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2007-1996

10071 SENATE JUDICIARY

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SSSB 5

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to the crime of misprision of BRU Administration and Operations
felony. Component All
 Sponsor Senator Pearce
 Requester Senate Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: ***

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SSSB 5 would make witnessing the commission of a felony or having knowledge of the actual commission of a felony by another person a crime punishable as a C felony (up to 5 years incarceration) or an A misdemeanor (up to 1 year incarceration) if not reported immediately.

Based on discussions with the Department of Law, we were unable to estimate the impact for the Department of Corrections. While quite certain there will be an impact, DOC will have to evaluate the costs after some time has passed and the number of cases per year and their sentences can be evaluated. Therefore, DOC is submitting an indeterminate fiscal at this time.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/2/99 3:59 PM
 Approved by Commissioner Margaret M. Pugh Date 2/2/99
 Agency Department of Corrections

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2/25/99*

CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

**Offered:
Referred:**

Sponsor(s): SENATOR PEARCE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the crime of misprision or felony."**

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

3 *** Section 1.** AS 11.56 is amended by adding a new section to read:

4 **Sec. 11.56.765. Misprision of felony.** (a) A person, other than the victim,
5 commits the crime of misprision of felony if the person witnesses the commission by
6 another of murder in the first degree, murder in the second degree, kidnapping, sexual
7 assault in the first degree, sexual abuse of a minor in the first degree, or arson in the
8 first degree or has knowledge of the actual commission by another of murder in the
9 first degree, murder in the second degree, kidnapping, sexual assault in the first degree,
10 sexual abuse of a minor in the first degree, or arson in the first degree and does not
11 in a timely manner report that crime to a peace officer or law enforcement agency.

12 (b) In a prosecution under this section,

13 (1) it is an affirmative defense that the defendant did not report in a
14 timely manner because the defendant reasonably believed that doing so would have
15 exposed the defendant to a substantial risk of physical injury;

L

- 1 (2) the state does not have to prove that the defendant knew the degree
- 2 of the crime not reported.
- 3 (c) Misprision of felony is a class A misdemeanor.

ALASKA PUBLIC DEFENDER AGENCY

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FAX

TO: Sen. Drue Pearce
Fax No.: 465-3872

Sen. Robin Taylor
Fax No.: 465-3922

FROM: Blair McCune, Deputy Public Defender 

RE: SB 5 - Misprison of Felony

DATE: February 10, 1999

=====

I wanted to send down some more information about this bill. I sent some materials down just before the last hearing. (I'm sorry I did not send this material directly to Sen. Pearce in advance of the last hearing. I was really busy and have to admit that I only did the research the morning of the hearing.)

As I said last time, I think that a problem with the bill will be how it interacts with the privilege against self-incrimination. (5th Amendment, U.S. Constitution; Art. I, § 9, Alaska Constitution) A defendant who has any "reasonable possibility" of being criminally responsible for the felony has a privilege to refuse to report as required by the bill. It seems unfair that someone in cahoots with the felon has a privilege to refuse to report, but someone who has nothing to do with it can get into trouble.

There was also some discussion about what current statutes might cover failing to report a felony. The statute that comes to my mind is Hindering Prosecution, AS 11.56.770. I have attached a copy. I think that is a broad statute that covers a lot of activity. Also, Alaska's accomplice, solicitation, and conspiracy statutes are broadly written. People who associate themselves with

criminal activity can be (and are) convicted under these statutes. AS 11.16.110 (Accomplice statute -- Legal accountability based on conduct of another); AS 11.31.110 (Solicitation); and AS 11.31.120 (Conspiracy).

Because of these statutes, I do not think an Alaska prosecutor would necessarily throw up her hands like the Nevada prosecutor did in the recent case involving the murder of the 7 year old girl. As I understand it from the press reports, the young man who knew about the child being killed helped the other young man drive back to California. "Rendering assistance" in this way could easily violate Alaska's Hindering Prosecution statute.

I believe that there was a similar case recently in Alaska in which the Dept. of Law did find a way of prosecuting individuals who were only peripherally involved in a serious crime. The Public Defender Agency represented the young man who was convicted of murder in shooting the school principal and another student in Bethel. We did not represent the other young men, but I understand from reading the newspapers that two young men were prosecuted on the theory that they aided or encouraged or conspired with the defendant in the murder case even though they did not directly participate in the shooting.

Finally, Sen. Taylor noted a passage from the materials I sent down about the difference between the moral and criminal laws that cover situations like this. That reminded me of a famous law review article by Justice Oliver Wendell Holmes on this subject just over 100 years ago. Justice Holmes made the following observation about what he saw as the limitations of the law:

I do not say that there is not a wider point of view from which the distinction between law and morals becomes of secondary or no importance ... But ... If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.

Oliver W. Holmes, The Path of the Law, 10 Harv. L. Rev. 457, 459 (1897)

I think, in the 100 years since this article was written, rightly or wrongly, we've moved quite a ways away from Justice Holmes' theory of the law.

Citation/Title

AK ST § 11.56.770, Hindering prosecution in the first degree

4313 Alaska Stat. § 11.56.770

WEST'S ALASKA STATUTES
TITLE 11. CRIMINAL LAW
CHAPTER 56. OFFENSES AGAINST PUBLIC ADMINISTRATION
ARTICLE 5. OBSTRUCTION OF PUBLIC ADMINISTRATION

Current through 1998 2nd Reg. Sess. and 1st Sp. Sess.

§ 11.56.770. Hindering prosecution in the first degree

(a) A person commits the crime of hindering prosecution in the first degree if the person renders assistance to a person who has committed a crime punishable as a felony with intent to

(1) hinder the apprehension, prosecution, conviction, or punishment of that person; or

(2) assist that person in profiting or benefiting from the commission of the crime.

(b) For purposes of this section, a person "renders assistance" to another if the person

(1) harbors or conceals the other person;

(2) warns the other person of impending discovery or apprehension;

(3) provides or aids in providing the other person with money, transportation, a dangerous instrument, a disguise, or other means of avoiding discovery or apprehension;

(4) prevents or obstructs, by means of force, threat, or deception, anyone from performing an act which might aid in the discovery or apprehension of the other person;

(5) suppresses by an act of concealment, alteration, or destruction physical evidence which might aid in the discovery or apprehension of the other person; or

(6) aids the other person in securing or protecting the proceeds of the crime.

(c) Hindering prosecution in the first degree is a class C felony.

Search this disc for cases citing this section.

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Senator Pearce
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

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FEB 22 1999

Ans'd.....

Dear Senator Pearce,

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse SB 5.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau

State President

Alaska Peace Officers Association

SUBSTANTIVE CRIMINAL LAW

Criminal Practice Series

By

WAYNE R. LaFAVE

David C. Baum Professor of Law and
Professor in the Center for Advanced Study,
University of Illinois

and

AUSTIN W. SCOTT, JR.

Late Professor of Law,
University of Colorado

Volume 2

Sections 6.1 to End

APPENDICES—TABLES—INDEX

ST. PAUL, MINN.
WEST PUBLISHING CO.
1986

information in certain circumstances.⁶⁶ Some other states include aid in the nature of securing the proceeds of the crime,⁶⁷ while several other states instead follow the Model Penal Code approach⁶⁸ by making activity of that general type the separate offense of aiding consummation of crime.⁶⁹

The great majority of these statutes do not give special attention to aid given to a family member. Some, however, recognize an exception in the case of aid given to a relative.⁷⁰ A few others strike a compromise by providing that the fact the person aided was a relative reduces the grade of the aider's offense.⁷¹



WESTLAW REFERENCES

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→ (b) **Misprision of Felony.**⁷² Misprision of felony consisted of a failure to report or prosecute a known felon.⁷³ It was sometimes said also to include a failure to prevent the commission of a felony,⁷⁴

§ 710-1028; Mc.Rev.Stat. Ann. tit. 17-A, § 763; Vernon's Ann. Mo. Stat. § 575.030; Mont. Code Ann. 45-7-303; Neb. Rev. Stat. § 28-204; N.H. Rev. Stat. Ann. 642:3; N.J. Stat. Ann. 2C:29-3; N.Y.—McKinney's Penal Law § 205.60; Or. Rev. Stat. 162.325; Utah Code Ann. 1963, 76-8-306; West's Rev. Code Wash. Ann. 9A.76.050; Wyo. Stat. 1977, § 6-5-201.

60. Ark. Stats. § 41-2805; Iowa Code Ann. § 719.3; Neb. Rev. Stat. § 28-204; N.J. Stat. Ann. 2C:29-3; N.D. Cent. Code 12.1-08-03; Pa. Cons. Stat. Ann. tit. 18, § 5105.

67. Alaska Stat. 11.56.770; Conn. Gen. Stat. Ann. § 53a-165; Del. Code tit. 11, § 1244; Mc.Rev. Stat. Ann. tit. 17-A, § 763; N.J. Stat. Ann. 2C:29-3; N.Y.—McKinney's Penal Law § 205.60; Or. Rev. Stat. 162.325.

68. Model Penal Code § 242.4.

69. Ariz. Rev. Stat. § 13-2408; Ark. Stats. § 41-2806; Hawaii Rev. Stat. § 710-1018; Neb. Rev. Stat. § 28-205; N.H. Rev. Stat. Ann. 642:4; N.D. Cent. Code 12.1-08-04; Pa. Cons. Stat. Ann. tit. 18, § 5107.

70. Ala. Code 1975, § 13A-10-44 (spouse, parent, child, sibling); West's Fla. Stat. Ann. § 777.03 (spouse, parent, child, sibling, grandparent, grandchild); West's Ann. Ind. Code 35-44-3-2 (spouse, parent, child); Iowa Code Ann. § 703.3 (spouse); Minn. Stat. Ann. § 609.495 (spouse, parent, child); N.M. Stat. Ann. 1978, § 80-22-4 (spouse, parent, child, sibling, grandparent, grandchild); Va. Code 1950, § 18.2-19 (spouse, parent, child, sibling, grandparent, grandchild); Wis. Stat. Ann. 940.47 (spouse, parent, child, sibling, grandparent,

grandchild); Wyo. Stat. 1977, § 6-5-201 (misdemeanor aid only; parent, child, spouse, sibling, grandparent, grandchild).

71. Ark. Stats. § 41-2805 (spouse, parent, child, sibling); N.J. Stat. Ann. 2C:29-3 (spouse, parent, child); West's Rev. Code Wash. Ann. 9A.76.080 (spouse, parent, child, sibling, grandparent, grandchild); Wyo. Stat. 1977, § 6-5-201 (felony; parent, child, spouse, sibling, grandparent, grandchild).

72. See Allen, *Misprision*, 76 L.Q. Rev. 40 (1962); Glazebrook, *Misprision of Felony—Shadow or Phantom?*, 8 Am. J. Legal Hist. 189, 293 (1964); Glazebrook, *How Long Then is the Arm of the Law to Be?*, 25 Mod. L. Rev. 301 (1962); Goldberg, *Misprision of Felony: An Old Concept in New Context*, 52 A.B.A.J. 148 (1966); Howard, *Misprisions, Compoundings and Compromises*, 1959 Crim. L. Rev. 750 (1959); Yahuda, *Misprision of Felony*, 106 Sol. J. 124 (1962); Comment, 28 U. Fla. L. Rev. 199 (1975).

73. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923). *Popo v. State*, 38 Md. App. 520, 382 A.2d 880 (1978), affirmed in part, reversed in part 284 Md. 309, 390 A.2d 1054 (1979), states that for a misprision conviction the necessary elements are: (1) knowledge of the felony; (2) a reasonable opportunity to disclose without risk of harm; and (3) concealment of the felony, but that prior conviction of the felon is unnecessary.

74. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923).

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although this view appears to be erroneous.⁷⁵ One was not guilty of this common law misdemeanor if he was accountable for the felony as either a principal or accessory before the fact.⁷⁶

It is doubtful whether this offense ever had a meaningful existence beyond the textbook writers.⁷⁷ The offense was said to be "practically obsolete" in England almost a century ago,⁷⁸ and the few prosecutions in that country in recent years have been limited to the most extreme situations.⁷⁹ Doubt has been expressed as to whether this offense was ever inherited by the United States as a part of the common law.⁸⁰ While "it may be the duty of a citizen to accuse every offender, and to proclaim every offense which comes to his knowledge, . . . the law which would punish him in every case for not performing this duty is too harsh for man."⁸¹

In virtually all of the modern recodifications, a misprision statute has not been included.⁸² There is a misprision of felony statute in the United States Code,⁸³ but it is not a true misprision statute in that it requires an act of concealment in addition to failure to disclose.⁸⁴ Even this statute has fallen into disuse,⁸⁵ and would be eliminated from the

75. G. Williams, *Criminal Law: The General Part* 422 (2d ed. 1961).

76. 1 J. Bishop, *Criminal Law* § 717 (9th ed. 1923). Cf. *State v. Caroon*, 274 S.C. 316, 262 S.E.2d 918 (1980) (no self-incrimination defense to misprision charge unless defendant was an accessory to or principal in the felony concealed).

