

HOUSE BILL NO. 105

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE JAMES

Introduced: 1/20/95

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations of state agencies and to administrative hearings,
2 amending the Administrative Procedure Act, and establishing the division of
3 regulations; and providing for an effective date."

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

5 * **Section 1.** AS 18.56.088(a) is amended to read:

6 (a) Except for AS 44.62.310 and 44.62.312, regarding public meetings, and
7 AS 44.62.320 [AS 44.62.320(a)] regarding legislative review of regulations, AS 44.62
8 (Administrative Procedure Act) does not apply to this chapter. The corporation shall
9 make available to members of the public copies of the regulations adopted under (b) -
10 (e) of this section. Within 45 days after adoption, the **chair** [CHAIRMAN] of the
11 board shall submit a regulation adopted under (b) - (e) of this section to the **chair**
12 [CHAIRMAN] of the Administrative Regulation Review Committee under
13 AS 24.20.400 - 24.20.460. [THE PROVISIONS OF AS 44.62.320(a) APPLY TO
14 REGULATIONS ADOPTED UNDER (b) - (e) OF THIS SECTION.]

1 * **Sec. 2.** AS 24.20.400 is amended to read:

2 Sec. 24.20.400. ADMINISTRATIVE REGULATION REVIEW COMMITTEE
3 ESTABLISHED. The Administrative Regulation Review Committee is established as
4 a permanent interim committee of the legislature. The establishment of the committee
5 recognizes the need for prompt legislative review of administrative regulations filed
6 by the lieutenant governor to determine whether repeal of a regulation or other
7 statutory change [ANNULMENT UNDER AS 44.62.320] is appropriate.

8 * **Sec. 3.** AS 24.20.460 is amended to read:

9 Sec. 24.20.460. POWERS. The Administrative Regulation Review Committee
10 has the following powers:

11 (1) to organize and adopt rules for the conduct of its business;

12 (2) to hold public hearings;

13 (3) to require all state officials and agencies of state government to give
14 full cooperation to the committee or its staff in assembling and furnishing requested
15 information;

16 (4) to examine all administrative regulations to determine if they
17 properly implement legislative intent;

18 (5) [TO MAKE RECOMMENDATIONS FOR LEGISLATIVE
19 ANNULMENT OF ADMINISTRATIVE REGULATIONS UNDER AS 44.62.320;

20 (6)] to prepare and distribute reports, memoranda, or other materials;

21 (6) [(7)] to promote needed revision or repeal of regulations that have
22 been adopted by state departments and agencies and, when the committee determines
23 a regulation should be repealed or amended, to introduce a bill that would enact a
24 statute that would supersede or nullify the regulation;

25 (7) [(8)] to investigate findings that are transmitted to the committee
26 by a standing committee in accordance with AS 24.05.182 and, as appropriate, to
27 either introduce a bill annulling the regulation or exercise the committee's power to
28 suspend the effectiveness of the regulation in accordance with AS 24.20.445.

29 * **Sec. 4.** AS 44.62.020 is amended by adding a new subsection to read:

30 (b) The division of regulations is established in the Department of
31 Administration. Notwithstanding any other provision of law, a state agency may not

1 adopt, amend, or repeal a regulation. Only the division may adopt, amend, or repeal
2 a regulation on behalf of a state agency. AS 44.62.010 - 44.62.320 apply to all the
3 changes in regulations made by the division.

4 * **Sec. 5.** AS 44.62.030 is amended to read:

5 Sec. 44.62.030. CONSISTENCY BETWEEN REGULATION AND
6 STATUTE. If [, BY] express or implied terms of a statute **grant** [, A STATE
7 AGENCY HAS] authority to adopt regulations to implement, interpret, make specific
8 or otherwise carry out the provisions of the statute, a regulation [ADOPTED] is not
9 valid or effective unless consistent with the statute and reasonably necessary to carry
10 out the purpose of the statute.

11 * **Sec. 6.** AS 44.62.030 is amended by adding a new subsection to read:

12 (b) A regulation that does not conform to the following requirements is
13 not valid:

14 (1) the regulation may not exceed standards established by pertinent
15 federal statutes or regulations unless specifically required by the state statute the
16 regulation implements, interprets, or otherwise carries out;

17 (2) where applicable, the regulation must set specific performance
18 standards that do not require extremely advanced technology to comply with;

19 (3) if specific scientifically measurable performance standards are
20 included in the regulation, those standards must have been reviewed and approved
21 by one or more individuals qualified to competently consider those standards;

22 (4) the cost of implementing the regulation must have been
23 adequately considered and a reasonable effort made to incorporate the least costly
24 approach, taking into account social as well as quantifiable economic factors;

25 (5) the regulation may not require compliance by a business or
26 other nongovernmental entity in a form that duplicates requirements already
27 imposed on the entity by another state or federal statute or regulation.

