

SENATE CS FOR CS FOR HOUSE BILL NO. 295(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/9/04

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the publishing, furnishing, and contents of certain notices regarding
2 regulations or rules of certain state agencies and entities; relating to distribution of the
3 Alaska Administrative Code, Alaska Administrative Register, and supplements to the
4 code or register; and providing for an effective date."

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

6 * **Section 1.** AS 06.26.900(2) is amended to read:

7 (2) in addition to other authority in this chapter to adopt regulations,
8 adopt regulations necessary to interpret and implement this chapter, including
9 regulations providing for the retention and preservation of records; **the requirement**
10 **of AS 44.62.190(a)(7) for newspaper or other publication of a notice of proposed**
11 **action does not apply to a notice for regulations proposed to be adopted under**
12 **this chapter;**

13 * **Sec. 2.** AS 09.25.510 is amended by adding a new subsection to read:

14 (d) The requirement of AS 44.62.190(a)(7) for newspaper publication of a

1 notice of proposed action does not apply to a notice for regulations proposed to be
2 adopted by the lieutenant governor or a state agency under this section.

3 * **Sec. 3.** AS 14.25.022(c) is amended to read:

4 (c) At least 30 days before the adoption, amendment, or repeal of a regulation
5 under this chapter, the Alaska Teachers' Retirement Board shall provide notice of the
6 action that is being considered. The notice shall be

7 (1) posted in public buildings throughout the state;

8 (2) published in **a newspaper** [ONE OR MORE NEWSPAPERS] of
9 general circulation in [EACH JUDICIAL DISTRICT OF] the state;

10 (3) **furnished** [MAILED] to each person or group that has filed a
11 request for notice of proposed action with the Alaska Teachers' Retirement Board; and

12 (4) furnished to each member of the legislature and to the Legislative
13 Affairs Agency.

14 * **Sec. 4.** AS 14.25.022(d) is amended to read:

15 (d) **Notwithstanding (c)(3) of this section, if a person who is to receive a**
16 **notice under (c) of this section requests that the Alaska Teachers' Retirement**
17 **Board mail the notice, the Alaska Teachers' Retirement Board shall furnish the**
18 **notice to the person by mail.** Failure to **furnish** [MAIL] notice to a person as
19 required under **this subsection or** (c)(3) of this section does not invalidate an action
20 taken by the Alaska Teachers' Retirement Board.

21 * **Sec. 5.** AS 14.40.871(d) is amended to read:

22 (d) Except as provided in (e) of this section, at least 15 days before the
23 adoption of a regulation, the corporation shall give public notice of the proposed
24 action by publishing the notice in [AT LEAST] three newspapers of general
25 circulation in the state and by **furnishing** [MAILING] a copy of the notice to every
26 person who has filed a request for notice of proposed regulations with the corporation.

27 **If a person who is to receive a notice under this subsection requests that the**
28 **corporation mail the notice, the corporation shall furnish the notice to the person**
29 **by mail.** The public notice must include a statement of the time, place, and nature of
30 the proceedings for the adoption of the regulation, **a brief general description** [AND
31 MUST INCLUDE AN INFORMATIVE SUMMARY] of the subject of the proposed

1 action, **and a statement of how more detailed information can be obtained.** On the
 2 date and at the time and place designated in the notice, the corporation shall give each
 3 interested person or an authorized representative of the person, or both, the
 4 opportunity to present statements, arguments, or contentions orally or in writing and
 5 shall give members of the public an opportunity to present oral statements, arguments,
 6 or contentions for a total period of at least one hour. The corporation shall consider all
 7 relevant matter presented to it before taking the proposed action on the regulation. At
 8 a hearing under this subsection, the corporation may continue or postpone the hearing
 9 to a time and place determined by the corporation and announced at the hearing before
 10 taking the action to continue or postpone the hearing. A regulation adopted by the
 11 corporation may vary from the **brief general description** [INFORMATIVE
 12 SUMMARY] specified in this subsection if the subject matter of the action taken on
 13 the regulation remains the same and if the original notice of the proposed action was
 14 written so as to assure that members of the public are reasonably notified of the
 15 subject matter of the proposed action in order for them to determine whether their
 16 interests could be affected by the corporation's proposed action on that subject.

