

STATUTES

RE:

Comm.



Alaska State Legislature

JUNEAU ALASKA

MEMORANDUM

To: Senator Hohman

From: Rob

Re: Administrative Regulation Review Committee

STATUTORY AUTHORIZATION: AS 24.20.400--AS 24,20.460.

STATUS: Permanent Interim Committee of the legislature.

PURPOSE: Need for prompt legislative review of administrative regulations.

MEMBERSHIP: Three members from each body (house/senate); each body must include members of both major political parties in its appointees. Speaker and president appoint. Chairman elected by members.

TERM OF MEMBERSHIP: Two years.

VACANCIES: Filled by appointment by Speaker or president.

MEETINGS: During session or during interim, at such times and places within the state as the chairman may determine. Per diem is the same as during session. You may not draw double per diem however during session.

POWERS OF SUSPENSION: You may suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature. Suspension power continues until 30 days after convening. A 2/3 affirmative vote of the committee is required for suspension.

POWERS OF SUSPENSION:
(continued)

Suspension is effective on the date a committee report passed in favor of suspension is filed with the Lt. Governor. You must afford a hearing for all interested parties at least 15 days prior to suspension. The committee has no power to suspend an emergency regulation.

STAFF:

Legislative Affairs Agency shall provide professional and clerical assistance under the auspices of the Legislative Council.

POWERS; GENERAL:

1. to organize and adopt rules for the conduct of its business;
2. to hold public hearings;
3. to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information.
4. to examine all administrative regulations to determine if they properly implement legislative intent.
5. to make recommendations for legislative annulment of administrative regulations under AS 44.62.320. (copy attached.)
6. to prepare and distribute reports, memoranda, or other materials.

NOTE: Special charge to the committee

The committee is charged with reviewing the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall not later than January 20, 1979, make formal recommendations with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee

are to be (shall be) transmitted to the first regular session of the 11th Alaska Legislature.

Alaska coastal management program....AS 46.40.010 et seq.

Coastal Policy Council....AS 44.19.891 et seq.

Planning assistance for development and maintenance of district coastal management programs....AS 44.47.095.

NOTE: LEGISLATIVE COUNCIL TIE-IN WITH ADMINISTRATIVE REGULATION REVIEW COMMITTEE

The following language appears in the legislation establishing the Legislative Council (see AS 24.20.065, copy attached)

"The legislative council shall annually examine administrative regulations...to determine whether or not

- (1) the courts and agencies are properly implementing legislative purposes;...
- (3) the opinions or regulations indicate unclear or ambiguous statutes."

"The legislative council shall submit a comprehensive report of the annual examination with recommendation to the members of the legislature at the start of each regular session."

COMMENT: Apparently both the council and the Adm. Reg. Review Committee have the power and mandate to do essentially the same thing, review regulations to determine if they are in keeping with legislative intent.

The council provides the Adm. Reg. Review Committee with "...professional and clerical assistance under the auspices of the Legislative Council."

Both Council and Adm. Reg. Review Committee are charged with making recommendations regarding annulment of regulations. The Administrative Regulation Review Committee has a specific charge "...to make recommendations for legislative annulment of administrative regulations under AS 44.62.320. The Council charge is not as specific but none the less clear:



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Suspension is effective on the date a committee report passed in favor of suspension is filed with the Lt. Governor. You must afford a hearing for all interested parties at least 15 days prior to suspension. The committee has no power to suspend an emergency regulation.

STAFF:

Legislative Affairs Agency shall provide professional and clerical assistance under the auspices of the Legislative Council.

POWERS; GENERAL:

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1979

SUBJECT: Synopsis of structure, functions, and powers of
the Administrative Regulation Revision Committee

TO: Senator Don Bennett

FROM: Joseph A. Guthrie, Legislative Counsel *JAG*

STRUCTURE

* Permanent interim committee of the Legislature
(AS 24.20.400).

* Composed of three members of the House appointed by
the Speaker of the House, and three members of the Senate
appointed by the President of the Senate (AS 24.20.410).

* Members serve for the duration of the Legislature
during which they are appointed and; until they are re-
appointed on the appointment of their successor, during the
next Legislature, (24.20.420).

* Members entitled to travel and per diem for the
minimum time required to get to and from meetings, and for
the period while attending meetings (AS 24.20.440).

