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1 IN THE SENATE

BY FAHRENKAMP

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SENATE BILL NO. 429

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 regulations that affect small
7 businesses, small organizations, and small govern-
8 mental jurisdictions; and providing for an effective
9 date."

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

11 * Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

12 (1) when adopting regulations to protect the health, safety,
13 environment, and economic welfare of the state, agencies should seek to
14 achieve statutory goals as effectively and efficiently as possible without
15 imposing unnecessary burdens on the public;

16 (2) laws and regulations designed for application to large scale
17 entities have been applied uniformly to small businesses, small organiza-
18 tions, and small governmental jurisdictions even though the problems that
19 gave rise to government action may not have been caused by those smaller
20 entities;

21 (3) uniform regulatory and reporting requirements have in numer-
22 ous instances imposed unnecessary and disproportionately burdensome demands
23 including legal, accounting and consulting costs upon small businesses,
24 small organizations, and small governmental jurisdictions with limited
25 resources;

26 (4) the failure to recognize differences in the scale and re-
27 sources of regulated entities has in numerous instances adversely affected
28 competition in the marketplace, discouraged innovation and restricted
29 improvements in productivity;

1 (5) unnecessary regulations create entry barriers in many indus-
2 tries and discourage potential entrepreneurs from introducing beneficial
3 products and processes;

4 (6) the practice of treating all regulated businesses, organiza-
5 tions, and governmental jurisdictions as equivalent may lead to inefficient
6 use of agency resources, enforcement problems, and, in some cases, to
7 actions inconsistent with the legislative intent of health, safety, en-
8 vironmental, and economic welfare legislation;

9 (7) alternative regulatory approaches that do not conflict with
10 the stated objectives of applicable statutes may be available to minimize
11 the significant economic impact of regulations on small businesses, small
12 organizations, and small governmental jurisdictions;

13 (8) the process by which regulations are developed and adopted
14 should be reformed to require agencies to solicit the ideas and comments of
15 small businesses, small organizations, and small governmental jurisdictions
16 to examine the impact of proposed and existing regulations on the entities,
17 and to review the continued need for existing regulations.

18 * Sec. 2. AS 44 is amended by adding a new chapter to read:

19 CHAPTER 63. REGULATIONS AFFECTING SMALL ENTITIES.

20 Sec. 44.63.010. REGULATORY AGENDA. (a) During the months of
21 January and July of each year, each agency shall publish in the
22 journal a regulatory flexibility agenda

23 (1) describing briefly the subject area of any regulation
24 that the agency expects to propose or adopt that is likely to have a
25 significant economic impact on a substantial number of small entities;

26 (2) summarizing the nature of any proposed regulation under
27 each subject area listed under (1) of this subsection, the objectives
28 and legal basis for the proposed regulation, and an approximate
29 schedule for completing action on each regulation for which the agency

1 has issued a notice of proposed regulation-making; and
2 (3) containing the name and telephone number of an agency
3 official knowledgeable concerning the items listed in (1) of this
4 subsection.

5 (b) Each regulatory flexibility agenda shall be transmitted to
6 the office of enterprise, for comment.

7 (c) Each agency shall endeavor to give notice of the agenda to
8 small entities or their representatives by direct notification or
9 publication of the agenda in publications likely to be obtained by the
10 small entities and shall invite comments upon each subject area on the
11 agenda.

12 (d) An agency may consider or act on a matter not included in a
13 regulatory flexibility agenda and may decline to consider or act on a
14 matter listed in the agenda.

15 Sec. 44.63.020. INITIAL FLEXIBILITY ANALYSIS. (a) When an
16 agency is required by AS 44.62.190 or any other law to publish notice
17 of proposed action for a proposed regulation, the agency shall prepare
18 and make available for public comment an initial flexibility analysis.
19 The analysis shall describe the effect of the proposed regulation on
20 small entities. The initial flexibility analysis or a summary shall
21 be published in the journal when the notice of proposed action is
22 published. The agency shall send a copy of the initial flexibility
23 analysis to the office of enterprise.

24 (b) Each initial flexibility analysis shall

25 (1) describe the reasons why action by the agency is being
26 considered;

27 (2) contain a succinct statement of the objectives of, and
28 legal basis for, the proposed regulation;

29 (3) describe and, if feasible, estimate the number of small

1 entities to which the proposed regulation will apply;

2 (4) describe the reporting, record-keeping and other com-
3 pliance requirements of the proposed regulation, including an estimate
4 of the classes of small entities that will be subject to the require-
5 ment and the type of professional skills necessary for preparing the
6 report or record;

7 (5) identify, to the extent practicable, relevant regula-
8 tions that may duplicate, overlap, or conflict with the proposed regu-
9 lation.