17 * **Sec. 6.** AS 18.56.088(d) is amended to read:

18 (d) Except as provided in (e) of this section, at least 15 days before the
 19 adoption, amendment, or repeal of a regulation on a subject specified in (c)(1) - (4) of
 20 this section, the board shall give public notice of the proposed action by publishing the
 21 notice in [AT LEAST] three newspapers of general circulation in the state and by
 22 **furnishing** [MAILING] a copy of the notice to every person who has filed a request
 23 for notice of proposed regulations with the board or the corporation. **If a person who**
 24 **is to receive a notice under this subsection requests that the board mail the**
 25 **notice, the board shall furnish the notice to the person by mail.** The public notice
 26 must include a statement of the time, place, and nature of the proceedings for the
 27 adoption, amendment, or repeal of the regulation, **a brief general description** [AND
 28 MUST INCLUDE AN INFORMATIVE SUMMARY] of the proposed subject of the
 29 regulation, **and a statement of how more detailed information can be obtained.**
 30 On the date and at the time and place designated in the notice, the board shall give
 31 each interested person or an authorized representative, or both, the opportunity to

1 present statements, arguments, or contentions in writing, and shall give members of
 2 the public an opportunity to present oral statements, arguments, or contentions for a
 3 total period of at least one hour. The board shall consider all relevant matter presented
 4 to it before adopting, amending, or repealing a regulation. At a hearing under this
 5 subsection, the board may continue or postpone the hearing to a time and place that it
 6 determines. A regulation that is adopted, or its amendment or repeal, may vary in
 7 content from the **brief general description** [INFORMATIVE SUMMARY] specified
 8 in this subsection if the subject matter of the regulation, or its amendment or repeal,
 9 remains the same and the original notice was written so as to assure that members of
 10 the public are reasonably notified of the proposed subject of the board's action in order
 11 for them to determine whether their interests could be affected by the board's action on
 12 that subject.

13 * **Sec. 7.** AS 21.06.090(a) is amended to read:

14 (a) The director may adopt reasonable regulations to effectuate this title. **The**
 15 **requirement of AS 44.62.190(a)(7) for newspaper or other publication of a notice**
 16 **of proposed action does not apply to a notice for regulations proposed to be**
 17 **adopted under this title.** A regulation may not extend, modify, or conflict with any
 18 law of this state or the reasonable implications thereof. Except for regulations adopted
 19 under AS 21.06.250, a regulation affecting a person or matter other than the personnel
 20 or the internal affairs of the director's office shall be adopted or amended only after a
 21 hearing, of which notice was given as required by AS 21.06.200. If reasonably
 22 possible, the director shall set out the proposed regulation or amendment in or with the
 23 notice of hearing. A regulation or amendment as to which a hearing is required is not
 24 effective until it has been on file as a public record in the director's office for at least
 25 10 days.

26 * **Sec. 8.** AS 22.25.027(c) is amended to read:

27 (c) At least 30 days before the adoption, amendment, or repeal of a regulation
 28 under this chapter, the commissioner of administration shall provide notice of the
 29 action that is being considered. The notice shall be

30 (1) posted in public buildings throughout the state;

31 (2) published in **a newspaper** [ONE OR MORE NEWSPAPERS] of

1 general circulation in [EACH JUDICIAL DISTRICT OF] the state;

2 (3) **furnished** [MAILED] to each person or group that has filed a
3 request for notice of proposed action with the commissioner of administration; and

4 (4) furnished to each member of the legislature and to the Legislative
5 Affairs Agency.

6 * **Sec. 9.** AS 22.25.027(d) is amended to read:

7 (d) **Notwithstanding (c)(3) of this section, if a person who is to receive a**
8 **notice under (c)(3) of this section requests that the commissioner of**
9 **administration mail the notice, the commissioner of administration shall furnish**
10 **the notice to the person by mail.** Failure to **furnish** [MAIL] notice to a person as
11 required under **this subsection or** (c)(3) of this section does not invalidate an action
12 taken by the commissioner of administration.

