

Introduced: 2/24/69
Referred: Resources
and Finance

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 195

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act providing for the conservation of the air
7 quality of the state and the prevention and control
8 of air pollution."

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

10 * Section 1. AS 18 is amended by adding a new chapter to read:

11 CHAPTER 31. AIR POLLUTION.

12 Sec. 18.31.010. DECLARATION OF POLICY AND PURPOSE. (a) It is
13 declared to be the policy of the state and the purpose of this chapter
14 to achieve and maintain levels of air quality that will protect human
15 health and safety, and to the greatest degree practicable, prevent
16 injury to plant and animal life and property, foster the comfort and
17 convenience of the people, promote the economic and social development
18 of the state and facilitate the enjoyment of the natural attractions
19 of the state.

20 (b) It is also declared that local and regional air pollution
21 control programs shall be supported to the extent practicable as es-
22 sential instruments for the securing and maintaining of appropriate
23 levels of air quality.

24 (c) To these ends it is the purpose of this chapter to

25 (1) provide for a coordinated statewide program of air
26 pollution prevention, abatement and control;

27 (2) provide for an appropriate distribution of responsi-
28 bilities among the state and local units of government;

29 (3) facilitate cooperation across jurisdictional lines in

1 dealing with problems of air pollution not confined within single
2 jurisdictions; and

3 (4) provide a framework within which all values may be
4 balanced in the public interest.

5 Sec. 18.31.020. AIR POLLUTION CONTROL COMMISSION. There is
6 created within the department of health and welfare the Air Pollution
7 Control Commission, the members of which shall be the commissioners
8 of the Departments of Health and Welfare and of Natural Resources, and
9 five members appointed by the governor. Of the five members appointed
10 by the governor, insofar as practicable one shall be a licensed
11 physician knowledgeable in the health effects of air pollution; one
12 shall be a professional engineer experienced in the field of air
13 pollution control; one shall be a representative of a local or regional
14 air pollution control agency; one shall be a representative of industry,
15 employed by a manufacturing, power generating or fuels firm within
16 the state, and be experienced in air pollution control; and one shall
17 be chosen at large. The commission shall select its own chairman
18 from among its members.

19 Sec. 18.31.030. TERM. The terms of the appointed members shall
20 be four years except that of the initially-appointed members, one
21 shall serve for one year, one shall serve for two years, one shall
22 serve for three years and two shall serve for four years, as desig-
23 nated by the governor at the time of appointment. Whenever a vacancy
24 occurs, the governor shall appoint a member for the remaining portion
25 of the unexpired term created by the vacancy.

26 Sec. 18.31.040. MEETINGS. The commission shall hold at least
27 two regular meetings each year and additional meetings which the
28 chairman considers desirable, at a place and time to be fixed by the
29 chairman. Special meetings shall be called by the chairman upon the

1 written request of four members. Four members shall constitute a
2 quorum. Each of the department heads on the commission may designate
3 a principal deputy or assistant to act in his place on the commission.

4 Sec. 18.31.050. EXPENSES. Members of the commission shall re-
5 ceive no salary, but are entitled to per diem and travel expenses as
6 provided by law while attending commission business.

7 Sec. 18.31.060. COMMISSION PERSONNEL. The commission shall
8 employ an executive director, who may be a member of the commission
9 and who shall be an experienced administrator. The commission may
10 employ engineers, examiners, hearing officers, experts, clerks,
11 accountants and other assistants it considers necessary and set the
12 compensation for them.

13 Sec. 18.31.070. ADMINISTRATIVE SUPERVISION. The commission is
14 under the general administrative supervision of the commissioner of
15 health and welfare.

