

LEGAL SERVICES

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MEMORANDUM

March 19, 2013

SUBJECT: Legislature's Involvement with Regulations: Various Statutes

TO: Representative Lora Reinbold
Chair of the Administrative Regulation Review Committee
Attn: Robert Pearson

FROM: Terri Lauterbach
Legislative Counsel



In preparation for the meeting of the Administrative Regulation Review Committee (ARRC) on March 21, 2013, you have asked me to send to you and the members of the ARRC a list of the various statutes under which members and committees of the legislature get notice of, and the opportunity to review, proposed regulations and adopted regulations.

The statutes are in several places; I have organized them for this memo chronologically from the initial "proposed" stage of a regulation, to its review by the Department of Law, on to its filing with the lieutenant governor, and thence to becoming adopted and having a continuing existence. The legislature can be part of the process at several steps along the way.

Here's the list, with relevant excerpts of the statutes:

AS 44.62.190(a)(6) - At least 30 days before adoption of a regulation, notice of the proposed action is "furnished by electronic format to all incumbent State of Alaska legislators, and furnished to the Legislative Affairs Agency." This is at the beginning of the "public comment period" during which legislators (and other interested persons) may submit comments and questions to the agency about the proposed regulations, in favor or opposed, or requesting changes or clarifications.

AS 24.20.105 and AS 44.62.190(a)(7) - At least 30 days before adoption of a regulation, the notice of proposed action, along with a copy of the proposed regulation, is furnished electronically by the state agency to the Legislative Affairs Agency; the chairs of the standing committees with jurisdiction over the subject of the proposed regulation; the Administrative Regulation Review Committee; and the legislative council. As above, this occurs at the beginning of the "public comment period" -- the difference here, compared to above, is that a copy of the proposed regulations accompanies the notice.

AS 24.20.460(4) - The ARRC may "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."

AS 24.05.182 - Review of proposed regulations by standing committees:

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.

AS 24.20.460(7) - The ARRC may "investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, . . . 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." (However, the suspension power is unconstitutional under the A.L.I.V.E. decision.)

AS 24.20.105 - The Legislative Affairs Agency reviews proposed regulations for legal flaws (not policy implications), and if flaws are found, submits a memorandum to the ARRC, the legislative council, the president of the senate, the speaker of the house, the Department of Law, and the agency proposing the regulation. Under this same statute, the ARRC, a standing committee, or the legislative council can attach "priority" to LAA review of proposed regulations by submitting a written request to LAA, citing "major policy implications of the proposed regulations." However, LAA review would still be focused only on legal flaws specified in AS 24.20.105(d): legality, constitutionality, statutory authority of the agency, and consistency with applicable statutes. (In this case, the standing committee would also get a copy of any memo written by LAA under AS 24.20.105.) Memos that raise issues involving potential inconsistency of proposed regulations with legislative intent can also be sent by LAA to the ARRC, the president of the senate, and the speaker of the house.

AS 44.62.125 - It is my understanding that, when conducting review of proposed regulations that are submitted for adoption, the Regulations Attorney in the Department

of Law considers any LAA memo that may have been issued under AS 24.20.105, even though that memo is not part of the "public record."

AS 44.62.040(c) - Before filing final regulations with the lieutenant governor, an agency must submit the regulations to the governor. The governor may ask for the input of the ARRC. Here is the statute:

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

AS 44.62.320(b) - Under AS 44.62.040(a), an agency wishing to adopt a regulation, must, at the end of the process, file a certified copy and one duplicate copy with the lieutenant governor. Under AS 44.62.320(b), the lieutenant governor must submit "to the chairman and all members of the ARRC" a copy of any regulation filed with the lieutenant governor for "review under 24.20.400 - 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195 [estimate of any appropriation increase that the regulation may cause for that fiscal year and for at least the next two succeeding fiscal years]."

AS 24.20.460(4) and (6) - With respect to regulations that are already adopted, the ARRC may "examine all administrative regulations . . . to determine if they properly implement legislative intent and to provide comments on them to the governor and state agencies." The ARRC may also "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, . . . introduce a bill that would enact a statute that would . . . nullify the regulation." Standing committees could also exercise similar powers to review adopted regulations and introduce bills related to regulations, including nullifying them, within their subject matter jurisdictions.

Representative Lora Reinbold

March 19, 2013

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I hope you find this listing helpful. Please do not hesitate to let me know if you have questions about any statutes cited.

TML:Ind

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cc: Senator Cathy Giessel, Vice-Chair, ARRC
Senator Gary Stevens, Member, ARRC
Senator Hollis French, Member, ARRC
Representative Mike Hawker, Member, ARRC
Representative Geran Tarr, Member, ARRC