

**CS FOR HOUSE BILL NO. 264(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE HOUSE FINANCE COMMITTEE**

**Offered: 3/6/98**  
**Referred: Rules**

**Sponsor(s): REPRESENTATIVES JAMES, Berkowitz, Cowdery, Kemplen**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act relating to negotiated regulation making; and providing for an effective**  
2 **date."**

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

4 **\* Section 1.** AS 44.62 is amended by adding new sections to read:

5 **Article 10. Negotiated Regulation Making.**

6 **Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.** (a)

7 The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct  
8 of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated  
9 regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320  
10 but may be used as a supplemental procedure to permit the direct participation of  
11 affected interests in the development of new regulations or the amendment or repeal  
12 of existing regulations. A consensus agreement reached by a negotiated regulation  
13 making committee may be modified by an agency as a result of the subsequent  
14 regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an

1 attempt to limit innovation and experimentation with the negotiated regulation making  
2 process or to limit other means to obtain public participation in the regulation making  
3 process.

4 (b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency  
5 even if other provisions of this chapter do not apply to that agency.

6 **Sec. 44.62.720. Determination of need for negotiated regulation making**  
7 **committee.** (a) In addition to the regulation adoption requirements under  
8 AS 44.62.010 - 44.62.320, an agency may determine that the use of a negotiated  
9 regulation making committee to negotiate and develop a proposed regulation is in the  
10 public interest. In making that determination, the agency is advised to consider  
11 whether

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

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

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

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

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

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

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

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

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

31 (b) Upon determining that a negotiated regulation making committee will be

1 formed, an agency shall notify the public so that interested persons can apply to be  
2 appointed to the committee.

3 **Sec. 44.62.730. Use of convener.** (a) An agency may use the services of an  
4 impartial person as a convener to assist in making the determination of need under  
5 AS 44.62.720 and to assist the agency to

6 (1) identify the persons who will be significantly affected by a  
7 proposed regulation; and

8 (2) conduct discussions with affected persons on the issues of concern  
9 and determine whether the establishment of a negotiated regulation making committee  
10 is feasible and appropriate for the particular proposed regulation.

11 (b) A person acting as a convener may also be named as a facilitator under  
12 AS 44.62.760. The convener shall report findings and make recommendations to the  
13 agency. The report and recommendations of the convener shall be made available to  
14 the public upon request.

15 **Sec. 44.62.740. Establishment, support, and termination of committee.** (a)  
16 The agency may establish a negotiated regulation making committee to assist in the  
17 formulation of a proposed regulation. The agency should strive to achieve the  
18 balanced committee representation described under AS 44.62.720(a)(3). Members of  
19 the committee serve at the pleasure of the head of the agency. If a committee member  
20 is unable to attend a meeting, the agency head may select a designee to serve in that  
21 member's place for a meeting.

22 (b) The agency head may expand the membership of the negotiated regulation  
23 making committee if necessary to facilitate the workings of the committee.

24 (c) The agency shall make available administrative support to the negotiated  
25 regulation making committee, including technical support, that the agency determines  
26 necessary.

27 (d) A negotiated regulation making committee terminates upon adoption under  
28 AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency  
29 specifies an earlier termination date.

30 **Sec. 44.62.750. Committee duties, procedures, and report.** (a) A negotiated  
31 regulation making committee shall consider the matter proposed by the agency for

1 consideration and shall attempt to reach consensus concerning a proposed regulation  
2 and any other matter on which the agency requests assistance and that is relevant to  
3 the proposed regulation.

4 (b) The person representing the agency on a negotiated regulation making  
5 committee shall participate in the deliberations of the committee with the same rights  
6 and responsibilities of other members of the committee and is authorized to fully  
7 represent the agency in the discussions and negotiations of the committee.

8 (c) An agency may adopt procedures for the operation of the negotiated  
9 regulation making committee. The agency head shall appoint the chair of the  
10 committee.

