

CS FOR SENATE BILL NO. 24(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/23/99
Referred: Finance

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulations; relating to administrative adjudications; amending
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date."

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

4 * **Section 1.** SHORT TITLE. Sections 2 - 13 of this Act may be known as the Alaska
5 Regulations Reform Act.

6 * **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute.** If, by express
8 or implied terms of a statute, a state agency has authority to adopt regulations to
9 implement, interpret, make specific, or otherwise carry out the provisions of the statute,
10 a regulation adopted is not valid or effective unless consistent with the statute and
11 clearly [REASONABLY] necessary to carry out the purpose of the statute.

12 * **Sec. 3.** AS 44.62.030 is amended by adding a new subsection to read:

13 (b) In addition to the requirements of (a) of this section, a state agency may
14 not adopt a regulation that changes the intent of the statute being implemented,

1 interpreted, made specific, or otherwise carried out. When challenging a regulation
2 under this subsection, the burden of proof is on the person challenging the regulation
3 to prove that the regulation changes the intent of the statute. A person may not obtain
4 a temporary restraining order, a preliminary injunction, or a permanent injunction from
5 a court to enjoin the operation of a regulation based on a failure to comply with this
6 subsection.

7 * **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

8 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
9 an order of repeal, or an amendment to a regulation, unless the adopting state agency
10 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive
11 or that the costs and benefits cannot be easily determined, a state agency shall prepare
12 a cost-benefit analysis of the costs to the public to comply with the proposed
13 regulatory action and the benefits to the public from the proposed regulatory action.
14 The state agency shall consider a cost or benefit even if the cost or benefit relates to
15 aesthetics or is otherwise nonquantifiable, and the state agency is not required to give
16 the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

17 (b) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
18 required by this section, the agency may not adopt a regulation, order of repeal, or
19 amendment unless, under the analysis, the benefit to the public outweighs the cost to
20 the public.

21 (c) Consistent with this section, the adopting state agency head shall determine
22 the type of cost-benefit analysis to be prepared by the state agency under this section.

23 (d) The cost-benefit analysis requirement of this section does not apply when
24 the proposed regulatory action is necessary to implement a budgetary modification or
25 when the state agency is expressly required by statute to adopt the proposed regulation,
26 order of repeal, or amendment.

27 (e) A regulation, an order of repeal, or an amendment to a regulation may not
28 be voided because the state agency taking the regulatory action failed to comply with
29 this section if the state agency made a good faith attempt to comply with this section.

30 (f) The state agency shall make a copy of the cost-benefit analysis prepared
31 under this section available to the public before a hearing on the proposed regulatory

1 action.

2 (g) In this section,

3 (1) "adopting state agency head" means the governor if the state agency
4 is the Office of the Governor, or the commissioner of the department within which the
5 state agency is located;

6 (2) "state agency" does not include the Board of Fisheries, the Board
7 of Game, or the Alaska Commercial Fisheries Entry Commission.

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

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

11 (1) published in the newspaper of general circulation or trade or
12 industry publication that the state agency prescribes and in the Alaska Administrative
13 Journal; in the discretion of the state agency giving the notice, the requirement of
14 publication in a newspaper or trade or industry publication may be satisfied by using
15 a combination of publication and broadcasting; when broadcasting the notice, an
16 agency may use an abbreviated form of the notice if the broadcast provides the name
17 and date of the newspaper or trade or industry journal where the full text of the notice
18 can be found;

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

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

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

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

26 (B) published in the additional form and manner the state
27 agency prescribes;

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

31 (6) furnished to all incumbent State of Alaska legislators and the

1 Legislative Affairs Agency;

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

7 (8) furnished to the staff of the Administrative Regulation Review
8 Committee, together with a copy of the proposed regulation, amendment, or order of
9 repeal and, if preparation of an appropriation increase estimate is required by
10 AS 44.62.195, a copy of the estimate;