77. Glazebrook, *supra* note 72.

78. 2 J. Stephen, *History of the Criminal Law of England* 238 (1883).

79. E.g., *Sykes v. Director of Public Prosecutions*, [1961] 3 All E.R. 93, involving the failure to disclose knowledge of the theft of pistols, submachine guns and ammunition.

80. *Marbury v. Brooks*, 20 U.S. 558, 5 L.Ed. 522 (1822) (dictum); *Holland v. State*, 302 So.2d 808 (Fla.App.1974); *Pope v. State*, 284 Md. 309, 396 A.2d 1954 (1979); *People v. Lefkowitz*, 294 Mich. 263, 293 N.W. 642 (1940); 54 *Harv.L.Rev.* 506 (1941). But see *State v. Carson*, 274 S.C. 316, 262 S.E.2d 918 (1980) (common law offense of misprision of felony exists in the state).

81. *Marbury v. Brooks*, 20 U.S. 558, 5 L.Ed. 522 (1822).

82. The exception is S.D.Cod.Laws 22-11-12, making it an offense where one, "having knowledge which is not privileged, of the commission of a felony, conceals the same, or does not immediately disclose such felony, with the name of the perpetrator thereof."

83. 18 U.S.C.A. § 4.

84. *United States v. Ciambone*, 750 F.2d 1416 (9th Cir.1984) (thus this crime not committed by defendant when he disclosed some knowledge about counterfeiting operation, but withheld additional information because the government would not pay him for the information); *United States v. Davila*, 698 F.2d 715 (5th Cir. 1983); *United States v. Johnson*, 546 F.2d 1226 (6th Cir.1977).

In *United States v. Daddano*, 432 F.2d 1119 (7th Cir.1970), the court thus rejected the defendants' contention that the statute could not be applied to them because it would compel them to be witnesses against themselves in that if they reported their information about the bank robbery they could reasonably fear that the information could lead to their own conviction of being accessories after the fact.

Compare *United States v. Kub*, 641 F.2d 672 (7th Cir.1976), holding that defendants who knowingly received stolen money following its concealment could not be charged under the misprision statute for failure to disclose the underlying robbery, as the object of the Fifth Amendment privilege against self-incrimination is that a person "not be compelled to give information which might tend to show he himself has committed a crime."

85. 1 National Comm'n on Reform of Federal Criminal Laws, Working Papers 530 n. 5 (1970).

proposed new federal criminal code in favor of the more common hindering of law enforcement offense.⁸⁶



WESTLAW REFERENCES

misprison +2 felon*

(c) **Compounding Crime.** Compounding crime consists of the receipt of some property or other consideration in return for an agreement not to prosecute or inform on one who has committed a crime.⁸⁷ There are three elements to this offense at common law and under the typical compounding statute: (1) the agreement not to prosecute; (2) knowledge of the actual commission of a crime; and (3) the receipt of some consideration.

The agreement is essential.⁸⁸ Thus, if a criminal returns or gives property to the victim or another merely in the hope that the other person will not commence prosecution, there is no compounding.⁸⁹ Modern statutes vary as to what kind of agreement is necessary. An agreement not to seek or initiate prosecution will usually suffice,⁹⁰ but some of the statutes in the modern recodifications recognize other possibilities as well. Among them are agreements to abandon a prosecution,⁹¹ to refrain from aiding a prosecution,⁹² to withhold evidence⁹³ or procure the absence of witnesses,⁹⁴ to conceal the offense,⁹⁵ or to not report the crime.⁹⁶

86. National Comm'n on Reform of Federal Criminal Law, Final Report—Proposed New Federal Criminal Code § 1303 (1971).

87. 4 W. Blackstone, supra note 1, at 133.

88. *Austin v. Feron*, 289 Ill.App. 528, 7 N.E.2d 476 (1937).

89. *Fidelity & Deposit Co. v. Grand National Bank*, 69 F.2d 177 (8th Cir.1934).

90. Ala.Code 1975, § 13A-10-7; Alaska Stat. 11.56.790; Ariz.Rev.Stat. § 13-2405; Del.Code tit. 11, § 1246; West's Fla.Stat. Ann. § 843.14; Ga.Code § 28-2804; Hawaii Rev.Stat. § 710-1013; Ill.—S.H.A. ch. 38, § 32-1; Iowa Code Ann. § 720.1; Kan. Stat. Ann. 21-3807; Ky.Rev.Stat. 519.030; Vernon's Ann.Mo.Stat. § 575.020; Mont. Code Ann. 45-7-306; Neb.Rev.Stat. § 28-301; N.H.Rev.Stat. Ann. 642:6; N.J.Stat. Ann. 2C:29-4; N.M.Stat. Ann.1978, § 30-22-6; N.Y.—McKinney's Penal Law § 216.45; S.D.Cod.Laws 22-11-10; Va. Code 1950, § 18.2-462; West's Rev.Code Wash. Ann. 9A.78.100; Wis.Stat. Ann. 846.57; Wyo.Stat.1977, § 6-5-203.

91. Del.Code tit. 11, § 1246; Ohio Rev. Code § 2921.21; Vernon's Tax.Code Ann., Penal Code § 38.06.

92. Alaska Stat. 11.56.790; Ga.Code § 28-2604; Ill.—S.H.A. ch. 38, § 32-1; Iowa Code Ann. § 720.1; Kan.Stat. Ann. 21-3807; Vernon's Ann.Mo.Stat. § 575.020; Wis.Stat. Ann. 846.57.

93. Alaska Stat. 11.56.790; West's Fla. Stat. Ann. § 843.14; Iowa Code Ann. § 720.1; Vernon's Ann.Mo.Stat. § 575.020; N.M.Stat. Ann.1978, § 30-22-6; Va.Code 1950, § 18.2-462; Wyo.Stat.1977, § 6-5-203.

94. Wyo.Stat.1977, § 6-5-203.

95. West's Fla.Stat. Ann. § 843.14; Iowa Code Ann. § 720.1; Vernon's Ann.Mo.Stat. § 575.020; N.M.Stat. Ann.1978, § 30-22-6; Va.Code 1950, § 18.2-462; Wyo.Stat.1977, § 6-5-203.

96. Ala.Code 1975, § 13A-10-7; Ariz.Rev.Stat. § 13-2405; Ark.Stats. § 41-2807; Hawaii Rev.Stat. § 710-1013; Mont.Code Ann. 45-7-305; Neb.Rev.Stat. § 28-301; N.J.Stat. Ann. 2C:29-4; Or.Rev.Stat. 162.335; Pa.Cons.Stat. Ann. tit. 18, § 5108; S.D.Cod.Laws 22-11-10.



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

Sponsor Statement

SB 5

“An Act relating to the crime of misprision of felony.”

A person commits the crime of “misprision” if he/she witnesses or has knowledge of a felony crime committed against another person, and fails to immediately report it to a peace officer or law enforcement agency. This is sometimes known as the “Good Samaritan Law.”

This bill was drafted in response to the Las Vegas incident: A 7 year old girl was raped and murdered in a casino restroom. A college student witnessed his friend committing the crime, but he walked away and did not report it. He was not charged with any crime because Nevada does not have a “Good Samaritan Law.”

Senate Bill 5 will make it a class C felony if the crime not reported is a violent felony, as described in AS 11.41, or arson in the first degree. It will be considered a class A misdemeanor if the crime not reported is a felony offense other than the previously mentioned felonies.

OCT 28 1998

105TH CONGRESS
2D SESSION

H. R. 4531

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

RECEIVED
JAN 27 1999

Ans'd.....

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 9, 1998

Mr. LAMPSON (for himself, Mr. SANDLIN, and Mr. CRAMER) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Sherrice Iverson Act".

1 SEC. 2. REQUIREMENT ON STATES RECEIVING GRANTS FOR
2 CHILD ABUSE AND NEGLECT PREVENTION
3 AND TREATMENT PROGRAMS.

4 (a) IN GENERAL.—Section 106(b)(2) of the Child
5 Abuse Prevention and Treatment Act (42 U.S.C.
6 5106a(b)(2)) is amended—

7 (1) in subparagraph (C), by striking “and” at
8 the end;

9 (2) in subparagraph (D), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(E) an assurance in the form of a certifi-
13 cation by the chief executive officer of the State
14 that the State has in effect and is enforcing a
15 State law providing for a criminal penalty on an
16 individual 18 years of age or older who fails to
17 report to a State or local law enforcement offi-
18 cial that the individual has witnessed another
19 individual in the State engaging in sexual abuse
20 of a child.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on December 31, 2004.

○

Teen gets life for murdering girl, 7, in casino

By TIM DAHLBERG

The Associated Press

LAS VEGAS — A former honor student avoided the death penalty by pleading guilty Tuesday to molesting and strangling a 7-year-old girl in a casino toilet stall.

Under a plea bargain, Jeremy Strohmeyer, 19, will go to prison for the rest of his life for the 1997 slaying of Sherrice Iverson.

The Long Beach, Calif., teen-ager agreed to the plea bargain hours before he was to go on trial, admitting that he sexually assaulted the girl with his fingers and choked her over the Memorial Day weekend at the Primadonna Casino on the California-Nevada state line.

Not only did prosecutors have his confession, but video surveillance cameras had captured Strohmeyer going into the bathroom with the little girl in a game of hide-and-seek.

District Attorney Stewart Bell said that "death verdicts are always hard to get" and that the plea assures Strohmeyer will be off the street. Strohmeyer will be sentenced next month to life in prison without parole.

Defense attorney Leslie Abramson called Strohmeyer a good boy until seven months before the killing, when "evil influences" took over his life. She listed drugs, Internet

pornography and friends like David Cash Jr., whom she suggested "is not a witness but a co-perpetrator in this case."

Cash, 19, told authorities he entered the restroom a few minutes after his friend peered over the wall of an adjoining stall and saw Strohmeyer with his hand over Sherrice's mouth, muffling her screams. Cash said he told Strohmeyer to let her go and then left the restroom.

Cash was not charged because Nevada has no "Good Samaritan" law requiring someone who witnesses a crime to try to stop it or to seek help from law enforcement.

Sherrice's mother, angered by Cash's inaction, led a petition drive that gathered more than 30,000 signatures in support of a Good Samaritan law scheduled to be introduced in Congress on Wednesday.

The case also drew attention to the safety of children in casinos. The Los Angeles girl had been left in the casino arcade with her older brother while their father, LeRoy Iverson, gambled in the early-morning hours.

Security guards said that three times, they found the girl alone and told her father to come get her.



JIM LAURIE / Las Vegas Review Journal

Former honor student Jeremy Strohmeyer, with attorney Leslie Abramson at his side, pleaded guilty Tuesday hours before his trial was to begin.

Alaska Civil Liberties Union

An Affiliate of the American Civil Liberties Union

P. O. Box 201844, Anchorage, AK 99520-1844

Phone: (907) 258-0044 Fax: (907) 258-0288 Email: akclu@alaska.net

RECEIVED

APR 6 1999

Ans'd.....

POSITION PAPER

To: All Members of the Alaska Senate

Date: Tuesday, April 6, 1999

Re: SB 5 - Misprision of Felony

The Alaska Civil Liberties Union sees constitutional and public policy problems with the crime of misprision of a felony, particularly as written. Most significantly, the bill runs directly afoul of the privilege against self-incrimination under the Alaska Constitution, Article I, Sec. 9, and United States Constitution, Fifth Amendment.

The current misprision of felony bill makes it a class A misdemeanor for a person to witness the commission of a serious crime and not report it. Serious crime is defined as murder, kidnapping, assault in the first degree, sexual assault and abuse in the first degree or arson. It is an affirmative defense to the misdemeanor if the person reasonably believed that they would be in a substantial risk of physical injury if they reported.

This proposed misprision statute differs from the federal statute in that 18 U.S.C.A. 4 requires not only a knowledge of the actual commission of a felony but also concealment as well. Mere failure to report a felony is not sufficient to constitute a violation under federal law.¹

The current formulation of the proposed Alaska statute has been strongly disapproved. LaFave (Wayne LaFave & Austin Scott, *Criminal Law*, (1972)) stated, "It is doubtful whether this offense [e.g., the proposed Alaska statute] ever had a meaningful existence beyond the textbook writers. The offense was said to be "practically obsolete" in England almost a century ago, and the few prosecutions in that country in recent years have been limited to the most extreme situations." Commenting on the felony misprision statute in the United States Code, which has the additional element of "concealment" of the crime, LaFave notes that even this statute has fallen into disuse. Wharton's *Criminal Law* [Charles E. Torcia, Wharton's *Criminal Law* (15th Ed.)] contains a similar opinion, noting that the crime of misprision was "wholly unsuited to American Criminal law" and that it "has come to be obsolete." Wharton's notes that even the current felony misprision statute is "entirely unnecessary" since there are crimes of obstruction and accessory after the fact which covers the same conduct.