28 * **Sec. 7.** AS 44.62.040(a) is amended to read:

29 (a) **The division** [EVERY STATE AGENCY WHICH BY STATUTE
30 POSSESSES REGULATION-MAKING AUTHORITY] shall submit to the
31 lieutenant governor for filing a certified original and one duplicate copy of every

1 **adoption, amendment, or repeal of a** regulation [OR ORDER OF REPEAL
2 ADOPTED BY IT,] except one that

3 (1) establishes or fixes rates, prices, or tariffs;

4 (2) relates to the use of public works, including streets and
5 highways, under the jurisdiction of a state agency if the effect of the order is
6 indicated to the public by means of signs or signals; or

7 (3) is directed to a specifically named person or to a group of
8 persons and does not apply generally throughout the state.

9 * **Sec. 8.** AS 44.62.050 is amended to read:

10 Sec. 44.62.050. STYLE AND FORMS. The **division** [DEPARTMENT OF
11 LAW] shall prepare and shall revise when necessary a drafting manual for
12 administrative regulations that prescribes the style and forms for submitting
13 regulations under AS 44.62.040.

14 * **Sec. 9.** AS 44.62.120 is amended to read:

15 Sec. 44.62.120. VOLUNTARY SUBMITTING AND PUBLICATION. With
16 the approval of the lieutenant governor, **the division or an** [A STATE] agency **in the**
17 **legislative branch** may submit to the lieutenant governor for filing **the adoption,**
18 **amendment, or** [A REGULATION OR ORDER OF] repeal of a regulation not
19 required by AS 44.62.040 to be submitted. If the lieutenant governor accepts the
20 regulation **change** [OR ORDER OF REPEAL], the lieutenant governor shall endorse
21 and file it as required in AS 44.62.080, and may publish the **change** [REGULATION
22 OR ORDER OF REPEAL] in the manner the lieutenant governor considers proper.

23 * **Sec. 10.** AS 44.62.125 is amended to read:

24 Sec. 44.62.125. REGULATIONS ATTORNEY. (a) In the **division**
25 [DEPARTMENT OF LAW] a particular attorney, called the regulations attorney, shall
26 be assigned, as the attorney's primary responsibility, the functions relating to the
27 handling of **legal issues involving** administrative regulations.

28 (b) The **regulations attorney** [DEPARTMENT] shall

29 (1) advise all state [ADMINISTRATIVE] agencies of the nature and
30 use of administrative regulations;

31 (2) alert the **other division staff and state** agencies to statutes that

1 need to be implemented, interpreted, or made clear by regulation;

2 (3) continually review the regulations [, MAKE
3 RECOMMENDATIONS TO THE RESPECTIVE AGENCIES] concerning deficiencies,
4 conflicts, and obsolete provisions in and the need for reorganization or revision of the
5 regulations, and prepare **proposed** regulations to be **considered for adoption**
6 [ADOPTED] by the **division** [AGENCIES], correcting or removing the deficiencies,
7 conflicts, and obsolete provisions;

8 (4) work with all **state** [ADMINISTRATIVE] agencies [POSSESSING
9 REGULATION-MAKING POWER] in drafting all new regulations, advising the
10 agencies of legal problems encountered, and ensuring compliance with the drafting
11 manual for administrative regulations prepared by the **division** [DEPARTMENT OF
12 LAW] under AS 44.62.050;

13 (5) assist the **division** [AGENCIES] in holding public hearings under
14 AS 44.62.210;

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

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

22 * **Sec. 11.** AS 44.62.130(b) is amended to read:

23 (b) The **division** [DEPARTMENT OF LAW] shall prescribe a uniform system
24 of indexing, numbering, arrangement of text, and citation of authority and history notes
25 for the Alaska Administrative Code.

