

CS FOR SENATE BILL NO. 24(FIN) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 4/14/99

Offered: 4/1/99

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

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

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

4 * **Section 1.** SHORT TITLE. This Act may be known as the Alaska Regulations Reform
5 Act.

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

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

13 * **Sec. 3.** AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry
 2 out the provisions of the statute, a regulation adopted is not valid or effective,
 3 notwithstanding any other provision of law, unless the regulation takes a reasonable
 4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state
 6 agency may not adopt a regulation that changes the intent of the statute being
 7 implemented, interpreted, made specific, or otherwise carried out.

8 (d) When challenging a regulation under (b) or (c) of this section, the burden
 9 of proof is on the person challenging the regulation to prove that the regulation does
 10 not comply with (b) or (c) of this section. A person may not obtain a temporary
 11 restraining order, a preliminary injunction, or a permanent injunction from a court to
 12 enjoin the operation of a regulation based on a failure to comply with (b) or (c) of this
 13 section.

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

15 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,
 16 an order of repeal, or an amendment to a regulation, unless the adopting state agency
 17 head determines in writing that the cost to prepare a cost-benefit analysis is
 18 prohibitive, a designated state agency shall prepare a cost-benefit analysis of the costs
 19 to the public to comply with the proposed regulatory action and the benefits to the
 20 public from the proposed regulatory action. The designated state agency shall consider
 21 a cost or benefit even if the cost or benefit relates to aesthetics or is otherwise
 22 nonquantifiable, and the designated state agency is not required to give the cost or
 23 benefit a dollar value in order to prepare a cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not
 25 required to prepare a cost-benefit analysis if the estimated cost to the designated state
 26 agency of implementing the proposed regulatory action is equal to or not substantially
 27 greater than the cost of implementing the proposed regulatory action as estimated in
 28 the fiscal note prepared for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is
 30 required by this section, the designated state agency may not adopt a regulation, order
 31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt
9 the proposed regulation, order of repeal, or amendment;

10 (3) the proposed regulatory action is necessary to meet federal
11 requirements, to obtain an exemption for a person, program, or situation in the state
12 from federal requirements, or to revise, in a manner that reduces any burden imposed
13 by a federal requirement, how the federal requirement will apply to a person, program,
14 or situation in the state; or

15 (4) the proposed regulatory action would reduce the regulatory burden
16 on the public.

17 (f) A regulation, an order of repeal, or an amendment to a regulation may not
18 be voided because the designated state agency taking the regulatory action failed to
19 comply with this section. A person may not obtain a temporary restraining order, a
20 preliminary injunction, or a permanent injunction from a court to enjoin the operation
21 of a regulation based on a failure to comply with this section.

22 (g) The designated state agency shall make a copy of the cost-benefit analysis
23 prepared under this section available to the public before a hearing on the proposed
24 regulatory action, or, if a cost-benefit analysis is not required due to the operation of
25 (b) of this section, the designated state agency shall make a copy of the fiscal note
26 identified in (b) of this section available to the public before a hearing on the proposed
27 regulatory action.

28 (h) In this section, "adopting state agency head" means the commissioner of
29 the department within which the state agency is located.

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

31 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,

1 notice of the proposed action shall be

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

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

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

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

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

17 (B) published in the additional form and manner the state
18 agency prescribes;

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

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

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

29 (8) furnished to the staff of the Administrative Regulation Review
30 Committee, together with a copy of the proposed regulation, amendment, or order of
31 repeal and, if preparation of an appropriation increase estimate is required by

1 AS 44.62.195, a copy of the estimate;

2 **(9) published on the Internet by a designated state agency**
 3 **proposing the action if the designated state agency has the technological capability**
 4 **to publish on the Internet.**

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

6 (a) The notice of proposed adoption, amendment, or repeal of a regulation
 7 must include

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

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

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

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

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

18 **(6) a statement that a copy of the cost-benefit analysis is available**
 19 **from the designated state agency proposing the regulatory action if the cost-**
 20 **benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not**
 21 **required due to the operation of AS 44.62.035(b), that a copy of the fiscal note**
 22 **identified in AS 44.62.035(b) is available from the designated state agency**
 23 **proposing the regulatory action.**

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

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

31 * **Sec. 8.** AS 44.62.200 is amended by adding a new subsection to read:

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

7 * **Sec. 9.** AS 44.62.210(a) is amended to read:

8 (a) On the date and at the time and place designated in the notice, the agency
 9 shall give each interested person or the person's authorized representative, or both, the
 10 opportunity to present statements, arguments, or contentions in writing, with or without
 11 opportunity to present them orally. The state agency may accept material presented
 12 by any form of communication authorized by this chapter and shall consider all
 13 factual, substantive, and other relevant matter presented to it before adopting,
 14 amending, or repealing a regulation. When considering the factual, substantive, and
 15 other relevant matter, the agency shall pay special attention to the cost to private
 16 persons of the proposed regulatory action. **A designated state agency shall also pay**
 17 **special attention to the benefit to private persons of the proposed regulatory**
 18 **action.**

19 * **Sec. 10.** AS 44.62 is amended by adding a new section to read:

20 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a
 21 designated state agency rewrites a proposed regulation, amendment of a regulation, or
 22 order of repeal after the designated state agency has complied with AS 44.62.190,
 23 44.62.200, and 44.62.210, and if the rewriting substantially changes the substance of
 24 the regulation, amendment, or order but the designated state agency would not
 25 normally consider the change to be significant enough to require additional notice and
 26 opportunity for comment under AS 44.62.190, 44.62.200, and 44.62.210, before
 27 adoption, the designated state agency shall provide notice and opportunity for public
 28 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten
 29 regulation, amendment, or order of repeal.

