

**CS FOR HOUSE BILL NO. 424(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered: 3/8/04**

**Referred: Finance**

**Sponsor(s): REPRESENTATIVES HOLM, McGuire, Foster, Lynn**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to review by the Legislative Affairs Agency of certain state agency**  
2 **regulations proposed for adoption, amendment, or repeal under the Administrative**  
3 **Procedure Act; repealing provisions relating to annulment of regulations; and providing**  
4 **for an effective date."**

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

6 **\* Section 1.** AS 18.56.088(a) is amended to read:

7 (a) Except for AS 44.62.310 and 44.62.312, regarding public meetings, [AND  
8 AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF REGULATIONS,]  
9 AS 44.62 (Administrative Procedure Act) does not apply to this chapter. The  
10 corporation shall make available to members of the public copies of the regulations  
11 adopted under (b) - (e) of this section. Within 45 days after adoption, the chairman of  
12 the board shall submit a regulation adopted under (b) - (e) of this section to the  
13 chairman of the Administrative Regulation Review Committee under AS 24.20.400 -  
14 24.20.460. [THE PROVISIONS OF AS 44.62.320(a) APPLY TO REGULATIONS

1 ADOPTED UNDER (b) - (e) OF THIS SECTION.]

2 \* **Sec. 2.** AS 24.20 is amended by adding a new section to read:

3 **Sec. 24.20.105. Review of proposed regulations.** (a) The Legislative Affairs  
4 Agency may review each proposed regulation that is subject to AS 44.62.010 -  
5 44.62.300 (Administrative Procedure Act). A review of proposed regulations under  
6 this section must be conducted by an attorney employed by that agency.

7 (b) Reviews shall be conducted under (a) of this section in the following order  
8 of priority:

9 (1) proposed regulations that would implement newly enacted  
10 legislation;

11 (2) proposed regulations requested in writing to be reviewed by a  
12 standing committee, the Administrative Regulation Review Committee, or the  
13 legislative council as implicating major policy development.

14 (c) Under AS 44.62.190(a)(7), the notice of proposed action, along with a  
15 copy of the proposed regulation, shall be furnished electronically by the state agency  
16 to the

17 (1) Legislative Affairs Agency;

18 (2) chairs of the standing committees with jurisdiction over the subject  
19 of the proposed regulation;

20 (3) Administrative Regulation Review Committee;

21 (4) legislative council.

22 (d) Within available staff resources and priorities set by the legislative council,  
23 the Legislative Affairs Agency shall assign one or more attorneys to conduct a review  
24 of proposed regulations. The review shall evaluate

25 (1) the legality and constitutionality of the proposed regulation;

26 (2) whether the state agency has statutory authority to adopt the  
27 proposed regulation to implement, interpret, make specific, or otherwise carry out a  
28 statute; and

29 (3) whether the proposed regulation is consistent with the applicable  
30 statutes.

31 (e) In conducting its review under this section, the assigned attorney may

1 consult with the Department of Law, the committee or council that requests the review  
 2 under (b)(2) of this section, and the state agency proposing the regulation change. If  
 3 the assigned attorney determines that the proposed action fails to meet the standards  
 4 set out in (d) of this section, the assigned attorney shall notify, in writing, the  
 5 Department of Law, the state agency, the Administrative Regulation Review  
 6 Committee, the president of the senate, and the speaker of the house of  
 7 representatives.

8 (f) In addition to the review specified in (d) of this section, the assigned  
 9 attorney shall notify the Administrative Regulation Review Committee, the president  
 10 of the senate, and the speaker of the house of representatives of any provision of the  
 11 proposed regulation that may be inconsistent with legislative intent and appropriate for  
 12 additional legislative oversight as a result.

13 (g) Except as provided in this section, the Legislative Affairs Agency may not  
 14 release any information regarding its review of a proposed regulation under this  
 15 section.

16 (h) The process of review of a proposed regulation under this section does not  
 17 affect a state agency's authority to complete its proposed action regarding the  
 18 regulation. Suggestions for changes to a proposed regulation made by the Legislative  
 19 Affairs Agency are not binding on a state agency.

20 (i) No action may be brought for the failure of the Legislative Affairs Agency  
 21 to conduct a legal review under this section.

22 (j) The provisions of (b) - (i) of this section do not apply to proposed  
 23 regulations of the Board of Game or the Board of Fisheries.

24 (k) In this section, "proposed regulation" means a proposed adoption,  
 25 amendment, or repeal of a regulation.

26 \* **Sec. 3.** AS 24.20.400 is amended to read:

27 **Sec. 24.20.400. Administrative Regulation Review Committee established.**

28 The Administrative Regulation Review Committee is established as a permanent  
 29 interim committee of the legislature. The establishment of the committee recognizes  
 30 the need for prompt legislative review of administrative regulations filed by the  
 31 lieutenant governor [TO DETERMINE WHETHER ANNULMENT UNDER

1 AS 44.62.320 IS APPROPRIATE].

2 \* **Sec. 4.** AS 40.25.120(a) is amended by adding a new paragraph to read:

3 (11) the written notification regarding a proposed regulation provided  
4 under AS 24.20.105 to the Department of Law and the affected state agency and  
5 communications between the Legislative Affairs Agency, the Department of Law, and  
6 the affected state agency under AS 24.20.105.

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

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

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

19 (2) furnished 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, furnished to the commissioner  
22 of the department;

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

24 (A) furnished 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 to 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 by electronic format, if the state agency has the

1 technological capability, to all incumbent State of Alaska legislators, and furnished to  
 2 the Legislative Affairs Agency; if the state agency does not have the technological  
 3 capability to furnish the notice by electronic format to the legislators, the state agency  
 4 shall furnish the notice to the legislators by other means;

5 (7) furnished by electronic format, along with a copy of the  
 6 proposed regulation, amendment, or order of repeal, as required by  
 7 AS 24.20.105(c).

8 \* **Sec. 6.** AS 44.88.085(a) is amended to read:

9 (a) Except for AS 44.62.310 and 44.62.312 regarding public meetings, [AND  
 10 EXCEPT FOR AS 44.62.320(a) REGARDING LEGISLATIVE REVIEW OF  
 11 REGULATIONS,] the provisions of the Administrative Procedure Act regarding the  
 12 adoption of regulations (AS 44.62.040 - 44.62.320) do not apply to the authority. The  
 13 authority shall make available to members of the public copies of the regulations  
 14 adopted under this section. Within 45 days after adoption of a regulation under this  
 15 section, the chairman of the authority shall submit the regulation adopted to the  
 16 chairman of the Administrative Regulation Review Committee under AS 24.20.400 -  
 17 24.20.460.

18 \* **Sec. 7.** AS 24.20.460(5) and AS 44.62.320(a) are repealed.

19 \* **Sec. 8.** This Act takes effect July 1, 2004.