26 * **Sec. 12.** AS 44.62.180 is amended to read:

27 Sec. 44.62.180. EFFECTIVE DATE. **An adoption, amendment, or repeal**
28 **of a** [A] regulation [OR AN ORDER OF REPEAL] filed by the lieutenant governor
29 becomes effective on the 30th day after the date of filing unless

30 (1) otherwise specifically provided by the statute under which the
31 regulation **change** [OR ORDER OF REPEAL] is adopted, in which event it becomes

1 effective on the day prescribed by the statute;

2 (2) it is a change dealing with [REGULATION PRESCRIBING] the
3 organization or procedure of a state [AN] agency, in which event it becomes effective
4 upon filing by the lieutenant governor or upon a later date specified by the division
5 [STATE AGENCY] in a written instrument submitted with, or as part of, the change
6 [REGULATION OR ORDER OF REPEAL];

7 (3) it is an emergency regulation change [OR ORDER OF REPEAL]
8 adopted under AS 44.62.250, in which case the finding and the statement of the facts
9 constituting the emergency shall be submitted to the lieutenant governor, together with
10 the emergency change [REGULATION OR ORDER OF REPEAL], which, in that
11 event only, becomes effective upon filing by the lieutenant governor or upon a later
12 date specified by the division [STATE AGENCY] in a written instrument submitted
13 with, or as part of, the emergency change [REGULATION OR ORDER OF
14 REPEAL];

15 (4) a later date is prescribed by the division [STATE AGENCY] in a
16 written instrument submitted with, or as part of, the change [REGULATION OR
17 ORDER OF REPEAL].

18 * **Sec. 13.** AS 44.62 is amended by adding a new section to read:

19 Sec. 44.62.185. DEVELOPMENT OF PROPOSED CHANGE. Before
20 publishing a notice of proposed regulation change under AS 44.62.190, the following
21 steps must be accomplished in the following sequence with respect to the proposed
22 adoption, amendment, or repeal of the regulation:

23 (1) the division shall gather and consider relevant scientific and other
24 data;

25 (2) the division shall prepare an initial draft of the proposed regulation
26 change;

27 (3) the initial draft shall be submitted for review and approval by
28 individuals qualified to analyze it and all scientific and other data upon which it is
29 based;

30 (4) upon approval of a change under (3) of this section, the division
31 shall perform a cost-benefit analysis and adjust the proposal as necessary based upon

1 the results of the analysis;

2 (5) the proposed change shall be submitted to the affected state agency
3 for review and approval of its feasibility;

4 (6) the proposed change shall be submitted for review and comment to
5 representatives of businesses that would be most affected by the change;

6 (7) the division shall adjust the proposal as necessary to accommodate
7 the suggestions received as a result of the review under (5) and (6) of this section.

8 * **Sec. 14.** AS 44.62.190(a) is amended to read:

9 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
10 notice of the proposed **change** [ACTION] shall be

11 (1) published in the newspaper of general circulation or trade or
12 industry publication that the **division** [STATE AGENCY] prescribes and in the Alaska
13 Administrative Journal; in the discretion of the **division** [STATE AGENCY GIVING
14 THE NOTICE], the requirement of publication in a newspaper or trade or industry
15 publication may be satisfied by using a combination of publication and broadcasting;
16 when broadcasting the notice, **the division** [AN AGENCY] may use an abbreviated
17 form of the notice if the broadcast provides the name and date of the newspaper or
18 trade or industry journal where the full text of the notice can be found;

19 (2) mailed to every person who has filed a request for notice of
20 proposed **change** [ACTION] with the **division** [STATE AGENCY];

21 (3) [IF THE AGENCY IS WITHIN A DEPARTMENT,] mailed or
22 delivered to the **head of the affected state agency** [COMMISSIONER OF THE
23 DEPARTMENT];

24 (4) when appropriate in the judgment of the **division** [AGENCY],

25 (A) mailed to a person or group of persons whom the **division**
26 [AGENCY] believes is interested in the proposed **change** [ACTION]; and

27 (B) published in the additional form and manner the **division**
28 [STATE AGENCY] prescribes;

29 (5) furnished the Department of Law together with a copy of the
30 proposed **change** [REGULATION, AMENDMENT, OR ORDER OF REPEAL FOR
31 THE DEPARTMENT'S USE IN PREPARING THE OPINION REQUIRED AFTER

1 ADOPTION AND BEFORE FILING BY AS 44.62.060);

2 (6) furnished to all incumbent State of Alaska legislators and the
3 Legislative Affairs Agency;

4 (7) furnished to the standing committee of each house of the legislature
5 having legislative jurisdiction over the subject matter treated by the **proposed change**
6 [REGULATION] under the Uniform Rules of the Alaska State Legislature, together
7 with a copy of the proposed **change** [REGULATION, AMENDMENT, OR ORDER
8 OF REPEAL] for the committee's use in conducting the review authorized by
9 AS 24.05.182;

10 (8) furnished to the staff of the Administrative Regulation Review
11 Committee.

