SENNATE CS FOR CS FOR HOUSE BILL NO. 130(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/5/95
Referred: Rules

Sponsor(s): REPRESENTATIVES KELLY, James, Kohring, Rokeberg, Therriault, Ogan

A BILL

FOR AN ACT ENTITLED

"An Act relating to the adoption, amendment, and repeal of regulations."

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

* Section 1. AS 24.20.460(4) is amended to read:

(4) to examine all administrative regulations, including proposed regulations, amendments, and orders of repeal, to determine if they properly implement legislative intent and to provide comments on them to the governor and state agencies:

* Sec. 2. AS 44.62.040(a) is amended to read:

(a) Subject to (c) of this section, every [EVERY] state agency that [WHICH] by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one that

(1) establishes or fixes rates, prices, or tariffs;

(2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the
public by means of signs or signals; or

(3) is directed to a specifically named person or to a group of persons
and does not apply generally throughout the state.

* Sec. 3. AS 44.62.040 is amended by adding a new subsection to read:

(c) Before submitting the regulations and orders of repeal to the lieutenant
governor under (a) of this section, every state agency that by statute possesses
regulation making authority, except boards and commissions and the office of the
ombudsman, shall submit to the governor for review a copy of every regulation or
order of repeal adopted by the agency, except regulations and orders of repeal
identified in (a)(1) - (2). The governor may review the regulations and orders of
repeal received under this subsection. The governor may return the regulations and
orders of repeal to the adopting agency before they are submitted to the lieutenant
governor for filing under (a) of this section, (1) if they are inconsistent with the
faithful execution of the laws or (2) to enable the adopting agency to respond to
specific issues raised by the Administrative Regulation Review Committee. The
governor may not delegate the governor's review authority under this subsection to a
person other than the lieutenant governor.

* Sec. 4. AS 44.62.190(a) is amended to read:

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

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

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

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

(4) when appropriate in the judgment of the agency,
   (A) mailed to a person or group of persons whom the agency
   believes is interested in the proposed action; and
   (B) published in the additional form and manner the state
   agency prescribes;

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

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

(7) furnished to the standing committee of each house of the legislature
having legislative jurisdiction over the subject matter treated by the regulation under
the Uniform Rules of the Alaska State Legislature, together with a copy of the
proposed regulation, amendment, or order of repeal for the committee’s use in
conducting the review authorized by AS 24.05.182;

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

* Sec. 5. AS 44.62.210(a) is amended to read:

(a) On the date and at the time and place designated in the notice the agency
shall give each interested person or the person’s authorized representative, or both, the
opportunity to present statements, arguments, or contentions in writing, with or without
opportunity to present them orally. The state agency may accept material presented
by any form of communication authorized by this chapter and shall consider all
factual, substantive, and other relevant matter presented to it before adopting,
amending, or repealing a regulation. When considering the factual, substantive, and
other relevant matter, the agency shall pay special attention to the cost to private
persons of the proposed regulatory action.

* Sec. 6. AS 44.62 is amended by adding a new section to read:
Sec. 44.62.215. RECORD OF PUBLIC COMMENT. In the drafting, review, or other preparation of a proposed regulation, amendment, or order of repeal, an agency, other than a board or commission and the office of the ombudsman, shall keep a record of its use or rejection of factual or other substantive information that is submitted in writing as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action.

* Sec. 7. AS 44.62.230 is amended to read:

Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under AS 44.62.190 - 44.62.215 [AS 44.62.190 - 44.62.210]. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.040(c) and 44.62.190 - 44.62.215 [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form.

* Sec. 8. AS 44.62.250 is amended to read:

Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after filing by the lieutenant governor the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation.

* Sec. 9. AS 44.62.260 is amended to read:
Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY REGULATIONS. (a) A regulation adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation.

* Sec. 10. AS 46.03.020 is amended by adding a new subsection to read:

(b) Notwithstanding another provision of law to the contrary, when adopting a regulation relating to the control, prevention, and abatement of air, water, or land or subsurface land pollution, the department shall give special attention to public comments concerning the cost of compliance with the regulation and to alternate practical methods of complying with the statute being interpreted or implemented by the regulation.

* Sec. 11. APPLICABILITY FOR REGULATIONS. The changes made to AS 44.62 and AS 46.03.020 by this Act do not apply to the adoption, amendment, or repeal of a regulation unless the adoption, amendment, or repeal is first noticed under AS 44.62.200 on or after the effective date of this Act.