* Legislative Affairs Agency provides staff to the
committee (AS 24.20.450).

FUNCTIONS

* The establishment of the committee recognizes the
need for prompt Legislative review of administrative regulations,
filed by the lieutenant governor, to determine whether
annulment under AS 44.62.320 is appropriate (first sentence
of AS 24.20.400).

Senator Don Bennett
Page 2
February 14, 1979

*Examine all administrative regulations to determine if they properly implement legislative intent (AS 24.20.460).

POWERS

* Make recommendations to the whole Legislature regarding the legislative annulment of administrative regulations under AS 44.62.320 (AS 24.20.460).

* When the Legislature is not in session, the committee may suspend the effectiveness of a regulation adopted or an amendment made to a regulation subsequent to adjournment of the previous regular session of the Legislature. The suspension remains in effect until 30 days after the Legislature reconvenes, (24.20.445).

* Meet during sessions of the Legislature and during the interim between sessions at such times and places in the state, as the chairman may determine, (24.20.460).

* Introduce bills and resolutions (Sec. AS 24.30.060).

* Hold public hearings, (24.20 460).

* Require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information, (24.20.460).

JAG:nem

STATE OF ALASKA THE LEGISLATURE

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LEGISLATIVE AFFAIRS AGENCY

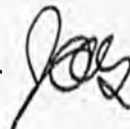
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Effect of amendment. — The 1977 amendment, effective May 29, 1977, in the third sentence of subsection (a), substituted "affects or limits" for "shall affect or limit"

and added the language beginning "nor does it create a tax exemption" to the end. As the rest of the section was not affected by the amendment, it is not set out.

Article 4. General Provisions.

Section 220. Definitions

Sec. 44.61.220. Definitions. In this chapter

(5) "industrial plant" or "manufacturing plant" means a plant used or intended for use in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature, any plant or facility used or intended for use in connection with air and water transportation, or any plant or facility for the prevention, limitation or control of air or water pollution, for the disposal of sewage or solid waste, or for the local furnishing of electric energy or gas;

(7) "project" means a manufacturing or industrial plant or plants, the construction or acquisition of which is to be financed in whole or in part by the authority under this chapter; (am §§ 4, 5 ch 64 SLA 1977)

Effect of amendment. — The 1977 amendment, effective May 29, 1977, added the language beginning "any plant or facility used or intended for use" to the end of paragraph (5) and deleted "and the reasonable aggregate project cost of which

to be financed by the authority under this chapter will exceed, in the opinion of the authority, \$500,000" from the end of paragraph (7).

As the rest of the section was not affected by the amendment, it is not set out.

Part 5. Administrative Procedure.

Chapter 62. Administrative Procedure Act.

Article 1. Application and Effect.

Sec. 44.62.030. Consistency between regulation and statute.

Regulation accorded presumption of validity. — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must

demonstrate its invalidity. Union Oil Co. v. State, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978).

Article 2. Submission, Filing and Publication of Regulations.

Section 50. Style and forms 60. Preparation and filing

Section 125. Regulations attorney

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Sec. 44.62.040. Submitting regulations.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176 (1977).

Sec. 44.62.050. Style and forms. The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969; am § 1 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the beginning of the section.

Sec. 44.62.060. Preparation and filing. (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter. (am § 2 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups

the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under this chapter. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.080. Endorsement and file.

This chapter does not require that a clause be inserted in each regulation stating where a text incorporated by reference can be found. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

This appears to be unnecessary, since by law a copy of the text must be available at the lieutenant governor's office. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

And failure to so specify does not invalidate regulation. — Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969; am § 3 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" in paragraph (4) of subsection (b).

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Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Article 4. Procedure for Adopting Regulations.

Section

190. Notice of proposed action

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the

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Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code

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Sec. 44.62.210. Public proceedings.

