



LAWS OF ALASKA

2018

Source
HB 168

Chapter No.

AN ACT

Relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to regulation notice and review by the legislature; and relating to the Administrative
2 Regulation Review Committee.

3
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:

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

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8 AMENDED, OR REPEALED].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 [COMMITTEE." BILLS] presented by the
21 governor shall be delivered with a letter to the rules committee of either house and
22 bear the inscription "Rules Committee by Request of the Governor"; bills so presented
23 and inscribed shall be received as bills carrying the approval of the governor as to
24 policy and budget impact. The governor may submit a statement of purpose and effect
25 with each bill and appear personally or through a representative before any committee
26 considering legislation.

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

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

1 AFTER ADOPTION OF A REGULATION UNDER THIS SECTION, THE CHAIR
2 OF THE CORPORATION SHALL SUBMIT THE REGULATION ADOPTED TO
3 THE CHAIR OF THE ADMINISTRATIVE REGULATION REVIEW
4 COMMITTEE UNDER AS 24.20.400 - 24.20.460.]

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

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

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

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

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

18 (g) A regulation adopted under this section takes effect immediately upon its
19 adoption by the board or at another time specified in the order of adoption. The
20 regulation shall be submitted to the lieutenant governor for publication in the Alaska
21 Administrative Code and Register. [WITHIN 45 DAYS AFTER ADOPTION OF A
22 REGULATION UNDER THIS SECTION, THE CORPORATION SHALL
23 PROVIDE A COPY OF THE ADOPTED REGULATION TO THE CHAIR OF THE
24 ADMINISTRATIVE REGULATION REVIEW COMMITTEE (AS 24.20.400).]

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

26 (a) **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320], 44.62.640, and
27 44.62.950 apply to regulations adopted by the commissioner under the authority of
28 this chapter.

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

30 (b) Unless specifically provided otherwise in this chapter, the following laws
31 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 - 44.62.319** [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

1 (a) of this section within 30 days [(1)] if they are inconsistent with the faithful
2 execution of the laws [, OR (2) TO ENABLE THE ADOPTING AGENCY TO
3 RESPOND TO SPECIFIC ISSUES RAISED BY THE ADMINISTRATIVE
4 REGULATION REVIEW COMMITTEE]. The governor may not delegate the
5 governor's review authority under this subsection to a person other than the lieutenant
6 governor.

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

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

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

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

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

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

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

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

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

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

1 legislators [, AND FURNISHED TO THE LEGISLATIVE AFFAIRS AGENCY;

2 (7) FURNISHED BY ELECTRONIC FORMAT, ALONG WITH A
3 COPY OF THE PROPOSED REGULATION, AMENDMENT, OR ORDER OF
4 REPEAL, AS REQUIRED BY AS 24.20.105(c)].

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

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

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

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

13 (3) THE MEMBERS OF THE ADMINISTRATIVE REGULATION
14 REVIEW COMMITTEE].

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

16 (a) AS 44.62.180 - 44.62.290 do not apply to a regulation not required to be
17 submitted to the lieutenant governor under **AS 44.62.010 - 44.62.319** [AS 44.62.010 -
18 44.62.320].

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

20 (a) An interested person may get a judicial declaration on the validity of a
21 regulation by bringing an action for declaratory relief in the superior court. In addition
22 to any other ground the court may declare the regulation invalid

23 (1) for a substantial failure to comply with **AS 44.62.010 - 44.62.319**
24 [AS 44.62.010 - 44.62.320]; or

25 (2) in the case of an emergency regulation or order of repeal, upon the
26 ground that the facts recited in the statement do not constitute an emergency under
27 AS 44.62.250.

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

29 (a) In **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320], unless the
30 context otherwise requires,

31 (1) "lieutenant governor" means the office of the lieutenant governor in

1 the executive branch of the state government, or another agency designated by
2 executive order under the constitution;

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

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

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

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

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

1 making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit
2 innovation and experimentation with the negotiated regulation making process or to
3 limit other means to obtain public participation in the regulation making process.

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

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

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

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

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

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

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

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

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

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

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

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

31 (e) A negotiated regulation making committee terminates upon adoption under

1 **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320] of the final regulation under
2 consideration unless the agency head specifies an earlier termination date.

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

4 **Sec. 44.62.790. Relationship to other requirements.** The negotiated
5 regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the
6 procedures required under **AS 44.62.010 - 44.62.319** [AS 44.62.010 - 44.62.320] for
7 adopting, amending, or repealing regulations, and, if an agency head decides to use
8 negotiated regulation making, the negotiated regulation making shall, where possible,
9 occur before the procedures under **AS 44.62.010 - 44.62.319** [AS 44.62.010 -
10 44.62.320] begin.

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

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

21 * **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,
22 24.20.400, 24.20.410, 24.20.420, 24.20.430, 24.20.440, 24.20.445, 24.20.450, 24.20.460;
23 AS 40.25.120(a)(11); and AS 44.62.320 are repealed.