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1 IN THE SENATE

BY FAHRENKAMP

2

SENATE BILL NO. 166

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to regulations that affect small  
7 businesses and small municipalities; and providing  
8 for an effective date."

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

10 \* Section 1. AS 24.20.460 is amended to read:

11 Sec. 24.20.460. POWERS. The Administrative Regulation Review  
12 Committee has the following powers:

13 (1) to organize and adopt rules for the conduct of its  
14 business;

15 (2) to hold public hearings;

16 (3) to require all state officials and agencies of state  
17 government to give full cooperation to the committee or its staff in  
18 assembling and furnishing requested information;

19 (4) to examine all administrative regulations to determine  
20 if they properly implement legislative intent;

21 (5) to make recommendations for legislative annulment of  
22 administrative regulations under AS 44.62.320;

23 (6) to prepare and distribute reports, memoranda, or other  
24 materials;

25 (7) to promote needed revision or repeal of regulations  
26 that have been adopted by state departments and agencies and, when the  
27 committee determines a regulation should be repealed or amended, to  
28 introduce a bill that would enact a statute that would supersede or  
29 nullify the regulation;

1 (8) to investigate findings that are transmitted to the  
2 committee by a standing committee in accordance with AS 24.05.182 and,  
3 as appropriate, to either introduce a bill annulling the regulation or  
4 exercise the committee's power to suspend the effectiveness of the  
5 regulation in accordance with AS 24.20.445;

6 (9) to monitor agency compliance with the requirements of  
7 AS 44.62.197, make recommendations to an agency regarding the adequacy  
8 of its analyses and of its responses to public testimony, and report  
9 annually to the legislature on agency compliance with AS 44.62.197;

10 (10) to petition the court for permission to appear as  
11 amicus curiae in an action brought under AS 44.62.300 to address the  
12 effect of the regulation on small entities.

13 \* Sec. 2. AS 44.62 is amended by adding a new section to article 3 to  
14 read:

15 Sec. 44.62.177. REGULATORY AGENDA. (a) During the months of  
16 January and July of each year, each agency shall publish in the Alaska  
17 Administrative Journal a regulatory flexibility agenda that

18 (1) describes briefly the subject area of a regulation that  
19 the agency expects to propose or adopt that is likely to have a  
20 significant economic impact on a substantial number of small entities;

21 (2) summarizes the nature of a proposed regulation under  
22 each subject area listed under (1) of this subsection, the objectives  
23 and legal basis for the proposed regulation, and an approximate sched-  
24 ule for completing action on each regulation for which the agency has  
25 issued a notice of proposed regulation-making; and

26 (3) contains the name and telephone number of an agency  
27 official knowledgeable about the items listed in (1) of this sub-  
28 section.

29 (b) An agency may consider or act on a matter not included in a

1 regulatory flexibility agenda. An agency may decline to consider or  
2 act on a matter listed in the agenda. The agency shall state why it  
3 is declining to act on the matter. An agency may not refuse to con-  
4 sider or adopt a regulation solely because the proposed regulation was  
5 not included in the agency's regulatory agenda.

6 (c) In this section, "small entity" has the meaning given in  
7 AS 44.62.197.

8 \* Sec. 3. AS 44.62 is amended by adding a new section to read:

9 Sec. 44.62.197. ECONOMIC ANALYSIS; SMALL ENTITIES. (a) Before  
10 publishing notice under AS 44.62.190, an agency planning to adopt,  
11 amend, or repeal a regulation shall analyze the probable economic  
12 effect of the proposed action on small businesses and small municipal-  
13 ities. The analysis must

14 (1) consider the types and numbers of small entities that  
15 will probably be affected by the proposed action, including the types  
16 that will bear the costs of the proposed action and those that will  
17 benefit from it;

18 (2) consider the probable economic effect of the proposed  
19 action, both as to kind and amount, upon the affected entities;

20 (3) review the reasons for the proposed action, in light of  
21 the probable economic effect on small entities;

22 (4) identify whether there are less costly or less intru-  
23 sive means of achieving the purpose of the proposed action;

24 (5) identify, to the extent practicable, relevant regula-  
25 tions that may duplicate, overlap, or conflict with the proposed  
26 regulations.