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Article 5. Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

The supreme court has distinguished between two types of questions which may confront a court in judicial review of administrative action. Where the agency decision involves the formulation of fundamental policy or the particularized expertise and experience of administrative personnel, the court will defer to the administrative decision, inquiring only whether it has a reasonable basis. On the other hand, where the issues to be resolved turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute. Statutory interpretation is within the scope of the court's special competency, and it is the court's duty to consider the statute

independently. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

"Reasonable basis" standard of review. In accord with 2nd paragraph in original. See Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Where there is primarily a question of a statutory interpretation and legislative intent, it is a question of whether "the administrative agency has acted within the scope of its authority" and concerns "statutory interpretations requiring the special competency of the courts." Therefore, the reasonable basis test is not the appropriate standard of review. Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Alaska Workmen's Compensation Board. — Although the Alaska Workmen's

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(7) "project" means a manufacturing or industrial plant or plants, the construction or acquisition of which is to be financed in whole or in part by the authority under this chapter; (am §§ 4, 5 ch 64 SLA 1977)

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Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the beginning of the section.

Sec. 44.62.060. Preparation and filing. (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter.

(am § 2 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups

the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under this chapter. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable to negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.080. Endorsement and file.

This chapter does not require that a clause be inserted in each regulation stating where a text incorporated by reference can be found. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

This appears to be unnecessary, since by law a copy of the text must be available at the lieutenant governor's office. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

And failure to so specify does not invalidate regulation. — Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969; am § 3 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" in paragraph (4) of subsection (b).

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Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Article 4. Procedure for Adopting Regulations.

Section

190. Notice of proposed action

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting

manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the

legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code

which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.210. Public proceedings.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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Article 5 Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

The supreme court has distinguished between two types of questions which may confront a court in judicial review of administrative action. Where the agency decision involves the formulation of fundamental policy or the particularized expertise and experience of administrative personnel, the court will defer to the administrative decision, inquiring only whether it has a reasonable basis. On the other hand, where the issues to be resolved turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute. Statutory interpretation is within the scope of the court's special competency, and it is the court's duty to consider the statute

independently. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

"Reasonable basis" standard of review.

In accord with 2nd paragraph in original. See Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Where there is primarily a question of a statutory interpretation and legislative intent, it is a question of whether "the administrative agency has acted within the scope of its authority" and concerns "statutory interpretations requiring the special competency of the courts." Therefore, the reasonable basis test is not the appropriate standard of review. Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Alaska Workmen's Compensation Board. — Although the Alaska Workmen's

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Compensation Board is a quasi-judicial agency, the same criteria for judicial review of any administrative action should apply.

Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review.

(a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978)

Effect of amendment.

The 1978 amendment substituted "At the

same time" for "Within 45 days after" at the beginning of subsection (b).

Article 8. Administrative Adjudication.

Section

330. Application of §§ 330 — 630

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

(1) Board of Barber Examiners

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects, Engineers and Land Surveyors

(5) Repealed by § 13 ch 218 SLA 1976.

(6) Board of Examiners in Optometry

Sec. 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned and the legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature within the first five days of each regular session of the legislature. Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature. (§ 2 ch 95 SLA 1971)

Article 3. Administrative Regulation Review Committee.

Section	Section
400. Administrative Regulation Review Committee established	440. Meetings
410. Membership	445. Power of suspension
420. Term of membership	450. Staff
430. Vacancies	460. Powers

Sec. 24.20.400. Administrative Regulation Review Committee established. The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor to determine whether annulment under AS 44.62.320 is appropriate. (§ 1 ch 27 SLA 1975)

Editor's note. — Section 6, ch. 84, SLA 1977 provides: "The Administrative Regulation Review Committee established in AS 24.20.400 — 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1979, make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature." As to the Alaska coastal management program, see AS 46.40.010 et seq. As to the Alaska Coastal Policy Council, see AS 44.19.891 et seq. As to planning assistance for development and maintenance of district coastal management programs, see AS 44.47.095.

Sec. 24.20.410. Membership. The Administrative Regulation Review Committee is composed of three members of the house appointed by the speaker of the house, and three members of the senate appointed by the president of the senate. The membership from each house shall include at least one member from each of the two major political parties. The committee elects a chairman from among its members. (§ 1 ch 27 SLA 1975)

Sec. 24.20.420. Term of membership. The committee shall be organized within 15 days after the organization of each legislature.

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language ch. 3, SLA 1978 and codified as part of AS of AS 24.20.445(d) was drawn from sec. 2, 24.20.445.

