

Sec. 16.43.120. Application of Administrative Procedure Act.

(a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by the commission.

Sec. 18.56.088. Administrative procedure; regulations.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), AS 44.62 (Administrative Procedure Act) does not apply to this chapter. The corporation shall make available to members of the public copies of the regulations adopted under (b) - (e) of this section. Within 45 days after adoption, the chairman of the board shall submit a regulation adopted under (b) - (e) of this section to the chairman of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The board may adopt regulations by motion or by resolution or in any other manner permitted by its bylaws.

(c) The board may adopt regulations to carry out the purposes of this chapter, and shall adopt regulations necessary for the following purposes:

(1) determination of borrower eligibility including, but not limited to, income limitations and the determination of remote, underdeveloped, or blighted areas of the state;

(2) loan guidelines and terms including but not limited to maximum loan amounts and required loan-to-value ratios, but excluding mortgage loan interest rates;

(3) characteristics of housing eligible for loans or purchase of loans, including compliance with the requirements of AS 18.56.300;

(4) the qualifications of loan originators and servicers and the method of allocating amounts available for the purchase of loans;

(5) establishment of a procedure, including a fee schedule, for the commitment for one year or less of money for the purchase of an individual mortgage loan at a specific interest rate; and

(6) establishment of the program of housing assistance authorized by AS 18.56.090(b) including program regulations that, at minimum,

(A) establish priorities and criteria for providing money and other forms of authorized assistance in response to housing assistance proposals;

(B) define the forms of housing assistance authorized under AS 18.56.090(b);

(C) set out procedures to evaluate housing assistance proposals;

(D) set out procedures to approve the award of housing assistance; and

(E) prescribe methods of monitoring the use of money paid out under AS 18.56.090(b) and the progress of activity under the approved housing assistance program.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation on a subject specified in (c)(1) - (4) of this section, the board shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the board or the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the proposed

subject of the regulation. On the date and at the time and place designated in the notice, the board shall give each interested person or an authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The board shall consider all relevant matter presented to it before adopting, amending, or repealing a regulation. At a hearing under this subsection, the board may continue or postpone the hearing to a time and place that it determines. A regulation that is adopted, or its amendment or repeal, may vary in content from the informative summary specified in this subsection if the subject matter of the regulation, or its amendment or repeal, remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of the board's action in order for them to determine whether their interests could be affected by the board's action on that subject.

(e) A regulation or order of repeal on a subject specified in (c) of this section may be adopted as an emergency regulation or order of repeal if the board makes a finding in its order of adoption or repeal, 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 orderly operation of the corporation's loan and bonding programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation covering a subject specified in (c)(1) - (4) of this section; however, upon adoption of an emergency regulation, the board shall, within 10 days after adoption, give notice of the adoption in accordance with (d) of this section. An emergency regulation adopted under this subsection does not remain in effect more than 120 days unless the board complies with (d) of this section during the 120-day period.

(f) A regulation adopted under (b) - (e) of this section becomes effective immediately upon its adoption by the board, unless otherwise specifically provided by the order of adoption.

(g) The provisions of (b) - (e) of this section do not apply to regulations governing interest rates on the corporation's mortgage loan programs.

(h) The board shall adopt regulations in accordance with (a) - (f) of this section that establish a procedure by which a seller of mortgage loans may appeal a decision of the corporation not to purchase mortgage loans offered by the seller.

(i) The board may adopt regulations under (a) - (f) of this section that establish conditions and terms for mobile home loans that are not in accordance with the provisions of this chapter, including conditions and terms relating to owner-occupancy, the number of loans that may be made to a single borrower, and borrower eligibility requirements, if the board first determines that the regulations are necessary to ensure the continued security of the mobile home loan portfolio.

Sec. 24.05.182. Review of administrative regulations by standing committees of the legislature.

(a) A standing committee of the legislature furnished notice of a proposed action under AS 44.62.190 shall review the proposed regulation, amendment of a regulation, or repeal of a regulation before the date the regulation is scheduled by the department or agency to be adopted, amended, or repealed.

(b) A standing committee conducting a review of a regulation under (a) of this section shall determine whether the regulation properly implements legislative intent.

(c) A standing committee shall conduct preliminary reviews under this section while the legislature is in session and during the interim between legislative sessions.

(d) If a standing committee determines that a regulation, amendment to a regulation, or repeal of a regulation does not properly implement legislative intent, the standing committee's findings shall be transmitted to the Administrative Regulation Review Committee.

Sec. 24.08.060. Introduction of bills.

(a) A member of the legislature or a committee chairman, with the concurrence of a majority of the active members of the committee and on behalf of the committee, may introduce a bill or resolution. Bills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual.

(b) Bills introduced by the legislative council shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Council"; bills introduced by the Administrative Regulation Review Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Administrative Regulation Review Committee"; bills introduced by the Legislative Budget and Audit Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit Committee." Bills presented by the governor shall be delivered with a letter to the rules committee of either house and bear the inscription "Rules Committee by Request of the Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the governor as to policy and budget impact. The governor may submit a statement of purpose and effect with each bill and appear personally or through a representative before any committee considering legislation.

Article 03. ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Sec. 24.20.400. Administrative Regulation Review Committee established.

The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor.

Sec. 24.20.410. Membership.

The Administrative Regulation Review Committee is composed of three members of the house appointed by the speaker of the house, and three members of the senate appointed by the president of the senate. The membership from each house shall include at least one member from each of the two major political parties. The committee elects a chairman from among its members.

Sec. 24.20.420. Term of membership.

The committee shall be organized within 15 days after the organization of each legislature. Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor.

Sec. 24.20.430. Vacancies.

When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member.

Sec. 24.20.440. Meetings.

The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature.

Sec. 24.20.445. Power of suspension.

(a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a resolution of the Administrative Regulation Review Committee resolving that the regulation be suspended is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a resolution is filed with the lieutenant governor, the effectiveness of the adoption or amendment that is the subject of the committee's resolution is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) Action under (a) of this section may not be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations.

Sec. 24.20.450. Staff.

The Legislative Affairs Agency shall provide the committee with professional and clerical assistance under the auspices of the legislative council.

Sec. 24.20.460. Powers.

The Administrative Regulation Review Committee has the following powers:

- (1) to organize and adopt rules for the conduct of its business;
- (2) to hold public hearings;
- (3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;
- (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;
- (5) to prepare and distribute reports, memoranda, or other materials;
- (6) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;
- (7) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.20.445.

Sec. 26.27.110. Regulations.

(a) The corporation shall adopt regulations to carry out the purposes of this chapter.

(b) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to the corporation. The corporation shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chair of the corporation shall submit the regulation adopted to the chair of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(c) The corporation may adopt regulations by motion or by resolution or in another manner permitted by its bylaws.