12 * **Sec. 15.** AS 44.62.190(d) is amended to read:

13 (d) Along with a notice furnished under (a)(2), (4)(A), (6), (7), or (8) of this
14 section, the **division** [STATE AGENCY] shall include the reason for the proposed
15 **change** [ACTION], the initial cost to the **affected** state agency of implementation, the
16 estimated annual costs to the state agency of implementation, the name of the contact
17 person for the **division** [STATE AGENCY], and the origin of the proposed action.

18 * **Sec. 16.** AS 44.62.200 is amended to read:

19 Sec. 44.62.200. CONTENTS OF NOTICE. (a) The notice of proposed
20 adoption, amendment, or repeal of a regulation must include

21 (1) a statement of the time, place, and nature of proceedings for
22 adoption [, AMENDMENT, OR REPEAL] of the regulation **change**;

23 (2) reference to the authority under which the **change** [REGULATION]
24 is proposed and a reference to the particular code section or other provisions of law
25 that are being implemented, interpreted, or made specific;

26 (3) an informative summary of the [PROPOSED] subject of **the change**
27 [AGENCY ACTION];

28 (4) other matters prescribed by a statute applicable to the **affected**
29 [SPECIFIC] agency or to the specific **change** [REGULATION] or class of regulations;

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

1 (b) A regulation that is adopted, amended, or repealed may vary in content
2 from the summary specified in (a)(3) of this section if the subject matter of the **change**
3 [REGULATION] remains the same and the original notice was written so as to assure
4 that members of the public are reasonably notified of the **proposal** [PROPOSED
5 SUBJECT OF AGENCY ACTION] in order for them to determine whether their
6 interests could be affected by [AGENCY] action on that subject.

7 (c) **The division** [AN AGENCY THAT ISSUES A NOTICE UNDER THIS
8 SECTION] shall assure that the notice is prepared in a form adequate for publication
9 in the Alaska Administrative Journal.

10 * **Sec. 17.** AS 44.62.210 is amended to read:

11 Sec. 44.62.210. PUBLIC PROCEEDINGS. (a) On the date and at the time
12 and place designated in the notice the **division** [AGENCY] shall give each interested
13 person or the person's authorized representative, or both, the opportunity to present
14 statements, arguments, or contentions in writing, with or without opportunity to present
15 them orally. The **division** [STATE AGENCY] may accept material presented by any
16 form of communication authorized by this chapter and shall consider all relevant
17 matter presented to it before adopting, amending, or repealing a regulation.

18 (b) At a hearing under this section the **division** [AGENCY] or its authorized
19 representative may administer oaths or affirmations, and may continue or postpone the
20 hearing to the time and place **that** [WHICH] it determines **appropriate**.

21 * **Sec. 18.** AS 44.62.220 is amended to read:

22 Sec. 44.62.220. RIGHT TO PETITION. Unless the right to petition for
23 adoption of a regulation is restricted by statute to a designated group or the procedure
24 for the petition is prescribed by statute, an interested person may petition **the division**
25 [AN AGENCY] for the adoption, **amendment**, or repeal of a regulation as provided
26 in AS 44.62.180 - 44.62.290. The petition must state clearly and concisely

27 (1) the substance or nature of the regulation **change** [, AMENDMENT,
28 OR REPEAL] requested;

29 (2) the reasons for the request;

30 (3) reference to the authority of the **division** [AGENCY] to take the
31 action requested.

1 * **Sec. 19.** AS 44.62.230 is amended to read:

2 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition
3 requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 -
4 44.62.290, **the division** [A STATE AGENCY] shall, within 30 days, deny the petition
5 in writing or schedule the matter for public hearing under AS 44.62.190 - 44.62.210.
6 However, if the petition is for an emergency regulation **change**, and the **division**
7 [AGENCY] finds that an emergency exists, the requirements of AS 44.62.190 -
8 44.62.210 do not apply, and the **division** [AGENCY] may submit the **change**
9 [REGULATION] to the lieutenant governor immediately after making the finding of
10 emergency and putting the **change** [REGULATION] into proper form.

11 * **Sec. 20.** AS 44.62 is amended by adding a new section to read:

12 Sec. 44.62.242. RETROACTIVE ACTION PROHIBITED. The adoption,
13 amendment, or repeal of a regulation under this chapter has prospective effect only.