13 * **Sec. 10.** AS 31.05.030(c) is amended to read:

14 (c) The commission shall adopt regulations and orders and take other
15 appropriate action to carry out the purposes of this chapter. **The requirement of**
16 **AS 44.62.190(a)(7) for newspaper or other publication of a notice of proposed**
17 **action does not apply to a notice for regulations proposed to be adopted under**
18 **this chapter, including regulations under AS 31.05.040.**

19 * **Sec. 11.** AS 39.25.140(c) is amended to read:

20 (c) At least 30 days before the adoption, amendment, or repeal of a personnel
21 rule, the secretary to the personnel board shall provide notice that the personnel board
22 has the proposed action under consideration. The notice shall be

23 (1) posted in public buildings throughout the state;

24 (2) **posted on the Alaska Online Public Notice System**
25 **(AS 44.62.175)** [PUBLISHED IN ONE OR MORE NEWSPAPERS OF GENERAL
26 CIRCULATION THROUGHOUT THE STATE];

27 (3) **furnished** [MAILED] to each person or group that filed a request
28 for notice of proposed action with the secretary to the personnel board;

29 (4) furnished to each member of the legislature and to the Legislative
30 Affairs Agency.

31 * **Sec. 12.** AS 39.25.140(f) is amended to read:

1 (f) Failure to **furnish** [MAIL] notice to a person as required in this section
 2 does not invalidate an action taken by the personnel board.

3 * **Sec. 13.** AS 39.35.042(c) is amended to read:

4 (c) At least 30 days before the adoption, amendment, or repeal of a regulation
 5 under this chapter, the board shall provide notice of the action that is being considered.

6 The notice shall be

7 (1) posted in public buildings throughout the state;

8 (2) published in **a newspaper** [ONE OR MORE NEWSPAPERS] of
 9 general circulation in [EACH JUDICIAL DISTRICT OF] the state;

10 (3) **furnished** [MAILED] to each person or group that has filed a
 11 request for notice of proposed action with the board; and

12 (4) furnished to each member of the legislature and to the Legislative
 13 Affairs Agency.

14 * **Sec. 14.** AS 39.35.042(d) is amended to read:

15 (d) **Notwithstanding (c)(3) of this section, if a person who is to receive a**
 16 **notice under (c)(3) of this section requests that the board mail the notice, the**
 17 **board shall furnish the notice to the person by mail.** Failure to **furnish** [MAIL]
 18 notice to a person as required under **this subsection or** (c)(3) of this section does not
 19 invalidate an action taken by the board.

20 * **Sec. 15.** AS 42.06.140(a) is amended to read:

21 (a) The commission

22 (1) shall regulate pipelines and pipeline carriers in the state;

23 (2) may investigate upon complaint or its own motion, the rates,
 24 classifications, rules, regulations, prices, services, practices, and facilities of pipeline
 25 carriers, and the performance of obligations under and compliance with the terms of
 26 leases issued by the state;

27 (3) may make, prescribe, or require just, fair, and reasonable rates,
 28 classifications, regulations, practices, services, and facilities for pipeline carriers;

29 (4) may require pipeline carriers and affiliated interests to file with the
 30 commission reports and other information and data required or permitted to be
 31 required by other provisions of this chapter;

1 (5) may adopt regulations that are necessary and proper to the
 2 performance of its duties under this chapter, including regulations governing practices
 3 and procedures of the commission; the regulations may not be inconsistent with state
 4 law; **the requirement of AS 44.62.190(a)(7) for newspaper or other publication of**
 5 **a notice of proposed action does not apply to a notice for regulations proposed to**
 6 **be adopted under this chapter;**

