

HOUSE CS FOR CS FOR SENATE BILL NO. 24(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/12/00
Referred: Finance

Sponsor(s): SENATORS DONLEY, Taylor

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to regulations; and providing for an effective date."**

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

3 * **Section 1.** The uncodified law of the State of Alaska is amended by adding a new
4 section to read:

5 SHORT TITLE. This Act may be known as the Alaska Regulations Reform Act.

6 * **Sec. 2.** AS 44.62.190(a) is amended to read:

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

9 (1) published in the newspaper of general circulation or trade or
10 industry publication that the state agency prescribes and in the Alaska Administrative
11 Journal; in the discretion of the state agency giving the notice, the requirement of
12 publication in a newspaper or trade or industry publication may be satisfied by using
13 a combination of publication and broadcasting; [WHEN BROADCASTING THE
14 NOTICE, AN AGENCY MAY USE AN ABBREVIATED FORM OF THE NOTICE
15 IF THE BROADCAST PROVIDES THE NAME AND DATE OF THE NEWSPAPER

1 OR TRADE OR INDUSTRY JOURNAL WHERE THE FULL TEXT OF THE
2 NOTICE CAN BE FOUND;]

3 (2) **furnished** [MAILED] to every person who has filed a request for
4 notice of proposed action with the state agency;

5 (3) if the agency is within a department, **furnished** [MAILED OR
6 DELIVERED] to the commissioner of the department;

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

8 (A) **furnished** [MAILED] to a person or group of persons **who**
9 [WHOM] the agency believes is interested in the proposed action; and

10 (B) **provided** [PUBLISHED] in the additional form and manner
11 the state agency prescribes;

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

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

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

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

26 * **Sec. 3.** AS 44.62.190(c) is amended to read:

27 (c) The failure to **furnish** [MAIL] notice to a person as provided in this
28 section does not invalidate an action taken by an agency under AS 44.62.180 -
29 44.62.290.

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

31 **Sec. 44.62.213. Additional procedural requirements for certain state**

1 **agencies.** (a) The provisions of this section apply to regulations of the Department
2 of Environmental Conservation, but do not apply to regulations of

3 (1) a board or commission located in the Department of Environmental
4 Conservation; or

5 (2) any other organizational entity located in the Department of
6 Environmental Conservation if the organizational entity is governed by a board whose
7 members are subject to confirmation by the legislature.

8 (b) In addition to complying with the notice requirements of AS 44.62.190, a
9 state agency to which this section applies shall

10 (1) furnish notice to persons who have provided comment to the state
11 agency under AS 44.62.210 on earlier versions of the proposed adoption, amendment,
12 or repeal of the regulation; and

13 (2) publish the notice on the Internet.

14 (c) Notwithstanding the variance in content authorized by AS 44.62.200(b),
15 and except as provided in (d) of this section, a regulation that is adopted, amended, or
16 repealed by a state agency to which this section applies may vary in content from the
17 summary specified in AS 44.62.200(a)(3) if the subject matter of the regulation
18 remains the same and the notice was written so as to assure that members of the public
19 are reasonably notified of the proposed subject of agency action in order for them to
20 determine whether their interests could be affected by agency action on that subject.

21 (d) If a state agency to which this section applies rewrites a proposed
22 regulation, an amendment of a regulation, or an order of repeal after it has complied
23 with AS 44.62.190, 44.62.200, and 44.62.210, and if the rewriting substantially
24 changes the substance of the regulation, amendment, or order, the state agency shall,
25 before adoption, provide notice and opportunity for public comment under
26 AS 44.62.190(a)(2) - (8), 44.62.200, 44.62.210, and (b) of this section for the
27 rewritten regulation, amendment, or order of repeal.

