

**CS FOR HOUSE BILL NO. 130(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/28/95

Referred: Rules

Sponsor(s): REPRESENTATIVES KELLY, James, Kohring

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to letters of intent by legislative committees and to the adoption,  
2 amendment, and repeal of regulations."

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

4 \* **Section 1.** AS 24.05.180 is amended by adding a new subsection to read:

5 (c) In order to make the intent of legislation clear for agencies adopting  
6 regulations under the legislation, a standing, special, or other legislative committee  
7 shall adopt a letter of intent for a bill when the committee passes the bill out of the  
8 committee if the committee has jurisdiction over the substance of the bill and either  
9 is passing out a new version of the bill or disagrees with a previous letter of intent.  
10 The letter of intent shall be reported in the journal.

11 \* **Sec. 2.** AS 24.20.460(4) is amended to read:

12 (4) to examine all administrative regulations, including proposed  
13 regulations, amendments, and orders of repeal, to determine if they properly  
14 implement legislative intent and to provide comments on them to the governor and

1           state agencies;

2   \* **Sec. 3.** AS 44.62.040(a) is amended to read:

3           (a) **Subject to (c) of this section, every** [EVERY] state agency **that** [WHICH]  
4           by statute possesses regulation-making authority shall submit to the lieutenant governor  
5           for filing a certified original and one duplicate copy of every regulation or order of  
6           repeal adopted by it, except one that

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

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

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

13   \* **Sec. 4.** AS 44.62.040 is amended by adding a new subsection to read:

14           (c) Before submitting the regulations and orders of repeal to the lieutenant  
15          governor under (a) of this section, every state agency that by statute possesses  
16          regulation making authority, except boards and commissions and the office of the  
17          ombudsman, shall submit to the governor for review a copy of every regulation or  
18          order of repeal adopted by the agency, except regulations and orders of repeal  
19          identified in (a)(1) - (2). The governor may review the regulations and orders of  
20          repeal received under this subsection. The governor may return the regulations and  
21          orders of repeal to the adopting agency before they are submitted to the lieutenant  
22          governor for filing under (a) of this section, (1) if they are inconsistent with the  
23          faithful execution of the laws or (2) to enable the adopting agency to respond to  
24          specific issues raised by the Administrative Regulation Review Committee. The  
25          governor may not delegate the governor's review authority under this subsection to a  
26          person other than the lieutenant governor.

27   \* **Sec. 5.** AS 44.62.190(a) is amended to read:

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

30                      (1) published in the newspaper of general circulation or trade or  
31          industry publication that the state agency prescribes and in the Alaska Administrative

1 Journal; in the discretion of the state agency giving the notice, the requirement of  
2 publication in a newspaper or trade or industry publication may be satisfied by using  
3 a combination of publication and broadcasting; when broadcasting the notice, an  
4 agency may use an abbreviated form of the notice if the broadcast provides the name  
5 and date of the newspaper or trade or industry journal where the full text of the notice  
6 can be found;

7 (2) mailed to every person who has filed a request for notice of  
8 proposed action with the state agency;

9 (3) if the agency is within a department, mailed or delivered to the  
10 commissioner of the department;

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

12 (A) mailed to a person or group of persons whom the agency  
13 believes is interested in the proposed action; and

14 (B) published in the additional form and manner the state  
15 agency prescribes;

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

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

21 (7) furnished to the standing committee of each house of the legislature  
22 having legislative jurisdiction over the subject matter treated by the regulation under  
23 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
24 proposed regulation, amendment, or order of repeal for the committee's use in  
25 conducting the review authorized by AS 24.05.182;

26 (8) furnished to the staff of the Administrative Regulation Review  
27 Committee, **together with a copy of the proposed regulation, amendment, or order**  
28 **of repeal and, if preparation of an appropriation increase estimate is required by**  
29 **AS 44.62.195, a copy of the estimate.**

30 \* Sec. 6. AS 44.62.210(a) is amended to read:

31 (a) On the date and at the time and place designated in the notice the agency

1 shall give each interested person or the person's authorized representative, or both, the  
2 opportunity to present statements, arguments, or contentions in writing, with or without  
3 opportunity to present them orally. The state agency may accept material presented  
4 by any form of communication authorized by this chapter and shall consider all  
5 **factual, substantive, and other** relevant matter presented to it before adopting,  
6 amending, or repealing a regulation. **When considering the factual, substantive, and**  
7 **other relevant matter, the agency shall pay special attention to the cost to private**  
8 **persons of the proposed regulatory action.**

9 \* **Sec. 7.** AS 44.62 is amended by adding a new section to read:

10 Sec. 44.62.215. RECORD OF PUBLIC COMMENT. In the drafting, review,  
11 or other preparation of a proposed regulation, amendment, or order of repeal, an  
12 agency, other than a board or commission and the office of the ombudsman, shall keep  
13 a record of its use or rejection of factual or other substantive information that is  
14 submitted in writing as public comment and that is relevant to the accuracy, coverage,  
15 or other aspect of the proposed regulatory action.

16 \* **Sec. 8.** AS 44.62.230 is amended to read:

17 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a petition  
18 requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 -  
19 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule  
20 the matter for public hearing under **AS 44.62.190 - 44.62.215** [AS 44.62.190 -  
21 44.62.210]. However, if the petition is for an emergency regulation, and the agency  
22 finds that an emergency exists, the requirements of **AS 44.62.040(c) and 44.62.190 -**  
23 **44.62.215** [AS 44.62.190 - 44.62.210] do not apply, and the agency may submit the  
24 regulation to the lieutenant governor immediately after making the finding of  
25 emergency and putting the regulation into proper form.

26 \* **Sec. 9.** AS 44.62.250 is amended to read:

27 Sec. 44.62.250. EMERGENCY REGULATIONS. A regulation or order of  
28 repeal may be adopted as an emergency regulation or order of repeal if a state agency  
29 makes a written finding, including a statement of the facts that constitute the  
30 emergency, that the adoption of the regulation or order of repeal is necessary for the  
31 immediate preservation of the public peace, health, safety, or general welfare. The

1 requirements of AS 44.62.040(c), 44.62.060, [AS 44.62.060] and 44.62.190 - 44.62.215  
2 [44.62.190 - 44.62.210] do not apply to the initial adoption of emergency regulations;  
3 however, upon adoption of an emergency regulation the adopting agency shall  
4 immediately submit a copy of it to the lieutenant governor for filing and for  
5 publication in the Alaska Administrative Register, and within five days after filing by  
6 the lieutenant governor the agency shall give notice of the adoption in accordance with  
7 AS 44.62.190(a). Failure to give the required notice by the end of the 10th day  
8 automatically repeals the regulation.

9 \* **Sec. 10.** AS 44.62.260 is amended to read:

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

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

22 \* **Sec. 11.** AS 46.03.020 is amended by adding a new subsection to read:

23 (b) Notwithstanding another provision of law to the contrary, when adopting  
24 a regulation relating to the control, prevention, and abatement of air, water, or land or  
25 subsurface land pollution, the department shall give special consideration to public  
26 comments concerning the cost of compliance with the regulation and to alternate  
27 practical methods of complying with the statute being interpreted or implemented by  
28 the regulation.

29 \* **Sec. 12.** APPLICABILITY FOR REGULATIONS. The changes made to AS 44.62 and  
30 AS 46.03.020 by this Act do not apply to the adoption, amendment, or repeal of a regulation  
31 unless the adoption, amendment, or repeal is first noticed under AS 44.62.200 on or after the

1 effective date of this Act.