16 Sec. 18.31.080. POWERS. (a) In addition to other powers con-
17 ferred on it by law the commission may

- 18 (1) adopt rules and regulations implementing this chapter;
- 19 (2) hold hearings relating to any aspect of the administra-
20 tion of this chapter and in that regard compel the attendance of
21 witnesses and the production of evidence;
- 22 (3) issue orders as may be necessary to effectuate the
23 purposes of this chapter and enforce them by appropriate administrative
24 and judicial proceedings;
- 25 (4) require access to records relating to emissions which
26 cause or contribute to air contamination;
- 27 (5) secure necessary scientific, technical, administrative
28 and operational services, including laboratory facilities, by contract
29 or otherwise;

1 (6) prepare and develop a comprehensive plan or plans for
2 the prevention, abatement and control of air pollution in the state;

3 (7) encourage voluntary cooperation by persons and affected
4 groups to achieve the purposes of this chapter;

5 (8) encourage local municipalities, and provide them with
6 technical and consultative assistance, to handle air pollution problems
7 within their respective jurisdictions on a cooperative basis;

8 (9) encourage and conduct studies, investigations and
9 research relating to air contamination and air pollution and their
10 causes, effects, prevention, abatement and control;

11 (10) determine, by means of field studies and sampling, the
12 degree of air contamination and air pollution in the basins of the
13 state;

14 (11) collect and disseminate information and conduct
15 educational and training programs relating to air contamination and
16 air pollution;

17 (12) advise, consult, contract and cooperate with other
18 agencies of the state, local governments, industries, other states,
19 interstate or interlocal agencies, the federal government and with
20 interested persons or groups regarding air pollution matters;

21 (13) consult, upon request, with any person proposing to
22 construct, install, or otherwise acquire an air contaminant source
23 or device or system for its control, concerning the efficacy of
24 the device or system or the air pollution problem which may be related
25 to the source, device or system;

26 (14) accept and administer grants or other funds or gifts
27 from public and private sources, including the federal government, for
28 carrying out the purposes of this chapter.

29 (b) Any consultation given pursuant to (a) of this section may

1 not be construed to relieve a person from compliance with this
2 chapter and regulations in force pursuant to it or other provisions
3 of law.

4 Sec. 18.31.090. ESTABLISH BASINS; MINIMUM AIR QUALITY. The
5 commission shall, after holding public hearings,

6 (1) divide the state into basins, taking into consider-
7 ation the type of industry, population, air quality, governing bodies
8 and existing air quality programs in the basin;

9 (2) establish a minimum ambient air quality standard for
10 the state as a whole or for each basin taking into consideration the
11 public health, safety and welfare, including but not limited to health,
12 illness, irritation to the senses, aesthetic value, interference with
13 visibility, and effects on the economy.

14 Sec. 18.31.100. LOCAL BASIN COMMISSIONS. (a) There shall be
15 established within two years from the effective date of this chapter
16 a local basin commission for each basin. Each local basin commission
17 shall have five members. Insofar as practicable one member shall be
18 a licensed physician knowledgeable in the health effects of air
19 pollution; one member shall be a professional engineer experienced
20 in the field of air pollution control; one member shall be a repre-
21 sentative of industry, employed by a manufacturing, power generating
22 or fuels firm within the basin, and be experienced in air pollution
23 control. The remaining two members shall be chosen at large.

24 (b) If a basin is wholly within a city, the city shall establish
25 the local basin commission.

26 (c) If an organized borough is in a basin and no portion of
27 another organized borough is in the same basin, the borough shall
28 establish the local basin commission. The exercise of the powers
29 with respect to the local basin commission in this subsection is not

1 subject to the restrictions on acquiring additional areawide powers
2 specified in AS 07.15.350.

3 (d) If only one city is in the basin and the city is not within
4 an organized borough that municipality shall establish the local
5 basin commission.

6 (e) If more than one municipality is wholly or partly in a
7 basin, the local basin commission shall consist of representatives
8 from each municipality apportioned according to the same ratio of
9 population each has living in the basin.

10 (f) If no municipality is wholly or partly in the basin the
11 commission shall establish by rules and regulations an air pollution
12 control program if there is a need for a program.

13 Sec. 18.31.110. DUTIES OF LOCAL BASIN COMMISSION. Each local
14 basin commission shall, after holding public hearings,

15 (1) establish ambient air quality standards compatible
16 with, or stricter or more extensive than those imposed by sec. 90
17 and the regulations promulgated under that section;

18 (2) provide for the enforcement of the requirements by
19 appropriate administrative and judicial process;

20 (3) provide for administrative organization, staff,
21 financial and other resources necessary to effectively and efficiently
22 carry out an air quality program;

23 (4) provide for a system to grant variances consistent with
24 sec. 180 of this chapter. No variance may be granted by a local basin
25 commission below the minimum standards set by sec. 90 of this chapter
26 and regulations promulgated under that section;

27 (5) provide additional contaminant control measures con-
28 sistent with sec. 150 of this chapter.