The 5th Amendment problems are real. The crime of misprision, mandating a duty to report, runs completely afoul of this constitutional right, since the proposed statute will often compel a person to report a crime for which they also could be charged. Even though the federal statute has the additional element of "concealment," the Seventh and Ninth Circuits have declared the misprision statutes unconstitutional as applied to persons who have reasonable cause to believe they will be prosecuted themselves. *U.S. v. King*, 402 F.2d 694 (9th Cir. 1968) (if defendants had reported crime to authorities, they would risk being prosecuted as aiders or abettors); *United States v. Kuh*, 541 F.2d 672 (7th Cir. 1976) (if defendants had reported the crime they could have been prosecuted for possession of stolen goods); *United States v. Jennings*, 603 F.2d 650 (7th Cir. 1979) (report of narcotics sale would have exposed defendant to charges of solicitation of a bribe). See also *U.S. v. Davila*, 698 F.2d 715 (1983).

Public policy considerations also mandate against the passage of a misprision bill. Making a crime out of a simple failure to report may actually hinder the prosecution of some of Alaska's most serious crimes. Investigation and prosecution often depend heavily on the testimony of eyewitnesses. If those eyewitnesses are subject to the risk of prosecution if they see a crime and simply fail to report it in a timely manner, a requirement open to many interpretations, they have a Fifth Amendment right to remain silent and may well assert that privilege.

Essential fairness also mandates against a crime of misprision. An accomplice of the felon is not subject to this crime since he would have a privilege to refuse to report, but a simple bystander who saw the crime can be prosecuted.

Persons who associate themselves with criminal activity will be prosecuted. Defendants are often convicted under the accomplice liability statutes, AS 11.16.110 (legal accountability based on the conduct of another), AS 11.31.110 (solicitation) and AS 11.31.120 (conspiracy). If this misprision statute is indeed a response to the Nevada murder of a 7 year old, it is an overreaction. No Alaska prosecutor would be without tools to prosecute the witness to this murder. At the least, the witness would be charged under a hindering prosecution statute, if not also under accomplice liability. In Alaska, for example, the State has prosecuted men in the Bethel area on two occasions, 14 years apart, who were present and aided a murder in some way, even though they did not directly participate in the deaths.

The misprision statute is ill-advised. It creates a crime duplicated by other statutes, interferes with the prosecution of the state's most serious crimes, and directly conflicts with the constitutional right against self-incrimination. Legal commentators have called the misprision statute obsolete and wholly unsuited to the American justice system. This misprision bill addresses a non-existent problem, and guarantees extensive constitutional challenges to its validity.

1 The federal statute makes concealment of the crime an essential element, which the proposed Alaska statute does not do. See, e.g. *U.S. v. Warters*, C.A.5 (Tex) 1989, 885 F.2d 1266 (Affirmative step to conceal is a required element of misprision of felony; mere failure to make known does not suffice); *U.S. v. Gravitt*, C.A.5 (Ga.) 1979, 590 F.2d 123 (evidence that defendant took affirmative action to conceal crime was sufficient to sustain misprision of felony of bank robbery); *U.S. v. Johnson*, C.A. 5 (Tex.) 1977, 546 F.2d 1255 (An essential element of the offense of misprision of felony is concealment, and mere failure to report a felony is not sufficient to constitute a felony under this section): *U.S. v. King*, C.A. 9 (Cal.) 1968,402 F.2d694 (If defendant had been a passenger and not a driver of the automobile in which a person who had robbed a national bank had been taken to a place so that they could drive to another city until things "cooled off", defendant's riding in the automobile would not be an affirmative step required for conviction of knowingly and willfully concealing information concerning robbery of national bank.); *Lancey v. U.S.* C.A. 9 (Cal.) 1966, 356 F.2d 407,cert. Denied 87 S. Ct.234, 385 U.S. 922, 17 L.Ed.2d 145 (A harboring of criminal with full knowledge, may be the positive act required to constitute the required concealment, an essential of offense of misprision of a felony); *Bratton v. U.S.* , C.C.A. 10 Okla.) 1934, 73 F.2d 795 (Some meaning must have been given to the words "conceal and" as used in former S251 of this title (now this section), and indictment must have alleged more than mere failure to disclose, such a suppression of evidence, harboring of Criminal, intimidation of witnesses, or other positive act designed to conceal from authorities commission of the felony).

SB

11

SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 2/1/99
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 2/22/99

Judiciary Committee considered

SENATE BILL NO. 11

"An Act relating to good time credits for prisoners serving sentences of imprisonment for certain murders, attempted murders, or conspiracies to commit murder."

and recommends:

be replaced with _____ CS SB 11 (JUD)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title
 new title

House Bill:

same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>David Donley</i>	<input checked="" type="checkbox"/>	<i>John Joseph</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>Rick Halford</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
<i>DOC</i>	<i>2/16</i>	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

SB + CS

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 11

Revision Date/Time (Note if correction) _____ Dept. Affected Department of Corrections
 Title An Act relating to good time credits for prisoners BRU Administration and Operations
serving sentences of imprisonment for certain murders, or Component All
 Sponsor Senator Donley
 Requester Senate Judiciary Committee Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Senate Bill 11 will reduce the amount of good time credits currently awarded to those offenders who are convicted of murder 1, attempted murder 1, murder 2, or conspiracy to commit murder 1. This legislation will reduce the amount of good time credits from the current one-third of the sentence to one-sixth.

The Dept. of Corrections has submitted a zero fiscal note because the impact will not be realized until approximately 2010. This will have a definite impact in the out years. An example would be if SB 11 had passed on 1-1-98, offenders sentenced in that year on the above crimes would serve a combined total of 33 additional years. At today's average daily cost of care, that would amount to a \$1.2 million dollar impact for those sentenced in 1998.

Prepared by Bruce Richards Phone 465-3307
 Division Commissioner's Office Date/Time 2/16/99 4:58 PM
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 2-16-99
 Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 11

Revision Date: _____
 Title: "An Act relating to good time credits for prisoners serving sentences for certain murders..."
 Sponsor: Senator Donley
 Requestor: (S) JUD

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
-----------------------------	----	----	----	----	----	----

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

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill reduces good time credits available for defendants convicted of murder in the first degree, attempted first degree murder, or conspiracy to commit first degree murder. The bill provides that prisoners convicted of these offenses are only entitled to one-half the good time credits "provided to other prisoners."

This bill may have a fiscal impact on the Alaska Public Defender Agency. There may be litigation on whether this bill violates equal protection of the laws under the Alaska or United States Constitution. In the past, Alaska courts have found that laws singling out particular offenses (rather than classes of offenses) for disparate treatment violate equal protection. Also, it may be that more cases will be contested because of the increased penalties. However, the impact is not quantifiable. Therefore, the Public Defender Agency is submitting an indeterminate fiscal note.

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

Phone: (907) 2 4-4414
 Date: _____

Approved by Commissioner: Robert Poe Jr.
 Agency: Department of Administration

Date: 2/16/99

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1-LS0148VD
Luckhaupt
2/18/99

CS FOR SENATE BILL NO. 11()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS DONLEY, Leman, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to good time credits for prisoners serving sentences of
2 imprisonment for certain murders."

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

4 * Section 1. AS 12.55.125(f) is amended to read:

5 (f) If a defendant is sentenced under (a) or (b) of this section,

6 (1) imprisonment for the prescribed minimum or mandatory term may
7 not be suspended under AS 12.55.080;

8 (2) imposition of sentence may not be suspended under AS 12.55.085;

9 (3) imprisonment for the prescribed minimum or mandatory term may
10 not be reduced, except as provided in (j) of this section or AS 33.20.010.

11 * Sec. 2. AS 12.55.125(g) is amended to read:

12 (g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4),
13 or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

14 (1) imprisonment may not be suspended under AS 12.55.080;

- 1 (2) imposition of sentence may not be suspended under AS 12.55.085;
2 (3) terms of imprisonment may not be otherwise reduced, except as
3 provided in AS 33.20.010.

4 * Sec. 3. AS 33.20.010(a) is repealed and reenacted to read:

5 (a) Except as otherwise provided in this section, a prisoner convicted of an
6 offense against the state or a political subdivision of the state who follows the rules
7 of the correctional facility in which the prisoner is confined is entitled to a deduction
8 of one-third of the term of imprisonment rounded off to the nearest day if the prisoner

9 (1) was sentenced to a term of imprisonment of at least three days;

10 (2) was not sentenced to a mandatory 99-year term of imprisonment
11 under AS 12.55.125(a) after June 27, 1996, or a definite term under AS 12.55.125(l);
12 and

13 (3) was not convicted after the effective date of this Act of murder in
14 the first or second degree.

15 * Sec. 4. AS 33.20.010 is amended by adding a new subsection to read:

16 (c) A prisoner convicted after the effective date of this Act of murder in the
17 first or second degree who is not sentenced to a mandatory 99-year term of
18 imprisonment under AS 12.55.125(a) or a definite term of imprisonment under
19 AS 12.55.125(l) is entitled to a deduction of the term of imprisonment equal to one-
20 half of the deduction provided to other prisoners under (a) of this section rounded off
21 to the nearest day if the prisoner follows the rules of the correctional facility in which
22 the prisoner is confined.



SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Sponsor Statement for Senate Bill 11 Reducing Good Time Credit for First and Second Degree Murder

Senate Bill 11 would reduce good time sentence reduction by one-half for individuals convicted of first and second degree murders.

Under Alaska statute 33.20.10, a prisoner is entitled to a deduction of one-third of the term of imprisonment if the prisoner follows the rules of that correctional facility. This is known as a "good time" credit and applies to prisoners convicted of an offense against the state or a political subdivision of the state.

Alaska has one of the most liberal "good time" provisions in the nation. Alaska's one-third sentence reduction for "good time" is extremely liberal compared to federal statutes, which require federal offenders to serve at least 85% of the sentence imposed. Additionally thirty states also require at least 85% of the sentence be served. The federal government has asked all states to adopt this 85% standard.

SB 11 would reduce "good time" sentence reduction by one-half for individuals convicted of the most heinous forms of homicide and attempted murder:

- murder in the first degree;
- murder in the second degree;
- attempted murder in the first degree; or
- conspiracy to commit murder in the first degree

Affording convicted murderers the same "good time" privileges as those who commit less serious crimes is poor public policy. Senate Bill 11 addresses this injustice by preventing excessive sentence reductions on those individuals who maliciously take human life.

DD/jja

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Vice-Chair, Senate Finance Committee • Chairman, Capitol Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative C



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

MEMORANDUM

To: Senator Robin Taylor
Chair, Senate Judiciary Committee

From: Senator Dave Donley **DB**

Re: Hearing Request for SB 11 -- "Reducing Good Time Credit for Serious Murders"

Date: February 3, 1999

I request that you schedule Senate Bill 11, an act reducing good time sentence reductions for certain serious murder convictions, for a hearing in your committee.

Senate Bill 11 would reduce good time sentence reduction by one-half for individuals convicted of first and second degree murders.

Under Alaska statute 33.20.10, a prisoner is entitled to a deduction of one-third of the term of imprisonment if the prisoner follows the rules of that correctional facility. This is known as a "good time" credit and applies to prisoners convicted of an offense against the state or a political subdivision of the state.

Affording convicted murderers the same "good time" privileges as those who commit less serious crimes is poor public policy. Senate Bill 11 addresses this injustice by preventing excessive sentence reductions on those individuals who maliciously take human life.

If you have any questions, please contact James Armstrong of my staff at 3887.

DD/jja

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Produced in House

REQUESTOR'S
STATEMENT

PUBLIC DEFENDER AGENCY
900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
264-4400
FAX 269-5476



CONFIDENTIAL !!!
IF RECEIVED IN ERROR PLEASE SEND BACK
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THANK YOU .

PLEASE DELIVER THE FOLLOWING PAGES TO:

SENATOR DAVE DONLEY
NAME: SENATOR ROBIN TAYLOR DATE: 2/16/99
SENATOR JOHNNY ELLIS
AGENCY: STATE CAPITOL
TELEPHONE: 465-3892 / 465-6595
465-3873 / FAX 465-3922
465-3704 / 465-2529
Number of pages sent (including cover sheet) 3
FROM: Sue Hedge / BLAIR M'CUNE
AGENCY: PUBLIC DEFENDER
SENDER PHONE: 264-4413

PLEASE CALL ON RECEIPT

Comments: _____

ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501

Tel: (907) 264-4400
Direct line: 264-4412
Fax: (907) 269-5476
e-mail: Blair_Mccune@admin.state.ak.us

FAX

TO: Senator Dave Donley
Alaska State Senate
Fax No.:

Senator Robin Taylor
Alaska State Senate
Chairman, Senate Judiciary Committee
Fax No.:

Senator Johnny Ellis
Alaska State Senate
Fax No.:



FROM: Blair McCune, Deputy Public Defender

RE: SB 11 – Prison Time Credits for Murderers
Senate Judiciary Hearing – Wed, Feb. 17th

DATE: February 15, 1999

=====

The Public Defender has several comments on this bill.

