

**HOUSE BILL NO. 130**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

**BY REPRESENTATIVES KELLY, James**

**Introduced: 1/27/95**

**Referred:**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to agency review of public comment on the adoption,  
2 amendment, and repeal of regulations; relating to the examination of proposed  
3 regulations, amendments of regulations, and orders repealing regulations by the  
4 Administrative Regulation Review Committee and the Department of Law; relating  
5 to the submission to, and acceptance by, the lieutenant governor of proposed  
6 regulations, amendments of regulations, and orders repealing regulations; and  
7 requiring agencies to make certain determinations before adopting regulations,  
8 amendments of regulations, or orders repealing regulations."

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

10 \* **Section 1.** AS 24.20.460 is amended to read:

11           Sec. 24.20.460. POWERS. The Administrative Regulation Review Committee  
12           has the following powers:

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

- 1 (2) to hold public hearings;
- 2 (3) to require all state officials and agencies of state government to give  
3 full cooperation to the committee or its staff in assembling and furnishing requested  
4 information;
- 5 (4) to examine all administrative regulations, **including proposed**  
6 **regulations, amendments, and orders of repeal submitted to it under**  
7 **AS 44.62.040(c)**, to determine if they properly implement legislative intent;
- 8 (5) to make recommendations for legislative annulment of  
9 administrative regulations under AS 44.62.320;
- 10 (6) to prepare and distribute reports, memoranda, or other materials;
- 11 (7) to promote needed revision or repeal of regulations that have been  
12 adopted by state departments and agencies and, when the committee determines a  
13 regulation should be repealed or amended, to introduce a bill that would enact a statute  
14 that would supersede or nullify the regulation;
- 15 (8) to investigate findings that are transmitted to the committee by a  
16 standing committee in accordance with AS 24.05.182 and, as appropriate, to either  
17 introduce a bill annulling the regulation or exercise the committee's power to suspend  
18 the effectiveness of the regulation in accordance with AS 24.20.445.

19 \* **Sec. 2.** AS 44.62.040 is amended by adding new subsections to read:

20 (c) When an agency submits a regulation, amendment, or order of repeal to the  
21 lieutenant governor under (a) of this section, the regulation, amendment, or order of  
22 repeal shall be accompanied by a copy of the written determinations made by the  
23 agency under AS 44.62.215(b) and the statement prepared by the Department of Law  
24 under AS 44.62.060(b).

25 (d) Within 30 days after an agency submits a regulation, amendment, or order  
26 of repeal to the lieutenant governor under (a) of this section and before accepting the  
27 regulation, amendment, or order of repeal for filing, the lieutenant governor shall  
28 submit the following items to the Administrative Regulation Review Committee for  
29 the committee's comments on whether the regulation, amendment, or order of repeal  
30 conforms to the intent of the authorizing statute and whether the agency complied with  
31 AS 44.62.215:

- 1 (1) the regulation, amendment, or order of repeal;  
2 (2) the written determinations made by the agency under  
3 AS 44.62.215(b); and  
4 (3) the statement prepared by the Department of Law under  
5 AS 44.62.060(b).

6 (e) The Administrative Regulation Review Committee shall provide its  
7 comments under (d) of this section to the lieutenant governor within 90 days after  
8 receiving the items listed in (d) of this section. The committee shall notify the  
9 lieutenant governor within 30 days after receipt if the committee needs more time to  
10 prepare its comments. When preparing its comments, the committee may consult with  
11 experts in the area that is the subject of the regulation, amendment, or order of repeal.

12 (f) After receiving the comments under (e) of this section, the lieutenant  
13 governor may return the proposed regulation, amendment, or order of repeal to the  
14 proposing agency without accepting the regulation, amendment, or order of repeal for  
15 filing.

16 \* **Sec. 3.** AS 44.62.050 is amended to read:

17 Sec. 44.62.050. **STYLE AND FORMS.** The Department of Law shall prepare  
18 and shall revise when necessary a drafting manual for administrative regulations that  
19 prescribes the style and forms for submitting regulations **to the lieutenant governor**  
20 under AS 44.62.040.

