

Offered: 4/1/86
Referred: Judiciary

Original sponsors: Pignalberi, Cato,
Marrou, et al

1 IN THE HOUSE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 458 (State Affairs)
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 is amended by adding a new section to read:
17 Sec. 44.62.197. REGULATORY ANALYSIS. (a) An agency shall issue
18 a regulatory analysis of a proposed regulation if, within 20 days
19 after publishing the notice of proposed action, a written request is
20 submitted to the agency by a legislator, another agency, a political
21 subdivision of the state, the governor, as authorized by a vote of the
22 Administrative Regulation Review Committee, or by 50 persons signing a
23 single request.
24 (b) Upon receipt of a request under (a) of this section, the
25 agency shall prepare the regulatory analysis. The analysis must
26 quantify the data to the extent practicable, take into account both
27 short-term and long-term consequences, and
28 (1) describe the classes of persons who probably will be
29 directly affected by the proposed action, including the classes who

1 will bear the costs of the proposed regulation and the classes who
2 will benefit;

3 (2) describe the probable quantitative and qualitative
4 effect of the proposed regulation, economic or otherwise, on the
5 classes of persons affected;

6 (3) set out the probable cost to the agency and any other
7 agency for implementing and enforcing the proposed regulation and the
8 anticipated effect on state revenue;

9 (4) compare the probable cost and benefits of the proposed
10 regulation with the probable cost and benefits of inaction;

11 (5) determine whether there are less costly or less intru-
12 sive methods for achieving the purpose of the proposed regulation.

13 (c) The person or persons requesting the regulatory analysis
14 may, by express statement in the request, waive one or more of the
15 requirements of (b) of this section.

16 (d) A concise summary of the regulatory analysis shall be pub-
17 lished in the administrative journal at least 10 days before the
18 earliest of

19 (1) the end of the period for making written comments on
20 the proposed regulation; or

21 (2) the end of the period during which an oral public
22 proceeding may be requested.

23 (e) The published summary must indicate where to obtain copies
24 of the full text of the analysis and when, where, and how persons may
25 comment on the proposed regulation.

26 (f) If an agency has made a good faith effort to comply with the
27 requirements of (a) - (c) of this section, the regulation may not be
28 invalidated on the ground that the contents of the regulatory analysis
29 are insufficient or inaccurate.

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

2 (a) The notice of proposed adoption, amendment, or repeal of a
3 regulation shall include

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

6 (2) reference to the authority under which the regulation
7 is proposed and a reference to the particular code section or other
8 provisions of law which are being implemented, interpreted, or made
9 specific;

10 (3) an informative summary of the proposed subject of
11 agency action, including a summary of the initial justification of
12 need;

13 (4) other matters prescribed by a statute applicable to
14 the specific agency or to the specific regulation or class of regu-
15 lations;

16 (5) a summary of the fiscal information required [TO BE
17 PREPARED] under AS 44.62.195.

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

19 Sec. 44.62.205. JUSTIFICATIONS OF NEED. (a) When a state
20 agency files a notice of proposed action under AS 44.62.190, the
21 agency shall make available to the public an initial justification of
22 need for the proposed action. The initial justification shall

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

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

28 (3) identify documents upon which the agency is relying in
29 proposing the action; and

1 (4) describe practical and reasonable alternatives to the
2 proposed action.

3 (b) When a state agency submits a regulation or order of repeal
4 for filing with the lieutenant governor under AS 44.62.040, the agency
5 shall make available to the public a final justification of need con-
6 cerning the regulation or order of repeal. The final justification
7 shall include

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

10 (2) a summary of the comments and objections received and
11 an explanation of changes made to the proposed regulation in response
12 to the information or the reasons for rejecting the comments or ob-
13 jections; and

14 (3) the reasons for rejecting proposed alternatives.

15 * Sec. 5. AS 44.62.210 is amended by adding a new subsection to read:

16 (c) If at least 15 interested persons submit a written request
17 for a public hearing at least 10 days before the end of the initial
18 comment period, a state agency shall promptly schedule a public hear-
19 ing on the proposed action. The agency may extend the comment period
20 if necessary to provide at least 14 days' notice of the public hear-
21 ing.

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

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

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

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

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

- 8 (1) petitions received under AS 44.62.220;
- 9 (2) published notices of proposed action under AS 44.62.-
10 190;
- 11 (3) justifications of need required by AS 44.62.205;
- 12 (4) fiscal information under AS 44.62.195;
- 13 (5) a regulatory analysis, if required under AS 44.62.197;
- 14 (6) each document submitted in connection with the proposed
15 action;
- 16 (7) each document upon which the agency is relying for the
17 proposed action;
- 18 (8) a transcript, recording, or minutes of each public
19 hearing connected with the proposed action; and
- 20 (9) other information that the state agency is required by
21 law to consider or prepare in connection with the proposed action.

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

27 (c) The file is a public record.

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

29 Sec. 44.62.300. COURT REVIEW. An interested person may get a

1 judicial declaration on the validity of a regulation by bringing an
2 action for declaratory relief in the superior court. In addition to
3 any other ground the court may declare the regulation invalid

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

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

9 (3) for failure to comply with AS 44.62.205; or

10 (4) if the justification of need fails to present
11 sufficient facts to establish by a preponderance of the evidence the
12 need for the regulation.

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

14 (5) "document" means a written or electronic communication
15 of any kind, except a telephone communication, considered by an agency
16 during the adoption, amendment, or repeal of a regulation.

17 * Sec. 10. AS 44.62.190 as enacted by sec. 1 of this Act, AS 44.62.-
18 205(b) as enacted by sec. 4 of this Act, and the amendments made by secs. 5
19 and 9 of this Act apply to proposed regulations, amendments, and orders of
20 repeal that have not been submitted to the lieutenant governor for filing
21 before the effective date of this Act. The amendment made by sec. 6 of
22 this Act applies to petitions that have not been scheduled for public
23 hearing or denied before the effective date of this Act.

24 * Sec. 11. The amendments made by secs. 2, 3, 7, and 8 of this Act, and
25 AS 44.62.205(a) enacted by sec. 4 of this Act do not apply to proposed
26 regulations, amendments, or orders of repeal for which a notice of proposed
27 action has been published before the effective date of this Act.

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