29 Sec. 18.31.120. APPROVAL. Each local basin commission before

1 beginning its air quality program shall submit its plans and program
2 to the commission for approval. The commission may grant its approval
3 only if the plans and program are adequate to meet the requirements
4 of this chapter and applicable regulations.

5 Sec. 18.31.130. ABSENCE OF LOCAL PROGRAM. (a) If a municipi-
6 pality required to establish or participate in an air pollution
7 control program under sec. 100 of this chapter fails to establish
8 a program within the time specified, or if the commission has reason
9 to believe that an air pollution control program in force under that
10 section is inadequate to prevent and control air pollution in the
11 jurisdiction to which the program applies, or that the program is
12 being administered in a manner inconsistent with the requirements
13 of this chapter the commission shall, following due notice, conduct
14 a hearing on the matter.

15 (b) If, after the hearing, the commission determines that any
16 of the deficiencies enumerated in (a) of this section exist, it shall
17 require that necessary corrective action be taken within a reasonable
18 period of time, not to exceed 90 days.

19 (c) If a local basin commission fails to take the necessary
20 corrective action within the time specified the commission shall
21 administer within the basin all of the regulatory provisions of this
22 chapter. The commission's air pollution control program shall then
23 supersede municipal air pollution ordinances, regulations, and re-
24 quirements in the affected jurisdiction. The cost of the adminis-
25 tration shall be a charge on the municipality.

26 (d) If the commission finds that the control of a particular
27 class of air contaminant source, because of its complexity or magni-
28 tude, is beyond the reasonable capability of the local air pollution
29 control authorities or may be more efficiently and economically

1 performed at the state level, it may with the consent of the city
2 or municipality assume and retain jurisdiction over that class of
3 air contaminant source, but in this case no charge may be assessed
4 against the locality for the costs of administration. Classifications
5 under this subsection may be either on the basis of the nature of
6 the sources involved or on the basis of their relationship to the
7 size of the communities in which they are located.

8 (e) A basin in which the commission administers the air pollu-
9 tion control program under this section may with the approval of the
10 commission establish or resume a basin program which meets the re-
11 quirements of secs. 100 and 110 of this chapter.

12 Sec. 18.31.140. CLASSIFICATION AND REPORTING. (a) The com-
13 mission, by regulation, may classify air contaminant sources, which
14 in its judgment may cause or contribute to air pollution, according
15 to levels and types of emissions and other characteristics which
16 relate to air pollution, and may require reporting for the classifi-
17 cations. Classifications made under this subsection may be for
18 application to the state as a whole or to a designated area of the
19 state and shall be made with special reference to effects on health,
20 economic and social factors and physical effects on property.

21 (b) A person operating or responsible for the operation of air
22 contaminant sources of a class for which the regulations of the
23 commission require reporting shall make reports containing information
24 as may be required by the commission concerning location, size and
25 height of contaminant outlets, processes employed, fuels used and the
26 nature and time periods or duration of emissions, and other infor-
27 mation relevant to air pollution and available or reasonably capable
28 of being assembled.

29 Sec. 18.31.150. ADDITIONAL CONTAMINANT CONTROL MEASURES. (a)

1 If a local basin commission is nonexistent or a local basin commission
2 fails to provide an adequate program under sec. 110(5) of this chapter,
3 the commission may require that notice be given to it before the
4 undertaking of the construction, installation or establishment of
5 particular types or classes of new air contaminant sources specified
6 in its regulations. Within 15 days of its receipt of the notice,
7 the commission may require, as a condition precedent to this under-
8 taking, the submission of plans and other information it considers
9 necessary in order to determine whether the proposed undertaking will
10 be in accord with applicable regulations in force under this chapter.
11 If within 30 days of the receipt of these plans and information the
12 commission determines that the proposed undertaking will not be in
13 accord with the requirements of this chapter and applicable regu-
14 lations, it shall issue an order prohibiting the undertaking. Failure
15 to issue the order within the time prescribed shall be considered an
16 approval of the plans and information and the undertaking may proceed
17 in accordance with them.