There May Be an Equal Protection Challenge to the Bill

The bill singles out certain offenses such as murder, attempted murder, and conspiracy to commit murder for disparate treatment. Defendants convicted of these offenses will receive only half the good time credits other defendants get.

These are certainly all very serious offenses. Of course, the legislature has the authority to reduce good time awards for more serious offenses if it wants to do so. However, in the past, Alaska courts have found equal protection violations when the legislature has singled out certain offenses rather than classes of offenses.

Good Time Credits Enforce Prison Discipline

Part of the reason for good time credits is to enforce prison discipline and participation in rehabilitative programs. If the current one-third time off for good behavior is reduced, there is less of an incentive for good behavior and participation in rehabilitative programs. Although prison sentences for these defendants are usually very high, the added incentive will be lost.

Prisoners Released Because of Good Time Credits Are Not Released Free and Clear. They Are Released on Conditions To the Jurisdiction of The Parole Board.

The committee should be aware that prisoners who receive more than two years good time credits are not simply released free and clear. They are released on Mandatory Parole to the jurisdiction of the Parole Board and the supervision of a probation officer. The Parole Board can and does place restrictive conditions on these prisoners. Mandatory Parole can be revoked for violations of law, but also for technical violations such using alcohol or drugs or not participating in rehabilitative programs ordered by the Board.

The Mandatory Parole system is a good way of transitioning prisoner who have spent a long time in jail. Prisoners who don't make it often end up serving all their time.

If this bill is enacted, there would be less time for transitioning prisoners who are doing well. Prisoners who are dangerous to public safety, usually end up in jail anyway.

There Will Be a Considerable Fiscal Impact If This Bill Is Passed

Obviously, this bill will result in more time to serve for some of the defendants who already have lengthy sentences. Most sentences for first and second degree murder generally are now running about 60 years to serve. 99 year sentences are being imposed more frequently.

Under current law, a defendant receiving 60 years would receive 20 years of good time credits. Under the bill, the prisoner would receive 10 years resulting in 10 more years jail time.

Obviously, it costs a lot of money to keep someone in jail for 10 years.

SB

24

AMENDMENT
CSSB 24 (1-LSO274\K--2/19/99)

*Adopted 2/19/99
by the Legislature*

Page 3, Line 2; Amend subsection (g) to read:

- (g) In this section,
 - (1) "adopting state agency head" means the governor if the state agency is the Office of the Governor, or the commissioner of the department within which the state agency is located;
 - (2) "state agency" does not include the Board of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry Commission.

DD/hrn

1-LS0274K
Bannister ✓
2/19/99

Handwritten notes:
2/19/99
Bannister ✓
2/19/99

CS FOR SENATE BILL NO. 24()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; relating to administrative adjudications; amending
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date."

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

4 * Section 1. SHORT TITLE. Sections 2 - 13 of this Act may be known as the Alaska
5 Regulations Reform Act.

6 * Sec. 2. AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute.** If, by express
8 or implied terms of a statute, a state agency has authority to adopt regulations to
9 implement, interpret, make specific, or otherwise carry out the provisions of the statute,
10 a regulation adopted is not valid or effective unless consistent with the statute and
11 clearly [REASONABLY] necessary to carry out the purpose of the statute.

12 * Sec. 3. AS 44.62.030 is amended by adding a new subsection to read:

13 (b) In addition to the requirements of (a) of this section, a state agency may
14 not adopt a regulation that changes the intent of the statute being implemented,

1 interpreted, made specific, or otherwise carried out. When challenging a regulation
2 under this subsection, the burden of proof is on the person challenging the regulation
3 to prove that the regulation changes the intent of the statute. A person may not obtain
4 a temporary restraining order, a preliminary injunction, or a permanent injunction from
5 a court to enjoin the operation of a regulation based on a failure to comply with this
6 subsection.

7 * Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

8 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
9 an order of repeal, or an amendment to a regulation, unless the adopting state agency
10 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
11 or that the costs and benefits cannot be easily determined, a state agency shall prepare
12 a cost-benefit analysis of the costs to the public to comply with the proposed
13 regulatory action and the benefits to the public from the proposed regulatory action.
14 The state agency shall consider a cost or benefit even if the cost or benefit relates to
15 aesthetics or is otherwise nonquantifiable, and the state agency is not required to give
16 the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

17 (b) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
18 required by this section, the agency may not adopt a regulation, order of repeal, or
19 amendment unless, under the analysis, the benefit to the public outweighs the cost to
20 the public.

21 (c) Consistent with this section, the adopting state agency head shall determine
22 the type of cost-benefit analysis to be prepared by the state agency under this section.

23 (d) The cost-benefit analysis requirement of this section does not apply when
24 the proposed regulatory action is necessary to implement a budgetary modification or
25 when the state agency is expressly required by statute to adopt the proposed regulation,
26 order of repeal, or amendment.

27 (e) A regulation, an order of repeal, or an amendment to a regulation may not
28 be voided because the state agency taking the regulatory action failed to comply with
29 this section if the state agency made a good faith attempt to comply with this section.

30 (f) The state agency shall make a copy of the cost-benefit analysis prepared
31 under this section available to the public before a hearing on the proposed regulatory

1 action.

2 (g) In this section, "adopting state agency head" means the governor if the
3 state agency is the Office of the Governor, or the commissioner of the department
4 within which the state agency is located.

5 * Sec. 5. AS 44.62.190(a) is amended to read:

6 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
7 notice of the proposed action shall be

8 (1) published in the newspaper of general circulation or trade or
9 industry publication that the state agency prescribes and in the Alaska Administrative
10 Journal; in the discretion of the state agency giving the notice, the requirement of
11 publication in a newspaper or trade or industry publication may be satisfied by using
12 a combination of publication and broadcasting; when broadcasting the notice, an
13 agency may use an abbreviated form of the notice if the broadcast provides the name
14 and date of the newspaper or trade or industry journal where the full text of the notice
15 can be found;

16 (2) mailed to every person who has filed a request for notice of
17 proposed action with the state agency;

18 (3) if the agency is within a department, mailed or delivered to the
19 commissioner of the department;

20 (4) when appropriate in the judgment of the agency,

21 (A) mailed to a person or group of persons whom the agency
22 believes is interested in the proposed action; and

23 (B) published in the additional form and manner the state
24 agency prescribes;

25 (5) furnished the Department of Law together with a copy of the
26 proposed regulation, amendment, or order of repeal for the department's use in
27 preparing the opinion required after adoption and before filing by AS 44.62.060;

28 (6) furnished to all incumbent State of Alaska legislators and the
29 Legislative Affairs Agency;

30 (7) furnished to the standing committee of each house of the legislature
31 having legislative jurisdiction over the subject matter treated by the regulation under

1 the Uniform Rules of the Alaska State Legislature, together with a copy of the
2 proposed regulation, amendment, or order of repeal for the committee's use in
3 conducting the review authorized by AS 24.05.182;

4 (8) furnished to the staff of the Administrative Regulation Review
5 Committee, together with a copy of the proposed regulation, amendment, or order of
6 repeal and, if preparation of an appropriation increase estimate is required by
7 AS 44.62.195, a copy of the estimate;

8 (9) published on the Internet by the state agency proposing the
9 action if the state agency has the technological capability to publish on the
10 Internet; in this paragraph, "state agency" does not include the Board of
11 Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry
12 Commission.

13 * Sec. 6. AS 44.62.200(a) is amended to read:

14 (a) The notice of proposed adoption, amendment, or repeal of a regulation
15 must include

16 (1) a statement of the time, place, and nature of proceedings for
17 adoption, amendment, or repeal of the regulation;

18 (2) reference to the authority under which the regulation is proposed
19 and a reference to the particular code section or other provisions of law that are being
20 implemented, interpreted, or made specific;

21 (3) an informative summary of the proposed subject of agency action;

22 (4) other matters prescribed by a statute applicable to the specific
23 agency or to the specific regulation or class of regulations;

24 (5) a summary of the fiscal information required to be prepared under
25 AS 44.62.195;

26 (6) a statement that a copy of the cost-benefit analysis is available
27 from the agency proposing the regulatory action if a summary of the cost-benefit
28 analysis is required under AS 44.62.035.

29 * Sec. 7. AS 44.62.200(b) is amended to read:

30 (b) A regulation that is adopted, amended, or repealed may vary in content
31 from the summary specified in (a)(3) of this section if the subject matter of the

1 regulation remains the same and the [ORIGINAL] notice was written so as to assure
2 that members of the public are reasonably notified of the proposed subject of agency
3 action in order for them to determine whether their interests could be affected by
4 agency action on that subject.

5 * Sec. 8. AS 44.62 is amended by adding a new section to read:

6 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
7 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
8 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
9 rewriting changes the substance of the regulation, amendment, or order but the state
10 agency would not normally consider the change to be significant enough to require
11 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and
12 44.62.210, before adoption, the agency shall provide notice and opportunity for public
13 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
14 regulation, amendment, or order of repeal.

15 (b) If a state agency does not provide the notice and opportunity for public
16 comment under (a) of this section for a rewritten proposed regulation, amendment, or
17 order of repeal, the agency shall prepare a written explanation of the reasons why the
18 requirement of (a) of this section does not apply. When the adopted regulation,
19 amendment, or order of repeal is published in the Alaska Administrative Journal, the
20 lieutenant governor shall include the agency explanation with the text or a summary
21 of the text of the regulation, amendment, or order of repeal.

22 (c) A regulation, an order of repeal, or an amendment to a regulation may not
23 be voided because the state agency taking the regulatory action failed to comply with
24 this section if the state agency made a good faith attempt to comply with this section.

25 (d) This section does not apply to regulations

26 (1) adopted under AS 44.62.260 to make emergency regulations
27 permanent; or

28 (2) that are necessary to meet federal requirements.

29 (e) In this section, "state agency" does not include the Board of Fisheries, the
30 Board of Game, or the Alaska Commercial Fisheries Entry Commission.

31 * Sec. 9. AS 44.62.230 is amended to read:

1 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
2 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
3 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
4 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
5 emergency regulation, and the agency finds that an emergency exists, the requirements
6 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
7 apply, and the agency may submit the regulation to the lieutenant governor
8 immediately after making the finding of emergency and putting the regulation into
9 proper form.

10 * **Sec. 10.** AS 44.62.250 is amended to read:

11 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
12 be adopted as an emergency regulation or order of repeal if a state agency makes a
13 written finding, including a statement of the facts that constitute the emergency, that
14 the adoption of the regulation or order of repeal is necessary for the immediate
15 preservation of the public peace, health, safety, or general welfare. The requirements
16 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
17 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
18 adoption of an emergency regulation, the adopting agency shall immediately submit
19 a copy of it to the lieutenant governor for filing and for publication in the Alaska
20 Administrative Register, and, within five days after filing by the lieutenant governor,
21 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
22 Failure to give the required notice by the end of the 10th day automatically repeals the
23 regulation.

24 * **Sec. 11.** AS 44.62.260 is amended to read:

25 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

26 (a) A regulation adopted as an emergency regulation does not remain in effect more
27 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
28 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the
29 regulation to the lieutenant governor or during the 120-day period.

30 (b) Before the expiration of the 120-day period, the agency shall transmit to
31 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)

1 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
2 submitting the regulation to the lieutenant governor, or that the agency complied with
3 those sections within the 120-day period. Failure to so certify repeals the emergency
4 regulation; it may not be renewed or refiled as an emergency regulation.

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

6 **Sec. 44.62.285. Time limit for adoption.** (a) A state agency may not take
7 more than two years to adopt regulations that the state agency is required to adopt by
8 a statute. The two-year period begins on the effective date of enactment of the statute
9 requiring the adoption of the regulations.

10 (b) If a state agency fails to comply with (a) of this section, the state agency
11 shall prepare a written report containing the reasons for the failure and submit the
12 report to the president of the senate, the speaker of the house of representatives, and
13 the Administrative Regulation Review Committee established under AS 24.20.400.

14 (c) The requirement of (a) of this section is not intended to prohibit a state
15 agency from amending a regulation after the regulation has been adopted.

16 * Sec. 13. AS 44.62.300 is amended by adding new subsections to read:

17 (b) Notwithstanding any other factor considered by the court, including the
18 grounds for invalidity identified under (a) of this section, a court that reviews the
19 validity of a regulation may not hold the regulation valid unless

20 (1) the regulation accomplishes its goal by using an approach that
21 causes the least intrusion on the rights and property of the persons affected by the
22 regulation; or

23 (2) if the regulation does not satisfy (1) of this subsection, a substantial
24 state interest requires using the approach taken by the regulation.

25 (c) Notwithstanding (b) of this section, when an action for declaratory relief
26 is brought under (a) of this section, a court may not issue a temporary restraining
27 order, a preliminary injunction, or a permanent injunction based on (b) of this section
28 to stop the operation of the regulation.

29 (d) In (b)(2) of this section, the person challenging the regulation carries the
30 burden of proving that there is not a substantial state interest that requires using the
31 approach taken by the regulation.