11 **(9) published on the Internet by the state agency proposing the**
12 **action if the state agency has the technological capability to publish on the**
13 **Internet; in this paragraph, "state agency" does not include the Board of**
14 **Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry**
15 **Commission.**

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

17 (a) The notice of proposed adoption, amendment, or repeal of a regulation
18 must include

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

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

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

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

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

29 **(6) a statement that a copy of the cost-benefit analysis is available**
30 **from the agency proposing the regulatory action if a summary of the cost-benefit**
31 **analysis is required under AS 44.62.035.**

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

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

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

9 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state
10 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal
11 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the
12 rewriting changes the substance of the regulation, amendment, or order but the state
13 agency would not normally consider the change to be significant enough to require
14 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and
15 44.62.210, before adoption, the agency shall provide notice and opportunity for public
16 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
17 regulation, amendment, or order of repeal.

18 (b) If a state agency does not provide the notice and opportunity for public
19 comment under (a) of this section for a rewritten proposed regulation, amendment, or
20 order of repeal, the agency shall prepare a written explanation of the reasons why the
21 requirement of (a) of this section does not apply. When the adopted regulation,
22 amendment, or order of repeal is published in the Alaska Administrative Journal, the
23 lieutenant governor shall include the agency explanation with the text or a summary
24 of the text of the regulation, amendment, or order of repeal.

25 (c) A regulation, an order of repeal, or an amendment to a regulation may not
26 be voided because the state agency taking the regulatory action failed to comply with
27 this section if the state agency made a good faith attempt to comply with this section.

28 (d) This section does not apply to regulations

29 (1) adopted under AS 44.62.260 to make emergency regulations
30 permanent; or

31 (2) that are necessary to meet federal requirements.

1 (e) In this section, "state agency" does not include the Board of Fisheries, the
2 Board of Game, or the Alaska Commercial Fisheries Entry Commission.

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

4 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting
5 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,
6 a state agency shall, within 30 days, deny the petition in writing or schedule the matter
7 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an
8 emergency regulation, and the agency finds that an emergency exists, the requirements
9 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not
10 apply, and the agency may submit the regulation to the lieutenant governor
11 immediately after making the finding of emergency and putting the regulation into
12 proper form.

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

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

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

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

29 (a) A regulation adopted as an emergency regulation does not remain in effect more
30 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
31 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the

1 regulation to the lieutenant governor or during the 120-day period.

2 (b) Before the expiration of the 120-day period, the agency shall transmit to
3 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
4 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before
5 submitting the regulation to the lieutenant governor, or that the agency complied with
6 those sections within the 120-day period. Failure to so certify repeals the emergency
7 regulation; it may not be renewed or refiled as an emergency regulation.

8 * **Sec. 12.** AS 44.62 is amended by adding a new section to read:

9 **Sec. 44.62.285. Time limit for adoption.** (a) A state agency may not take
10 more than two years to adopt regulations that the state agency is required to adopt by
11 a statute. The two-year period begins on the effective date of enactment of the statute
12 requiring the adoption of the regulations.

13 (b) If a state agency fails to comply with (a) of this section, the state agency
14 shall prepare a written report containing the reasons for the failure and submit the
15 report to the president of the senate, the speaker of the house of representatives, and
16 the Administrative Regulation Review Committee established under AS 24.20.400.

17 (c) The requirement of (a) of this section is not intended to prohibit a state
18 agency from amending a regulation after the regulation has been adopted.

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

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

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

26 (2) if the regulation does not satisfy (1) of this subsection, a substantial
27 state interest requires using the approach taken by the regulation.

28 (c) Notwithstanding (b) of this section, when an action for declaratory relief
29 is brought under (a) of this section, a court may not issue a temporary restraining
30 order, a preliminary injunction, or a permanent injunction based on (b) of this section
31 to stop the operation of the regulation.