Sec. 24.20.450. Staff. The Legislative Affairs Agency shall provide the committee with professional and clerical assistance under the auspices of the Legislative Council. (§ 1 ch 27 SLA 1975)

Sec. 24.20.460. Powers. The Administrative Regulation Review Committee has the following powers:

- (1) to organize and adopt rules for the conduct of its business;
- (2) to hold public hearings;
- (3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;
- (4) to examine all administrative regulations to determine if they properly implement legislative intent;
- (5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;
- (6) to prepare and distribute reports, memoranda, or other materials. (§ 1 ch 27 SLA 1975)

Article 4. Legislative Board of Retirement Benefits.

Section	Section
500. Legislative Board of Retirement Benefits established	530. Compensation
510. Membership	540. Duties of the board
520. Selection of membership	560. Staff for the board
	570. Definitions

Sec. 24.20.500. Legislative Board of Retirement Benefits established. The Legislative Board of Retirement Benefits is established as a permanent advisory board of the legislature. The legislature establishes the board in recognition of its need for detailed expert fiscal analyses of the retirement systems of the state and recommendations to change them. (§ 1 ch 130 SLA 1977)

Sec. 24.20.510. Membership. The membership of the Legislative Board of Retirement Benefits is composed of seven members:

- (1) the commissioner of administration or his designee;
- (2) the director of the division of retirement;
- (3) an employee of the state employed under the public employees' retirement system (AS 39.35);
- (4) an employee of the state or of a school district who is employed under the teachers' retirement system (AS 14.25);
- (5) a public member not employed by the state who possesses a background in economics or public finance;
- (6) a retired member from the public employees' retirement system; and
- (7) a retired member from the teachers' retirement system. (§ 1 ch 130 SLA 1977; am § 1 ch 121 SLA 1978)

Sec. 24.20.065. Examination of regulations and opinions. (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

Sec. 24.20.070. Revision of statutes. (a) The legislature may direct the council to revise the laws of the state in the form of a bulk formal revision. At the direction of the legislature and within the limit of appropriations made, the council may enter into contracts for the printing, annotating, indexing, and distribution of a revision of the laws of the state. The council receives sufficient copies of a revision for exchange with other states and jurisdictions. A revision prepared by the council under authority of this section shall be referred to the legislature for enactment or adoption.

(b) Statute revision is a continuing responsibility of the council. The general and permanent acts of each regular and special session of the legislature shall be integrated with and published as annual supplements to or replacement pamphlets for the Alaska Statutes. (§ 7 ch 17 SLA 1960; am § 5 ch 100 SLA 1963)

Cited in *Employment Sec. Comm'n v. Wilson*, Sup. Ct. Op. No. 587 (File No. 1084), 461 P.2d 425 (1969).

Sec. 24.20.075. Code Revision Commission. (a) The Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; one public member, who is not an employee of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer, and appointed members serve at the pleasure of the appointing authority. Members receive the standard per diem for board members, or the regular legislative per diem if they are legislators, for days spent on commission business. The

Compensation Board is a quasi-judicial agency, the same criteria for judicial review of any administrative action should apply.

Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

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Section

320. Legislative annulment of regulations and review

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(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978)

Effect of amendment.

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same time" for "Within 45 days after" at the beginning of subsection (b).

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Section

330. Application of §§ 330 — 630

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Article 3. Administrative Regulation Review Committee.

Section	Section
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(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language ch. 3, SLA 1978 and codified as part of AS of AS 24.20.445(d) was drawn from sec. 2, 24.20.445.

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Article 4. Legislative Board of Retirement Benefits.

<p>Section 500. Legislative Board of Retirement Benefits established 510. Membership 520. Selection of membership</p>	<p>Section 530. Compensation 540. Duties of the board 560. Staff for the board 570. Definitions</p>
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Sec. 24.20.500. Legislative Board of Retirement Benefits established. The Legislative Board of Retirement Benefits is established as a permanent advisory board of the legislature. The legislature establishes the board in recognition of its need for detailed expert fiscal analyses of the retirement systems of the state and recommendations to change them. (§ 1 ch 130 SLA 1977)

Sec. 24.20.510. Membership. The membership of the Legislative Board of Retirement Benefits is composed of seven members:

- (1) the commissioner of administration or his designee;
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- (3) an employee of the state employed under the public employees' retirement system (AS 39.35);
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- (5) a public member not employed by the state who possesses a background in economics or public finance;
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(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

Sec. 24.20.070. Revision of statutes. (a) The legislature may direct the council to revise the laws of the state in the form of a bulk formal revision. At the direction of the legislature and within the limit of appropriations made, the council may enter into contracts for the printing, annotating, indexing, and distribution of a revision of the laws of the state. The council receives sufficient copies of a revision for exchange with other states and jurisdictions. A revision prepared by the council under authority of this section shall be referred to the legislature for enactment or adoption.