1 (e) A regulation of the Department of Corrections, the Department of Natural
2 Resources, a state board, or a state commission is not subject to (b) of this section.

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

4 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication must result
5 in a final administrative order within the later of 60 days after the hearing officer
6 closes the record or two years after the statement of issues under AS 44.62.370 or an
7 accusation under AS 44.62.360 is filed.

8 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the
9 contrary, an agency may not order a record to be reopened after the hearing officer has
10 closed the record unless a substantial factual question exists that is necessary to the
11 resolution of the administrative adjudication and the lieutenant governor approves
12 reopening the record.

13 (c) The time limitation in (a) of this section may be extended if

14 (1) the lieutenant governor approves the extension, but, even with an
15 extension under this paragraph, the administrative adjudication may not exceed four
16 years;

17 (2) a respondent other than a state agency petitions for reconsideration
18 under AS 44.62.540 for a stay of execution under AS 44.62.520, for an extension of
19 the two-year period, or for the record to be reopened in the administrative adjudication.

20 (d) Except as provided by (c) of this section, if an administrative adjudication
21 does not result in a final administrative order in the time required by (a) of this section
22 and if an agency instigated the administrative adjudication, the respondent may cancel
23 the administrative adjudication by notifying the agency in writing of the cancellation.
24 The agency may not subsequently begin another administrative adjudication for the
25 same matter that was the subject of the cancelled administrative adjudication, and an
26 appeal may not be taken from the cancelled administrative adjudication or from the
27 cancellation of the administrative adjudication. However, after the administrative
28 adjudication is cancelled, the agency may bring an action in superior court covering
29 the matter that was the subject of the cancelled administrative adjudication. The
30 complaint must be filed with the superior court within 60 days after the administrative
31 adjudication is cancelled under this subsection.

1 (e) Except as provided by (c) of this section, if an administrative adjudication
2 does not result in a final administrative order in the time required by (a) of this section
3 and if a person other than an agency instigated the administrative adjudication, the
4 person may cancel the administrative adjudication by notifying the agency in writing
5 of the cancellation. The person is considered to have exhausted the person's
6 administrative remedies with regard to the subject matter of the cancelled
7 administrative adjudication, and an appeal may not be taken from the cancelled
8 administrative adjudication or from the cancellation of the administrative adjudication.
9 However, after the administrative adjudication is cancelled, the person may bring an
10 action in superior court covering the matter that was the subject of the administrative
11 adjudication. The complaint must be filed with the superior court within 60 days after
12 the administrative adjudication is cancelled under this subsection.

13 (f) In this section,

14 (1) "administrative adjudication" means the procedure that begins with
15 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380
16 and ends with the issuance of a final administrative order;

17 (2) "final administrative order" means a decision under AS 44.62.330 -
18 44.62.630 that is eligible for judicial review under AS 44.62.560.

19 * **Sec. 15. APPLICABILITY.** (a) Sections 1 - 11 and 13 of this Act apply to the
20 adoption, amendment, or repeal of a regulation if the initial notice under AS 44.62.190, as
21 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
22 effective date of this Act.

23 (b) Section 12 of this Act applies to a state agency's adoption of regulations if the
24 effective date of the Act enacting the statutory authority requiring the adoption is the same
25 as or after the effective date of this Act.

26 (c) Section 14 of this Act applies to an administrative adjudication if the statement
27 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the
28 effective date of this Act.

29 * **Sec. 16. COURT RULE CHANGES.** AS 44.62.030(b), enacted by sec. 3 of this Act,
30 and AS 44.62.300(c), enacted by sec. 13 of this Act, change Rule 65, Alaska Rules of Civil
31 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

1

* Sec. 17. This Act takes effect July 1, 2000.

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/19/99

FURTHER: Finance

Date of 5-Day Notice: 1/21/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 2/23/99

Judiciary Committee considered

SENATE BILL NO. 24

"An Act relating to the adoption, amendment, repeal, legislative review, and judicial review of regulations; and amending Rule 202, Alaska Rules of Appellate Procedure."

and recommends:

- be replaced with _____ CS SB 24 (JUD)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

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

<u>SIGNING DO PASS</u>	<u>DP</u>	<u>OTHER RECOMMENDATIONS</u>	<u>NR</u>	<u>DNP</u>	<u>AM</u>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
		<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

<i>SEE ATTACHED</i>			

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



SENATOR DAVE DONLEY
ALASKA STATE LEGISLATURE

**DIFFERENCES BETWEEN CSSB 24 (1-LSO274/D)
AND CSSB 24 (1-LSO274/H)**

Summary of Changes:

The intent of SB 24 remains fundamentally unchanged. However, the proposed CSSB 24 (1-LSO274/H) adds several sections to CSSB 24 (1-LSO274/D) adopted by the Judiciary Committee during its previous hearing (Jan. 29, 1999).

In version CSCB 24 (1-LSO274/H). Additions are:

- **Section 3 (p.1)**—Consistency between regulation and statute—A state agency may not adopt a regulation that changes the intent of the statute being implemented.
- **Section 4 (p.2)**—Cost-benefit Requirement—exemptions are expanded to include the Department of Corrections, Department of Natural Resources, state boards and state commissions. Also, the concept of cost-benefit analysis is elaborated on to include non-quantifiable measurements (see lines 12-18).
- **Section 5 (p.2)**—proposed action on regulations (amendments, adoption or repeal) must be published on the internet. Exempt from this provision are the Department of Corrections, Department of Natural Resources, board of game and the board of fisheries.
- **Section 8 (p.4)**—Supplemental notice and public proceedings—This section was a part of the last version of the bill, and is altered in the new version by exempting the Department of Corrections, Department of Natural Resources, state boards and state commissions from this provision. The former version (1-LSO274/D) had exempted the Department of Corrections, the board of fisheries, the board of game and the Alaska Commercial Fisheries Entry Commission.

January-May: STATE CAPITOL • JUNEAU, AK • 99801-1182 • (907) 465-3892 • FAX: (907) 465-6595
June-December: 716 W. 4TH AVE. • STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

Vice-Chair, Senate Finance Committee • Chairman, Capitol Budget Subcommittee •
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

- **Section 12 (p.6)**—Time limit for adoption (a new Sec. 44.62.285). This new section requires a state agency to not take more than two years to adopt regulations that it is required to by statute. If the agency fails to comply, it must prepare and submit a written report on the reasons for its failure to adopt the regulations to the senate president, the speaker of the house, and the Administrative Regulation Review Committee.
- **Section 14 (p.7)**—Time Limit. An administrative adjudication must result in a final administrative order within two years after the statement of issues under AS 44.62.370 or under an accusation filed under AS 44.62.360.
- **Section 15 (p.7)**—Applicability of this Act and effective dates.

DD/hn

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-1994
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FAX: (907) 276-3697

KEY BANK BUILDING
100 CUSHMAN ST., SUITE 400
FAIRBANKS ALASKA 99701-4679
PHONE (907) 451-2811
FAX: (907) 451-2346

February 3, 1999

P.O. BOX 110300-DIMOND COURT HO.
JUNEAU, ALASKA 99811-0300
PHONE (907) 465-3600
FAX (907) 465-6735

Senator John Torgerson
Alaska Senate
Room 516, State Capitol
Juneau, AK 99811-1182

Re: Length of time for regulations
adoption process

Dear Senator Torgerson:

At a recent hearing on SB 24, you asked for information about the length of time usually required for the regulations adoption process. While the length of time for adopting regulations varies according to the size and complexity of the project, we can provide the following basic timelines.

The Administrative Procedure Act requires at least 30 days between the date an agency publishes notice of proposed regulations and the date an agency adopts those regulations. See AS 44.62.190(a). If an agency anticipates widespread public interest in proposed regulations, the agency frequently extends the 30-day period in order to gather and consider additional public comment. Also, if a board or commission is involved in the adoption or approval of the regulations, the timeline for a project may be extended to accommodate the planned meeting schedule of the board or commission. Ordinarily, there is another 30-day period between the date the lieutenant governor files the regulations and the date they become effective. See AS 44.62.180. Between these two periods, the regulations undergo Department of Law review, as required by statute. See AS 44.62.060(b). The length of the Department of Law's review varies according to the size of the regulations project, the project's complexity, the legal issues, if any, that the project presents, and the Department of Law's workload.

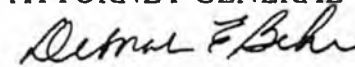
During fiscal year 1998, the Department of Law reviewed 2,648 pages of regulations. More recently, the Department reviewed 252 pages of regulations in December 1998, and 131 pages in January 1999.

We hope that you find the above information to be helpful. Please feel free to contact us if you have additional questions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

cc: Senator Dave Donley
Alaska Senate

Senator Robin Taylor
Alaska Senate

Pat Pourchot, Legislative Director
Office of the Governor

Barbara Ritchie
Deputy Attorney General—Civil Division
Department of Law

Chrystal Smith, Legislative Liaison
Department of Law

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 3, 1999

RECEIVED

FEB 3 -- 1999

Ans'd.....

TONY KNOWLES, GOVERNOR

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Senator Robin Taylor
Alaska Senate
Room 30, State Capitol
Juneau, AK 99811-1182

Re: Standard for judicial review in
condemnation proceedings

Dear Senator Taylor:

At a recent hearing on SB 24, you asked for information on the standard for judicial review in condemnation proceedings.

Alaska Statute 09.55.460(b) provides that the condemnor "may not be divested of a title or possession acquired except where the court finds that the property was not taken by necessity for a public use or purpose in a manner compatible with the greatest public good and the least private injury." See also AS 09.55.430(7). The Alaska Supreme Court has read this provision to mean that each private person's injury "should be minimized to the extent that it is reasonably possible to do so without impairing the integrity and function of the project and without adding unreasonable costs to the project." State, Dep't of Transp. & Pub. Facilities v. 0.644 Acres, More or Less, 613 P.2d 829, 832-33 (Alaska 1980). The court does not substitute its own judgment for that of the condemnor, but will overturn a determination by the condemnor if that determination is arbitrary, capricious, or an abuse of discretion, or is otherwise not in accordance with law. Id. at 833. The state's determination of least private injury and the greatest public good must be a rational determination, and a court will consider that determination arbitrary if the condemnor has failed to consider all important, relevant factors in making that determination. State, Dep't of Transp. & Pub. Facilities v. 2.072 Acres, More or Less, 652 P.2d 465, 466-67 (Alaska 1982) (per curiam).

The standard for judicial review of condemnation proceedings differs from the standard for judicial review of a regulation. The Administrative Procedure Act sets out the following provisions for judicial review of a regulation's validity:

An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid

(1) for a substantial failure to comply with AS 44.62.010 – 44.62.320; or

(2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under AS 44.62.250.

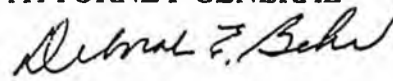
AS 44.62.300. To be effective, a regulation must be within the scope of authority that the legislature has conferred to the adopting agency, and must be in accordance with standards prescribed by other provisions of law. AS 44.62.020. Additionally, a regulation "is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute." AS 44.62.030.

Please feel free to contact us if you have additional questions.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Deborah E. Behr
Assistant Attorney General

cc: Senator Dave Donley
Alaska Senate

Pat Pourchot, Legislative Director
Office of the Governor

Barbara Ritchie
Deputy Attorney General—Civil Division
Department of Law

Chrystal Smith, Legislative Liaison
Department of Law—Juneau

SB 24 FISCAL NOTES INDEX

TAB	DEPT	BRU	COMPONENT	FY 2000	FY 2001	FY 2002	FY 2003
1	DOT/PF	Commissioner's Off		35.0	35.0	35.0	35.0
2	PUBLIC SAFETY	Statewide Support	Administrative Services	20.0	20.0	20.0	20.0
3	PUBLIC SAFETY	Vio Crimes Comp Board		0.0	0.0	0.0	0.0
4	H&SS	Administrative Services	Admin Support Services	90.5	85.5	85.5	85.5
5	DNR	Management & Admin.	Commissioner's Office	242.4	93.7	101.2	127.1
6	REVENUE	Revenue Operations		76.3	76.3	76.3	76.3
7	LAW	Criminal/Civil Divisions	1st-4th Jud Dist, Crim Ap	322.3	302.8	302.8	302.8
8	FISH & GAME	Limited Entry Comm	Program Administration	46.8	40.8	40.8	40.8
9	ADMINISTRATION	Various	Various	26.8	26.8	26.8	26.8
10	LABOR	Commissioner's Office	Labor Relations Agency	1.8	0.0	0.0	1.8
11	LABOR	Worker's Comp	Worker's Comp	19.5	19.5	19.5	19.5
12	LABOR	Employment Security	Unemployment Insurance	0.0	0.0	0.0	0.0
13	LABOR	Administrative Services	Labor Market Information	20.0	0.0	20.0	0.0
14	LABOR	Labor Standards & Safety	Wage & Hour Admin.	8.3	3.3	8.3	8.3
15	LABOR	Labor Standards & Safety	Mechanical Inspection	16.5	16.5	16.5	16.5
16	LABOR	Labor Standards & Safety	Occupational Safety & Health	16.5	16.5	16.5	16.5
17	DEC	Administration	Commissioner's Office	293.9	275.9	275.9	275.9
18	DCRA			0.0	0.0	0.0	0.0
19	EDUCATION	Executive Administration	State Board of Education	87.8	80.3	80.3	80.3
20	COMM & EC DEV	Occupational Licensing		87.8	81.5	81.5	81.5
21	COMM & EC DEV	Insurance	Insurance	41.2	41.2	41.2	43.5
22	COMM& EC DEV	Banking, Sec & Corp		39.0	39.0	39.0	39.0
23	GOVERNOR'S OFF	Governmental Coordination		54.9	55.9	56.9	57.9
24	GOVERNOR'S OFF	Commissions & Sp Offices	Human Rights Commission	20.2	0.0	20.2	0.0
25	AK COURT SYSTEM		Trial Courts	52.9	52.9	52.9	52.9
	TOTAL			1,620.4	1,368.4	1,417.1	1,407.9