7 (6) shall, during normal business hours, have access to and may
 8 designate any of its employees, agents, or consultants to inspect and examine the
 9 accounts, financial and property records, books, maps, inventories, appraisals,
 10 valuations, and related reports kept by a pipeline carrier, or kept for it by others, that
 11 directly affect the interests of the state and directly relate to pipelines located in the
 12 state;

13 (7) may initiate, intervene in, and appear personally or by counsel and
 14 offer evidence in and participate in, any proceedings involving a pipeline carrier, and
 15 affecting the interests of the state, before any officer, department, board, commission,
 16 or court of this state;

17 (8) shall require permits for the construction, enlargement in size or
 18 operating capacity, extension, connection and interconnection, operation, or
 19 abandonment of any oil or gas pipeline facility or facilities, subject to necessary and
 20 reasonable terms, conditions, and limitations;

21 (9) may prescribe the system of accounts and regulate the service of an
 22 oil or gas pipeline facility;

23 (10) shall provide all reasonable assistance to the Department of Law
 24 in intervening in, offering evidence in, and participating in proceedings involving a
 25 pipeline carrier or affiliated interest and affecting the interests of the state, before an
 26 officer, department, board, commission, or court of another state or the United States.

27 * **Sec. 16.** AS 42.40.180(a) is amended to read:

28 (a) The board shall adopt rules to carry out its functions and the purposes of
 29 this chapter, including rules to safeguard property owned, managed, or transported by
 30 the corporation and to protect employees and persons using the corporation's property
 31 or services. At least 15 days before the adoption of a rule, the board shall give public

1 notice of the proposed action by publishing a notice in [AT LEAST] three newspapers
 2 of general circulation in the state and by **furnishing** [MAILING] a copy of the notice
 3 to each person who has requested notice of proposed changes to rules. The notice
 4 must **include a statement of** [STATE] the time, place, and nature of the proceedings,
 5 [AND MUST CONTAIN] a **brief general description** [SUMMARY] of the subject
 6 of the proposed rule, **and a statement of how more detailed information can be**
 7 **obtained**.

8 * **Sec. 17.** AS 42.40.180(c) is amended to read:

9 (c) The board shall consider all relevant matters presented to it before
 10 adopting a rule. The board may take action on a rule that varies in content from the
 11 **brief general description specified in (a) of this section** [SUMMARY PROVIDED
 12 WITH THE NOTICE OF THE PROPOSED RULE] if the subject of the rule was
 13 reflected in the **brief general description** [SUMMARY] and **the brief general**
 14 **description** [IT] provided reasonable notice to **members of** the public as to whether
 15 their interests could be affected by the board's action on that subject.

16 * **Sec. 18.** AS 42.40.200(a) is amended to read:

17 (a) **If a person who is to receive a notice under AS 42.40.180(a) or**
 18 **42.40.190(a) requests that the board mail the notice, the board shall furnish the**
 19 **notice to the person by mail.** Failure to **furnish** [MAIL] notice to a person under
 20 **this subsection,** AS 42.40.180(a), or 42.40.190(a) does not invalidate an action taken
 21 by the board.

22 * **Sec. 19.** AS 43.20.160(c) is amended to read:

23 (c) The department shall prescribe and furnish all necessary forms, and adopt
 24 and publish all necessary regulations in plain and concise language conformable with
 25 this chapter for the assessment and collection of the taxes imposed by this chapter.
 26 The department shall apply as far as practicable the administrative and judicial
 27 interpretations of the federal income tax law. The department shall also prepare a
 28 concise statement of the contents of the code sections referred to in this chapter for the
 29 information of the taxpayer and make them available to the taxpayer making a return.
 30 **The requirement of AS 44.62.190(a)(7) for newspaper or other publication of a**
 31 **notice of proposed action does not apply to a notice for regulations proposed to**

1 **be adopted to administer AS 43.20.072.**

2 * **Sec. 20.** AS 43.56.200 is amended to read:

3 **Sec. 43.56.200. Regulations.** The board and the department may adopt
4 regulations under AS 44.62 (Administrative Procedure Act) as appropriate to carry out
5 their respective duties under this chapter. **The requirement of AS 44.62.190(a)(7)**
6 **for newspaper or other publication of a notice of proposed action does not apply**
7 **to a notice for regulations proposed to be adopted under this section.**