(d) Except as provided in (e) of this section, at least 15 days before the adoption of a regulation, the corporation shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption of the regulation and must include an informative summary of the subject of the proposed action. On the date and at the time and place designated in the notice, the corporation shall give each interested person or an authorized representative of the person, or both, the opportunity to present statements, arguments, or contentions orally or in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The corporation shall consider all relevant matter presented to it before taking the proposed action on the regulation. At a hearing under this subsection, the corporation may continue or postpone the hearing to a time and place determined by the corporation and announced at the hearing before taking the action to continue or postpone the hearing. A regulation adopted by the corporation may vary from the informative summary specified in this subsection if the subject matter of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to assure that members of the public are reasonably notified of the subject matter of the proposed action in order for them to determine whether their interests could be affected by the corporation's proposed action on that subject.

(e) The adoption of a regulation may be made as an emergency regulation if, in the order of adoption, the corporation states the facts constituting the emergency and makes a finding that the adoption of the regulation is necessary for the immediate preservation of the orderly operation of the corporation's programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation; however, upon adoption of an emergency regulation under this subsection, the corporation shall, within 10 days after that adoption, publish notice of the adoption in accordance with the notice procedures specified in (d) of this section. An emergency regulation adopted under this subsection may not remain in effect for more than 120 days unless, before the expiration of that period, the corporation adopts that regulation as a permanent regulation in accordance with the procedures specified in (d) of this section.

(f) A regulation adopted under this section takes effect immediately upon its adoption by the corporation or at another time specified by the corporation in its order of adoption.

Sec. 30.17.120. Administrative procedure.

The provisions of the Administrative Procedure Act regarding the adoption of regulations under AS 44.62.040 - 44.62.320 apply to the authority.

Sec. 31.25.130. Administrative procedure; regulations.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), AS 44.62 (Administrative Procedure Act) does not apply to this chapter. The corporation shall make available to members of the public copies of the regulations adopted under (b) - (e) of this section. Within 45 days after adoption, the chair of the board shall submit a regulation adopted under (b) - (e) of this section to the chair of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The board may adopt regulations by motion or by resolution or in another manner permitted by its bylaws.

(c) The board may adopt regulations to carry out the purposes of this chapter.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the board shall give public notice of the proposed action by posting notice on the corporation's Internet website and on the Alaska Online Public Notice System and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the board or the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the proposed subject of the regulation. On the date and at the time and place designated in the notice, the board shall give each interested person or an authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The board shall consider all relevant matter presented to it before adopting, amending, or repealing a regulation. At a hearing under this subsection, the board may continue or postpone the hearing to a time and place that it determines. A regulation that is adopted, or its amendment or repeal, may vary in content from the informative summary specified in this subsection if the subject matter of the regulation, or its amendment or repeal, remains the same and the original notice was written to ensure that members of the public are reasonably notified of the proposed subject of the board's action in order for them to determine whether their interests could be affected by the board's action on that subject.

(e) A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if the board makes a finding in its order of adoption or repeal, 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 orderly operation of the corporation's bonding programs. Upon adoption of an emergency regulation, the board shall, within 10 days after adoption, give notice of the adoption in accordance with (d) of this section. An emergency regulation adopted under this subsection does not remain in effect more than 120 days unless the board complies with (d) of this section during the 120-day period.

(f) A regulation adopted under (b) - (e) of this section becomes effective immediately upon its adoption by the board, unless otherwise specifically provided by the order of adoption.

Sec. 37.13.206. Regulations.

(a) The board may adopt regulations to carry out the purposes of this chapter and shall adopt regulations under AS 37.13.120(a). The provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to regulations of the corporation.

(b) The board may adopt regulations under this section by motion, by resolution, or in any other manner permitted by the bylaws of the corporation.

(c) Except as provided in (f) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the corporation shall give public notice of the proposed action by

(1) publishing the notice in a newspaper of general circulation or trade or industry publication that the corporation prescribes;

(2) posting the notice on the Alaska Online Public Notice System;

(3) furnishing the notice, by electronic format, to all legislators; and

(4) providing a copy of the notice to every person who has filed a request for notice of proposed regulation with the corporation.

(d) The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and an informative summary of the subject of the proposed action.

(e) On the date and at the time and place designated in the notice, the corporation 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 board may accept material presented by any form of communication and shall consider all factual, substantive, and other relevant matter presented to it before adopting, amending, or repealing a regulation. A regulation adopted, amended, or repealed by the board may vary from the informative summary specified in (d) of this section if the subject of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to ensure that members of the public are reasonably notified of the subject of the proposed action in order for members of the public to determine whether their interests could be affected by the board's proposed action on that subject.

(f) A regulation or order of repeal of a regulation under this section may be made as an emergency regulation if, in the order of adoption, the board states the facts constituting the emergency and makes a finding that the adoption of the regulation or repeal is necessary for the immediate preservation of the orderly operation of the corporation. The requirements of (c) - (e) of this section do not apply to the initial adoption of an emergency regulation or repeal under this subsection; however, upon adoption of an emergency regulation or repeal under this subsection, the corporation shall, within 10 days after that adoption, comply with the notice procedures specified in (c) - (e) of this section. An emergency regulation or repeal adopted under this subsection does not remain in effect for more than 120 days unless, before the expiration of that period, the corporation complies with the procedures specified in (c) - (e) of this section.

(g) A regulation adopted under this section takes effect immediately upon its adoption by the board or at another time specified in the order of adoption. The regulation shall be submitted to the lieutenant governor for publication in the Alaska Administrative Code and Register. Within 45 days after adoption of a regulation under this section, the corporation shall provide a copy of the adopted regulation to the chair of the Administrative Regulation Review Committee (AS 24.20.400).

Sec. 38.35.190. Application of the Administrative Procedure Act.

(a) AS 44.62.010 - 44.62.320, 44.62.640 and 44.62.950 apply to regulations adopted by the commissioner under the authority of this chapter.

(b) [Repealed, Sec. 18 ch 3 FSSLA 1973].

(c) [Repealed, Sec. 18 ch 3 FSSLA 1973].

(d) [Repealed, Sec. 18 ch 3 FSSLA 1973].

Sec. 40.25.120. Public records; exceptions; certified copies.

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual;

(7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803 - 14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under AS 24.20.105 to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under AS 24.20.105;

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160;

(13) information of the Alaska Gasline Development Corporation created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development Corporation that is confidential by law or under a valid confidentiality agreement;

(14) information under AS 38.05.020(b)(11) that is subject to a confidentiality agreement under AS 38.05.020(b)(12).

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110 - 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

Sec. 42.40.920. Application of existing laws.

(a) [Repealed, Sec. 38 ch 168 SLA 1990].

(b) Unless specifically provided otherwise in this chapter, the following laws do not apply to the operations of the corporation:

- (1) AS 19;
- (2) AS 30.15;
- (3) AS 35;
- (4) AS 36.30, except as specifically provided in that chapter;
- (5) AS 37.05, except as specifically provided in AS 37.05.210;
- (6) AS 37.07;
- (7) AS 37.10.010 - 37.10.060;
- (8) AS 37.10.085;
- (9) AS 37.20;
- (10) AS 37.25;
- (11) AS 38;
- (12) AS 44.62.010 - 44.62.320.