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected DOT&PF
 Title Regulations: Adoption & Judicial Review BRU Commissioners Office
 Component _____
 Sponsor Senator Dave Donley
 Requester Senate Judiciary Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	15.0	15.0	15.0	15.0	15.0	15.0
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual	15.0	15.0	15.0	15.0	15.0	15.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
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	1.0	1.0	1.0	1.0	1.0	1.0
TOTAL OPERATING	35.0	35.0	35.0	35.0	35.0	35.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match						
1004 GF	35.0	35.0	35.0	35.0	35.0	35.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	35.0	35.0	35.0	35.0	35.0	35.0

Estimate of any current year (FY99) cost: 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

ANALYSIS: (Attach a separate page if necessary)

There are approximately 196 active transportation regulations in 17 AAC. These regulations establish controls and standards, give authority, designate and define activities on surface, air, and marine transportation issues. DOT&PF's portion of the AAC is only 2% of the total volume of regulations.

The Dept. of Law will be responsible for accomplishing many of the tasks required by DOT&PF and this bill. The Dept. of Law will direct charge the DOT&PF for those services that relate to transportation issues.

These estimated costs are based on the assumption of moderate to minimal impacts to the adoption of regs by the DOT&PF.

Prepared by Dennis Poshard, Legislative Liaison Phone 465-3904
 Division Office of the Commissioner Date/Time 1/25/99 4:09 PM
 Approved by Commissioner [Signature] Date _____
 Agency Department of Transportation and Public Facilities

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FISCAL NOTE

22

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO: SB 24

Revision Date: 1/26/99 Dept. Affected: Public Safety
 Title: An Act relating to the adoption, amendment, BRU: Statewide Support
repeal, legislative reviewof regulations Component: Administrative Services
 Sponsor: Senator Donley
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 0525

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	20.0	20.0	20.0	20.0	20.0	20.0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	20.0	20.0	20.0	20.0	20.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
Revenue Code						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0	20.0	20.0	20.0	20.0	20.0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	20.0	20.0	20.0	20.0	20.0	20.0

Estimate of current year (FY) impact: \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary.)

The program effects of this bill, primarily resulting from section 44.62.035 requirement to conduct a cost benefit analysis will require approximately 3 months staff time complete cost benefit analyses and address changes related to public notice (Section 44.62.213) and shortened emergency regulation period (Section 44/62/260).

Prepared By: Kenneth E. Bischoff, Director Phone: 465-4336
 Division: Administrative Services Date: _____
 Approved by Commissioner: Ronald L. Otte Date: 1-28-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA

BILL NO: SB24

1999 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected: Public Safety
 Title: The Alaska Regulations Reform BRU: Violent Crimes Compensation Board
 Sponsor: Senator Donley Component: _____
 Requestor: _____ COMPONENT SERIAL NO. _____

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

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
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	0.0	0.0	0.0	0.0	0.0	0.0

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

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHT/A						
Other						
TOTAL						

Estimate of current year (FY 99) impact: \$ 0.0

POSITIONS:

FULL-TIME					
PART-TIME					
TEMPORARY					

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact

Prepared By: Susan L. Browne, Administrator Phone: 465-5525
 Division: Violent Crimes Compensation Board Date: 1/19/99
 Approved by Commissioner: *Ronald L. Otte* Date: 1-28-99
 Agency: Ronald L. Otte, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____ Dept. Affected: Health and Social Services
 Title: An act relating to cost-benefit analysis on BRU: Administrative Services
regulations Component: Administrative Support Services
 Sponsor: Sen. Donley COMPONENT SERIAL NO. 320
 Requestor: Senate (JUD) See also (SN#): _____

Expenditures/Revenues: (Thousands of Dollars)

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

OPERATING	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES	70.0	70.0	70.0	70.0	70.0	70.0
TRAVEL	5.0	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	10.0	10.0	10.0	10.0	10.0	10.0
SUPPLIES	0.5	0.5	0.5	0.5	0.5	0.5
EQUIPMENT	5.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	90.5	85.5	85.5	85.5	85.5	85.5

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

CHANGES IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	90.5	85.5	85.5	85.5	85.5	85.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	90.5	85.5	85.5	85.5	85.5	85.5

Estimate of any current year (FY1999) cost: \$0.0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

This bill will require the Department to conduct a Cost/Benefit analysis for each new regulation, regulation change, or repeal that it intends to effect. In order to do so, the Department will require the full-time services of an economist (Range 20) who can do these analyses and defend them. Because of the additional provisions concerning appeals, this individual would likely be required to travel frequently to appear in court. Additional costs would be incurred for special analyses that require outside expertise.

5/26/99 Prepared by: Janet Clarke, Director Phone: 465-3082
 Division: Administrative Services Date/Time: 1/26/99 11:32 AM
 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/27/99
 Agency: Department of Health & Social Services

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FISCAL NOTE

#5

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24

Revision Date: _____ Dept Affected: Natural Resources
 Title: An Act relating to the adoption, amendment, BRU: Management & Administration
repeal, legislative review, and judicial review of regulations... Component: Commissioner's Office
 Sponsor: Senators DONLEY, Taylor
 Requestor: (S) JUD Component Serial No. #423

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	242.4	93.7	101.2	127.1	101.2	97.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	242.4	93.7	101.2	127.1	101.2	97.5

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	242.4	93.7	101.2	127.1	101.2	97.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	242.4	93.7	101.2	127.1	101.2	97.5

Estimate of any current year (FY99) cost: \$ none

POSITIONS

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

The Department of Natural Resources has 13 regulation projects at the present time that will most likely fall under this piece of legislation. Several are highly complex issues, in particular Land and Mining. Each of these will require a cost/benefit analysis and supplemental notice and hearings. Some of the projects are highly controversial and will require several supplemental notices and hearings. DNR will contract for a professional cost/benefit analysis to be done as the need arises. The Department believes that it would not be able to hire an economist that would be proficient with all the issues involved in oil and gas, land, mining, parks, forestry etc. and so would contract with the most experienced in the appropriate field. Years after FY2000 are estimates of the number of projects and their complexity. Projects will likely vary substantially in number and complexity.

Prepared by: Carol Carroll, Director Phone: 465-4730
 Division: Support Services Date: 27-Jan-99
 Approved by Commissioner: [Signature] Date: 1-27-99
 Agency: Natural Resources

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____	Dept. Affected	Revenue
Title <u>Regulations: Adoptions & Judicial Review</u>	BRU	Revenue Operations
	Component	_____
Sponsor <u>Sen. Donley</u>		
Requester <u>Sen. JUD</u>	Component Serial No.	_____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	76.3	76.3	76.3	76.3	76.3	76.3
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	76.3	76.3	76.3	76.3	76.3	76.3

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	76.3	76.3	76.3	76.3	76.3	76.3
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	76.3	76.3	76.3	76.3	76.3	76.3

Estimate of current year (FY99) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

We estimate 5-10 regulation projects a year. Some would involve only technical changes, requiring minimal cost-benefit analysis. However, more complex regulatory changes will involve from 100-300 hours for each analysis, for an estimated total of 900 hours. At \$81 an hour, the cost would be \$72,900.

The cost of publishing regulation changes in the newspaper would run \$3,400 per year due to the added expense of publishing a summary of the cost-benefit analysis of each regulation project.

See attached page.

Prepared by <u>Deborah Vogt</u>	Phone <u>465-2300</u>
Division <u>Commissioner's Office</u>	Date/Time <u>25-Jan-99</u>
Approved by <u>Wilson L. Condon</u>	Date <u>25-Jan-99</u>
Agency <u>Department of Revenue</u>	

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Alaska Department of Revenue

SB 24

Regulations: Adoptions & Judicial Review

25-Jan-99

Page 2 of 2

Comments:

SB 24 increases the regulatory burden upon agencies and the liability to the state. Section 8 (public notice requirements) and Section 13 (least intrusive of all regulatory changes) would increase the expense of routine regulatory changes. Section 5 (cost-benefit requirements) would have the greatest fiscal impact. Conducting an accurate analysis would require identifying gainers and losers and quantifying the gains and losses. Many of these gains and losses involve intangibles that are difficult to value. For example, weighing the value of information lost due to regulatory streamlining against the time savings of applicants. Or, quantifying benefits such as reduced uncertainty and risk. In the Department of Revenue, the costs of performing the analysis would outweigh the benefits obtained from doing the analysis.

In our fiscal note, we do not address the potential costs of increased liability to civil claims by individuals or corporations. Even if we ignore potential legal challenges to the methods used to quantify the benefits and costs of intangibles, it will be difficult and expensive to demonstrate that a particular regulatory change is the least intrusive of all possible regulatory changes (see Section 3). Because of the risk of legal challenges and the expense of conducting benefit cost analysis, many regulatory changes that would benefit the public might not be considered.

FISCAL NOTE

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

BILL NO. SB 24

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>"An Act relating to the adoption, amendment, repeal, legislative review, and judicial review of regulations..."</u>	BRU <u>Criminal Division/Civil Division</u>
Sponsor <u>Senator Donley</u>	Component <u>1st-4th Jud. Dist., Crim Apps/Spec Lit</u>
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2198-99, 2201/03/61/79/09</u>
	<u>Legislation/Regulations</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	224.6	224.6	224.6	224.6	224.6	224.6
Travel	5.8	5.8	5.8	5.8	5.8	5.8
Contractual	69.0	69.0	69.0	69.0	69.0	69.0
Supplies	3.4	3.4	3.4	3.4	3.4	3.4
Equipment	19.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	322.3	302.8	302.8	302.8	302.8	302.8

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF	322.3	302.8	302.8	302.8	302.8	302.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	322.3	302.8	302.8	302.8	302.8	302.8

Estimate of any current year (FY99) cost: _____

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

To be known as the "Alaska Regulations Reform Act," SB 24 makes a number of significant changes to the way regulations are promulgated. Of most significance to the Department of Law from a cost perspective are three of the proposed changes: (1) a requirement for the preparation of cost-benefit analyses on every regulation adoption, repeal and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment for "significant changes" in proposed regulations after initial notice and public comment has occurred; and (3), an assumption of invalidity by the courts unless it can be shown that the proposed regulation uses an approach that causes the least intrusion on the rights and property of the persons affected by the regulation, and if it does not, that there is a compelling state interest in using the approach.

Prepared by Joan M. Kasson *Kathryn A. ... for JK*
 Division Attorney General's Office

Approved by Commissioner *Kathryn A. ...* Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 1/25/99, 3:32 PM
 Date 1/25/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS CONTINUATION

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations when they are challenged in court.

The Department of Law anticipates that a significant increase in the level of litigation attempting to overturn regulations would result. Quantifying costs and benefits of regulations will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least intrusion possible on rights and property of affected individuals would also be open to various interpretations in many cases. For example, it is difficult to determine even who might be affected in the case of many fisheries regulations, and proving a compelling state interest in using a particular allocation scheme, would almost certainly involve extensive litigation because of the economic interests at stake in fisheries and other natural resource allocation decisions.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 40 percent increase in time for all regulations-related projects would result from this bill. (Increases in fisheries and other natural resource-related litigation over regulations could be substantially higher.) At 40 percent, an additional 3000 hours would be required, a total of 2 full-time equivalent attorneys (3000/1448 hours). In addition, many of the cases in litigation would require the use of "outside" expert economists.

Based on the department's FY00 standard full-time equivalent attorney cost schedule (\$133,926), which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 2 FTE attorneys is \$267,852. An additional \$5,000 per position is included for direct case costs, \$6,500 per position for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

While clerical support funding is included in the cost schedule, position authorization and one-time equipment costs are separate. The total PFT estimate thus includes one permanent full-time Legal Secretary I position, and the equipment line includes \$6,500 for one-time equipment.