8 * **Sec. 21.** AS 44.62.140 is amended to read:

9 **Sec. 44.62.140. Distribution of code and register.** **Upon the request of the**
10 **clerk of a local government unit for a paper or an electronic copy of** [THE
11 LIEUTENANT GOVERNOR SHALL SUPPLY] a complete set of the Alaska
12 Administrative Code, and of the Alaska Administrative Register, and of each
13 supplement to the code or register, **and payment of the costs described in (b) of this**
14 **section, the lieutenant governor shall supply the requested copy** to the clerk of **the**
15 [EACH] local government unit, or, if the authority to accept filings is delegated, to the
16 person to whom this authority is delegated.

17 * **Sec. 22.** AS 44.62.140 is amended by adding a new subsection to read:

18 (b) Upon receipt of a request under (a) of this section, the lieutenant governor
19 shall inform the requesting clerk of the costs, including mailing costs, of complying
20 with the local government unit's request.

21 * **Sec. 23.** AS 44.62.190(a) is amended to read:

22 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,
23 **a state agency**

24 **(1) shall post a** notice of the proposed action [SHALL BE (1)
25 PUBLISHED IN THE NEWSPAPER OF GENERAL CIRCULATION OR TRADE
26 OR INDUSTRY PUBLICATION THAT THE STATE AGENCY PRESCRIBES
27 AND POSTED] on the Alaska Online Public Notice System; [IN THE DISCRETION
28 OF THE STATE AGENCY GIVING THE NOTICE, THE REQUIREMENT OF
29 PUBLICATION IN A NEWSPAPER OR TRADE OR INDUSTRY PUBLICATION
30 MAY BE SATISFIED BY USING A COMBINATION OF PUBLICATION AND
31 BROADCASTING; WHEN BROADCASTING THE NOTICE, AN AGENCY MAY

1 USE AN ABBREVIATED FORM OF THE NOTICE IF THE BROADCAST
 2 PROVIDES THE NAME AND DATE OF THE NEWSPAPER OR TRADE OR
 3 INDUSTRY JOURNAL AND THE INTERNET ADDRESS OF THE ALASKA
 4 ONLINE PUBLIC NOTICE SYSTEM WHERE THE FULL TEXT OF THE
 5 NOTICE CAN BE FOUND;]

6 (2) **shall furnish the notice of the proposed action** [FURNISHED] to
 7 every person who has filed a request for notice of proposed action with the state
 8 agency;

9 (3) **shall**, if the agency is within a department, **furnish the notice of**
 10 **the proposed action** [FURNISHED] to the commissioner of the department;

11 (4) **shall**, when appropriate in the judgment of the agency,

12 (A) **furnish the notice of the proposed action** [FURNISHED]
 13 to a person or group of persons whom the agency believes is interested in the
 14 proposed action; and

15 (B) **publish the notice of the proposed action** [PUBLISHED]
 16 in the additional form and manner the state agency prescribes;

17 (5) **shall furnish the notice of the proposed action** [FURNISHED] to
 18 the Department of Law together with a copy of the proposed regulation, amendment,
 19 or order of repeal for the department's use in preparing the opinion required after
 20 adoption and before filing by AS 44.62.060;

21 (6) **shall furnish the notice of the proposed action** [FURNISHED]
 22 by electronic format, if the state agency has the technological capability, to all
 23 incumbent State of Alaska legislators, and **furnish the notice** [FURNISHED] to the
 24 Legislative Affairs Agency; if the state agency does not have the technological
 25 capability to furnish the notice by electronic format to the legislators, the state agency
 26 shall furnish the notice to the legislators by other means;

27 (7) **shall publish an abbreviated form of the notice of the proposed**
 28 **action in a newspaper of general circulation or trade or industry publication that**
 29 **the state agency giving the notice prescribes; and**

30 (8) **may broadcast an abbreviated form of the notice of the**
 31 **proposed action.**

1 * **Sec. 24.** AS 44.62.200 is repealed and reenacted to read:

2 **Sec. 44.62.200. Contents of notice.** (a) The notice of proposed adoption,
3 amendment, or repeal of a regulation that is posted on the Alaska Online Public Notice
4 System and that is furnished under AS 44.62.190(a)(2) - (6) must include

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

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

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

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

13 (5) a summary of the fiscal information required to be prepared under
14 AS 44.62.195.