Chapter 44.62. ADMINISTRATIVE PROCEDURE ACT

Article 01. APPLICATION AND EFFECT

Sec. 44.62.010. Application to State Organization Act of 1959.
Rule-making power conferred by ch 64 SLA 1959 is subject to this chapter.

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations.
Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

Sec. 44.62.030. Consistency between regulation and statute.
If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

Article 02. SUBMISSION, FILING, AND PUBLICATION OF REGULATIONS

Sec. 44.62.040. Submitting regulations.

(a) Subject to (c) of this section, every state agency that 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.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted, or made clear, must follow the text of each regulation submitted under (a) of this section.

(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 the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, 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) and (2) of this section. 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 within 30 days (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. 44.62.050. Style and forms.

The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations that prescribes the style and forms for submitting regulations under AS 44.62.040.

Sec. 44.62.060. Preparation and filing.

(a) Every state agency that by statute possesses regulation-making authority shall work with the Department of Law, under AS 44.62.125, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050.

(b) In the performance of duties under AS 44.62.125, the Department of Law shall advise the agencies on legal matters relevant to the adoption of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality, and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment, or order of repeal required by AS 44.62.040 unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment, or order of repeal.

Sec. 44.62.070. Fees.

A state officer or public official may not charge a fee to perform an official act in connection with the certification, submission, or filing of regulations under AS 44.62.040 - 44.62.120.

Sec. 44.62.080. Endorsement and filing.

(a) The lieutenant governor shall

(1) endorse on the certified copy of each regulation or order of repeal filed, the time and date of filing; and

(2) maintain, for five years after filing, a permanent file of the certified copies of regulations and orders of repeal for public inspection; after the certified copies have been on file for five years, the lieutenant governor shall transfer the permanent file of the copies to the state archivist (AS 40.21.020) annually, on or before January 1 of each year.

(b) The state archivist shall have and maintain, for public inspection, the permanent file of the certified copies of regulations and orders of repeal transferred to the archivist by the lieutenant governor under (a)(2) of this section.

Sec. 44.62.090. Filing with local government unit clerks. [Repealed, Sec. 2 ch 57 SLA 1969].

Repealed or Renumbered

Sec. 44.62.100. Presumptions from filing.

(a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

(1) it was duly adopted;

(2) it was duly filed and made available for public inspection at the day and hour endorsed on it;

(3) all requirements of this chapter and the regulations relative to the regulation have been complied with;

(4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

Sec. 44.62.110. Presumptions from publication.

(a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register.

Sec. 44.62.120. Voluntary submitting and publication.

With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by AS 44.62.040 to be submitted. If the lieutenant governor accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in AS 44.62.080, and may publish the regulation or order of repeal in the manner the lieutenant governor considers proper.

Sec. 44.62.125. Regulations attorney.

(a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as the attorney's primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted, or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts, and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be adopted by the agencies, correcting or removing the deficiencies, conflicts, and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered, and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050;

(5) assist the agencies in holding public hearings under AS 44.62.210;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes under AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter that should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed.

Article 03. THE ALASKA ADMINISTRATIVE REGISTER AND CODE

Sec. 44.62.130. Codification and publication.

(a) The lieutenant governor shall provide for the continuing compilation, codification, and publication, with periodic supplements, of all regulations filed by the lieutenant governor's office, or of appropriate references to any regulations the printing of which the lieutenant governor finds to

be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register must contain appropriate annotations to judicial decisions and opinions of the attorney general.

(b) The Department of Law shall prescribe a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes for the Alaska Administrative Code.

Sec. 44.62.140. Distribution of code and register.

(a) Except as provided in this section, the lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings is delegated, to the person to whom this authority is delegated. A local government unit may decide to be excluded from the distribution requirements of this subsection. After receiving notice from the local government unit of the unit's decision to be excluded, the lieutenant governor shall exclude that local government unit from the distribution requirements of this subsection.

(b) A local government unit that requests to be excluded from the distribution requirements of (a) of this section may request to start receiving distributions as described under (a) of this section by providing written notice to the lieutenant governor. No later than July 1 of the fiscal year following receipt of notice by the lieutenant governor, the lieutenant governor shall include the local government unit in the distribution.

Sec. 44.62.150. Price. [Repealed, Sec. 49 ch 127 SLA 1974].

Repealed or Renumbered

Sec. 44.62.160. Date and content of register.

(a) The Alaska Administrative Register shall be published quarterly on the first day of the month. All regulations required to be submitted under AS 44.62.040 that are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment, or order of repeal has been filed the regular quarterly register shall be published reflecting that fact.

Sec. 44.62.170. Form of publication. [Repealed, Sec. 2 ch 57 SLA 1969].

Repealed or Renumbered

Sec. 44.62.175. Alaska Online Public Notice System.

(a) The lieutenant governor shall develop and supervise the Alaska Online Public Notice System, to be maintained on the state's site on the Internet. The lieutenant governor shall prescribe the form of notices posted on the system by state agencies. The Alaska Online Public Notice System must include

(1) notices of proposed actions given under AS 44.62.190(a);

(2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;

(3) notices of solicitations to bid issued under AS 36.30.130;

(4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;

(5) executive orders and administrative orders issued by the governor;

(6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal regardless of whether it has taken effect;

(8) notices required by AS 44.62.245(b) regarding an amended version of a document or other material incorporated by reference in a regulation;

(9) a summary of the text of recently issued published opinions of the attorney general;

(10) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(11) in accordance with AS 39.52.240(h), advisory opinions of the attorney general; and

(12) notices required by AS 26.30.010(d) and (e) regarding applications for military facility zones.

(b) The issuer of the notice, order, delegation, text, summary, or list in (a) of this section shall post on the Alaska Online Public Notice System the notice, order, delegation, text, summary, or list, prepared in the format required by the lieutenant governor.

(c) A request for a printed copy of a required posting on the Alaska Online Public Notice System may be made under AS 40.25.110 - 40.25.220 to any state employee designated by the lieutenant governor to receive requests.

(d) The lieutenant governor shall provide for a permanent, electronic archive system of notices posted on the Alaska Online Public Notice System under this section. Access to the electronic archive system shall be made available to the public.

(e) The lieutenant governor may delegate duties under this section to qualified state employees.

(f) A person may not maintain an action based on a posting or lack of posting on the Alaska Online Public Notice System.

Article 04. PROCEDURE FOR ADOPTING REGULATIONS

Sec. 44.62.180. Effective date.

A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal.

Sec. 44.62.190. Notice of proposed action.