18 (b) A person subject to an order of prohibition as prescribed in
19 (a) of this section shall, upon written request in accordance with
20 regulations of the commission be entitled to a hearing on the order.
21 This procedure must be followed before invoking other available legal
22 remedies. Following the hearing the order may be affirmed, modified
23 or withdrawn.

24 (c) For the purposes of this chapter, addition to or enlargement
25 or replacement of an air contaminant source, or a major alteration of
26 one, shall be construed as an undertaking for the construction, in-
27 stallation or establishment of a new air contaminant source.

28 (d) Features, machines and devices constituting parts of or
29 called for by plans or other information submitted under (a) of this

1 section shall be maintained in good working order.

2 (e) Nothing in this section may be construed to authorize the
3 commission to require the use of machinery, devices or equipment from
4 a particular supplier or produced by a particular manufacturer if
5 the required performance standards may be met by machinery, devices
6 or equipment available from other sources.

7 (f) The absence of, or the commission's failure to establish
8 a regulation or order under this section does not relieve a person
9 from compliance with emission control requirements of this chapter
10 or other provisions of law.

11 (g) The commission may require the payment of a reasonable fee
12 for the review of plans and information required to be submitted. No
13 fee for a single review may exceed \$25.

14 Sec. 18.31.160. INSPECTION. For the purpose of ascertaining
15 the state of compliance with this chapter and appropriate ordinances
16 and regulations a duly authorized officer, employee or representative
17 of the commission or of a local basin commission may, at a reasonable
18 time, enter and inspect the property and premises where an air con-
19 taminant source is located or is being constructed. If requested by
20 the owner or operator of the premises the commission or local basin
21 commission shall give him a report setting out all facts found which
22 relate to compliance status.

23 Sec. 18.31.170. EMERGENCY PROCEDURES. (a) If the director of
24 the commission finds that a generalized condition of air pollution
25 exists and that it creates an emergency requiring immediate action to
26 protect human health or safety he shall, with the concurrence of the
27 governor, order persons causing or contributing to the air pollution
28 to reduce or discontinue immediately the emission of air contaminants.
29 The order shall fix a place and time, not more than 24 hours later,

1 for a hearing to be held before the commission. Within 24 hours after
2 the commencement of the hearing, and without adjournment of it, the
3 commission shall affirm, modify or set aside the order of the director.

4 (o) Nothing in this section may be construed to limit the con-
5 stitutional, statutory or inherent power of the governor or other
6 officers to declare an emergency and act on the basis of that decla-
7 ration.

8 Sec. 18.31.180. VARIANCES. (a) A person who owns or is in
9 control of a plant, building, structure, establishment, process or
10 equipment may apply to the commission for a variance from the state's
11 minimum air quality requirements. If there is an existing and oper-
12 ating local basin commission having jurisdiction over the area of the
13 requested variance the commission shall not entertain the application
14 unless the applicant has obtained a variance from all of the appli-
15 cable air quality requirements of the local basin commission which
16 are more stringent than the minimum requirements set by the commission.
17 The commission may grant the variance, but only after a public hearing
18 following due notice, if it finds that

19 (1) the emissions occurring or proposed to occur do not
20 endanger human health or safety; and

21 (2) compliance with the ordinances or regulations from
22 which variance is sought would produce serious hardship without equal
23 or greater benefits to the public.

24 (b) No variance may be granted under this section until the
25 commission has considered the relative interests of the applicant,
26 other owners of property likely to be affected by the emissions and
27 the general public.

28 (c) A variance or its renewal, granted under (a) of this section,
29 shall be for periods and under conditions consistent with the reasons

1 for it and within the following limitations:

2 (1) If the variance is granted on the ground that there
3 is no practicable means known or available for the adequate pre-
4 vention, abatement or control of the air pollution involved, the
5 variance shall be only until the necessary means for prevention,
6 abatement or control become known and available, subject to the taking
7 of substitute or alternate measures that the commission may prescribe.