FISCAL NOTE

#7

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB24

Revision Date/Time (Note if correction)
Title Alaska Legislation Reform Act

Dept. Affected: Fish and Game
BRU: Commercial Fisheries (Limited) Entry Commission
Component: Limited Entry Program Administration

Sponsor Sen. Taylor, Donley
Requester Senate Finance

COMPONENT SERIAL NO. 0471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	36.4	36.4	36.4	36.4	36.4	36.4
Travel						
Contractual	2.0	2.0	2.0	2.0	2.0	2.0
Supplies	2.4	2.4	2.4	2.4	2.4	2.4
Equipment	6.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	46.8	40.8	40.8	40.8	40.8	40.8

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	46.8	40.8	40.8	40.8	40.8	40.8
1006 GF/MHTIA						
Other						
TOTAL	46.8	40.8	40.8	40.8	40.8	40.8

Estimate of any current year (FY99) cost: \$ 0.0

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

For most CFEC regulatory actions, particularly those implementing limitations of specific fisheries, cost-benefit analyses would be impracticable. They would be complex, speculative, and not likely to be particularly meaningful. In addition, the delay due to the time it would take to complete such an analysis could undermine the effectiveness the limitation. However, if CFEC is not exempted from the cost-benefit analysis requirement, this fiscal note would allow us to attempt simple cost-benefit analyses of proposed regulatory actions.

See attachment

Prepared by Roger Kolden Phone 790-6950
Agency Commercial Fisheries (Limited) Entry Commission Date/Time 01/27/99

Approved by Commissioner Bruce Twomley Date: 1/27/99
Agency Commercial Fisheries (Limited) Entry Commission

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SB 24 Fiscal Note Analysis:

CFEC regulates entry into commercial fishing in Alaska in accordance with AS16.43. CFEC always considers the impact of a proposed regulation on the fishing industry when adopting regulations that achieve the statute's purposes. All CFEC regulatory proposals are extensively reviewed by the public before a decision is made. Through this public input process, the public provides the sort of cost-benefit information that SB24 seeks, and in a useful and timely manner.

Under the extensive requirements of SB 24, CFEC would need to devote considerably more resources to trying to estimate the benefits and costs of each regulatory proposal. Any analysis would necessarily be highly speculative and time-consuming. Additionally, because the requirement to complete a cost-benefit analysis prior to proposing regulatory action would delay implementation of fishery limitations, it would likely lead to an increase in last minute participation by those speculating for permits, and thus undermine the goals of limited entry and perhaps jeopardize the position of Alaskans in their fisheries. Finally, the analyses would have to withstand legal challenges. Because CFEC is an adjudicatory agency, the analysis requirement may lead to further expensive litigation for the state.

Each year, CFEC must add or amend many regulations. Each proposed regulatory change requires a public review process. For example, CFEC is required by its statutes to adopt regulations to limit additional fisheries, to place moratoria on new entrants into fisheries, to develop hardship ranking systems to allocate permits in newly limited fisheries, and to establish application periods for permits in newly limited fisheries. Additionally, CFEC often needs to change regulations related to fishery definitions, permanent and emergency permit transfer requirements, other reporting requirements, administrative procedures, permit fees and user fees for sundry services. Moreover, new legislation and court decisions sometimes require extensive regulatory changes. Many of these actions simply do not lend themselves to meaningful cost-benefit analysis.

In the last two years our Law Specialist needed to devote about 30% of her time on tasks related to the Commission's regulations and regulatory proposals. Many other staff persons also need to be involved in the development of proposed regulatory changes and/or the extensive public review process for such proposals.

Because our agency has lost 24% of its staff positions over the last 12 years, we are having serious difficulty meeting existing statutory requirements. Estimating the benefits and costs of each regulatory change will require the addition of at least one part-time regulatory economist position to help make the estimates and prepare the supporting documents. Some regulations will require more detailed economic analysis than others. In some cases these analyses would need to be very extensive and complex, and in the end, because of the nature of CFEC's statutory duties, results would be speculative at best.

First Year Additional Cost of SB 24:

Part-Time Economist II or equivalent position for 6.0 months
Telephone purchase and yearly expenses
Personal computer purchase
Office supplies
Office equipment

Subsequent Years Additional Cost of SB 24:

Part-Time Economist II or equivalent position for 6.0 months
Telephone yearly expenses
Office supplies

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____ Dept. Affected Administration _____
 Title "The Alaska Regulations Reform Act" BRU Various _____
 Component Various _____
 Sponsor Senator Donley _____
 Requester Senate Judiciary _____ Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	26.8	26.8	26.8	26.8	26.8	26.8
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	26.8	26.8	26.8	26.8	26.8	26.8

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	26.8	26.8	26.8	26.8	26.8	26.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	26.8	26.8	26.8	26.8	26.8	26.8

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Page 2 for analysis.

Prepared by Sharon Barton *[Signature]* Phone 465-2277
 Division Administrative Services Date/Time _____
 Approved by Commissioner Robert Poe, Jr. *[Signature]* Date 11/27/99
 Agency Department of Administration

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

ANALYSIS:

It is impossible to project the costs of this bill with any accuracy. However, by making certain conservative assumptions we hope to come close.

Assumptions:

The Department of Administration estimates three regulations packages are dealt with annually. Each regulations project would likely be subject to the supplemental notices and public comment provision of the bill. \$2.5 for costs related to this requirement is included in the fiscal note.

The fiscal note further assumes the three regulations packages to be of various complexity; one very complex, one of medium complexity, and one of lesser complexity. Estimates of the number of hours necessary to conduct cost benefit analysis, for which the department will contract, are 10 hours for less complicated regulations projects, 40 hours for projects of medium complexity and 200 hours for very complex projects. The cost of contracting for cost benefit analysis services is estimated at \$100/hr.

#10

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Office of the Commissioner
Component: AK Labor Relations Agency
COMPONENT SERIAL NO. 1200

EXPENDITURES/REVENUES: (Thousands of Dollars)
Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	1.8			1.8		
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	1.8	0.0	0.0	1.8	0.0	0.0

CAPITAL						
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CHANGE IN REVENUE FUND SOURCE #						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.8			1.8		
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	1.8	0.0	0.0	1.8	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 SB 24 proposes changes to procedures to adopt regulations that will increase the costs of such procedures: AS 44.62.213 would increase publication costs and AS 44.62.035 would add the cost of an economist to do a cost benefit analysis. This note assumes the agency will have one substantial regulation project every three years.

Prepared by: Mark Torgerson, Hearing Examiner *Mark Torgerson* Phone: 269-4895
Division: Alaska Labor Relations Agency Date/Time: 1/27/99 1:36 PM

Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
Agency: Department of Labor Date: 1/27/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
 Title: Regulations: Adoption & Judicial Review
 Sponsor: Senator Donley
 Requester: Senate JUD

Department Affected: Labor
 BRU: Workers' Compensation
 Component: Workers' Compensation
 COMPONENT SERIAL NO. 344

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL	7.3	7.3	7.3	7.3	7.3	7.3
CONTRACTUAL	12.2	12.2	12.2	12.2	12.2	12.2
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	19.5	19.5	19.5	19.5	19.5	19.5

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

CHANGE IN REVENUE FUND SOURCE #						
---------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	19.5	19.5	19.5	19.5	19.5	19.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	19.5	19.5	19.5	19.5	19.5	19.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The bill provides for a right to judicial review in district or superior court by an interested party for any regulation adopted, amended, or repealed. The bill also requires a cost benefit analysis be performed for each regulation promulgated and supplemental notices and public proceedings to take place when a substantive change in regulation occurs. Please see attached for additional impact to Worker's Compensation.

Prepared by: Paul Grossi, Director Phone: 465-2790
 Division: Workers' Compensation Date/Time: 1/27/99 10:31 AM

Approved by Commissioner: Ed Flanagan, Commissioner
 Agency: Department of Labor Date: 1/27/99

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SB 24 Analysis

The bill provides for a right to judicial review in district or superior court by an interested party for any regulation adopted, amended, or repealed. The bill also requires a cost benefit analysis be performed for each regulation promulgated and supplemental notices and public proceedings to take place when a substantive change in regulation occurs.

To ensure accurate cost benefit analysis data, a contract must be established with an experienced economic cost benefit analyst. It is anticipated that this form of Professional Services contract will cost \$10,000 annually.

Additionally, the required travel, supplemental notices and public proceedings will result in approximately \$9,500 in additional annual expenses.

Line 200 Travel

Board Members/Hearing Officers Travel	7.3
--	-----

Line 300 Contractual

Cost Benefit Analysis Professional Services Contract	10.0
---	------

Advertising (Proposed Changes/Public Meetings)	2.2
---	-----

Total	19.5
-------	------

4/2

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requestor: Senate JUD

Department Affected: Labor
BRU: Employment Security
Component: Unemployment Insurance
COMPONENT SERIAL NO. 2276

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
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						
---------	--	--	--	--	--	--

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

The Bill would amend the regulation adoption process in AS 44.62. See attached.

Prepared by: Rebecca Gamez, Director *Rebecca Gamez* Phone: 465-2711
 Division: Employment Security Division Date/Time: 1/27/99 11:52 AM

Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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Attachment
Fiscal Note for SB 24

Alaska Department of Labor
Employment Security Division

The Bill would amend the regulation adoption process in AS 44.62 in two primary areas:

Sections 5-6 of the Bill would require a mandatory cost-benefit analysis for each regulation and would allow adoption of the regulation only if benefits exceed costs. A summary of the cost-benefit analysis would be included with each notice.

Section 8 of the Bill would require a supplemental notice before adoption if the agency has made any "significant" change to the regulation after the original notice. The agency would be required to justify any failure to provide supplemental notice, presumably on the basis of whether the re-drafted changes were "significant."

Mandatory cost-benefit analysis

ESD regulations in most cases do not impose additional reporting or other burdens on the public. They interpret eligibility requirements in the statute or define statutory terms. Cost-benefit analysis would be minimal. The personal services cost for this function is based on one regulations project per year, with one staff person completing the analysis in one week. Estimated cost approximately \$1,500.

Supplemental notice

Almost all ESD regulations projects have some "significant" re-drafting before adoption. Personal services cost is based on one project per year, with one supplemental notice per project, and an estimated two staff-weeks to complete the supplemental notice and evaluate the public response. Estimated cost approximately \$2,800.

Anticipated costs to be absorbed within existing budgeted funds. Zero fiscal note to be submitted.

#13

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Administrative Services
Component: Labor Market Information
COMPONENT SERIAL NO. 336

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	20.0		20.0		20.0	
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	20.0	0.0	20.0	0.0	20.0	0.0

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

CHANGE IN REVENUE FUND SOURCE #						
------------------------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	20.0		20.0		20.0	
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	20.0	0.0	20.0	0.0	20.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

See Attached.

Prepared by: Denise Liccioli, Acting Director *Denise Liccioli* Phone: 465-2720
 Division: Administrative Services Date/Time: 1/27/99 12:13 PM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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SB 24 Analysis

AS 09.38.115 of the Alaska Exemptions Act provides for the adjustment of the exemption amounts specified in other sections of the Act and requires that the Department of Labor adopt a regulation announcing the changes in the dollar amounts. The dollar amounts change on October 1 of each even-numbered year if the percentage of change is 10 percent or more. Senate Bill No. 24 would require that the department prepare a cost benefit analysis to identify the cost to the public and the benefit that the public would receive from the adjustment. The exemptions Act deals with the exclusion from various legal assessments and proceedings specified values for certain items. These legal proceedings ultimately result in the transfer of funds from one entity to another. The nominal net cost/benefit of this transfer or non-transfer in the case of exempted amounts is zero to the parties involved. The public social cost/benefit is not measurable (i.e., improved fairness, equity) in any reasonably quantifiable way. Doing a cost/benefit analysis for the adjustment of exemption amounts would not be a cost effective use of public funds. Adjustment of dollar amounts in the Exemptions Act should not be done by regulation but should more appropriately be acted upon by the legislature.

The Alaska Exemptions Act deals with all sorts of financial settlements. They range from bankruptcies to divorce settlements. The number of new cases which would involve exemptions each year is unknown. An estimate of the number and type of cases would have to be identified and the adjustment amount related to each case; an estimate of the benefit to interested and unrelated parties would need to be determined. Understanding that a supportable estimate would require such information, we would nonetheless estimate that complying with Senate Bill No. 24 would require 250 hours of contracted economic analysis at \$80 per hour for a cost of \$20,000. This does not include the costs to the Courts system to develop and maintain an electronic database which would provide the data which would be the basis of the above analysis.

Presumably the adjustment would not be made if the cost outweighs the benefit even though the adjustment has also been mandated by state law. However, we question the legality of not acting on the requirements of the Alaska Exemptions Act and would propose an amendment to the Act to eliminate the requirement that adjustments are made by the Department of Labor and noticed by regulation. The amendment would require the legislature to act on future adjustments to the exemption amounts specified in the Alaska Exemptions Act and would clarify the legislature's intent as it relates to exemption amounts.

#14

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Wage & Hour Administration
COMPONENT SERIAL NO. 345

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	8.3	8.3	8.3	8.3	8.3	8.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.3	8.3	8.3	8.3	8.3	8.3

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	8.3	8.3	8.3	8.3	8.3	8.3
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	8.3	8.3	8.3	8.3	8.3	8.3

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Section 5 of SB24 would significantly impact Wage & Hour Administration as it requires agencies to "prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action."

Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
Division: Labor Standards & Safety Date/Time: 1/27/99 1:18 PM
Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
Agency: Department of Labor Date: 1/27/99

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SB24

Fiscal Note Analysis continued:

We do not currently have the funding or qualified staff available to implement this legislation. We would be required to contract with professional economic consulting firms, at a rate of \$65 to \$97 per hour, to conduct analyses. The hours required to conduct the analyses as required by SB24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec. 13), we must assume significant detail will be required.

This section estimates one regulation adoption per year in response to new legislation, requiring 100 hours of contractual services each. (100 hours x \$82.60 per hour = \$8,260.00)

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
Title: Regulations: Adoption & Judicial Review
Sponsor: Senator Donley
Requester: Senate JUD

Department Affected: Labor
BRU: Labor Standards & Safety
Component: Mechanical Inspection
COMPONENT SERIAL NO. 346

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTS/	16.5	16.5	16.5	16.5	16.5	16.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	16.5	16.5	16.5	16.5	16.5	16.5

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

CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	16.5	16.5	16.5	16.5	16.5	16.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	16.5	16.5	16.5	16.5	16.5	16.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 Section 5 of SB24 would significantly impact Mechanical Inspection as it requires agencies to "prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action."
 Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 1/27/99 1:12 PM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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SB24

Fiscal Note Analysis continued:

We do not currently have the funding or qualified staff available to implement this legislation. We would be required to contract with professional economic consulting firms, at a rate of \$65 to \$97 per hour, to conduct analyses. The hours required to conduct the analyses as required by SB24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec.13), we must assume significant detail will be required.

Mecnanical Inspection's regulatory changes could involve fee structure changes, and the incorporation of new plumbing, boiler, and electrical codes in existing regulations.

This section estimates two regulation changes or adoptions per year, requiring 100 hours of contractual services each. (200 hours x \$82.60 per hour = \$16,520.00)

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction): _____
 Title: Regulations: Adoption & Judicial Review
 Sponsor: Senator Donley
 Requestor: Senate JUD

Department Affected: Labor
 BRU: Labor Standards & Safety
 Component: Occupational Safety & Health
 COMPONENT SERIAL NO. 970

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	16.5	16.5	16.5	16.5	16.5	16.5
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	16.5	16.5	16.5	16.5	16.5	16.5
CAPITAL						
CHANGE IN REVENUE						
FUND SOURCE #						

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	16.5	16.5	16.5	16.5	16.5	16.5
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
TOTAL	16.5	16.5	16.5	16.5	16.5	16.5

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)
 Section 5 of SB24 would significantly impact Occupational Safety and Health (OSH) as it requires agencies to "prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action."
 Continued on next page.

Prepared by: Al Dwyer, Director *Al Dwyer* Phone: 465-4855
 Division: Labor Standards & Safety Date/Time: 1/27/99 1:21 PM
 Approved by Commissioner: Ed Flanagan, Commissioner *Ed Flanagan*
 Agency: Department of Labor Date: 1/27/99

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SB 24

Fiscal Note Analysis continued:

Every federal Occupational Safety & Health Administration final rule which OSH must adopt includes an analysis of costs of compliance, benefits to the public, and national economic effects. Each final rule also includes OSHA's estimated costs of compliance.

These federal analyses may be marginally acceptable as a response to Section 5, in cases where we are adopting a federal regulation. However, they often don't have much application to Alaska due to the differences in our geography, infrastructure, climate, and industries. In addition, there are regulatory changes OSH promulgates which are not federal changes, which we would have to analyze completely.

The OSH section currently uses information on occupational safety and health injuries, illnesses and fatalities as an indicator of needed state-specific changes, and OSH should be able to state the benefits to be received by the public with minimal additional effort. However, we do not complete formal cost/benefit analyses, and estimating the costs of compliance in Alaska could be a formidable task.

For example, a cost analysis for implementation of the relatively simple bloodborne pathogens standard in the Alaska Department of Health and Social Services required .5 FTE in 1992 for data gathering, analysis, rechecking assumptions, and report production for approximately four months. A statewide cost/benefit analysis for the implementation of the Process Safety Management standard probably would require several years for a team of safety professionals and professional analysts and economists to complete. We do not have this capability.

Because of the level of review and analysis required of the department, and the number of days allowed for each level of review, OSH would never meet federal deadlines for adoption of regulations. This would continue to be a serious problem for our federal monitors.

We do not currently have the funding or qualified staff to implement this legislation. We would be required to contract with professional economic consulting firms, at rate of \$65 to \$97 per hour, to conduct the cost benefit analyses. The hours required to conduct the analyses as required by SB 24 could vary tremendously depending on the type of regulation project and the level of detail required. Given that these analyses would need to stand up to a court challenge (Sec. 13), we must assume significant detail will be required.

OSH estimates two regulation adoptions or amendments per year will be undertaken by the section, requiring 100 hours of contractual services for each. (200 hours x \$82.60 per hour = \$16,520.00)

FISCAL NOTE

#17

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction)	Dept. Affected
Title	Environmental Cons.
The Alaska Regulations Reform Act	BRU Administration
Sponsor	Component
Senators Donley, Taylor	Commissioner's Office
Requester	Component Serial No.
Senate Judiciary	633

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	207.9	207.9	207.9	207.9	207.9	207.9
Travel	30.0	30.0	30.0	30.0	30.0	30.0
Contractual	33.0	33.0	33.0	33.0	33.0	33.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	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	293.9	275.9	275.9	275.9	275.9	275.9

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	293.9	275.9	275.9	275.9	275.9	275.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	293.9	275.9	275.9	275.9	275.9	275.9

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
See attached.

Prepared by <u>Janice Adair, Director</u>	Phone <u>269-7644</u>
Division <u>Environmental Health</u>	Date/Time <u>1/25/99 1:05 PM</u>
Approved by Commissioner <u>[Signature]</u>	Date <u>1/25/99</u>
Agency <u>Department of Environmental Conservation</u>	

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ATTACHMENT
SB 24 FISCAL NOTE
Page 2 of 2

While the department supports the concept that the public and the regulated community have a right to know the impacts of proposed regulations, obviously there is a very real and substantial cost associated with preparing an in-depth cost-benefit analysis of each regulatory proposal, increasing the public notice requirements, and defending the regulations under a judicial review of validity.

In the past two years, this Department developed approximately 50 regulatory projects. A number of these were complex and comprehensive amendments to existing law, and many were mandated by federal law. If that level of regulatory activity continues, we believe the development of cost-benefit analyses would be a full-time job for two economists, a paralegal, and a clerk.

Additional photocopying and postage costs would result from required supplemental notices. Many of our regulations mailing lists exceed 3,000 names.

A paralegal would be required to help this Department and the Department of Law with determining if changes made as a result of public comments were substantive, and if so, assist with the successive public notices and resulting changes required by the Supplement Notice provision found on page 4, line 1 - 7. The paralegal will also help prepare justification for not issuing a supplemental notice, prepare information to defend the regulations under a judicial review, and will help the economists prepare the cost-benefit analyses.

Line item detail for fiscal note:

Personal Services: Salaries and benefits for the four required new employees (two Economist I, one Paralegal II, and one Administrative Clerk II).

Travel: Travel for the economists to interact with department employees in other locations and to work with affected industries in trying to determine costs.

Contractual Services: Includes space lease, phones, copier expense, training for new employees. Also includes increased costs associated with additional public notice (e.g. classified ads, postage)

Supplies: Includes basic office supplies for staff as well as envelopes and other supplies associated with additional public notice.

Equipment: One time cost for purchase of office and computer equipment for four new positions.

Personal Services New PCN Detail

Department of Environmental Conservation

Scenario: DEC - LEGISLATION INFORMATION
 Component: Office of the Commissioner
 BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range and Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#036	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#037	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#038	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B	12.0		39,156	0	0	14,000	53,156
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 53,156.00 <hr/> Total Funding: 00.00% 53,156.00						
18-#039	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B	12.0		23,436	0	0	10,779	34,215
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 34,215.00 <hr/> Total Funding: 00.00% 34,215.00						

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	207,851.00

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 24

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Environmental Cons.</u>
Title <u>The Alaska Regulations Reform Act</u>	BRU <u>Administration</u>
Sponsor <u>Senators Donley, Taylor</u>	Component <u>Commissioner's Office</u>
Requester <u>Senate Judiciary</u>	Component Serial No. <u>633</u>

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	207.9	207.9	207.9	207.9	207.9	207.9
Travel	30.0	30.0	30.0	30.0	30.0	30.0
Contractual	33.0	33.0	33.0	33.0	33.0	33.0
Supplies	5.0	5.0	5.0	5.0	5.0	5.0
Equipment	18.0	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	293.9	275.9	275.9	275.9	275.9	275.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	293.9	275.9	275.9	275.9	275.9	275.9
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	293.9	275.9	275.9	275.9	275.9	275.9

Estimate of any current year (FY99) cost: 0.0

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)
See attached.

Prepared by <u>Janice Adair, Director</u>	Phone <u>269-7644</u>
Division <u>Environmental Health</u>	Date/Time <u>1/25/99 1:05 PM</u>
Approved by Commissioner	Date <u>1/25/99</u>
Agency <u>Department of Environmental Conservation</u>	

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ATTACHMENT
SB 24 FISCAL NOTE
Page 2 of 2

While the department supports the concept that the public and the regulated community have a right to know the impacts of proposed regulations, obviously there is a very real and substantial cost associated with preparing an in-depth cost-benefit analysis of each regulatory proposal, increasing the public notice requirements, and defending the regulations under a judicial review of validity.

In the past two years, this Department developed approximately 50 regulatory projects. A number of these were complex and comprehensive amendments to existing law, and many were mandated by federal law. If that level of regulatory activity continues, we believe the development of cost-benefit analyses would be a full-time job for two economists, a paralegal, and a clerk.

Additional photocopying and postage costs would result from required supplemental notices. Many of our regulations mailing lists exceed 3,000 names.

A paralegal would be required to help this Department and the Department of Law with determining if changes made as a result of public comments were substantive, and if so, assist with the successive public notices and resulting changes required by the Supplement Notice provision found on page 4, line 1 - 7. The paralegal will also help prepare justification for not issuing a supplemental notice, prepare information to defend the regulations under a judicial review, and will help the economists prepare the cost-benefit analyses.

Line item detail for fiscal note:

Personal Services: Salaries and benefits for the four required new employees (two Economist I, one Paralegal II, and one Administrative Clerk II).

Travel: Travel for the economists to interact with department employees in other locations and to work with affected industries in trying to determine costs.

Contractual Services: Includes space lease, phones, copier expense, training for new employees. Also includes increased costs associated with additional public notice (e.g. classified ads, postage)

Supplies: Includes basic office supplies for staff as well as envelopes and other supplies associated with additional public notice.

Equipment: One time cost for purchase of office and computer equipment for four new positions.

Personal Services New PCN Detail

Department of Environmental Conservation

Scenario: DEC - LEGISLATION INFORMATION
 Component: Office of the Commissioner
 BRU Name: Administration

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range and Steps	Budgeted Months	Split / Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#036	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#037	Economist I	FT	A	GG	Juneau	2A	18 B	12.0		45,036	0	0	15,204	60,240
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 60,240.00 <hr/> Total Funding: 00.00% 60,240.00						
18-#038	Paralegal Asst II	FT	A	GG	Juneau	2A	16 B	12.0		39,156	0	0	14,000	53,156
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 53,156.00 <hr/> Total Funding: 00.00% 53,156.00						
18-#039	Administrative Clerk II	FT	A	GG	Juneau	2A	8 B	12.0		23,436	0	0	10,779	34,215
Justification: No justification provided.								Funding Detail: 1004 General Fund Receipts 00.00% 34,215.00 <hr/> Total Funding: 00.00% 34,215.00						

Component Summary:

Total New Positions: 4

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	207,851.00

Note: If a position is split, an asterisk (*) will appear in the Split/Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: An Act relating to the adoption, BRU: _____
amendment, repeal, legislative review... Component: _____
 Sponsor: SENATOR DONLEY
 Requestor: Senate Judiciary Committee COMPONENT SERIAL NO. _____

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
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	0.0	0.0	0.0	0.0	0.0	0.0
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REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current (FY99) impact \$ none

ANALYSIS: (Attach a separate page if necessary)

This department's operational activities are not generally those of a "regulatory" agency. The occasional regulations promulgated by the department generally involve clarification of the day-to-day process of implementing statutorily created or amended programs. Consequently, the implementation of these regulations would involve minimal cost-benefit analysis, if any, and are not likely to lead to court actions. The department believes this legislation would not have significant fiscal impact on the department.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4709

Division: Division of Administrative Services Date: 1/28/99

Approved by Commissioner: *Remond Henderson for* Date: 1/28/99

Agency: Community & Regional Affairs

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