10 (c) An initial flexibility analysis shall also describe any
11 significant alternatives to the proposed regulation that accomplish
12 the stated objectives of applicable statutes and that minimize the
13 significant economic impact on small entities. The analysis shall
14 discuss significant alternatives including

15 (1) the establishment of differing compliance or reporting
16 requirements or timetables that take into account the resources avail-
17 able to small entities;

18 (2) the clarification, consolidation, or simplification of
19 compliance and reporting requirements under the regulation for the
20 small entities;

21 (3) the use of performance rather than design standards;
22 and

23 (4) an exemption from coverage of the regulation, or any
24 part, for the small entities.

25 (d) An agency head may waive or delay the completion of some or
26 all of the requirements of this section by publishing in the journal,
27 not later than the date of publication of the final regulation, a
28 written finding, with reasons, that the final regulation is being
29 adopted in response to an emergency that makes compliance or timely

1 compliance with this section unpracticable.

2 Sec. 44.63.030. FINAL FLEXIBILITY ANALYSIS. (a) When an agency
3 adopts a final regulation after being required by AS 44.62.190 or any
4 other law to publish a notice of proposed action, the agency shall
5 prepare a final flexibility analysis. Each final flexibility analysis
6 shall

7 (1) state succinctly the need for, and the objectives of,
8 the regulation;

9 (2) summarize the issues raised by the public comments in
10 response to the initial flexibility analysis and the agency's assess-
11 ment of the issues, and contain a statement of changes made in the
12 proposed regulation as a result of the comments; and

13 (3) describe each significant alternative to the regulation
14 that was consistent with the stated objectives of applicable statutes
15 and was designed to minimize significant economic impact of the regu-
16 lation on small entities that the agency considered, and state the
17 reasons that the agency rejected the alternative.

18 (b) The agency shall make copies of the final flexibility analy-
19 sis available to members of the public and shall publish in the
20 journal at the time of publication of the final regulation under
21 AS 44.62.180 a statement describing how the public may obtain copies.

22 (c) Except as provided in AS 44.63.040(b), an agency head may
23 not waive the requirements of this section. An agency head may delay
24 the completion of the requirements of this section for not more than
25 180 days after the date of publication in the journal of a final
26 regulation by publishing in the journal, not later than the date of
27 publication of the final regulation, a written finding, with reasons,
28 that the final regulation is being adopted in response to an emergency
29 that makes timely compliance with this section impracticable. If the

1 agency does not prepare a final regulatory analysis under this section
2 within 180 days from the date of publication of the final regulation,
3 the regulation lapses and has no effect. The agency may not adopt the
4 substance of the regulation in a second emergency regulation until it
5 has completed a final flexibility analysis.

6 Sec. 44.63.040. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALY-
7 SES. (a) An agency may perform the analyses required by AS 44.63.-
8 010 - 44.63.030 in conjunction with or as a part of another agenda or
9 analysis required by law if the other analysis satisfies these sec-
10 tions.

11 (b) If the head of the agency certifies that a regulation will
12 not have a significant economic impact on a substantial number of
13 small entities, the agency is not required to comply with AS 44.63.020
14 and 44.63.030. The agency shall publish the certification and a
15 succinct statement explaining the reasons for the certification in the
16 journal when the notice of proposed action for the regulation is
17 published or when the final regulation is published. The agency shall
18 provide the certification and statement to the office of enterprise.

19 (c) An agency may consider a series of closely related regula-
20 tions as one regulation for the purposes of AS 44.63.010 - 44.63.030
21 and 44.63.070.

22 Sec. 44.63.050. PREPARATION OF ANALYSIS. In complying with
23 AS 44.63.020 and 44.63.030, an agency may provide either a quantifi-
24 able or numerical description of the effects of a proposed regulation
25 or alternatives to the proposed regulation, or more general descrip-
26 tive statements if quantification is not practicable or reliable.

27 Sec. 44.63.060. PROCEDURES FOR GATHERING COMMENTS. When a
28 regulation is adopted that will have a significant economic impact on
29 a substantial number of small entities, the head of the agency

1 adopting the regulations or the official of the agency responsible for
2 adoption of the regulation shall assure that small entities have been
3 given an opportunity to participate in the process through techniques
4 including

5 (1) inclusion in an advanced notice of proposed adoption of
6 regulation, if issued, of a statement that the proposed regulation may
7 have a significant economic effect on a substantial number of small
8 entities;

9 (2) publication of general notice of the proposed regula-
10 tion in publications likely to be obtained by small entities;

11 (3) direct notification of interested small entities;

12 (4) open conferences or public hearings concerning the
13 regulation for small entities; and

14 (5) adoption or modification of agency procedural regula-
15 tions to reduce the cost or complexity of participation in the process
16 by small entities.

