

SENATE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY SENATOR DONLEY

Introduced: 2/24/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption, amendment, repeal, legislative review, and
2 judicial review of regulations; and amending Rule 202, Alaska Rules of Appellate
3 Procedure."

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

5 * **Section 1.** SHORT TITLE. This Act may be known as "The Alaska Regulations Reform
6 Act."

7 * **Sec. 2.** AS 22.05.010(b) is amended to read:

8 (b) **Except as provided in AS 44.62.300(b), appeal** [APPEAL] to the supreme
9 court is a matter of right only in those actions and proceedings from which there is no
10 right of appeal to the court of appeals under AS 22.07.020 or to the superior court
11 under AS 22.10.020 or AS 22.15.240.

12 * **Sec. 3.** AS 22.15.030(a) is amended to read:

13 (a) The district court has jurisdiction of civil cases, including foreign
14 judgments filed under AS 09.30.200 and arbitration proceedings under AS 09.43.170,

1 as follows:

2 (1) for the recovery of money or damages when the amount claimed
3 exclusive of costs, interest, and attorney fees does not exceed \$50,000;

4 (2) for the recovery of specific personal property [,] when the value of
5 the property claimed and the damages for the detention do not exceed \$50,000;

6 (3) for the recovery of a penalty or forfeiture, whether given by statute
7 or arising out of contract, not exceeding \$50,000;

8 (4) to give judgment without action upon the confession of the
9 defendant for any of the cases specified in this section, except for a penalty or
10 forfeiture imposed by statute;

11 (5) for establishing the fact of death or cause and manner of death of
12 any person in the manner prescribed in AS 09.55.020 - 09.55.069;

13 (6) for the recovery of the possession of premises in the manner
14 provided under AS 09.45.070 - 09.45.160 when the value of the arrears and damage
15 to the property does not exceed \$50,000;

16 (7) for the foreclosure of a lien when the amount in controversy does
17 not exceed \$50,000;

18 (8) for the recovery of money or damages in motor vehicle tort cases
19 when the amount claimed exclusive of costs, interest, and attorney fees does not
20 exceed \$50,000;

21 (9) over civil actions for taking utility service and for damages to or
22 interference with a utility line filed under AS 42.20.030;

23 (10) over cases involving protective orders for domestic violence under
24 AS 18.66.100 - 18.66.180;

25 **(11) to review regulations under AS 44.62.300.**

26 * **Sec. 4.** AS 24.20 is amended by adding a new section to article 3 to read:

27 **Sec. 24.20.470. Required review of regulations.** The Administrative
28 Regulation Review Committee shall review the regulations of the principal departments
29 of the executive branch identified under AS 44.17.005(2) - (18) at least every 10 years
30 and shall report its recommendations to the legislature.

31 * **Sec. 5.** AS 44.62 is amended by adding a new section to article 1 to read:

1 **Sec. 44.62.035. Cost-benefit requirement.** When adopting a regulation, an
 2 order of repeal, or an amendment to a regulation, a state agency shall prepare a cost-
 3 benefit analysis of the costs to the public to comply with the proposed regulatory
 4 action and the benefits to the public from the proposed regulatory action.
 5 Notwithstanding other laws to the contrary, the agency may not adopt a regulation,
 6 order of repeal, or amendment unless under the analysis the benefit to the public
 7 outweighs the cost to the public. The state agency shall make the cost-benefit analysis
 8 available to the public before any hearing on the proposed regulatory action.

9 * **Sec. 6.** AS 44.62.200(a) is amended to read:

10 (a) The notice of proposed adoption, amendment, or repeal of a regulation
 11 must include

12 (1) a statement of the time, place, and nature of proceedings for
 13 adoption, amendment, or repeal of the regulation;

14 (2) reference to the authority under which the regulation is proposed
 15 and a reference to the particular code section or other provisions of law that are being
 16 implemented, interpreted, or made specific;

17 (3) an informative summary of the proposed subject of agency action;

18 (4) other matters prescribed by a statute applicable to the specific
 19 agency or to the specific regulation or class of regulations;

20 (5) a summary of the fiscal information required to be prepared under
 21 AS 44.62.195;

22 **(6) a summary of the cost-benefit analysis prepared under**
 23 **AS 44.62.035.**

24 * **Sec. 7.** AS 44.62.200(b) is amended to read:

25 (b) A regulation that is adopted, amended, or repealed may vary in content
 26 from the summary specified in (a)(3) of this section if the subject matter of the
 27 regulation remains the same and the [ORIGINAL] notice was written so as to assure
 28 that members of the public are reasonably notified of the proposed subject of agency
 29 action in order for them to determine whether their interests could be affected by
 30 agency action on that subject.

31 * **Sec. 8.** AS 44.62 is amended by adding a new section to read:

1 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
 2 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
 3 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
 4 rewriting is a significant change in the substance of the regulation, amendment, or
 5 order, before adoption, the agency shall provide notice and opportunity for public
 6 comment under AS 44.62.190, 44.62.200, and 44.62.210 for the rewritten regulation,
 7 amendment, or order of repeal.

