

HOUSE BILL NO. 168

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES CHENAULT, Kreiss-Tomkins, Gara

Introduced: 3/10/17

Referred: State Affairs, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation notice and review by the legislature; and relating to the
2 **Administrative Regulation Review Committee.**"

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

4 * **Section 1.** AS 16.43.120(b) is amended to read:

5 (b) AS 44.62.010 - 44.62.319 [AS 44.62.010 - 44.62.320] and 44.62.640 apply
6 to regulations adopted by the commission.

7 * Sec. 2. AS 18.56.088(a) is amended to read:

1 * **Sec. 3.** AS 24.05.182(a) is amended to read:

2 (a) A standing committee of the legislature may, consistent with the
 3 committee's jurisdiction as provided in the uniform rules of the legislature,
 4 [FURNISHED NOTICE OF A PROPOSED ACTION UNDER AS 44.62.190
 5 SHALL] review a [THE] proposed or adopted regulation, amendment of a regulation,
 6 or repeal of a regulation [BEFORE THE DATE THE REGULATION IS
 7 SCHEDULED BY THE DEPARTMENT OR AGENCY TO BE ADOPTED,
 8 AMENDED, OR REPEALED].

9 * **Sec. 4.** AS 24.08.060(b) is amended to read:

10 (b) Bills introduced by the legislative council shall be delivered with a letter of
 11 explanation to the rules committee of either house and bear the inscription "Rules
 12 Committee by Request of the Legislative Council"; [BILLS INTRODUCED BY THE
 13 ADMINISTRATIVE REGULATION REVIEW COMMITTEE SHALL BE
 14 DELIVERED WITH A LETTER OF EXPLANATION TO THE RULES
 15 COMMITTEE OF EITHER HOUSE AND BEAR THE INSCRIPTION "RULES
 16 COMMITTEE BY REQUEST OF THE ADMINISTRATIVE REGULATION
 17 REVIEW COMMITTEE";] bills introduced by the Legislative Budget and Audit
 18 Committee shall be delivered with a letter of explanation to the rules committee of
 19 either house and bear the inscription "Rules Committee by Request of the Legislative
 20 Budget and Audit Committee." Bills presented by the governor shall be delivered with
 21 a letter to the rules committee of either house and bear the inscription "Rules
 22 Committee by Request of the Governor"; bills so presented and inscribed shall be
 23 received as bills carrying the approval of the governor as to policy and budget impact.
 24 The governor may submit a statement of purpose and effect with each bill and appear
 25 personally or through a representative before any committee considering legislation.

26 * **Sec. 5.** AS 26.27.110(b) is amended to read:

27 (b) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions
 28 of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do
 29 not apply to the corporation. The corporation shall make available to members of the
 30 public copies of the regulations adopted under this section. [WITHIN 45 DAYS
 31 AFTER ADOPTION OF A REGULATION UNDER THIS SECTION, THE CHAIR

1 OF THE CORPORATION SHALL SUBMIT THE REGULATION ADOPTED TO
 2 THE CHAIR OF THE ADMINISTRATIVE REGULATION REVIEW
 3 COMMITTEE UNDER AS 24.20.400 - 24.20.460.]

4 * **Sec. 6.** AS 30.17.120 is amended to read:

5 **Sec. 30.17.120. Administrative procedure.** The provisions of the
 6 Administrative Procedure Act regarding the adoption of regulations under
 7 AS 44.62.040 - 44.62.319 [AS 44.62.040 - 44.62.320] apply to the authority.

8 * **Sec. 7.** AS 31.25.130(a) is amended to read:

9 (a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), AS 44.62
 10 (Administrative Procedure Act) does not apply to this chapter. The corporation shall
 11 make available to members of the public copies of the regulations adopted under (b) -
 12 (e) of this section. [WITHIN 45 DAYS AFTER ADOPTION, THE CHAIR OF THE
 13 BOARD SHALL SUBMIT A REGULATION ADOPTED UNDER (b) - (e) OF THIS
 14 SECTION TO THE CHAIR OF THE ADMINISTRATIVE REGULATION REVIEW
 15 COMMITTEE UNDER AS 24.20.400 - 24.20.460.]

16 * **Sec. 8.** AS 37.13.206(g) is amended to read:

17 (g) A regulation adopted under this section takes effect immediately upon its
 18 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
 19 Administrative Code and Register. [WITHIN 45 DAYS AFTER ADOPTION OF A
 20 REGULATION UNDER THIS SECTION, THE CORPORATION SHALL
 21 PROVIDE A COPY OF THE ADOPTED REGULATION TO THE CHAIR OF THE
 22 ADMINISTRATIVE REGULATION REVIEW COMMITTEE (AS 24.20.400).]

23 * **Sec. 9.** AS 38.35.190(a) is amended to read:

24 (a) AS 44.62.010 - 44.62.319 [AS 44.62.010 - 44.62.320], 44.62.640 and
 25 44.62.950 apply to regulations adopted by the commissioner under the authority of
 26 this chapter.

27 * **Sec. 10.** AS 42.40.920(b) is amended to read:

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

30 (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 - 44.62.319 [AS 44.62.010 - 44.62.320].