(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 posted on the Alaska Online Public Notice System; 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 and the Internet address of the Alaska Online Public Notice System where the full text of the notice can be found;

(2) furnished 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, furnished to the commissioner of the department;

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

(A) furnished 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 to 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 by electronic format to all incumbent State of Alaska legislators, and furnished to the Legislative Affairs Agency;

(7) furnished by electronic format, along with a copy of the proposed regulation, amendment, or order of repeal, as required by AS 24.20.105(c).

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute.

(c) The failure to furnish notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 - 44.62.290.

(d) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the state agency, except the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, shall include

(1) the reason for the proposed action, including, if applicable, an identification of the law, order, decision, or other action of the federal government or a federal or state court that is the basis for the proposed action; in this paragraph, "federal government" means a department, agency, corporation, or instrumentality of the United States government;

(2) the initial cost to the state agency of implementation;

(3) the estimated annual costs, based on a good faith effort to estimate the costs in the aggregate for each of the following categories using the information available to the state agency, to

(A) private persons to comply with the proposed action;

(B) the state agency for implementation and to other state agencies to comply with the proposed action; and

(C) municipalities to comply with the proposed action;

(4) the name of the contact person for the state agency; and

(5) the origin of the proposed action.

(e) Notwithstanding (a) of this section, if a person who is to receive a notice under (a) of this section requests that the state agency mail the notice, the state agency shall furnish the notice to the person by mail.

(f) To the extent feasible, the subject line of electronic mail and the title of a written publication providing the information required by (d) of this section must give the reader a fair idea of the substance of the proposed new regulation, the proposed amended regulation, or the regulation proposed for repeal.

(g) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission shall include the reason for the proposed action, the initial cost of

implementation to the state agency, the estimated annual costs of implementation to the state agency, the name of a contact person, and the origin of the proposed action.

Sec. 44.62.195. Fiscal notes on regulations.

If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years.

Sec. 44.62.200. Contents of notice.

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

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

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

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

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

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

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

(c) An agency that issues a notice under this section shall ensure that the notice is prepared in a form adequate for posting on the Alaska Online Public Notice System. Unless the adoption, amendment, or repeal of a regulation is proposed by the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission, a complete copy of each proposed adoption, amendment, or repeal of a regulation and, if feasible and not prohibited by copyright, any document or other material incorporated by reference, including any document or other material incorporated by reference under this section, in the proposed adoption or amendment shall be made available on the Alaska Online Public Notice System by providing an electronic attachment or link to the complete text.

(d) When a state agency, other than the Regulatory Commission of Alaska, the Board of Fisheries, or the Board of Game, posts, furnishes, or otherwise provides a notice of the proposed adoption, amendment, or repeal of a regulation under AS 44.62.190, a brief description of the changes made by the proposed adoption, amendment, or repeal must accompany the notice. However, if, under AS 44.62.190(a), the notice is published in a newspaper or trade or industry publication or is broadcast, this subsection does not require that the brief description otherwise required by this subsection accompany the publication or the broadcast. To the extent practicable, the brief description shall be written in clear, easily readable language that a person without a legal background is able to understand.

Sec. 44.62.210. Public proceedings.

(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.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines.

Sec. 44.62.213. Agency contact with the public.

(a) Notwithstanding any other provision of this chapter, while an agency is developing a regulatory action and before the agency provides a notice of proposed action under AS 44.62.190, the agency may contact a person about the development of the regulatory action, and the agency may answer a question from a person that is relevant to the development of the regulatory action. In this subsection, "regulatory action" means the adoption, amendment, or repeal of a regulation.

(b) Notwithstanding any other provision of this chapter, after an agency provides a notice of proposed action under AS 44.62.190, the agency shall make a good faith effort to answer, before the end of the public comment period, a question that is relevant to the proposed action, if the question is received in writing or asked at a public meeting at least 10 days before the end of the public comment period. If a question is received after the 10-day cutoff date, the agency may answer the question. When an agency answers a question under this section, the agency shall answer the question in writing and make the question and answer available to the public. An agency may satisfy the requirements of this section by posting answers to frequently asked questions about the proposed action on the Alaska Online Public Notice System and may aggregate substantially similar questions and agency responses and provide a single consolidated response to substantially similar questions.

(c) In this section, "agency" does not include the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission.

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 the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, and the office of the ombudsman, shall keep a record of its use or rejection of factual or other substantive information that is received in writing or orally as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action.

Sec. 44.62.218. Regulations affecting small businesses. [Repealed, Sec. 2 ch 91 SLA 2005].

Repealed or Renumbered

Sec. 44.62.220. Right to petition.

Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in AS 44.62.180 - 44.62.290. The petition must state clearly and concisely

- (1) the substance or nature of the regulation, amendment, or repeal requested;
- (2) the reasons for the request;
- (3) reference to the authority of the agency to take the action requested.

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. 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 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. 44.62.240. Limitation on retroactive action.

If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter that is primarily an "interpretative regulation" has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct.

Sec. 44.62.245. Material incorporated by reference.

(a) In adopting a regulation that incorporates a document or other material by reference, a state agency may incorporate future amended versions of the document or other material if the adopted regulation identifies or refers to the document or other material followed by the phrase "as may be amended," the phrase "as amended from time to time," or a similar provision and the

(1) document consists of a regulation of another agency of the state; or

(2) incorporation of a future amended version of the document or other material is explicitly authorized by a statute.

(b) When the amended version of a document or other material incorporated by reference in a regulation as described in (a) of this section becomes available, the state agency shall

(1) make the amended version of the document or other material available to the public for review; and

(2) post on the Alaska Online Public Notice System and publish in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

(c) The state agency shall also send the notice described in (b)(2) of this section to

(1) a person who has placed the person's name on a distribution list kept by the agency that lists persons who want to receive the notice; the agency may allow a person to request that distribution of the notice be by electronic means and shall honor that request if appropriate means are available;

(2) the regulations attorney in the Department of Law; and

(3) the members of the Administrative Regulation Review Committee.

(d) A change in the form, format, or title in a future amended or revised version of a document or material incorporated by reference in a regulation under this section does not affect the validity of the regulation or the state agency's ability to enforce or implement the regulation. The state agency shall notify the regulations attorney in the Department of Law if the title of the document or other material changes. The regulations attorney shall correct the title in the Alaska Administrative Code under AS 44.62.125.

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, and 44.62.190 - 44.62.215 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. 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, and 44.62.190 - 44.62.215 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, and 44.62.190 - 44.62.215 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. 44.62.270. State policy.

It is the state policy that emergencies are held to a minimum and are rarely found to exist.

Sec. 44.62.280. Purpose of AS 44.62.180 - 44.62.290.

It is the purpose of AS 44.62.180 - 44.62.290 to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in AS 44.62.250, AS 44.62.180 - 44.62.290 apply to the exercise of quasi-legislative power conferred by a statute, but nothing in AS 44.62.180 - 44.62.290 repeals or diminishes additional requirements imposed by the statute. AS 44.62.180 - 44.62.290 are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly.