28 (e) If the state agency does not provide the notice and opportunity for public
29 comment under (d) of this section for a rewritten proposed regulation, amendment, or
30 order of repeal because it believes the rewriting did not substantially change the
31 substance,

1 (1) the state agency shall prepare a written explanation of the reasons
2 why the requirement of (d) of this section does not apply; and

3 (2) when the adopted regulation, amendment, or order of repeal is
4 published in the Alaska Administrative Journal, the lieutenant governor shall include
5 the state agency's explanation provided under (1) of this subsection with the text or a
6 summary of the text of the regulation, amendment, or order of repeal.

7 (f) The provisions of (d) and (e) of this section do not apply to regulations

8 (1) adopted under AS 44.62.260 to make emergency regulations
9 permanent; or

10 (2) that are necessary to meet federal requirements, to obtain an
11 exemption for a person, program, or situation in the state from federal requirements,
12 or to revise, in a manner that reduces any burden imposed by a federal requirement,
13 how the federal requirement will apply to a person, program, or situation in the state.

14 (g) If a statute is enacted or amended relating to a state agency to which this
15 section applies, the state agency shall, within 90 days after the effective date of the
16 statute or amendment, publish notice in the manner required under AS 44.62.190(a)(1)
17 that the commissioner of the agency does or does not find regulations presently
18 necessary to implement, interpret, or make specific the statute or amendment or to
19 govern applicable procedures.

20 (h) If a state agency to which this section applies publishes notice under (g)
21 of this section that the commissioner does not find regulations presently necessary, and
22 the commissioner subsequently finds that regulations are necessary to implement,
23 interpret, or make specific the statute or amendment or to govern applicable
24 procedures, the agency shall, within 90 days after the commissioner's revised finding,
25 publish notice of the revised finding in the manner required under AS 44.62.190(a)(1).

26 (i) A state agency to which this section applies may not take more than two
27 years to adopt regulations that the commissioner of the agency finds are necessary
28 under (g) or (h) of this section unless the agency complies with (j) of this section. The
29 two-year period begins on the date of the commissioner's finding that regulations are
30 necessary under (g) or (h) of this section. However, the requirement of this subsection
31 is not intended to prohibit the agency from amending a regulation after the regulation

1 has been adopted.

2 (j) If 21 months of the two-year time limit established under (i) of this section
3 for the adoption of regulations elapse without the agency adopting the regulations, and
4 if the agency determines that adopting the regulations will occur later than the two-
5 year time limit, the agency shall prepare a written report containing the reasons for the
6 failure and submit the report before expiration of the two-year time limit to the
7 governor, the president of the senate, the speaker of the house, and the chair of the
8 Administrative Regulation Review Committee established under AS 24.20.400.

9 (k) Notwithstanding AS 44.62.300, a court may not hold a regulation invalid
10 for failure to comply with (g) - (j) of this section.

11 * **Sec. 5.** AS 44.62.190(d) is repealed.

12 * **Sec. 6.** AS 44.62.213, enacted by sec. 4 of this Act, is repealed.

13 * **Sec. 7.** Sections 1, 8, and 9 of this Act are repealed.

14 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section
15 to read:

16 **APPLICABILITY OF AS 44.62.213(g) - (k).** AS 44.62.213(g) - (k), added by sec. 4
17 of this Act, apply to the adoption of regulations under a statute or amendment if the effective
18 date of the Act enacting the statute or amendment is the same as or after the effective date
19 of sec. 4 of this Act.

20 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section
21 to read:

22 **APPLICABILITY OF OTHER NEW PROVISIONS.** Except as provided by sec. 8,
23 secs. 1 - 5 of this Act apply to the adoption, amendment, or repeal of a regulation if the
24 original notice under AS 44.62.190 of the adoption, amendment, or repeal is given on or after
25 the effective date of secs. 1 - 5 of this Act.

26 * **Sec. 10.** Sections 1 - 5, 8, and 9 of this Act take effect July 1, 2000.

27 * **Sec. 11.** Sections 6 and 7 of this Act take effect July 1, 2005.