15 (b) The abbreviated form of the notice of proposed action that is published in a
16 newspaper of general circulation or trade or industry publication, or that is broadcast,
17 under AS 44.62.190(a)(7) or (8) must include

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

20 (2) a reference to the particular code section or other provisions of law
21 that are being implemented, interpreted, or made specific;

22 (3) a brief general description of the proposed subject of agency
23 action; and

24 (4) a statement of how more detailed information may be obtained,
25 including

26 (A) the Internet address of the Alaska Online Public Notice
27 System where the full text of the notice of proposed action can be found; and

28 (B) the name, telephone number, and electronic and mailing
29 addresses of the contact person for the state agency through whom a person
30 may request a copy of the full text of the notice of, or submit comments on, the
31 proposed action.

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

7 * **Sec. 25.** AS 44.88.085(d) is amended to read:

8 (d) Except as provided in (e) of this section, at least 15 days before the
 9 adoption, amendment, or repeal of a regulation, the authority shall give public notice
 10 of the proposed action by publishing the notice in [AT LEAST] three newspapers of
 11 general circulation in the state and by **furnishing** [MAILING] a copy of the notice to
 12 every person who has filed a request for notice of proposed regulations with the
 13 authority. **If a person who is to receive a notice under this subsection requests**
 14 **that the authority mail the notice, the authority shall furnish the notice to the**
 15 **person by mail.** The public notice must include a statement of the time, place, and
 16 nature of the proceedings for the adoption, amendment, or repeal of the regulation, **a**
 17 **brief general description** [AND MUST INCLUDE AN INFORMATIVE
 18 SUMMARY] of the subject of the proposed action, **and a statement of how more**
 19 **detailed information can obtained.** On the date and at the time and place designated
 20 in the notice, the authority shall give each interested person or an authorized
 21 representative of the person, or both, the opportunity to present statements, arguments,
 22 or contentions orally or in writing and shall give members of the public an opportunity
 23 to present oral statements, arguments, or contentions for a total period of at least one
 24 hour. The authority shall consider all relevant matter presented to it before taking the
 25 proposed action on the regulation. At a hearing under this subsection, the authority
 26 may continue or postpone the hearing to a time and place determined by the authority
 27 and announced at the hearing before taking the action to continue or postpone the
 28 hearing. A regulation adopted, amended, or repealed by the authority may vary from
 29 the **brief general description** [INFORMATIVE SUMMARY] specified in this
 30 subsection if the subject matter of the action taken on the regulation remains the same
 31 and if the original notice of the proposed action was written so as to assure that

1 members of the public are reasonably notified of the subject matter of the proposed
2 action in order for them to determine whether their interests could be affected by the
3 authority's proposed action on that subject.

4 * **Sec. 26.** AS 45.55.960 is amended to read:

5 **Sec. 45.55.960. Administrative Procedure Act applies.** AS 44.62
6 (Administrative Procedure Act) applies to all regulations adopted or authorized under
7 this chapter, **except that the requirement of AS 44.62.190(a)(7) for newspaper or**
8 **other publication of a notice of proposed action does not apply to a notice for**
9 **regulations proposed to be adopted under this chapter.**

10 * **Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to
11 read:

12 APPLICABILITY. The changes made by this Act do not apply to the adoption,
13 amendment, or repeal of an agency regulation or rule unless notice of the proposed adoption,
14 amendment, or repeal is first provided to the public in accordance with law on or after the
15 effective date of this Act.

16 * **Sec. 28.** This Act takes effect immediately under AS 01.10.070(c).