Sec. 44.62.290. Limits of the application of AS 44.62.180 - 44.62.290.

(a) AS 44.62.180 - 44.62.290 do not apply to a regulation not required to be submitted to the lieutenant governor under AS 44.62.010 - 44.62.320.

(b) Only this section and AS 44.62.180 apply to a regulation that prescribes the organization or procedure of an agency.

Article 05. JUDICIAL REVIEW

Sec. 44.62.300. Judicial review of validity.

(a) 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.

(b) Notwithstanding (a) of this section, a person may not bring an action in court to challenge the adoption, repeal, or amendment of a regulation by a state agency for

(1) insufficiency or inaccuracy of the information provided under AS 44.62.190(d) or (g);

(2) failure of the subject line of electronic mail or the title of a written publication to meet the requirements of AS 44.62.190(f);

- (3) failure of the brief description required by AS 44.62.200(d) to comply with the requirements of AS 44.62.200(d) relating to
 - (A) the clarity and readability of the brief description; or
 - (B) the description of the changes made by the proposed adoption, amendment, or repeal of a regulation; or
- (4) inaccuracy or insufficiency of the answer to a question provided by the state agency under AS 44.62.213.

Sec. 44.62.305. Judicial relief in administrative matters.

(a) Notwithstanding any other provision of law to the contrary and except as provided in (f) and (g) of this section, a person may obtain judicial relief in an administrative matter from the superior court before the state agency handling the administrative proceeding on the matter issues a final administrative decision if

- (1) the person is a party to the administrative proceeding;
- (2) the person has satisfied the procedural requirements of the administrative proceeding up to the time that the person petitions for judicial relief under (b) of this section;
- (3) the state agency has unreasonably delayed the progress of the administrative proceeding; and
- (4) further delay in reaching a final administrative decision will cause the person immediate and irreparable damage.

(b) A person may seek judicial relief under (a) of this section by filing a petition in the superior court. A person may not file the petition until 30 days after the person has filed with the state agency handling the administrative proceeding a written notice that the person intends to file the petition.

(c) In a proceeding begun under (b) of this section, if the superior court determines that the person is eligible for judicial relief under (a) of this section, the superior court may

- (1) enjoin the administrative proceeding and determine the administrative matter in the superior court;
 - (2) order that the administrative matter be handled by another form of dispute resolution;
- or

(3) establish a deadline for the state agency to issue a final administrative decision.

(d) After a person files a petition under (b) of this section, the state agency shall continue with the administrative proceeding unless the superior court

- (1) enjoins the administrative proceeding under (c)(1) of this section; or
- (2) issues an order under (c)(2) of this section.

(e) If the superior court decides that a person is not eligible for judicial relief under (a) of this section, a party to the administrative proceeding may exercise any right of appeal allowed under law for the final administrative decision as if the person had not filed a petition under (b) of this section.

(f) A person may not obtain judicial relief under this section in a personnel proceeding by a state agency. In this subsection, "personnel proceeding" includes a proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance arbitration procedure under a collective bargaining agreement.

(g) This section does not apply to an administrative proceeding of a state agency if another statute of this state establishes a deadline for the state agency to make a final decision in the administrative proceeding.

(h) In this section,

- (1) "administrative matter" means the subject matter of an administrative proceeding;
- (2) "administrative proceeding" means
 - (A) a proceeding subject to AS 44.62.330 - 44.62.630; and

(B) a proceeding that is not subject to AS 44.62.330 - 44.62.630, that is authorized by statute for the adjudication of a state agency matter by the state agency handling the matter or by a person appointed by the state agency, and that involves a matter that directly affects the personal, professional, or business interests of a specific person who is named in the adjudication;

(3) "damage" means damage to the personal, professional, or business interests of a person;

(4) "party" means a specific person whose personal, professional, or business interests are the subject of an administrative proceeding and who is named in the administrative proceeding;

(5) "person" does not include a state agency or other governmental agency;

(6) "state agency" means a department, an institution, a board, a commission, a division, an authority, and any other administrative unit of the executive branch of state government, except a public corporation; the term includes the University of Alaska.

Article 06. OPEN MEETINGS OF GOVERNMENTAL BODIES

Sec. 44.62.310. Government meetings public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

(c) The following subjects may be considered in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential;

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges, or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents;

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or

(8) meetings of municipal service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Sec. 44.62.312. State policy regarding meetings.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies that serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

Sec. 44.62.319. Short title.

AS 44.62.310 - 44.62.319 may be cited as the Open Meetings Act.

Article 07. LEGISLATIVE REVIEW OF RULES

Sec. 44.62.320. Submittal for legislative review.

(a) [Repealed, Sec. 7 ch 164 SLA 2004].

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 - 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195.

(c) At the same time as a regulation is submitted to the governor under AS 44.62.040(c), the state agency shall submit the regulation to the chair and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 - 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195.

(d) Within 10 days after receiving a regulation under (c) of this section, the chair of the Administrative Regulation Review Committee may submit to the governor, by legislative memorandum or letter, comments on the regulation.

Sec. 44.62.040. Submitting regulations.

(a) Subject to (c) of this section, every state agency that 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.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted, or made clear, must follow the text of each regulation submitted under (a) of this section.

(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 the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, 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) and (2) of this section. 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 within 30 days (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. 44.62.190. Notice of proposed action.

(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 posted on the Alaska Online Public Notice System; 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 and the Internet address of the Alaska Online Public Notice System where the full text of the notice can be found;

(2) furnished 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, furnished to the commissioner of the department;

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

(A) furnished 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 to 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 by electronic format to all incumbent State of Alaska legislators, and furnished to the Legislative Affairs Agency;

(7) furnished by electronic format, along with a copy of the proposed regulation, amendment, or order of repeal, as required by AS 24.20.105(c).

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute.

(c) The failure to furnish notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 - 44.62.290.

(d) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the state agency, except the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, shall include

(1) the reason for the proposed action, including, if applicable, an identification of the law, order, decision, or other action of the federal government or a federal or state court that is the basis for the proposed action; in this paragraph, "federal government" means a department, agency, corporation, or instrumentality of the United States government;

(2) the initial cost to the state agency of implementation;

(3) the estimated annual costs, based on a good faith effort to estimate the costs in the aggregate for each of the following categories using the information available to the state agency, to

(A) private persons to comply with the proposed action;

(B) the state agency for implementation and to other state agencies to comply with the proposed action; and

(C) municipalities to comply with the proposed action;

(4) the name of the contact person for the state agency; and

(5) the origin of the proposed action.

(e) Notwithstanding (a) of this section, if a person who is to receive a notice under (a) of this section requests that the state agency mail the notice, the state agency shall furnish the notice to the person by mail.

(f) To the extent feasible, the subject line of electronic mail and the title of a written publication providing the information required by (d) of this section must give the reader a fair idea of the substance of the proposed new regulation, the proposed amended regulation, or the regulation proposed for repeal.