8 (2) If the variance is granted on the ground that com-
9 pliance with the particular requirement from which variance is sought
10 will necessitate the taking of measures which, because of their extent
11 or cost, must be spread over a considerable period, the variance shall
12 be for a period not to exceed the reasonable time which in the opinion
13 of the commission is necessary. A variance granted on this ground
14 shall contain a timetable for taking action in an expeditious manner
15 and shall be conditioned on adherence to the timetable.

16 (3) If the variance is granted on the ground that it is
17 justified to relieve or prevent hardship of a kind other than that
18 provided in (c)(1) and (2) of this section, it shall be for not more
19 than one year.

20 (d) A variance granted under this section may be renewed on
21 terms and conditions and for periods which would be appropriate on
22 initial granting of a variance. No variance may be renewed under this
23 section until the commission has considered the effect of the variance
24 on owners of property affected by the emission and the general public.
25 No renewal may be granted except upon application for it. This appli-
26 cation shall be made at least 60 days before the expiration of the
27 variance. Immediately upon receipt of an application for renewal the
28 commission shall give public notice of it.

29 (e) A variance or renewal is a privilege, the granting of which

1 is within the sound discretion of the commission and local basin
2 commissions, and is not a vested right of the applicant. However,
3 a person adversely affected by a variance or renewal granted by
4 the commission may obtain judicial review of the commission order in
5 accordance with the Administrative Procedure Act (AS 44.62). Judicial
6 review of the denial of a variance or renewal may be had only on the
7 ground that the denial was arbitrary or capricious.

8 (f) No variance or renewal granted under this section may be
9 construed to prevent or limit the application of the emergency pro-
10 visions of sec. 170 of this chapter.

11 Sec. 18.31.190. APPLICABILITY OF THE ADMINISTRATIVE PROCEDURE
12 ACT. Except as otherwise provided in this chapter, the Administrative
13 Procedure Act (AS 44.62) governs the activities and the proceedings
14 of the commission.

15 Sec. 18.31.200. CONFIDENTIALITY OF RECORDS. Unless the owner
16 or operator expressly agrees to their publication or availability
17 to the general public, records and information in the possession of
18 the commission or a local basin commission concerning a contaminant
19 source, which records and information relate to production or sales
20 figures or to processes or production unique to the owner or operator
21 or which would tend to adversely affect his competitive position, as
22 certified by him, shall be only for the confidential use of the
23 commission or the local basin commission in the administration of this
24 chapter. The commission or the local basin commission may use these
25 records and information in compiling analyses or summaries relating
26 to the general condition of the outdoor atmosphere so long as the
27 owner or operator is not identified and no information specified in
28 the preceding sentence is revealed.

29 Sec. 18.31.210. LIMITATIONS. This chapter does not

1 (1) grant to the commission or local basin commission
2 jurisdiction or authority with respect to air contamination existing
3 solely inside commercial and industrial plants, shops, or other such
4 structures;

5 (2) affect the relations between employers and employees
6 with respect to or arising out of a condition of air contamination
7 or air pollution;

8 (3) supersede or limit the applicability of a law or
9 ordinance relating to sanitation, industrial health or safety.

10 Sec. 18.31.220. STATE AND FEDERAL AID. (a) A local basin
11 commission with an air pollution program meeting the requirements of
12 this chapter and the regulations issued under it shall be eligible
13 for state aid equal to 50 per cent of the locally funded operating
14 cost.

15 (b) Local basin commissions established under this chapter may
16 apply for, receive, administer and expend federal aid for the control
17 of air pollution or the development and administration of programs
18 related to that control, if the application is first submitted to and
19 approved by the commission. The commission shall approve an appli-
20 cation if it is consistent with this chapter and other applicable
21 requirements of law.

22 Sec. 18.31.230. ENFORCEMENT. (a) When the commission has
23 reason to believe that a violation of this chapter or a regulation
24 promulgated under it, other than sec. 250 of this chapter, has occurred,
25 the commission may serve written notice upon the suspected violator.
26 The notice shall specify the provision believed to be violated and
27 the facts believed to constitute the violation and may include an
28 order that necessary corrective action be taken within a reasonable
29 time. This order shall become final unless within 30 days after the

1 notice and order are served the person named requests in writing a
2 hearing before the commission, which hearing shall be held within a
3 reasonable time. In lieu of an order the commission may require the
4 suspected violator to appear before the board for a hearing at a time
5 and place specified in the notice and answer the charges.