30 (b) If a designated state agency does not provide the notice and opportunity
 31 for public comment under (a) of this section for a rewritten proposed regulation,

1 amendment, or order of repeal, the designated state agency shall prepare a written
 2 explanation of the reasons why the requirement of (a) of this section does not apply.
 3 When the adopted regulation, amendment, or order of repeal is published in the Alaska
 4 Administrative Journal, the lieutenant governor shall include the designated state
 5 agency explanation with the text or a summary of the text of the regulation,
 6 amendment, or order of repeal.

7 (c) A regulation, an order of repeal, or an amendment to a regulation of a
 8 designated state agency may not be voided because the designated state agency taking
 9 the regulatory action failed to comply with this section. A person may not obtain a
 10 temporary restraining order, a preliminary injunction, or a permanent injunction from
 11 a court to enjoin the operation of a regulation based on a failure to comply with this
 12 section.

13 (d) This section does not apply to regulations

14 (1) adopted under AS 44.62.260 to make emergency regulations
 15 permanent;

16 (2) that are necessary to meet federal requirements, to obtain an
 17 exemption for a person, program, or situation in the state from federal requirements,
 18 or to revise, in a manner that reduces any burden imposed by a federal requirement,
 19 how the federal requirement will apply to a person, program, or situation in the state;
 20 or

21 (3) that would reduce the regulatory burden on the public.

22 * **Sec. 11.** AS 44.62.230 is amended to read:

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

1 * **Sec. 12.** AS 44.62.250 is amended to read:

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

15 * **Sec. 13.** AS 44.62.260 is amended to read:

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

17 (a) A regulation adopted as an emergency regulation does not remain in effect more
18 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)
19 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, **to the extent they are**
20 **applicable to the regulation,** either before submitting the regulation to the lieutenant
21 governor or during the 120-day period.

22 (b) Before the expiration of the 120-day period, the agency shall transmit to
23 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)
24 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, **to the extent they were**
25 **applicable to the regulation,** were complied with before submitting the regulation to
26 the lieutenant governor, or that the agency complied with those sections within the
27 120-day period. Failure to so certify repeals the emergency regulation; it may not be
28 renewed or refiled as an emergency regulation.

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

30 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may
31 not take more than two years to adopt regulations that the designated state agency is

1 required to adopt by a statute. The two-year period begins on the effective date of
2 enactment of the statute requiring the adoption of the regulations.

3 (b) If a designated state agency fails to comply with (a) of this section, the
4 designated state agency shall prepare a written report containing the reasons for the
5 failure and submit the report to the president of the senate, the speaker of the house
6 of representatives, and the Administrative Regulation Review Committee established
7 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a
8 regulation invalid for failure to comply with this section.

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

12 (d) This section does not apply to regulations that are necessary to meet
13 federal requirements, to obtain an exemption for a person, program, or situation in the
14 state from federal requirements, or to revise, in a manner that reduces any burden
15 imposed by a federal requirement, how the federal requirement will apply to a person,
16 program, or situation in the state.

17 * **Sec. 15.** AS 44.62.300 is amended by adding new subsections to read:

18 (b) Except where a court has other grounds for holding the regulation invalid,
19 a court that reviews the validity of a regulation of a designated state agency shall hold
20 the regulation valid unless

21 (1) the regulation uses an approach that causes more than the least
22 necessary intrusion on the rights and property of the persons affected by the regulation;
23 and

24 (2) the approach taken by the regulation is not required by a substantial
25 state interest.

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

30 (d) In (b)(2) of this section, the person challenging the regulation carries the
31 burden of proving that there is not a substantial state interest that requires using the

1 approach taken by the regulation.

2 (e) The provisions of (b) - (d) of this section do not apply to regulations that
3 are necessary to meet federal requirements, to obtain an exemption for a person,
4 program, or situation in the state from federal requirements, or to revise, in a manner
5 that reduces any burden imposed by a federal requirement, how the federal requirement
6 will apply to a person, program, or situation in the state.

7 * **Sec. 16.** AS 44.62.640(a) is amended by adding a new paragraph to read:

8 (5) "designated state agency"

9 (A) means

10 (i) the Department of Environmental Conservation;

11 (ii) the Department of Natural Resources; and

12 (iii) the Department of Fish and Game for habitat and
13 restoration programs;

14 (B) does not include

15 (i) a board or commission located in an agency
16 described in (A) of this paragraph; or

17 (ii) any other organizational entity located in an agency
18 described in (A) of this paragraph if the organizational entity is
19 governed by a board whose members are subject to confirmation by the
20 legislature.

21 * **Sec. 17.** APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the
22 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as
23 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the
24 effective date of this Act.

25 (b) Section 14 of this Act applies to the adoption of regulations if the effective date
26 of the Act enacting the statutory authority requiring the adoption is the same as or after the
27 effective date of this Act.

28 * **Sec. 18.** COURT RULE CHANGES. AS 44.62.030(d), enacted by sec. 3 of this Act,
29 AS 44.62.035(f), enacted by sec. 4 of this Act, AS 44.62.213(c), enacted by sec. 10 of this
30 Act, and AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of
31 Civil Procedure, by prohibiting temporary restraining orders and injunctions in certain

1 situations.

2 * **Sec. 19.** This Act takes effect July 1, 2000.