(g) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission shall include the reason for the proposed action, the initial cost of implementation to the state agency, the estimated annual costs of implementation to the state agency, the name of a contact person, and the origin of the proposed action.

Sec. 44.62.245. Material incorporated by reference.

(a) In adopting a regulation that incorporates a document or other material by reference, a state agency may incorporate future amended versions of the document or other material if the adopted regulation identifies or refers to the document or other material followed by the phrase "as may be amended," the phrase "as amended from time to time," or a similar provision and the

(1) document consists of a regulation of another agency of the state; or

(2) incorporation of a future amended version of the document or other material is explicitly authorized by a statute.

(b) When the amended version of a document or other material incorporated by reference in a regulation as described in (a) of this section becomes available, the state agency shall

(1) make the amended version of the document or other material available to the public for review; and

(2) post on the Alaska Online Public Notice System and publish in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

(c) The state agency shall also send the notice described in (b)(2) of this section to

(1) a person who has placed the person's name on a distribution list kept by the agency that lists persons who want to receive the notice; the agency may allow a person to request that distribution of the notice be by electronic means and shall honor that request if appropriate means are available;

(2) the regulations attorney in the Department of Law; and

(3) the members of the Administrative Regulation Review Committee.

(d) A change in the form, format, or title in a future amended or revised version of a document or material incorporated by reference in a regulation under this section does not affect the validity of the regulation or the state agency's ability to enforce or implement the regulation. The state agency shall notify the regulations attorney in the Department of Law if the title of the document or other material changes. The regulations attorney shall correct the title in the Alaska Administrative Code under AS 44.62.125.

Sec. 44.62.290. Limits of the application of AS 44.62.180 - 44.62.290.

(a) AS 44.62.180 - 44.62.290 do not apply to a regulation not required to be submitted to the lieutenant governor under AS 44.62.010 - 44.62.320.

(b) Only this section and AS 44.62.180 apply to a regulation that prescribes the organization or procedure of an agency.

Sec. 44.62.300. Judicial review of validity.

(a) 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.

(b) Notwithstanding (a) of this section, a person may not bring an action in court to challenge the adoption, repeal, or amendment of a regulation by a state agency for

(1) insufficiency or inaccuracy of the information provided under AS 44.62.190(d) or (g);

(2) failure of the subject line of electronic mail or the title of a written publication to meet the requirements of AS 44.62.190(f);

(3) failure of the brief description required by AS 44.62.200(d) to comply with the requirements of AS 44.62.200(d) relating to

(A) the clarity and readability of the brief description; or

(B) the description of the changes made by the proposed adoption, amendment, or repeal of a regulation; or

(4) inaccuracy or insufficiency of the answer to a question provided by the state agency under AS 44.62.213.

Sec. 44.62.640. Definitions for AS 44.62.010 - 44.62.630.

(a) In AS 44.62.010 - 44.62.320, unless the context otherwise requires,

(1) "lieutenant governor" means the office of the lieutenant governor in the executive branch of the state government, or another agency designated by executive order under the constitution;

(2) "order of repeal" means a resolution, order, or other official act of a state agency that expressly repeals a regulation in whole or in part;

(3) "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application, and this and similar phraseology may not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

(b) In AS 44.62.330 - 44.62.630, unless the context otherwise requires,

(1) "agency" includes the state boards, commissions, and officers listed in AS 44.62.330 and those to which this chapter is made applicable by law or executive order involving reorganization under the constitution;

(2) "agency member" means a person who is a member of an agency to which AS 44.62.330 - 44.62.630 apply, and includes a person who individually is an agency;

(3) "hearing officer" means a hearing officer qualified under AS 44.62.350;

(4) "party" includes the agency, the respondent, and a person, other than an officer or an employee of the agency in an official capacity, who has been allowed to appear in the proceeding;

(5) "respondent" means a person against whom an accusation is filed under AS 44.62.360 or against whom a statement of issues is filed under AS 44.62.370.

(c) In this chapter "teleconferencing" means information exchange by audio or video medium.

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.

Sec. 44.62.720. Determination of need for negotiated regulation making committee.

(a) In addition to the regulation adoption requirements under AS 44.62.010 - 44.62.320, an agency head may determine that the use of a negotiated regulation making committee to negotiate and develop a proposed regulation is in the public interest. In making that determination, the agency head is advised to consider whether

(1) there is a need for a regulation, including whether any legal action is pending that might resolve the need;

(2) there are a limited number of identifiable interests that are held by more than one person and that will be significantly affected by the regulation;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) can adequately represent the interests identified under (2) of this section; and

(B) are willing to negotiate in good faith to reach a consensus on the proposed regulation;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed regulation within a fixed period of time;

(5) the negotiated regulation making procedure will not unreasonably delay the adoption of the final regulation;

(6) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(7) the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320.

(b) Upon determining that a negotiated regulation making committee will be formed, an agency head shall notify the public so that interested persons can apply to be appointed to the committee.

Sec. 44.62.740. Establishment, time line, support, and termination of committee.

(a) The agency head may establish a negotiated regulation making committee to assist in the formulation of a proposed regulation. The agency head should strive to achieve and maintain throughout the negotiated regulation making process the balanced committee representation described under AS 44.62.720(a)(3). Members of the committee serve at the pleasure of the agency head. If a committee member is unable to attend a meeting, the agency head may select a designee to serve in that member's place for a meeting.

(b) Before notifying the public under AS 44.62.720(b), the agency head shall establish a time line for the work of the committee. The time line must include a completion date for the transmission to the agency of the report described in AS 44.62.750(d) or (e). The agency shall provide the time line to persons who apply for appointment to the committee. At its first meeting, the committee shall review the time line and recommend to the agency head any revisions to the time line. The agency head shall consider any recommendations and revise the time line if necessary to further the purposes of the negotiated regulation making process.

(c) The agency head may expand the membership of the negotiated regulation making committee if necessary to facilitate the workings of the committee.

(d) The agency shall make available administrative support to the negotiated regulation making committee, including technical support, that the agency head determines necessary.

(e) A negotiated regulation making committee terminates upon adoption under AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency head specifies an earlier termination date.

Sec. 44.62.790. Relationship to other requirements.

The negotiated regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the procedures required under AS 44.62.010 - 44.62.320 for adopting, amending, or repealing regulations, and, if an agency head decides to use negotiated regulation making, the negotiated regulation making shall, where possible, occur before the procedures under AS 44.62.010 - 44.62.320 begin.

Sec. 44.88.085. Administrative procedure.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions of the Administrative Procedure Act regarding the adoption of regulations (AS 44.62.040 - 44.62.320) do not apply to the authority. The authority shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chairman of the authority shall submit the regulation adopted to the chairman of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The authority may adopt regulations under this section by motion or by resolution or in any other manner permitted by its bylaws.