27 (b) After the close of public proceedings under AS 44.62.210,  
28 the agency shall prepare, as a final analysis before adoption of the  
29 regulation, a brief summary from the analysis required by (a) of this

1 section and the agency's comment on public testimony, whether that  
2 testimony was written or oral. The agency's comment on the testimony  
3 must identify changes made in response to the testimony and must  
4 include a brief statement of the reason for rejecting a proposal, if  
5 any, that was not adopted by the agency. The agency's statement under  
6 this subsection may summarize the reasons and the testimony in  
7 aggregate form so as to avoid duplication and unnecessary detail.

8 (c) If the head of the agency certifies in writing that a regu-  
9 lation will not have a significant economic effect on a substantial  
10 number of small entities, the agency shall make a succinct statement  
11 explaining the reasons for the certification and why it is not re-  
12 quired to comply with this section. The certification must be submit-  
13 ted to the lieutenant governor for filing with the regulation.

14 (d) An agency may consider a series of closely related regula-  
15 tions as one regulation for the purposes of this section.

16 (e) Analyses under this section are not subject to judicial  
17 review. Action taken may not be invalidated on the ground that the  
18 contents of an analysis are insufficient or inaccurate.

19 (f) In this section

20 (1) "small business" means a business corporation or a  
21 nonprofit corporation, a partnership, or a sole proprietorship, that  
22 is licensed in the state and transacts business in the state, and

23 (A) employs 50 or fewer employees in the state, ex-  
24 cluding seasonal employees; or

25 (B) has annual gross sales, or value of services  
26 provided, of \$1,000,000 or less;

27 (2) "small entity" means a small business or small munic-  
28 ipality;

29 (3) "small municipality" means a municipality with a

1 population of 10,000 or fewer persons.

2 \* Sec. 4. AS 44.62.200(a) is amended to read:

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

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

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

11 (3) an informative summary of the proposed subject of  
12 agency action;

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

16 (5) a summary of the fiscal information required to be  
17 prepared under AS 44.62.195;

18 (6) a summary of the analysis required by AS 44.62.197(a)  
19 and the address from which a complete copy of the analysis may be  
20 obtained.

21 \* Sec. 5. REVIEW OF EXISTING REGULATIONS. (a) Before January 1, 1992,  
22 each agency shall review the regulations adopted by that agency and in  
23 effect as of July 1, 1987, that have or will have a significant economic  
24 effect upon a substantial number of small entities. The purpose of the  
25 review is to determine whether the regulations should be continued without  
26 change, or should be amended or repealed to minimize a significant economic  
27 effect on a substantial number of the small entities. If the head of the  
28 agency determines that completion of the review of existing regulations is  
29 not feasible by January 1, 1992, the agency head shall certify that fact in

1 writing and may extend the completion date by one year.

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

4 (1) continued need for the regulation;

5 (2) nature of complaints or comments received concerning the  
6 regulation from the public;

7 (3) complexity of the regulation;

8 (4) extent to which the regulation overlaps, duplicates, or  
9 conflicts with other state regulations, and, to the extent feasible, with  
10 federal and local governmental regulations; and

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

14 (c) In this section

15 (1) "agency" has the meaning given "state agency" in AS 44.62.-  
16 640(a);

17 (2) "small entity" has the meaning given in AS 44.62.197.

18 \* Sec. 6. AS 44.62.197, enacted by sec. 3 of this Act, does not apply  
19 to regulations for which a notice of proposed action is issued before  
20 July 1, 1987.

21 \* Sec. 7. This Act takes effect July 1, 1987.