11 (d) If a negotiated regulation making committee achieves consensus on a  
12 proposed regulation at the conclusion of the negotiations, the committee shall transmit  
13 to the agency that established the committee a report containing the proposed  
14 regulation.

15 (e) If a negotiated regulation making committee does not reach a consensus  
16 on the proposed regulation, the committee shall transmit to the agency a report  
17 specifying areas in which the committee reached consensus and the issues that remain  
18 unresolved. The committee may include in the report other information,  
19 recommendations, or materials that the committee considers appropriate. A member  
20 of the committee may include as an addendum to the report additional information,  
21 recommendations, or materials.

22 (f) AS 44.62.310 - 44.62.312 apply to meetings of a negotiated regulation  
23 making committee.

24 **Sec. 44.62.760. Facilitator selection, duties, and authority.** (a) An agency  
25 may appoint a person who is impartial to serve as a facilitator for the negotiations of  
26 a negotiated regulation making committee. A person designated to represent the  
27 agency on substantive issues may not serve as facilitator.

28 (b) A facilitator appointed or selected under (a) of this section shall

29 (1) preside at the meetings of the committee in an impartial manner,  
30 unless the agency head has designated another person as chair;

31 (2) impartially assist the members of the committee to conduct

1 discussions and negotiations and to achieve consensus;

2 (3) coordinate with the agency regarding the management of records  
3 of the committee; and

4 (4) perform other duties related to the negotiated regulation making  
5 committee that are assigned by the agency head.

6 (c) A facilitator does not have decision-making authority for the committee.

7 **Sec. 44.62.770. Employees, contractors, and funding.** (a) An agency may  
8 appoint an agency employee or obtain the services of another state employee or a  
9 private contractor to serve as a convener or facilitator for a negotiated regulation  
10 making committee.

11 (b) Before appointing or selecting a convener under AS 44.62.730 or a  
12 facilitator under AS 44.62.760, an agency shall determine whether a person being  
13 considered has a financial or other interest that would prevent the person from serving  
14 in an impartial and independent manner. A person disqualified under this criterion  
15 may not be considered further.

16 (c) The state may accept grants or gifts from any appropriate source to finance  
17 the negotiated regulation making process of a committee if

18 (1) information on the name of the person giving the grant or gift and  
19 on the amount of the grant or gift is available to the public;

20 (2) the grant or gift is given to and accepted by the state without  
21 placing any condition on the membership of a negotiated regulation making committee  
22 in an agency or the outcome of the negotiated regulation making process; and

23 (3) any other requirement of law has been met.

24 (d) A member of a negotiated regulation making committee shall disclose to  
25 the agency and other members of the committee a grant, gift, or other financial benefit  
26 that exceeds \$150 and that has been accepted by the disclosing member to finance the  
27 disclosing member's participation on the negotiated regulation making committee.

28 **Sec. 44.62.780. Judicial review.** An agency action relating to establishing,  
29 assisting, or terminating a negotiated regulation making committee under AS 44.62.710  
30 - 44.62.800 is not subject to judicial review. Nothing in this section bars judicial  
31 review if the judicial review is otherwise provided by law. A regulation that is the

1 product of negotiated regulation making and is later subject to judicial review may not  
2 be given greater deference by a court for that reason than a regulation that is not the  
3 product of negotiated regulation making.

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 - 44.62.320 for adopting, amending, or  
7 repealing regulations, and, if an agency decides to use negotiated regulation making,  
8 the negotiated regulation making shall, where possible, occur before the procedures  
9 under AS 44.62.010 - 44.62.320 begin.

10 **Sec 44.62.795. Confidentiality of certain records and documents.**  
11 Notwithstanding AS 09.25.100 - 09.25.220, records from private persons that are  
12 requested or used by a negotiated regulation making committee and working  
13 documents prepared by the committee that analyze or incorporate information from the  
14 records shall be kept confidential if the records or working documents contain  
15 proprietary information and the owner of the records or working documents requests  
16 that the records or working documents be kept confidential.