(b) Statute revision is a continuing responsibility of the council. The general and permanent acts of each regular and special session of the legislature shall be integrated with and published as annual supplements to or replacement pamphlets for the Alaska Statutes. (§ 7 ch 17 SLA 1960; am § 5 ch 100 SLA 1963)

Cited in *Employment Sec. Comm'n v. Wilson*, Sup. Ct. Op. No. 587 (File No. 1084), 461 P.2d 425 (1969).

Sec. 24.20.075. Code Revision Commission. (a) The Code Revision Commission is established as a permanent committee of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; one public member, who is not an employee of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer, and appointed members serve at the pleasure of the appointing authority. Members receive the standard per diem for board members, or the regular legislative per diem if they are legislators, for days spent on commission business. The

the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction or acquisition;

(9) "project occupant" means a business enterprise or enterprises proposing to use and occupy a project;

(10) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(11) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, real property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy real property. (§ 1 ch 64 SLA 1967)

Part 5. Administrative Procedure.

Chapter

62. Administrative Procedure Act (§§ 44.62.010 — 44.62.650)

Chapter 62. Administrative Procedure Act.

Article

1. Application and Effect (§§ 44.62.010 — 44.62.030)
2. Submission, Filing and Publication of Regulations (§§ 44.62.040 — 44.62.125)
3. The Alaska Administrative Register and Code (§§ 44.62.130 — 44.62.170)
4. Procedure for Adopting Regulations (§§ 44.62.180 — 44.62.290)
5. Judicial Review (§ 44.62.300)
6. Agency Meetings Public (§§ 44.62.310 — 44.62.312)
7. Legislative Review of Rules (§ 44.62.320)
8. Administrative Adjudication (§§ 44.62.330 — 44.62.630)
9. General Provisions (§§ 44.62.640 — 44.62.650)

Revisor's note (1971). — In this chapter the 1970 Alaska constitutional amendment "secretary of state" has been changed to (SJR 2) changing the designation of that "lieutenant governor" in conformity with office.

Article 1. Application and Effect.

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| <p>Section</p> <p>10. Application to State Organization Act of 1959</p> <p>20. Authority to adopt, administer, or enforce regulations</p> | <p>Section</p> <p>30. Consistency between regulation and statute</p> |
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Sec. 44.62.010. Application to State Organization Act of 1959. Rule-making power conferred by ch. 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

Revisor's note. — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision. However, most of ch 64 SLA 1959 is found in part 2 of this title.

Legislative committee report. — For legislative committee report on original bill, see House Journal (1959), pp. 394-397.

This chapter applies to the Alaska State Housing Authority. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

And — The Alaska Administrative Procedure Act chapter does not legislate for the insular Alaska Ct. Op. (1972). Not

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And its provisions must be adhered to. — There being no express exclusion of Alaska State Housing Authority from the Administrative Procedure Act, ASHA is bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. *Alaska State Housing Auth. v. Dixon*, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Not every administrative determi-

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in §§ 130 — 170 of this chapter, §§ 10 — 320 of this chapter do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

Meaning of "in accordance with standards prescribed by other provisions of law." — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of

nation requires that this chapter be followed. *Bradley v. State*, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Cited in *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969); *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); *In re Application of Sullivan*, Sup. Ct. Op. No. 1274 (File No. 2783), 551 P.2d 531 (1976).

Am. Jur. references. — 11 Am. Jur., Constitutional Law, §§ 240 to 242; 2 Am. Jur., Public Administrative Law, §§ 8 to 250.

the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it

appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following

manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any

legislative enactment. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Article 2. Submission, Filing and Publication of Regulations.