14 * **Sec. 21.** AS 44.62.250 is amended to read:

15 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation **change** [OR
16 ORDER OF REPEAL] may be adopted as an emergency regulation **change** [OR
17 ORDER OF REPEAL] if **the division** [A STATE AGENCY] makes a written finding,
18 including a statement of the facts that constitute the emergency, that the adoption of
19 the **change** [REGULATION OR ORDER OF REPEAL] is necessary for the immediate
20 preservation of the public peace, health, safety, or general welfare. The requirements
21 of **AS 44.62.190 - 44.62.210** [AS 44.62.060 AND 44.62.190 - 44.62.210] do not apply
22 to the initial adoption of **an** emergency **regulation change** [REGULATIONS];
23 however, upon adoption of an emergency regulation **change** the **division** [ADOPTING
24 AGENCY] shall immediately submit a copy of it to the lieutenant governor for filing
25 and for publication in the Alaska Administrative Register, and within five days after
26 filing by the lieutenant governor the **division** [AGENCY] shall give notice of the
27 adoption in accordance with AS 44.62.190(a). Failure to give the required notice by
28 the end of the 10th day automatically repeals the regulation **change**.

29 * **Sec. 22.** AS 44.62.260 is amended to read:

30 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY
31 **REGULATION CHANGES** [REGULATIONS]. (a) A **change** [REGULATION]

1 adopted as an emergency regulation **change** does not remain in effect more than 120
2 days unless the **division** [ADOPTING AGENCY] complies with AS 44.62.190 -
3 44.62.210 [AS 44.62.060 AND 44.62.190 - 44.62.210] either before submitting the
4 **change** [REGULATION] to the lieutenant governor or during the 120-day period.

5 (b) Before the expiration of the 120-day period, the **division** [AGENCY] shall
6 transmit to the lieutenant governor for filing a certification that AS 44.62.190 -
7 44.62.210 [AS 44.62.060 AND 44.62.190 - 44.62.210] were complied with before
8 submitting the regulation **change** to the lieutenant governor, or that the **division**
9 [AGENCY] complied with those sections within the 120-day period. Failure to so
10 certify repeals the emergency regulation **change**; it may not be renewed or refiled as
11 an emergency regulation **change**.

12 * **Sec. 23.** AS 44.62.290(b) is amended to read:

13 (b) Only this section and AS 44.62.180 apply to a regulation **change** that **deals**
14 **with** [PRESCRIBES] the organization or procedure of **a state** [AN] agency.

15 * **Sec. 24.** AS 44.62.330 is amended by adding a new subsection to read:

16 (e) Notwithstanding any other provision of law, an administrative hearing
17 subject to AS 44.62.330 - 44.62.630 that involves the application, interpretation, or
18 implementation of a regulation may be conducted only by the division of regulations
19 in the Department of Administration. When an administrative proceeding involving
20 the application, interpretation, or implementation of a regulation reaches the hearing
21 stage, the agency shall transfer all pertinent records involving the proceeding to the
22 division. AS 44.62.330 - 44.62.630 apply to all hearings held by the division under
23 this subsection.

24 * **Sec. 25.** AS 44.62.640(a) is amended by adding a new paragraph to read:

25 (5) "division" means the division of regulations in the Department of
26 Administration.

27 * **Sec. 26.** AS 44.88.085(a) is amended to read:

28 (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings, and
29 except for AS 44.62.320 [AS 44.62.320(a)] regarding legislative review of regulations,
30 the provisions of the Administrative Procedure Act regarding the adoption of
31 regulations (AS 44.62.040 - 44.62.320) do not apply to the authority. The authority

1 shall make available to members of the public copies of the regulations adopted under
2 this section. Within 45 days after adoption of a regulation under this section, the
3 chairman of the authority shall submit the regulation adopted to the chairman of the
4 Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

5 * **Sec. 27.** AS 44.62.060, 44.62.240, and 44.62.320(a) are repealed.

6 * **Sec. 28.** All rules and regulations adopted by a department, board, commission, public
7 corporation, or other agency of the executive branch of state government in effect on the
8 effective date of this section remain in effect until repealed or amended by the division of
9 regulations.

10 * **Sec. 29.** The revisor of statutes shall prepare a bill conforming the Alaska Statutes to the
11 changes made by this Act. The bill shall be presented to the House and Senate Rules
12 Committees for introduction on the first day of the Second Regular Session of the Nineteenth
13 Alaska State Legislature.

14 * **Sec. 30.** Section 29 of this Act takes effect immediately under AS 01.10.070(c).

15 * **Sec. 31.** Sections 1 - 28 of this Act take effect July 1, 1996.