(c) The authority may adopt regulations to carry out the purposes of this chapter and shall adopt regulations as provided in (g) of this section.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the authority shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the authority. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the subject of the proposed action. On the date and at the time and place designated in the notice, the authority shall give each interested person or an authorized representative of the person, or both, the opportunity to present statements, arguments, or contentions orally or in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The authority shall consider all relevant matter presented to it before taking the proposed action on the regulation. At a hearing under this subsection, the authority may continue or postpone the hearing to a time and place determined by the authority and announced at the hearing before taking the action to continue or postpone the hearing. A regulation adopted, amended, or repealed by the authority may vary from the informative summary specified in this subsection if the subject matter of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to assure that members of the public are reasonably notified of the subject matter of the proposed action in order for them to determine whether their interests could be affected by the authority's proposed action on that subject.

(e) The adoption, amendment, or repeal of a regulation may be made as an emergency regulation if, in the order of adoption, the authority states the facts constituting the emergency and makes a finding that the adoption of the regulation is necessary for the immediate preservation of the orderly operation of the authority's programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation; however, upon adoption of an emergency regulation under this subsection, the authority shall, within 10 days after that adoption, publish notice of the adoption in accordance with the notice procedures specified in (d) of this section. An emergency regulation adopted under this subsection may not remain in effect for more than 120 days unless, before the expiration of that period, the authority adopts that regulation as a permanent regulation in accordance with the procedures specified in (d) of this section.

(f) A regulation adopted under this section takes effect immediately upon its adoption by the authority or at another time specified by the authority in its order of adoption.

(g) The authority shall adopt regulations necessary for the following purposes in connection with its programs for the financing of projects under AS 44.88.155 - 44.88.159:

- (1) determination of borrower eligibility;
- (2) loan guidelines and terms, including
 - (A) maximum loan amounts;
 - (B) required loan-to-value ratios; and
 - (C) a method for determining loan interest rates;

(3) characteristics of projects eligible for loans or purchase of loans; and

(4) the qualifications of loan originators and servicers and the method of allocating amounts available for the purchase of loans.

(h) [Repealed, Sec. 21 ch 109 SLA 1998].

Sec. 24.05.182. Review of administrative regulations by standing committees of the legislature.

(a) A standing committee of the legislature furnished notice of a proposed action under AS 44.62.190 shall review the proposed regulation, amendment of a regulation, or repeal of a regulation before the date the regulation is scheduled by the department or agency to be adopted, amended, or repealed.

(b) A standing committee conducting a review of a regulation under (a) of this section shall determine whether the regulation properly implements legislative intent.

(c) A standing committee shall conduct preliminary reviews under this section while the legislature is in session and during the interim between legislative sessions.

(d) If a standing committee determines that a regulation, amendment to a regulation, or repeal of a regulation does not properly implement legislative intent, the standing committee's findings shall be transmitted to the Administrative Regulation Review Committee.

Sec. 24.08.035. Fiscal notes on bills.

(a) Before a bill or resolution, except an appropriation bill, is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease that would result from enactment of the bill for the current fiscal year and five succeeding fiscal years or, if the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement shall be prepared in conformity with the requirements of this section by the department or departments affected and may be reviewed by the office of management and budget. The fiscal note or statement shall be delivered to the committee requesting it within three days of the request. If the bill is presented by the governor for introduction in accordance with AS 24.08.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a committee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

(b) In addition to the fiscal note required by this section, the sponsor of a bill or resolution may prepare a fiscal note in conformity with the requirements of this section and submit it to the committee of first referral or the finance committee. A committee may prepare an additional fiscal note in conformity with the requirements of this section.

(c) A fiscal note for a bill or resolution must contain the following information:

- (1) the fiscal impact on existing programs;
- (2) the fiscal impact of new programs or activities;
- (3) a line item detail of the fiscal impact;
- (4) the source of funds expected to be utilized by general fund source, federal fund source, or other identified source;
- (5) the number of new positions that may be required, identified as full-time, part-time, or temporary;
- (6) an analysis of how the figures in the fiscal note were derived;
- (7) additional information necessary to explain the fiscal note;
- (8) a fiscal impact projection for the current fiscal year and for the succeeding five fiscal years; and

(9) formal information consisting of

- (A) the bill or resolution number,
- (B) the name of the prime sponsors,
- (C) the date the fiscal note was prepared,
- (D) the name of the committee requesting the fiscal note,
- (E) the name and phone number of the person who prepared the fiscal note, and
- (F) the budget request unit, program, or subprogram affected.

(d) The original of a fiscal note shall be submitted to the Division of Legislative Finance and copies shall be sent to the prime sponsor, the committee requesting the fiscal note, and the office of management and budget.

(e) [Repealed, Sec. 2 ch 64 SLA 1992].

(f) In addition to the other requirements of this section, if a bill directs an agency in the executive branch of state government to adopt, amend, or repeal a regulation or will result in an agency's adopting, amending, or repealing a regulation, the department affected shall include in the fiscal note for the bill a specific time by which the agency shall adopt, amend, or repeal the regulation. If the agency is not able to meet the deadline set in the fiscal note, the agency shall

- (1) set a new deadline; and
- (2) report to the Administrative Regulation Review Committee the new deadline and the reasons for being unable to meet the deadline set in the fiscal note.

(g) In (f) of this section, "agency" includes the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Public

Offices Commission, and the Alaska Oil and Gas Conservation Commission, but does not include other boards or commissions.

Sec. 24.20.105. Review of proposed regulations.

(a) The Legislative Affairs Agency may review each proposed regulation that is subject to AS 44.62.010 - 44.62.300 (Administrative Procedure Act). A review of proposed regulations under this section must be conducted by an attorney employed by that agency.

(b) Reviews shall be conducted under (a) of this section in the following order of priority:

(1) proposed regulations that would implement newly enacted legislation;

(2) proposed regulations requested in writing to be reviewed by a standing committee, the Administrative Regulation Review Committee, or the legislative council as implicating major policy development.

(c) Under AS 44.62.190(a)(7), the notice of proposed action, along with a copy of the proposed regulation, shall be furnished electronically by the state agency to the

(1) Legislative Affairs Agency;

(2) chairs of the standing committees with jurisdiction over the subject of the proposed regulation;

(3) Administrative Regulation Review Committee;

(4) legislative council.

(d) Within available staff resources and priorities set by the legislative council, the Legislative Affairs Agency shall assign one or more attorneys to conduct a review of proposed regulations. The review shall evaluate

(1) the legality and constitutionality of the proposed regulation;

(2) whether the state agency has statutory authority to adopt the proposed regulation to implement, interpret, make specific, or otherwise carry out a statute; and

(3) whether the proposed regulation is consistent with the applicable statutes.

