legislation requested by the department in 1980. Dept. of Law file no. J-77-054-81. The department explained that the fund would

eliminate the advantage the insurance company now has to the interest earned from the funds it holds. The language is permissive rather than mandatory; the state could still allow the insurance company to hold the funds. (1/)

The section-by-section analyses that accompanied the bills in which the provisions of AS 39.30.095 appeared during the 1981 and 1982 legislative sessions (HB 121, SB 121, and SB 827) explained that the section was

included at the urging of the State's benefits consultants. The existence of a fund will provide the flexibility needed to negotiate for and procure more favorable terms from insurance companies. Our consultants inform us that such added flexibility has led to substantial savings in other systems.

The private consultants have advised us that it was their intention that in recommending establishment of the fund, in addition to earning interest on the fund, the state would gain the flexibility to self-insure. The consultants' initial recommendation of language for the section included specific reference to self-insurance. However, no such specific reference was included in any draft of the bills that we have found. Furthermore, the section was not explained to the legislature as having the effect of authorizing self-insurance. In testimony to legislative committees, representatives of the division of retirement and benefits

1/ October 30, 1980 memorandum from Director of Administrative Services Crondahl to Commissioner Hudson.

included the section with provisions of the bills that were characterized as "strictly housekeeping." 2/

Because the statutes provide for provision of group health coverage through policies obtained from insurance companies and there is no specific authorization for provision of group health coverage by self-insurance, or even an indication that the legislature ever considered self-insurance as an option, we recommend that legislation be pursued to provide specific authority for alternatives to conventional insured plans, such as self-insurance. We note that last year the Washington legislature passed legislation, known as the Washington State Health Care Reform Act of 1988, which includes specific authority for self-insurance of state employee health benefits. A copy of the Washington statutes, RCW 41.05, is enclosed.

II. Cafeteria plan

There are no provisions in AS 39.30.090 that prescribe the level of health insurance coverage that must be provided in the policy or policies obtained by the department, the amount of deductible that a policy may require covered individuals to pay, or the manner in which premiums to insurance companies must be paid. The department has broad authority to determine the terms and structure of the insurance policies it obtains. 3/ Provision of health insurance coverage under a "cafeteria plan" qualified under 26 U.S.C. 125 would be within the scope of that authority, and would not conflict with any provision of AS 39.30.090. 4/

2/ March 18, 1982 testimony of Director Paul Arnoldt on SB 827 to Senate State Affairs Committee; May 12, 1982 testimony of Deputy Director Ken Humphreys on SB 121 to House Health, Education, and Social Services Committee.

3/ Of course, some issues regarding employee health benefits are subject to collective bargaining under the Public Employment Relations Act, AS 23.40.070 -- 23.40.260. See 1978 Op. Att'y Gen. No. 3 (Jan. 23); 1988 Inf. Op. Att'y Gen. (Jan. 1; 366-356-83).

4/ The advantage of such a plan is that, if any of the benefit options offered by the plan require payment of part of the premium by the employee, the employee's part of the premium could be paid by a voluntary reduction of pretax wages, which would reduce the employee's federal income taxes. Nothing in AS 39.30.090 precludes the department from offering insurance options that require employees to contribute to premiums.

Hon. John Andrews, Commissioner
Department of Administration
663-89-0230

March 14, 1989
Page #4

Depending upon how the department chooses to implement the cafeteria plan, regulatory and statutory changes may be needed. For example, since AS 30.30.090 requires the group policy to cover state employees, their spouses, and their dependent children unless exempt under regulation, if the plan allows an employer to elect individual or family coverage, a regulation must be adopted to permit exemption of coverage for family members upon election by the employee.

Some mention has been made of a plan that would allow employees to choose between receipt from the state of cash or of various levels of health insurance coverage. Cash received by employees from the state under the plan would constitute taxable income under the Internal Revenue Code. If this kind of provision is included in a cafeteria plan chosen by the department, statutory changes may be needed to clarify that cash received under the plan does not constitute "compensation" for purposes of determining employees' contributions to the state's retirement systems or SBS or determining the amount of employees' retirement benefits. Legislative authorization may also be needed to allow cash to be paid under the cafeteria plan to state employees who are subject to the state pay plan under AS 39.27.

Please let us know if we can provide further advice in this matter.

VBR/pjg

Enc.

cc: Sally Smith, Director
Division of Retirement and Benefits
Department of Administration

Department of Administration

HB 348 Sectional Analysis

February 14, 1992

"An Act relating to the provision of group life and health insurance for state employees by means of self-insurance; and to payment of administrative costs of providing group health and life insurance for state employees."

Section 1. Current law requires DOA to obtain health coverage from an insurance company or HMO licensed in Alaska.

The proposed language extends the "licensed in Alaska" requirement to the procurement of excess loss insurance. Excess loss insurance is commonly used in self-insurance situations.

Section 2. Current law requires the State to request bids from Alaska licensed insurance carriers for health coverage at least every five years and that the carrier with the lowest responsible bid shall be the winning bidder.

The proposed language would mandate the same five year bid cycle and "licensed in Alaska" requirement for excess loss coverage procured in the event of self insurance.

Section 3. Current law requires the health insurance benefits to be provided by insurance companies as outlined in Section 2.

The proposed language authorizes DOA to self-insure health insurance benefits as an alternative to using insurance companies. The language also requires that any excess loss coverage be procured the same as health insurance.

Section 4. AS 39.30.095

(a) Current law establishes the group health and life benefits fund as a special account in the general fund to provide carrier insured health and life coverage. Current language describes what money the fund shall consist of and requires the commissioner of administration to maintain accounts and records for the fund. Inasmuch as payment of premium has been made directly to insurance carriers, this fund has not been used. However, it would be necessary under a self-insurance arrangement.

Proposed language would expand the purposes of the fund to include self-insurance arrangements.

(b) Current law requires the commissioner to obtain an actuarial determination of the estimated cost of the insured coverages and to set the contribution rate to the fund for both employer and employee. The current language further requires that premiums and claims for carrier insured benefits be paid with money in this fund.

The proposed language broadens the kinds of payments that can be made from the fund to include self-insurance arrangements. The proposed language would also allow administrative costs of the health program to be paid from the fund.

(c) Current law allows the State to receive reimbursement of its administrative expenses from insurance carriers.

The proposed language would allow the department to contract with a third party administrator to pay claims and payments. A third party administrator is normally used in a self-insurance situation.

(d) Current law allows the commissioner to have the surplus of the fund or some part of it invested by the commissioner of revenue.

The proposed language would allow administrative costs to be included in the makeup of the fund when determining whether a surplus existed. This fund would become more relevant if the State were to implement self-insurance.