21 \* **Sec. 4.** AS 44.62.060(c) is amended to read:

22 (c) The lieutenant governor may not accept for filing a regulation, amendment,  
23 or order of repeal required by AS 44.62.040 unless it is accompanied by **the written**  
24 **determinations required by AS 44.62.215(b) and** the written statement specified in  
25 (b) of this section, and the statement approves the regulation, amendment, or order of  
26 repeal.

27 \* **Sec. 5.** AS 44.62.060 is amended by adding a new subsection to read:

28 (d) Unless the Department of Law notifies the lieutenant governor and the  
29 agency that it needs more time to review the proposed regulation, amendment, or order  
30 of repeal, the Department of Law shall prepare the written statement of approval or  
31 disapproval required by (b) of this section within 60 days after the proposed regulation,

1 amendment, or order of repeal has been submitted to it for preparation of the  
2 statement.

3 \* **Sec. 6.** AS 44.62 is amended by adding a new section to read:

4 Sec. 44.62.215. PUBLIC COMMENT AND AGENCY DETERMINATIONS.

5 (a) In the drafting, review, or other preparation of a proposed regulation, amendment,  
6 or order of repeal, an agency shall weigh, evaluate, or otherwise utilize public  
7 comment that consists of facts or other substantive information that is relevant to the  
8 accuracy, coverage, or contents of the proposed regulatory action. The agency shall  
9 explain in writing the agency's use or rejection of factual or other substantive  
10 information that is submitted as public comment and relevant to the accuracy,  
11 coverage, or other aspect of the proposed regulatory action. An agency may not  
12 weigh, evaluate, or otherwise utilize in the drafting, review, or other preparation of  
13 the proposed regulatory action public comment that is nonfactual or an expression of  
14 preference regarding the need for, coverage, or policy of the proposed regulatory  
15 action.

16 (b) Before adopting a regulation, amendment, or order of repeal, the agency  
17 shall determine in writing

18 (1) an estimate of the cost of compliance for a person affected by the  
19 proposed regulatory action;

20 (2) the benefits to be received by the public from the proposed  
21 regulatory action;

22 (3) the economic effect of the proposed regulatory action on the  
23 economy of the state; and

24 (4) that there is an economically feasible method for complying with  
25 the proposed regulatory action.

26 (c) A written explanation or determination required by this section is a public  
27 record under AS 09.25.100 - 09.25.220, and the agency producing the explanation or  
28 determination shall provide a copy to a person upon request.

29 \* **Sec. 7.** AS 44.62.250 is amended to read:

30 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of  
31 repeal may be adopted as an emergency regulation or order of repeal if a state agency

1 makes a written finding, including a statement of the facts that constitute the  
2 emergency, that the adoption of the regulation or order of repeal is necessary for the  
3 immediate preservation of the public peace, health, safety, or general welfare. The  
4 requirements of AS 44.62.040(c) - (e), 44.62.060, [AS 44.62.060] and 44.62.190 -  
5 44.62.215 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency  
6 regulations; however, upon adoption of an emergency regulation the adopting agency  
7 shall immediately submit a copy of it to the lieutenant governor for filing and for  
8 publication in the Alaska Administrative Register, and within five days after filing by  
9 the lieutenant governor the agency shall give notice of the adoption in accordance with  
10 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day  
11 automatically repeals the regulation.

12 \* **Sec. 8.** AS 44.62.260 is amended to read:

13           Sec. 44.62.260. **LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY**  
14 **REGULATIONS.** (a) A regulation adopted as an emergency regulation does not  
15 remain in effect more than 120 days unless the adopting agency complies with  
16 AS 44.62.040(c) - (e), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190  
17 - 44.62.210] either before submitting the regulation to the lieutenant governor or during  
18 the 120-day period.

19           (b) Before the expiration of the 120-day period, the agency shall transmit to  
20 the lieutenant governor for filing a certification that AS 44.62.040(c) - (e), 44.62.060,  
21 [AS 44.62.060] and 44.62.190 - 44.62.215 [44.62.190 - 44.62.210] were complied with  
22 before submitting the regulation to the lieutenant governor, or that the agency complied  
23 with those sections within the 120-day period. Failure to so certify repeals the  
24 emergency regulation; it may not be renewed or refiled as an emergency regulation.