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Referred: State Affairs
and Judiciary

BY PIGNALBERI, CATO,
MARROU AND SHULTZ

1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 458
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to the adoption of regulations; and
7 providing for an effective date."

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

9 * Section 1. AS 44.62.190 is amended by adding a new subsection to
10 read:

11 (d) An agency may not adopt, amend, or repeal a regulation if
12 more than one year has elapsed since the first publication of notice
13 of proposed action under this section. When more than one year has
14 elapsed, an agency may revive the proposed action by republication in
15 accordance with (a) of this section.

16 * Sec. 2. AS 44.62.195 is amended by adding a new subsection to read:

17 (b) The state agency shall prepare a financial estimate of the
18 cost or savings that will be incurred by individuals and entities
19 directly affected by the proposed action. The estimate shall include
20 the annual cost or savings that a representative individual or entity
21 would incur in complying with the proposed regulation and the total
22 annual cost or savings of all individuals and entities directly af-
23 fected.

24 * Sec. 3. AS 44.62.200(a) is amended to read:

25 (a) The notice of proposed adoption, amendment, or repeal of a
26 regulation shall include

27 (1) a statement of the time, place, and nature of proceed-
28 ings for adoption, amendment, or repeal of the regulation;

29 (2) reference to the authority under which the regulation

1 is proposed and a reference to the particular code section or other
2 provisions of law which are being implemented, interpreted, or made
3 specific;

4 (3) an informative summary of the proposed subject of
5 agency action, including a summary of the initial justification of
6 need unless the justification is excused under AS 44.62.205(c):

7 (4) other matters prescribed by a statute applicable to
8 the specific agency or to the specific regulation or class of regu-
9 lations;

10 (5) a summary of the fiscal information and financial
11 estimate required [TO BE PREPARED] under AS 44.62.195.

12 * Sec. 4. AS 44.62 is amended by adding a new section to read:

13 Sec. 44.62.205. JUSTIFICATIONS OF NEED. (a) Except as provided
14 in (c) of this section, when a state agency files a notice of proposed
15 action under AS 44.62.190, the agency shall make available to the
16 public an initial justification of need for the proposed action. The
17 initial justification shall

18 (1) describe the problem, condition, or circumstance the
19 regulation is intended to address;

20 (2) specify the purpose of the regulation and the factual
21 basis for the agency's determination that the regulation is reasonably
22 necessary to carry out the purpose;

23 (3) identify each document upon which the agency is relying
24 in proposing the action; and

25 (4) describe practical and reasonable alternatives to the
26 proposed action.

27 (b) Except as provided in (c) of this section, when a state
28 agency submits a regulation or order of repeal for filing with the
29 lieutenant governor under AS 44.62.040, the agency shall make

1 available to the public a final justification of need concerning the
2 regulation or order of repeal. The final justification shall include

3 (1) the complete text of a regulation that is adopted or
4 amended and a list of regulations repealed;

5 (2) a summary of each comment or objection received and an
6 explanation of changes made to the proposed regulation in response to
7 the information or the reasons for rejecting the comment or objection;
8 and

9 (3) the reasons for rejecting proposed alternatives.

10 (c) An agency is not required to prepare an initial or final
11 justification of need for a regulation that interprets, implements, or
12 makes clear a law if the agency has not previously adopted a regula-
13 tion under that law.

14 * Sec. 5. AS 44.62.210 is amended by adding new subsections to read:

15 (c) If at least 10 interested persons submit a written request
16 for a public hearing at least 10 days before the end of the initial
17 comment period, a state agency shall hold a public hearing on the
18 proposed action.

19 (d) A state agency may not add documents to the record of a
20 regulation-making procedure after the end of the public comment period
21 unless the agency provides an adequate opportunity for public comment
22 on the added documents.

23 * Sec. 6. AS 44.62.230 is amended to read:

24 Sec. 44.62.230. PROCEDURE ON PETITION. Upon receipt of a
25 petition requesting the adoption, amendment, or repeal of a regulation
26 under AS 44.62.180 - 44.62.290, a state agency shall, within 30 days,
27 deny the petition in writing, including the reasons for the denial, or
28 schedule the matter for public hearing under AS 44.62.190 - 44.62.210.
29 However, if the petition is for an emergency regulation [.]

1 and the agency finds that an emergency exists, the requirements of
2 AS 44.62.190 - 44.62.210 do not apply, and the agency may submit the
3 regulation to the lieutenant governor immediately after making the
4 finding of emergency and putting the regulation into proper form.

5 * Sec. 7. AS 44.62 is amended by adding a new section to read:

6 Sec. 44.62.275. RECORDS OF PROPOSED ACTIONS. (a) A state
7 agency shall maintain a file of the proceedings concerning the adop-
8 tion, amendment, or repeal of a regulation. The file shall include

9 (1) petitions received under AS 44.62.220;
10 (2) published notices of proposed action under AS 44.62.-
11 190;

12 (3) justifications of need required by AS 44.62.205;

13 (4) fiscal information and financial estimates under
14 AS 44.62.195;

15 (5) each document submitted in connection with the proposed
16 action;

17 (6) each document upon which the agency is relying for the
18 proposed action;

19 (7) a transcript, recording, or minutes of each public
20 hearing connected with the proposed action; and

21 (8) other information that the state agency is required by
22 law to consider or prepare in connection with the proposed action.

23 (b) The agency shall maintain a log that identifies each item
24 contained in the file and the date on which the item was received.
25 The file shall include an affidavit by the employee responsible for
26 maintaining the file stating that the file contains all of the docu-
27 ments required by this section and the date the file was completed.

28 (c) The file is a public record.

29 * Sec. 8. AS 44.62.300 is amended to read:

1 Sec. 44.62.300. COURT REVIEW. An interested person may get a
2 judicial declaration on the validity of a regulation by bringing an
3 action for declaratory relief in the superior court. In addition to
4 any other ground the court may declare the regulation invalid

5 (1) for a substantial failure to comply with AS 44.62.010 -
6 44.62.320; [, OR]

7 (2) in the case of an emergency regulation or order of
8 repeal, upon the ground that the facts recited in the statement do not
9 constitute an emergency under AS 44.62.250; or

10 (3) in the case of a regulation subject to AS 44.62.205(a)
11 and (b), for failure to comply with AS 44.62.205, or if the justifica-
12 tion of need fails to present sufficient facts to establish by a
13 preponderance of the evidence the need for the regulation.

14 * Sec. 9. AS 44.62.640(a) is amended by adding a new paragraph to read:

15 (5) "document" means a written or electronic communication
16 of any kind, except a telephone communication, submitted to an agency
17 for consideration during the adoption, amendment, or repeal of a
18 regulation.

19 * Sec. 10. AS 44.62.190 as enacted by sec. 1 of this Act, AS 44.62.-
20 205(b) and 44.62.205(c) as enacted by sec. 4 of this Act, and the amend-
21 ments made by secs. 5 and 9 of this Act apply to proposed regulations,
22 amendments, and orders of repeal that have not been submitted to the lieu-
23 tenant governor for filing before the effective date of this Act. The
24 amendment made by sec. 6 of this Act applies to petitions that have not
25 been scheduled for public hearing or denied before the effective date of
26 this Act.

27 * Sec. 11. The amendments made by secs. 2, 3, 7, and 8 of this Act, and
28 AS 44.62.205(a) enacted by sec. 4 of this Act do not apply to proposed
29 regulations, amendments, or orders of repeal for which a notice of proposed

1 action has been published before the effective date of this Act.

2 * Sec. 12. This Act takes effect July 1, 1986.