17 **Sec. 44.62.800. Definitions.** In AS 44.62.710 - 44.62.800,

18 (1) "agency" means a department, an institution, a division, or another  
19 administrative unit of the executive branch of state government authorized or required  
20 by law to make regulations, except that "agency" does not include

21 (A) a board; a commission; a council, except the Alaska Coastal  
22 Policy Council established in AS 44.19.155; an authority; or a public  
23 corporation of the executive branch of state government authorized or required  
24 by law to make regulations; or

25 (B) the Department of Corrections;

26 (2) "consensus" means unanimous concurrence among the interests  
27 represented on a negotiated regulation making committee;

28 (3) "convener" means a person who performs the services identified  
29 under AS 44.62.730 for an agency;

30 (4) "facilitator" means a person who performs the services identified  
31 under AS 44.62.760(b) for a negotiated regulation making committee;

1 (5) "negotiated regulation making" means regulation making through  
2 the use of a negotiated regulation making committee;

3 (6) "negotiated regulation making committee" means an advisory  
4 committee to consider and discuss issues for the purpose of reaching a consensus in  
5 the development of a proposed regulation;

6 (7) "person" has the meaning given in AS 01.10.060, and expressly  
7 includes a public organization of any character;

8 (8) "regulation" has the meaning given in AS 44.62.640 and includes  
9 the amendment or repeal of a regulation.

10 \* **Sec. 2.** AS 09.65 is amended by adding a new section to read:

11 **Sec. 09.65.235. Immunity for negotiated regulation making committee and**  
12 **its members.** A civil action for damages or costs may not be brought against a  
13 negotiated regulation making committee established under AS 44.62.710 - 44.62.800  
14 or any of its members for an act or omission occurring in the course and scope of the  
15 official duties of the committee under this chapter.

16 \* **Sec. 3.** AS 36.30.850(b) is amended by adding a new paragraph to read:

17 (38) contracts for a convener under AS 44.62.730 or for a facilitator  
18 under AS 44.62.760 related to a negotiated regulation making process under  
19 AS 44.62.710 - 44.62.800.

20 \* **Sec. 4.** AS 39.25.110 is amended by adding a new paragraph to read:

21 (33) a person employed as a convener under AS 44.62.730 or as a  
22 facilitator under AS 44.62.760 related to a negotiated regulation making process under  
23 AS 44.62.710 - 44.62.800.

24 \* **Sec. 5.** AS 39.52.960(4) is amended to read:

25 (4) "board or commission" means a board, commission, authority, or  
26 board of directors of a public or quasi-public corporation, established by statute in the  
27 executive branch, but excluding the Alaska Railroad **and members of a negotiated**  
28 **regulation making committee under AS 44.62.710 - 44.62.800;**

29 \* **Sec. 6.** AS 39.52.960(4) is amended to read:

30 (4) "board or commission" means a board, commission, authority, or  
31 board of directors of a public or quasi-public corporation, established by statute in the

1 executive branch, but excluding the Alaska Railroad [AND MEMBERS OF A  
2 NEGOTIATED REGULATION MAKING COMMITTEE UNDER AS 44.62.710 -  
3 44.62.800];

4 \* **Sec. 7.** AS 09.65.235; AS 36.30.850(b)(38); AS 39.25.110(33); AS 44.62.710, 44.62.720,  
5 44.62.730, 44.62.740, 44.62.750, 44.62.760, 44.62.770, 44.62.780, 44.62.790, 44.62.795, and  
6 44.62.800 are repealed July 1, 2003.

7 \* **Sec. 8.** Sections 1 - 5 and 7 of this Act take effect immediately under AS 01.10.070(c).

8 \* **Sec. 9.** Section 6 of this Act takes effect July 1, 2003.