

CS FOR HOUSE BILL NO. 130(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 3/22/95

Referred: Judiciary, Finance

Sponsor(s): REPRESENTATIVES KELLY, James

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the examination by the Administrative Regulation Review
2 Committee and the Department of Law of proposed regulations, amendments of
3 regulations, and orders repealing regulations; relating to the submission to,
4 acceptance by, and return by the lieutenant governor of proposed regulations,
5 amendments of regulations, and orders repealing regulations; relating to agency
6 review of public comment on the adoption, amendment, and repeal of regulations;
7 and requiring certain agencies to provide examples of compliance methods before
8 adopting regulations, 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(4) is amended to read:

11 (4) to examine all administrative regulations, including proposed
12 regulations, amendments, and orders of repeal submitted to it under
13 AS 44.62.040(c), to determine if they properly implement legislative intent;

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

2 (c) After an agency submits a regulation, amendment, or order of repeal to the
3 lieutenant governor under (a) of this section and before accepting the regulation,
4 amendment, or order of repeal for filing, the lieutenant governor shall submit the
5 following items to the Administrative Regulation Review Committee for the
6 committee's comments on whether the regulation, amendment, or order of repeal
7 conforms to the intent of the authorizing statute and whether the agency complied with
8 AS 44.62.215:

9 (1) the regulation, amendment, or order of repeal;

10 (2) the written record and example required by AS 44.62.215(a) - (b);

11 and

12 (3) the statement prepared by the Department of Law under
13 AS 44.62.060(b).

14 (d) The Administrative Regulation Review Committee shall provide its
15 comments under (c) of this section to the lieutenant governor within 30 days after
16 receiving the items listed in (c) of this section. When preparing its comments, the
17 committee may consult with experts in the area that is the subject of the regulation,
18 amendment, or order of repeal.

19 (e) At any time after receiving a proposed regulation, amendment, or order of
20 repeal from an agency, and whether or not the Administrative Regulation Review
21 Committee has provided comments under (c) - (d) of this section, the lieutenant
22 governor may return the proposed regulation, amendment, or order of repeal to the
23 proposing agency without accepting the regulation, amendment, or order of repeal for
24 filing if the Department of Law has submitted a statement of disapproval under
25 AS 44.62.060, or if the Administrative Regulation Review Committee has provided
26 comments under (c) - (d) of this section, in order to allow the agency to respond to the
27 specific issues raised by the Department of Law or the Administrative Regulation
28 Review Committee.

29 * **Sec. 3.** AS 44.62.050 is amended to read:

30 Sec. 44.62.050. **STYLE AND FORMS.** The Department of Law shall prepare
31 and shall revise when necessary a drafting manual for administrative regulations that

1 prescribes the style and forms for submitting regulations to the lieutenant governor
2 under AS 44.62.040.

3 * **Sec. 4.** AS 44.62.060 is amended to read:

4 Sec. 44.62.060. PREPARATION AND FILING. (a) Every state agency that
5 by statute possesses regulation-making authority shall work with the Department of
6 Law, under AS 44.62.125, in the preparation and revision of its regulations and shall
7 adhere to the drafting manual for administrative regulations prepared by the
8 Department of Law under AS 44.62.050. **A state agency shall also provide the**
9 **Administrative Regulation Review Committee with a copy of the first draft that**
10 **the agency provides to the Department of Law under this subsection.**

11 (b) In the performance of duties under AS 44.62.125, the Department of Law
12 shall advise the agencies on legal matters relevant to the adoption of regulations and
13 may advise the agencies on the need for and the policy involved in particular
14 regulations. In addition, the department shall prepare a written statement of approval
15 or disapproval after each regulation has been reviewed in order to determine

16 (1) its legality, constitutionality, and consistency with other regulations;
17 **in this paragraph, "legality" includes compliance with AS 44.62.030;**

18 (2) the existence of statutory authority and the correctness of the
19 required citation of statutory authority following each section;

20 (3) its clarity, simplicity of expression, and absence of possibility of
21 misapplication;

22 (4) compliance with the drafting manual for administrative regulations.

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

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

29 (d) Unless the Department of Law notifies the lieutenant governor and the
30 agency that it needs more time and sets a specific date for the review of the proposed
31 regulation, amendment, or order of repeal, the Department of Law shall prepare the

1 written statement of approval or disapproval required by (b) of this section within 30
2 days after the proposed regulation, amendment, or order of repeal has been submitted
3 to it for preparation of the statement.

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

5 Sec. 44.62.215. PUBLIC COMMENT AND AGENCY ESTIMATES AND
6 DETERMINATIONS. (a) In the drafting, review, or other preparation of a proposed
7 regulation, amendment, or order of repeal, an agency shall weigh, evaluate, or
8 otherwise utilize public comment that consists of facts or other substantive information
9 that is relevant to the accuracy, coverage, or contents of the proposed regulatory
10 action. The agency shall record in writing the agency's use or rejection of factual or
11 other substantive information that is submitted as public comment and relevant to the
12 accuracy, coverage, or other aspect of the proposed regulatory action. An agency may
13 not weigh, evaluate, or otherwise utilize in the drafting, review, or other preparation
14 of the proposed regulatory action public comment that is nonfactual or an expression
15 of preference regarding the need for, coverage, or policy of the proposed regulatory
16 action.

17 (b) Before adopting a regulation, amendment, or order of repeal, an agency,
18 except the Board of Fisheries or the Board of Game established under AS 16.05.221,
19 shall provide in writing an example of an economically feasible method for complying
20 with the proposed regulatory action.

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

24 * **Sec. 7.** AS 44.62.250 is amended to read:

25 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of
26 repeal may be adopted as an emergency regulation or order of repeal if a state agency
27 makes a written finding, including a statement of the facts that constitute the
28 emergency, that the adoption of the regulation or order of repeal is necessary for the
29 immediate preservation of the public peace, health, safety, or general welfare. The
30 requirements of AS 44.62.040(c) - (d), 44.62.060, [AS 44.62.060] and 44.62.190 -
31 44.62.215 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency

1 regulations; however, upon adoption of an emergency regulation the adopting agency
2 shall immediately submit a copy of it to the lieutenant governor for filing and for
3 publication in the Alaska Administrative Register, and within five days after filing by
4 the lieutenant governor the agency shall give notice of the adoption in accordance with
5 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day
6 automatically repeals the regulation.

7 * **Sec. 8.** AS 44.62.260 is amended to read:

8 Sec. 44.62.260. LIMITATION ON EFFECTIVE PERIOD OF EMERGENCY
9 REGULATIONS. (a) A regulation adopted as an emergency regulation does not
10 remain in effect more than 120 days unless the adopting agency complies with
11 AS 44.62.040(c) - (d), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215
12 [44.62.190 - 44.62.210] either before submitting the regulation to the lieutenant
13 governor or during the 120-day period.

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