* Sec. 11. AS 44.62.020 is amended to read:

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations.

Except for the authority conferred on [UPON] the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - 44.62.319 [AS 44.62.010 - 44.62.320] do not confer authority on [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. 12.** AS 44.62.040(c) is amended to read:

(c) Before submitting the regulations and orders of repeal to the lieutenant governor under (a) of this section, every state agency that by statute possesses regulation making authority, except 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

1 execution of the laws [, OR (2) TO ENABLE THE ADOPTING AGENCY TO
2 RESPOND TO SPECIFIC ISSUES RAISED BY THE ADMINISTRATIVE
3 REGULATION REVIEW COMMITTEE]. The governor may not delegate the
4 governor's review authority under this subsection to a person other than the lieutenant
5 governor.

6 * **Sec. 13.** AS 44.62.190(a) is amended to read:

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

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

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

20 (3) if the agency is within a department, furnished to the commissioner
21 of the department;

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

23 (A) furnished to a person or group of persons whom the agency
24 believes is interested in the proposed action; and

25 (B) published in the additional form and manner the state
26 agency prescribes;

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

30 (6) furnished by electronic format to all incumbent State of Alaska
31 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)].

* **Sec. 14.** AS 44.62.245(c) is amended to read:

(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; **and**

(2) the regulations attorney in the Department of Law [; AND

(3) THE MEMBERS OF THE ADMINISTRATIVE REGULATION
COMMITTEE].

* Sec. 15. AS 44.62.290(a) is amended to read:

(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 - 44.62.319** [AS 44.62.010 - 44.62.320].

* **Sec. 16.** AS 44.62.300(a) is amended to read:

(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 - 44.62.319 [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.

* Sec. 17. AS 44.62.640(a) is amended to read:

(a) In **AS 44.62.010 - 44.62.319** [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

1 executive order under the constitution;

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

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

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

22 * **Sec. 18.** AS 44.62.710(a) is amended to read:

23 (a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for
24 the conduct of negotiated regulation making consistent with **AS 44.62.010 - 44.62.319**
25 [AS 44.62.010 - 44.62.320]. Negotiated regulation making is not a substitute for the
26 requirements of **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320] but may be
27 used as a supplemental procedure to permit the direct participation of affected interests
28 in the development of new regulations or the amendment or repeal of existing
29 regulations. A consensus agreement reached by a negotiated regulation making
30 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

1 innovation and experimentation with the negotiated regulation making process or to
 2 limit other means to obtain public participation in the regulation making process.

3 * **Sec. 19.** AS 44.62.720(a) is amended to read:

4 (a) In addition to the regulation adoption requirements under **AS 44.62.010 -**
 5 **44.62.319** [AS 44.62.010 - 44.62.320], an agency head may determine that the use of a
 6 negotiated regulation making committee to negotiate and develop a proposed
 7 regulation is in the public interest. In making that determination, the agency head is
 8 advised to consider whether

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

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

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

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

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

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

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

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

25 (7) the agency head, to the maximum extent possible consistent with
 26 the legal or other obligations of the agency, will use the consensus of the committee as
 27 the basis for the regulation proposed by the agency under **AS 44.62.010 - 44.62.319**
 28 [AS 44.62.010 - 44.62.320].

29 * **Sec. 20.** AS 44.62.740(e) is amended to read:

30 (e) A negotiated regulation making committee terminates upon adoption under
 31 **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320] of the final regulation under

1 consideration unless the agency head specifies an earlier termination date.

2 * **Sec. 21.** AS 44.62.790 is amended to read:

3 **Sec. 44.62.790. Relationship to other requirements.** The negotiated
4 regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the
5 procedures required under **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320] for
6 adopting, amending, or repealing regulations, and, if an agency head decides to use
7 negotiated regulation making, the negotiated regulation making shall, where possible,
8 occur before the procedures under **AS 44.62.010 - 44.62.319** [AS 44.62.010 -
9 44.62.320] begin.

10 * **Sec. 22.** AS 44.88.085(a) is amended to read:

11 (a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions
12 of the Administrative Procedure Act regarding the adoption of regulations
13 **(AS 44.62.040 - 44.62.319)** [(AS 44.62.040 - 44.62.320)] do not apply to the
14 authority. The authority shall make available to members of the public copies of the
15 regulations adopted under this section. [WITHIN 45 DAYS AFTER ADOPTION OF
16 A REGULATION UNDER THIS SECTION, THE CHAIRMAN OF THE
17 AUTHORITY SHALL SUBMIT THE REGULATION ADOPTED TO THE
18 CHAIRMAN OF THE ADMINISTRATIVE REGULATION REVIEW
19 COMMITTEE UNDER AS 24.20.400 - 24.20.460.]

20 * **Sec. 23.** AS 24.05.182(b), 24.05.182(c), 24.05.182(d); AS 24.08.035(f)(2); AS 24.20.105,
21 24.20.400, 24.20.410, 24.20.420, 24.20.430, 24.20.440, 24.20.445, 24.20.450, 24.20.460;
22 AS 40.25.120(a)(11); and AS 44.62.320 are repealed.