



LAWS OF ALASKA

2005

Source

SCS CSHB 33(FIN)

Chapter No.

AN ACT

Relating to required notification of the Department of Commerce, Community, and Economic Development, economic effect statements, and regulatory flexibility analyses regarding the adoption of regulations that may govern the conduct of small businesses; relating to a private cause of action, regulation invalidation, and judicial review related to required notification, economic effect statements, and regulatory flexibility analyses for the adoption of regulations that may govern the conduct of small businesses; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

1 Relating to required notification of the Department of Commerce, Community, and Economic
2 Development, economic effect statements, and regulatory flexibility analyses regarding the
3 adoption of regulations that may govern the conduct of small businesses; relating to a private
4 cause of action, regulation invalidation, and judicial review related to required notification,
5 economic effect statements, and regulatory flexibility analyses for the adoption of regulations
6 that may govern the conduct of small businesses; and providing for an effective date.

7

8 * **Section 1.** AS 44.62 is amended by adding a new section to read:

9 **Sec. 44.62.218. Regulations affecting small businesses.** (a) Before a
10 designated state agency adopts a proposed regulation that may govern the conduct of
11 small businesses, or when a person petitions a designated state agency under
12 AS 44.62.220 to adopt a proposed regulation that may govern the conduct of small

1 businesses, the designated state agency shall

2 (1) notify the department that the designated state agency intends to
3 adopt the proposed regulation or has received a petition under AS 44.62.220 to adopt
4 the proposed regulation;

5 (2) prepare an economic effect statement under (b) and (c) of this
6 section; and

7 (3) prepare a regulatory flexibility analysis under (d) and (e) of this
8 section.

9 (b) A designated state agency shall use the information received under
10 AS 44.62.210 and 44.62.215, information provided by the department under (f) of this
11 section, and other information in the files of the designated state agency to prepare the
12 economic effect statement required by (a) of this section.

13 (c) The economic effect statement required by (a) of this section must provide,
14 if available from the information gathered under (b) of this section,

15 (1) a general description of small businesses that would be subject to
16 the proposed regulation;

17 (2) the projected reporting, record keeping, and other administrative
18 costs that small businesses would be required to incur in order to comply with the
19 proposed regulation, including an identification of the type of professional skills
20 necessary to prepare the report or record or to take the administrative action;

21 (3) a statement of the probable economic effect that the proposed
22 regulation would have on the small businesses whose conduct would be governed by
23 the proposed regulation; and

24 (4) a description of any alternative methods of achieving the purpose
25 of the proposed regulation that would be less intrusive or less costly for the small
26 businesses whose conduct would be governed by the proposed regulation.

27 (d) In the regulatory flexibility analysis required by (a) of this section, a
28 designated state agency shall consider using regulatory methods that

29 (1) minimize the effects of the proposed regulation on small businesses
30 without compromising the objectives of statutes authorizing the proposed regulation;
31 and

1 (2) are consistent with health, safety, environmental welfare, and
2 economic welfare.

3 (e) When preparing the regulatory flexibility analysis under (d) of this section,
4 the designated state agency shall consider

5 (1) the establishment of less stringent compliance or reporting
6 requirements for small businesses;

7 (2) the establishment of less stringent schedules or deadlines for
8 compliance or reporting requirements for small businesses;

9 (3) the consolidation or simplification of compliance or reporting
10 requirements for small businesses;

11 (4) the establishment of performance standards to replace design or
12 operational standards for small businesses; and

13 (5) the exemption of small businesses from all or any part of the
14 requirements contained in the proposed regulation.

15 (f) The department shall advise and assist a designated state agency to comply
16 with this section.

17 (g) This section does not apply to regulations

18 (1) of a board or commission whose members are subject to
19 confirmation by the legislature;

20 (2) of the Alaska Energy Authority;

21 (3) of the Department of Environmental Conservation that are adopted
22 under the authority of AS 46.03.050 - 46.03.900, AS 46.04, AS 46.08, AS 46.09,
23 AS 46.11, AS 46.14, AS 46.35, or AS 46.45;

24 (4) of the Local Boundary Commission;

25 (5) mandated by federal law as a condition for participating in or
26 implementing a federally subsidized or assisted program, or for obtaining or
27 maintaining state primacy in a federal program;

28 (6) that address standards, requirements, or conditions for
29 reimbursement by the designated state agency for services to be rendered on behalf of
30 the designated state agency, that address amounts or rates of that reimbursement, or
31 that adjust those amounts or rates to contain costs within the amount of appropriations

1 from the legislature for a state fiscal year; or

2 (7) that establish standards, requirements, or conditions for the
3 eligibility of an individual for assistance under AS 18 or AS 47, or that establish
4 standards for determining the amount of assistance that an eligible person is entitled to
5 receive.

6 (h) This section does not create a private cause of action. If a designated state
7 agency fails to comply with this section, the failure does not establish a ground on
8 which to invalidate a regulation that has been filed by the lieutenant governor under
9 AS 44.62.080. This subsection is not intended to prevent judicial review of a
10 regulation under AS 44.62.300 for a reason unrelated to this section.

11 (i) In this section,

12 (1) "department" means the Department of Commerce, Community,
13 and Economic Development;

14 (2) "designated state agency" means the

15 (A) Department of Commerce, Community, and Economic
16 Development;

17 (B) Department of Environmental Conservation;

18 (C) Department of Health and Social Services; or

19 (D) Department of Labor and Workforce Development;

20 (3) "governs the conduct" means regulates the manner in which a small
21 business conducts its business activities but does not include the imposition of a fee to
22 cover the cost of a state service if the fee is charged uniformly to all users of the
23 service;

24 (4) "proposed regulation" means a proposal for a new regulation or for
25 a change in or an addition to an existing regulation but does not include the repeal of
26 an existing regulation;

27 (5) "regulation" has the meaning given in AS 44.62.640 but does not
28 include an emergency regulation under AS 44.62.250 - 44.62.260;

29 (6) "small business" means

30 (A) a business entity, including its affiliates, that

31 (i) is independently owned and operated; and

- 1 (ii) employs fewer than 100 employees;
2 (B) a village corporation that employs fewer than 100
3 employees; in this subparagraph, "village corporation" has the meaning given
4 in 43 U.S.C. 1602(j); or
5 (C) a nonprofit utility that employs fewer than 100 employees;
6 in this subparagraph, "utility" has the meaning given in AS 42.05.990.

7 * **Sec. 2.** AS 44.62.218 is repealed January 1, 2009.

8 * **Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 REPORT TO LEGISLATURE. The Department of Commerce, Community, and
11 Economic Development shall provide to the legislature on or before March 15, 2008, a report
12 on the effectiveness of AS 44.62.218, enacted by sec. 1 of this Act, in making regulations less
13 intrusive and less costly for small businesses.

14 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
15 read:

16 TRANSITION. AS 44.62.218, enacted by sec. 1 of this Act, applies to a proposed
17 regulation proposed by a designated state agency on or after January 1, 2006, or by an
18 interested person under AS 44.62.220 on or after January 1, 2006. In this section, "designated
19 state agency" and "proposed regulation" have the meanings given in AS 44.62.218, enacted
20 by sec. 1 of this Act.

21 * **Sec. 5.** This Act takes effect January 1, 2006.