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Bannister
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SENATE CS FOR CS FOR HOUSE BILL NO. 140(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): REPRESENTATIVES REINBOLD, Hughes, Herron, LeDoux, Higgins, Thompson, Gara, Costello, Neuman, Tammie Wilson, Olson, Keller, Lynn, Tarr, Isaacson, Kawasaki

A BILL

FOR AN ACT ENTITLED

"An Act relating to the proposed adoption, amendment, or repeal of a regulation; and relating to contact with agencies about regulations."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

SHORT TITLE. This Act may be known as the Regulation Impact Transparency Act.

*** Sec. 2.** 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 [BOARDS AND COMMISSIONS], 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

1 repeal identified in **(a)(1) and (2)** [(a)(1) - (2)] of this section. The governor may
2 review the regulations and orders of repeal received under this subsection. The
3 governor may return the regulations and orders of repeal to the adopting agency before
4 they are submitted to the lieutenant governor for filing under (a) of this section **within**
5 **30 days** (1) if they are inconsistent with the faithful execution of the laws, or (2) to
6 enable the adopting agency to respond to specific issues raised by the Administrative
7 Regulation Review Committee. The governor may not delegate the governor's review
8 authority under this subsection to a person other than the lieutenant governor.

9 * **Sec. 3.** AS 44.62.190(d) is amended to read:

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

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

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

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

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

24 (B) the state agency **for** [OF] implementation **and to other**
25 **state agencies to comply with the proposed action; and**

26 (C) **municipalities to comply with the proposed action;**

27 (4) [,] the name of the contact person for the state agency; [,] and

28 (5) the origin of the proposed action.

29 * **Sec. 4.** AS 44.62.190 is amended by adding new subsections to read:

30 (f) To the extent feasible, the subject line of electronic mail and the title of a
31 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. 5.** AS 44.62.200(c) is amended to read:

(c) An agency that issues a notice under this section shall **ensure** [ASSURE] 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.**

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

(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.

[NOTWITHSTANDING AS 44.62.300, AN ACTION MAY NOT BE BROUGHT FOR FAILURE OF THE BRIEF DESCRIPTION TO COMPLY WITH THE REQUIREMENTS OF THIS SUBSECTION RELATING TO THE DESCRIPTION OF THE CHANGES OR ITS CLARITY AND READABILITY.]

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

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 cut-off 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. 8.** AS 44.62.215 is amended to read:

Sec. 44.62.215. Record of public comment. In the drafting, review, or other preparation of a proposed regulation, amendment, or order of repeal, an agency, other than the Regulatory Commission of Alaska, the Board of Fisheries, the Board of

Game, the Alaska Oil and Gas Conservation Commission [A BOARD OR 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 [SUBMITTED] in writing or orally as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action.

* **Sec. 9.** 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 Review Committee.

* **Sec. 10.** AS 44.62.300 is amended by adding a new subsection to read:

(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. 11.** AS 44.62.320 is amended by adding new subsections to read:

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

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

9 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 APPLICABILITY. AS 44.62.040(c), as amended by sec. 2 of this Act,
12 AS 44.62.190(d), as amended by sec. 3 of this Act, AS 44.62.190(f) and (g), added by sec. 4
13 of this Act, AS 44.62.200(c), as amended by sec. 5 of this Act, AS 44.62.200(d), as amended
14 by sec. 6 of this Act, AS 44.62.213(b) and (c), enacted by sec. 7 of this Act, AS 44.62.215, as
15 amended by sec. 8 of this Act, AS 44.62.245(c), as amended by sec. 9 of this Act,
16 AS 44.62.300(b), added by sec. 10 of this Act, and AS 44.62.320(c) - (d), added by sec. 11 of
17 this Act, apply to proposed regulations first published under AS 44.62.190 on or after the
18 effective date of this Act.