8 (b) If a state agency does not provide the notice and opportunity for public
 9 comment under (a) of this section for a rewritten proposed regulation, amendment, or
 10 order of repeal, the agency shall prepare a written explanation of the reasons why the
 11 requirement of (a) of this section does not apply. When the adopted regulation,
 12 amendment, or order of repeal is published in the Alaska Administrative Journal, the
 13 lieutenant governor shall include the agency explanation with the text or a summary
 14 of the text of the regulation, amendment, or order of repeal.

15 (c) Notwithstanding AS 44.62.300, if a court determines that notice and an
 16 opportunity for public comment were required under (a) of this section for the
 17 rewriting of a proposed regulation, amendment, or order of repeal, and if the state
 18 agency did not provide the notice and opportunity for public comment, the court may
 19 order the relief, other than monetary damages, that is appropriate under the
 20 circumstances, including the invalidation of the regulation, amendment, or order of
 21 repeal.

22 (d) This section does not apply to regulations

23 (1) adopted by the Board of Fisheries, the Board of Game, or the
 24 Alaska Commercial Fisheries Entry Commission;

25 (2) adopted under AS 44.62.260 to make emergency regulations
 26 permanent; or

27 (3) that are necessary to meet federal requirements.

28 * **Sec. 9.** AS 44.62.230 is amended to read:

29 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
 30 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
 31 a state agency shall, within 30 days, deny the petition in writing or schedule the matter

1 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
 2 emergency regulation, and the agency finds that an emergency exists, the requirements
 3 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
 4 apply, and the agency may submit the regulation to the lieutenant governor
 5 immediately after making the finding of emergency and putting the regulation into
 6 proper form.

7 * **Sec. 10.** AS 44.62.250 is amended to read:

8 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may
 9 be adopted as an emergency regulation or order of repeal if a state agency makes a
 10 written finding, including a statement of the facts that constitute the emergency, that
 11 the adoption of the regulation or order of repeal is necessary for the immediate
 12 preservation of the public peace, health, safety, or general welfare. The requirements
 13 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -
 14 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon
 15 adoption of an emergency regulation, the adopting agency shall immediately submit
 16 a copy of it to the lieutenant governor for filing and for publication in the Alaska
 17 Administrative Register, and, within five days after filing by the lieutenant governor,
 18 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).
 19 Failure to give the required notice by the end of the 10th day automatically repeals the
 20 regulation.

21 * **Sec. 11.** AS 44.62.260 is amended to read:

22 **Sec. 44.62.260. Limitation on effective period of emergency regulations.**

23 (a) A regulation adopted as an emergency regulation does not remain in effect more
 24 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
 25 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the
 26 regulation to the lieutenant governor or during the 120-day period.

27 (b) Before the expiration of the 120-day period, the agency shall transmit to
 28 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
 29 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
 30 submitting the regulation to the lieutenant governor, or that the agency complied with
 31 those sections within the 120-day period. Failure to so certify repeals the emergency

1 regulation; it may not be renewed or refiled as an emergency regulation.

2 * **Sec. 12.** AS 44.62.300 is amended to read:

3 **Sec. 44.62.300. Judicial review of validity.** An interested person may get a
4 judicial declaration on the validity of a regulation by bringing an action for declaratory
5 relief in the **district or** superior court. In addition to any other ground, the court may
6 declare the regulation invalid

7 (1) for a substantial failure to comply with AS 44.62.010 - 44.62.320;
8 or

9 (2) in the case of an emergency regulation or order of repeal, upon the
10 ground that the facts recited in the statement do not constitute an emergency under
11 AS 44.62.250.

12 * **Sec. 13.** AS 44.62.300 is amended by adding new subsections to read:

13 (b) Notwithstanding any other factor considered by the court, including the
14 grounds for invalidity identified under (a) of this section, a court that reviews the
15 validity of a regulation may not hold a regulation valid unless

16 (1) the regulation accomplishes its goal by using an approach that
17 causes the least intrusion on the rights and property of the persons affected by the
18 regulation; or

19 (2) if the regulation does not satisfy (1) of this subsection, a compelling
20 state interest requires using the approach taken by the regulation.

21 (c) A judicial declaration under (a) of this section from either the district or
22 superior court may be appealed directly as a matter of right to the supreme court.

23 * **Sec. 14.** AS 22.05.010(b), amended by sec. 2 of this Act, and AS 44.62.300(b), enacted
24 by sec. 13 of this Act, change Rule 202, Alaska Rules of Appellate Procedure, by allowing
25 appeals to the supreme court from the district court in certain cases.

26 * **Sec. 15.** This Act applies to the adoption, amendment, or repeal of a regulation if the
27 initial notice under AS 44.62.190 of the adoption, amendment, or repeal is given on or after
28 the effective date of this Act.