17 Sec. 44.63.070. PERIODIC REVIEW OF REGULATIONS. (a) Before
18 January 1, 1987, each agency shall publish in the journal a plan for
19 the periodic review of the regulations issued by the agency that have
20 or will have a significant economic impact upon a substantial number
21 of small entities. The agency may amend the plan by publishing the
22 revision in the journal. The purpose of the review is to determine
23 whether the regulations should be continued without change, or should
24 be amended or rescinded to minimize significant economic impact on a
25 substantial number of the small entities. The plan must provide for
26 the review by July 1, 1991, of all the agency regulations existing on
27 July 1, 1986, and for the review of a regulation adopted after July 1,
28 1986, within five years of the effective date of the regulation. If
29 the head of the agency determines that completion of the review of

1 existing regulations is not feasible by the established date, the
2 agency head shall certify that fact in a statement published in the
3 journal and may extend the completion date by one year at a time for a
4 total of not more than five years.

5 (b) In reviewing regulations under (a) of this section, the
6 agency shall consider the

7 (1) continued need for the regulation;

8 (2) nature of complaints or comments received concerning
9 the regulation from the public;

10 (3) complexity of the regulation;

11 (4) extent to which the regulation overlaps, duplicates or
12 conflicts with other state regulations, and, to the extent feasible,
13 with federal and local governmental regulations; and

14 (5) length of time since the regulation has been evaluated
15 or the degree to which technology, economic conditions, or other
16 factors have changed in the area affected by the regulation.

17 (c) Each agency shall annually publish in the journal a list of
18 the regulations to be reviewed under this section during the suc-
19 ceeding 12 months. The list shall include a brief description of each
20 regulation and the need for and legal basis of the regulation and
21 shall invite public comment on the regulation.

22 Sec. 44.63.080. JUDICIAL REVIEW. (a) Except as provided in (b)
23 of this section,

24 (1) a determination by an agency concerning the applicabil-
25 ity of this chapter to an action of the agency is not subject to
26 judicial review;

27 (2) a flexibility analysis prepared under AS 44.63.020 or
28 44.63.030 and agency compliance or noncompliance with this chapter is
29 not subject to judicial review.

1 (b) When an action for judicial review of a regulation is in-
2 stituted, the flexibility analysis for the regulation shall constitute
3 part of the whole record of agency action in connection with the
4 review.

5 Sec. 44.63.090. REPORTS AND INTERVENTION RIGHTS. (a) The
6 office of enterprise shall monitor agency compliance with this chapter
7 and shall report at least annually to the governor and the legisla-
8 ture.

9 (b) The office may appear as amicus curiae in an action brought
10 in a court to review a regulation and may present views on the effect
11 of the regulation on small entities.

12 (c) A court shall grant the application of the office to appear
13 in an action under (b) of this section.

14 Sec. 44.63.200. AGENCY AMENDMENT OF DEFINITIONS. (a) An agency
15 may amend, by regulation, the definition of "small business" or "small
16 organization" if the amended definition is appropriate to the activi-
17 ties of the agency. An agency shall consult with the office of enter-
18 prise before amending "small business." An amendment to "small busi-
19 ness" may establish a maximum number of employees or dollar volume of
20 business for an enterprise in an industry.

21 (b) An agency may amend, by regulation, the definition of "small
22 governmental jurisdiction" if the amendment is appropriate to the
23 activity of the agency and is based on factors including location in
24 rural or sparsely populated areas or an area with limited revenue due
25 to the population of the jurisdiction.

26 (c) An agency that is not subject to AS 44.62.010 - 44.62.290 of
27 the Administrative Procedure Act and that intends to amend a defini-
28 tion under (a) or (b) of this section shall provide an opportunity for
29 public comment before adopting the amendment and shall publish the

1 amended definition in the journal.

2 Sec. 44.63.210. DEFINITIONS. In this chapter

3 (1) "agency" means an agency in the executive branch of
4 state government;

5 (2) "journal" means the Alaska Administrative Journal under
6 AS 44.62.175;

7 (3) "office of enterprise" means the office of enterprise
8 in the Department of Commerce and Economic Development;

9 (4) "regulation" means a regulation adopted under AS 44.62
10 or any other law, except a regulation of particular applicability
11 relating to rates, wages, corporate or financial structures or reorga-
12 nizations, prices, facilities, appliances, services or allowances or
13 to valuations, costs, or accounting, or practices relating to the
14 rates, wages, structures, prices, appliances, services, or allowances;

15 (5) "small business" means a small business that is
16 independently owned and operated and is not dominant in its field;

17 (6) "small entity" means a "small business," small orga-
18 nization, or small governmental jurisdiction;

19 (7) "small governmental jurisdiction" means a municipality,
20 school district, or special district, with a population of less than
21 50,000;

22 (8) "small organization" means a not-for-profit enterprise
23 that is independently owned and operated and is not dominant in its
24 field.

25 * Sec. 2. Notwithstanding AS 44.63.010(a), as enacted by sec. 1 of this
26 Act, the first publication of regulatory agendas must occur by January 31,
27 1987.

28 * Sec. 3. AS 44.63.020 and 44.63.030 as enacted by sec. 2 of this Act
29 do not apply to regulations for which a notice of proposed action is issued

1 before July 1, 1986.

2 * Sec. 4. This Act takes effect July 1, 1986.