1 (d) In (b)(2) of this section, the person challenging the regulation carries the
2 burden of proving that there is not a substantial state interest that requires using the
3 approach taken by the regulation.

4 (e) A regulation of the Department of Corrections, the Department of Natural
5 Resources, a state board, or a state commission is not subject to (b) of this section.

6 * **Sec. 14.** AS 44.62 is amended by adding a new section to read:

7 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication must result
8 in a final administrative order within the later of 60 days after the hearing officer
9 closes the record or two years after the statement of issues under AS 44.62.370 or an
10 accusation under AS 44.62.360 is filed.

11 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the
12 contrary, an agency may not order a record to be reopened after the hearing officer has
13 closed the record unless a substantial factual question exists that is necessary to the
14 resolution of the administrative adjudication and the lieutenant governor approves
15 reopening the record.

16 (c) The time limitation in (a) of this section may be extended if

17 (1) the lieutenant governor approves the extension, but, even with an
18 extension under this paragraph, the administrative adjudication may not exceed four
19 years;

20 (2) a respondent other than a state agency petitions for reconsideration
21 under AS 44.62.540 for a stay of execution under AS 44.62.520, for an extension of
22 the two-year period, or for the record to be reopened in the administrative adjudication.

23 (d) Except as provided by (c) of this section, if an administrative adjudication
24 does not result in a final administrative order in the time required by (a) of this section
25 and if an agency instigated the administrative adjudication, the respondent may cancel
26 the administrative adjudication by notifying the agency in writing of the cancellation.
27 The agency may not subsequently begin another administrative adjudication for the
28 same matter that was the subject of the cancelled administrative adjudication, and an
29 appeal may not be taken from the cancelled administrative adjudication or from the
30 cancellation of the administrative adjudication. However, after the administrative
31 adjudication is cancelled, the agency may bring an action in superior court covering

1 the matter that was the subject of the cancelled administrative adjudication. The
2 complaint must be filed with the superior court within 60 days after the administrative
3 adjudication is cancelled under this subsection.

4 (e) Except as provided by (c) of this section, if an administrative adjudication
5 does not result in a final administrative order in the time required by (a) of this section
6 and if a person other than an agency instigated the administrative adjudication, the
7 person may cancel the administrative adjudication by notifying the agency in writing
8 of the cancellation. The person is considered to have exhausted the person's
9 administrative remedies with regard to the subject matter of the cancelled
10 administrative adjudication, and an appeal may not be taken from the cancelled
11 administrative adjudication or from the cancellation of the administrative adjudication.
12 However, after the administrative adjudication is cancelled, the person may bring an
13 action in superior court covering the matter that was the subject of the administrative
14 adjudication. The complaint must be filed with the superior court within 60 days after
15 the administrative adjudication is cancelled under this subsection.

16 (f) In this section,

17 (1) "administrative adjudication" means the procedure that begins with
18 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380
19 and ends with the issuance of a final administrative order;

20 (2) "final administrative order" means a decision under AS 44.62.330 -
21 44.62.630 that is eligible for judicial review under AS 44.62.560.

22 * **Sec. 15. APPLICABILITY.** (a) Sections 1 - 11 and 13 of this Act apply to the
23 adoption, amendment, or repeal of a regulation if the initial notice under AS 44.62.190, as
24 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
25 effective date of this Act.

26 (b) Section 12 of this Act applies to a state agency's adoption of regulations if the
27 effective date of the Act enacting the statutory authority requiring the adoption is the same
28 as or after the effective date of this Act.

29 (c) Section 14 of this Act applies to an administrative adjudication if the statement
30 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the
31 effective date of this Act.

1 * **Sec. 16.** COURT RULE CHANGES. AS 44.62.030(b), enacted by sec. 3 of this Act,
2 and AS 44.62.300(c), enacted by sec. 13 of this Act, change Rule 65, Alaska Rules of Civil
3 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

4 * **Sec. 17.** This Act takes effect July 1, 2000.