(e) In conducting its review under this section, the assigned attorney may consult with the Department of Law, the committee or council that requests the review under (b)(2) of this section, and the state agency proposing the regulation change. With respect to proposed regulations that implement newly enacted legislation as described in (b)(1) of this section, the assigned attorney may also consult with the prime sponsor of the legislation if the prime sponsor is a member of the legislature at the time of the review. If the assigned attorney determines that the proposed regulations fail to meet the standards set out in (d) of this section, the assigned attorney shall notify, in writing, the Department of Law, the state agency, the Administrative Regulation Review Committee, the president of the senate, the speaker of the house of representatives, and the committee or council, if any, that requested the review under (b)(2) of this section. If the review involves proposed regulations that implement newly enacted legislation as described in (b)(1) of this section and the prime sponsor of that legislation is a member of the legislature at the time of the review, the assigned attorney shall also notify the prime sponsor, in writing, if the proposed regulations fail to meet the standards set out in (d) of this section. If, after performing a review requested under (b)(2) of this section, the assigned attorney determines that the proposed regulations meet the standards set out in (d) of this section, the assigned attorney shall communicate that determination to the requester.

(f) In addition to the review specified in (d) of this section, the assigned attorney shall notify the Administrative Regulation Review Committee, the president of the senate, and the speaker of the house of representatives of any provision of the proposed regulation that may be inconsistent with legislative intent and appropriate for additional legislative oversight as a result.

(g) Except as provided in this section, the Legislative Affairs Agency may not release any information regarding its review of a proposed regulation under this section.

(h) The process of review of a proposed regulation under this section does not affect a state agency's authority to complete its proposed action regarding the regulation. Suggestions for changes to a proposed regulation made by the Legislative Affairs Agency are not binding on a state agency.

(i) No action may be brought for the failure of the Legislative Affairs Agency to conduct a legal review under this section.

(j) The provisions of (b) - (i) of this section do not apply to proposed regulations of the Board of Game or the Board of Fisheries.

(k) In this section, "proposed regulation" means a proposed adoption, amendment, or repeal of a regulation.



KeyCite Yellow Flag - Negative Treatment

Declined to Follow by Martinez v. Department of Industry, Labor and Human Relations, Wis., January 15, 1992

606 P.2d 769

Supreme Court of Alaska.

STATE of Alaska and Department of Revenue, Appellants,

v.

A.L.I.V.E. VOLUNTARY, Appellee.

No. 3670.

|

Feb. 19, 1980.

Unincorporated association, which was political action committee for unions, brought suit based on allegation that Department of Revenue's denial of permit allowing association to operate lotteries was wrongful for certain reasons including fact that such denial was based on continuing enforcement of a regulation despite its nullification by legislature. The Superior Court, Third Judicial District, Peter J. Kalamarides, J., granted association partial summary judgment, and State and Department of Revenue appealed. The Supreme Court, Matthews, J., held that statute providing that legislature, by concurrent resolution adopted by vote of both houses, could annul a regulation of an agency or department violated state constitutional provisions defining the mechanics of legislation.

Reversed and remanded with directions.

Boochever, C. J., dissented and filed opinion in which Connor, J., joined.

West Headnotes (10)

[1]

Statutes

🔑 Purpose of single-subject rule

Statutes

🔑 Purpose of rule that title expresses
subject of statute

Constitutional requirements that every bill be confined to one subject and that there be a descriptive title are intended to prevent inclusion of incongruous and unrelated matters in same bill and to guard against inadvertence, stealth and fraud in legislation. Const. art. 2, § 13.

Cases that cite this headnote

[2]

Statutes

🔑 Reading and consideration of bills

Statutes

🔑 Mode of voting, and entry of yeas and
nays

Purpose of state constitutional provision requiring three readings of a bill on three separate days, requiring that vote of each legislator on final passage of a bill be recorded and requiring that no bill pass without an affirmative vote of the majority of the membership of each house is to ensure deliberation prior to passage, to ensure that requisite majority of each house affirmatively votes to enact a bill into law and to provide a public record of the vote cast by each legislator. Const. art. 2, § 14.

1 Cases that cite this headnote

[3]

Statutes

🔑 Necessity for approval and authority to veto

Purpose of state constitutional provisions to effect that no bill shall become law unless governor has opportunity to veto it is to preserve integrity of executive branch of government, and thus maintain equilibrium of governmental powers, and to act as a check on hasty and ill-considered legislation. Const. art. 2, §§ 15, 17.

6 Cases that cite this headnote

[4]

Statutes

🔑 Passage, approval, or enactment; time computed therefrom

Purpose of state constitutional provision that laws are not to become effective, unless a two-thirds vote of membership of each house provides otherwise, until 90 days after they are enacted is to provide fair opportunity to those people affected by the legislation to learn of it. Const. art. 2, § 18.

1 Cases that cite this headnote

[5]

States

🔑 Orders and resolutions

Statute providing that legislature, by concurrent resolution adopted by vote of both houses, could annul a regulation of an agency or department violated state constitutional provisions defining the mechanics of legislation. Const. art. 2, §§ 1 et seq., 5, 13–18; art. 3, § 23; art. 10, § 12; AS 44.62.320(a).

5 Cases that cite this headnote

[6]

States

🔑 Orders and resolutions

When legislature wishes to act in an advisory capacity it may act by resolution, but if it wishes to take action having a binding effect on those outside the legislature, it may do so only by following the enactment procedure set forth in State Constitution. Const. art. 2, § 1 et seq.

4 Cases that cite this headnote

[7]

States

🔑 Orders and resolutions

Legislature has no implied general power to veto agency regulations by informal legislative actions. Const. art. 3, § 23; art. 10, § 12.

10 Cases that cite this headnote

[8]

Administrative Law and Procedure

🔑 Power to Make

Power granted by state constitutional provisions to effect that, unless they are disapproved by legislature within 60 days, changes in the law by executive order shall become effective at a date thereafter to be designated by governor and that recommendations made by a state local boundary commission become effective 45 days after presentation to the legislature

unless vetoed is not rule-making power, but, rather, power to change statutes, and, thus, expression of such power in Constitution does not carry any implication that general administrative rule making is meant to be forbidden. Const. art. 3, § 23; art. 10, § 12.

2 Cases that cite this headnote

[9]

Constitutional Law

🔑 Delegation of Powers

Though legislature can delegate power to make laws conditionally, the condition must be lawful and may not contain a grant of power to any branch of government to function in a manner prohibited by Constitution; fact that legislature can delegate legislative powers to others, who are not bound by constitutional provisions defining the mechanics of legislation, does not mean that legislature can delegate the same power to itself and, in the process, escape from such constitutional constraints under which it must operate. Const. art. 2, § 1 et seq.

3 Cases that cite this headnote

[10]

Constitutional Law

🔑 Encroachment on Executive

Though power to void agency regulations can be exercised by either legislature or agency, if legislature exercises such power it must do so while acting as a legislature; it may not grant itself the power to act as an agency. Const. art. 2, §§ 1 et seq., 5; art. 3, § 26.

Cases that cite this headnote

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Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.