

CS FOR HOUSE BILL NO. 424(JUD)(efd fld S)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Amended: 5/9/04

Offered: 3/8/04

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; and repealing provisions relating to annulment of regulations."**

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

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

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

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

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

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

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

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

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

16 (1) Legislative Affairs Agency;

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

19 (3) Administrative Regulation Review Committee;

20 (4) legislative council.

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

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

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

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

30 (e) In conducting its review under this section, the assigned attorney may
31 consult with the Department of Law, the committee or council that requests the review

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

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

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

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

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

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

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

25 * **Sec. 3.** AS 24.20.400 is amended to read:

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

27 The Administrative Regulation Review Committee is established as a permanent
 28 interim committee of the legislature. The establishment of the committee recognizes
 29 the need for prompt legislative review of administrative regulations filed by the
 30 lieutenant governor [TO DETERMINE WHETHER ANNULMENT UNDER
 31 AS 44.62.320 IS APPROPRIATE].

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

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

6 * **Sec. 5.** 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 posted on the Alaska Online
11 Public Notice System; in the discretion of the state agency giving the notice, the
12 requirement of publication in a newspaper or trade or industry publication may be
13 satisfied by using a combination of publication and broadcasting; when broadcasting
14 the notice, an agency may use an abbreviated form of the notice if the broadcast
15 provides the name and date of the newspaper or trade or industry journal and the
16 Internet address of the Alaska Online Public Notice System where the full text of the
17 notice can be found;

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

20 (3) if the agency is within a department, furnished to the commissioner
21 of the department;

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

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

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

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

30 (6) furnished by electronic format, if the state agency has the
31 technological capability, to all incumbent State of Alaska legislators, and furnished to

1 the Legislative Affairs Agency; if the state agency does not have the technological
 2 capability to furnish the notice by electronic format to the legislators, the state agency
 3 shall furnish the notice to the legislators by other means;

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

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

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

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