6 (b) If, after a hearing held under (a) of this section, the
7 commission finds that a violation has occurred, it shall affirm or
8 modify its order previously issued or issue an appropriate order for
9 taking corrective action. If the commission finds that no violation
10 has occurred it shall rescind its previous order, if any. An order
11 issued as part of a notice or after a hearing may prescribe the date
12 by which the violation shall cease and may prescribe timetables for
13 necessary action in preventing, abating or controlling the emissions.

14 (c) The commission shall make efforts to obtain voluntary
15 compliance through warning, conference or other appropriate means.

16 (d) In connection with a hearing held under this section, the
17 commission shall have power and upon application by a party to the
18 hearing it shall have the duty to compel the attendance of witnesses
19 and the production of evidence on behalf of all parties.

20 Sec. 18.31.240. PENALTIES. (a) A person who violates a pro-
21 vision of this chapter or regulation in force under it, other than
22 secs. 200 and 250 of this chapter, upon conviction, is punishable by
23 a fine of not to exceed \$1,000. Each day of violation shall con-
24 stitute a separate offense.

25 (b) A person who violates sec. 200 of this chapter, knowing the
26 information to be of a confidential nature, upon conviction, is
27 punishable by a fine of not to exceed \$1,000.

28 (c) Conviction as specified in (a) and (b) of this section shall
29 not be a bar to enforcement of this chapter, and the regulations and

1 orders issued under it. The commission shall have power to institute
2 and maintain in the name of the state all enforcement proceedings.

3 (d) This chapter does not affect the right of a person to bring
4 an action for damages or other relief because of an injury caused by
5 air pollution.

6 Sec. 18.31.250. NUISANCES. (a) A person is guilty of creating
7 or maintaining a nuisance if he

8 (1) places or deposits upon a lot, street, beach, premises,
9 or upon, or within 200 feet of a public highway, unless the highway
10 abuts upon tidal waters, any garbage, offal, dead animal, or any other
11 matter or thing, which would be obnoxious or cause the spread of
12 disease or in any way endanger the health of the community;

13 (2) voluntarily allows to be placed or deposited upon any
14 premises owned by him or under his control garbage, offal, dead animal,
15 or any other matter or thing which would be obnoxious or offensive
16 to the public or which would produce, aggravate, or cause the spread
17 of disease or in any way endanger the health of the community.

18 (b) A person who neglects or refuses to abate the nuisance upon
19 order of a health officer is guilty of a misdemeanor and is punishable
20 as provided in sec. 250 of this chapter. In addition to this punish-
21 ment, the court shall assess judgment against the defendant for the
22 expenses of abating the nuisance. The judgment shall be enforced in
23 the same manner as an execution in a civil action.

24 Sec. 18.31.260. PENALTY FOR VIOLATION OF SEC. 250 OF THIS
25 CHAPTER. A person who violates sec. 250 of this chapter upon con-
26 viction is punishable by a fine of not less than \$10 nor more than
27 \$50, or by imprisonment for not less than five nor more than 25 days,
28 or by both.

29 Sec. 18.31.270. DEFINITIONS. In this chapter

1 (1) "air contaminant" means dust, fumes, mist, smoke, other
2 particulate matter, vapor, gas, odorous substances or a combination
3 of these;

4 (2) "air pollution" means the presence in the outdoor
5 atmosphere of one or more air contaminants in such quantities and
6 duration as is or tends to be injurious to human health or welfare,
7 animal or plant life, or property, or would unreasonably interfere
8 with the enjoyment of life or property;

9 (3) "commission" means the Air Pollution Control Commission;

10 (4) "city" includes cities of all classes whether home
11 rule or otherwise;

12 (5) "municipality" means an organized borough or an
13 incorporated city outside an organized borough;

14 (6) "local basin commission" means the air pollution control
15 agency established within each of the several basins;

16 (7) "basin" means an area of the state designated by the
17 commission.

18 * Sec. 2. AS 18.30 is repealed.
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