Section

- 40. Submitting regulations
- 50. Style and forms
- 60. Preparation and filing
- 70. Fees
- 80. Endorsement and file
- 90. [Repealed]

Section

- 100. Presumptions from filing
- 110. Presumptions from publication
- 120. Voluntary submitting and publication
- 125. Regulations attorney

Sec. 44.62.040. Submitting regulations. (a) Every state agency which by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one which

- (1) establishes or fixes rates, prices or tariffs;
- (2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or
- (3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted under (a) of this section. (§ 1 art II (ch 1) ch 143 SLA 1959; am § 1 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations promulgated under AS 15.15.330, dealing with the early counting

of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of this section and AS 44.62.640. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The lieutenant governor's supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

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* **Sec. 44.62.050. Style and forms.** The ^{Dept. of Law}~~Legislative Affairs Agency~~ shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969)

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

* **Sec. 44.62.060. Preparation and filing.** (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the ^{Dept. of Law}~~Legislative Affairs Agency~~ under § 50 of this chapter.

(b) In the performance of duties under § 125 of this chapter, the Department of Law shall advise the agencies on legal matters relevant to the promulgation of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment or order of repeal required by § 40 of this chapter unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment or order of repeal. (§ 3 art II (ch 1) ch 143 SLA 1959; am § 1 ch 149 SLA 1962; am § 4 ch 70 SLA 1966; am § 1 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.070. Fees. No state officer or public official may charge a fee to perform an official act in connection with the certification, submission or filing of regulations under §§ 40 — 120 of this chapter. (§ 4 art II (ch 1) ch 143 SLA 1959; am § 2 ch 40 SLA 1969)

Sec. 44.62.080. Endorsement and file. The lieutenant governor shall (1) endorse on the certified copy of each regulation or order of repeal

filed by him, the time and date of filing, and (2) maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. (§ 5 art II (ch 1) ch 143 SLA 1959; am § 3 ch 40 SLA 1969)

Sec. 44.62.090. Filing with local government unit clerks.

Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Sec. 44.62.100. Presumptions from filing. (a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

- (1) it was duly adopted;
- (2) it was duly filed and made available for public inspection at the day and hour endorsed on it;
- (3) all requirements of this chapter and the regulations relative to the regulation have been complied with;
- (4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed. (§ 7 art II (ch 1) ch 143 SLA 1959; am § 4 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal p. 415.

This section establishes a rebuttable presumption that the procedural requirements for the promulgation of

administrative regulations have been satisfied. *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *College Enterprises, Inc. v. State*, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.110. Presumptions from publication. (a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register. (§ 8 art II (ch 1) ch 143 SLA 1959)

Sec. 44.62.120. Voluntary submitting and publication. With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by § 40 of this chapter to be submitted. If he accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in § 80 of this chapter, and may publish the regulation or order of repeal in the manner he considers proper. (§ 9 art II (ch 1) ch 143 SLA 1959; am § 5 ch 40 SLA 1969)

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Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

As to preparation of regulations to be submitted to the secretary of state

pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Ops. Att'y Gen., No. 27.

* **Sec. 44.62.125. Regulations attorney.** (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the ~~Legislative Affairs Agency~~ under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969)

Editor's note. — Section 4, ch. 58, SLA 1969, provides: "Until the revision of the Alaska Administrative Code under 1967 SCR No. 15 and sec. 2(a), ch. 70 SLA 1966 has been completed, the regulations attorney shall assist the staff of the

Legislative Affairs Agency on that project."

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Article 3. The Alaska Administrative Register and Code.

<p>Section 130. Codification and publication 140. Distribution of code and register 150. [Repealed]</p>	<p>Section 160. Date and content of register 170. [Repealed]</p>
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Sec. 44.62.130. Codification and publication. The lieutenant governor shall provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations filed by his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register shall contain appropriate annotations to judicial decisions and opinions of the Alaska attorney general.

(b) The legislative council shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Alaska Administrative Code. (§ 1 art III (ch 1) ch 143 SLA 1959; am § 1 ch 70 SLA 1966; am § 6 ch 40 SLA 1969)

Revisor's note (1968). — Subsection (b) has been complied with by the publication of the "Drafting Manual for Administrative Regulations" under sec. 2(a), ch. 70, SLA 1966 and AS 44.62.050.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the

required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in *College Enterprises, Inc. v. State*, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.140. Distribution of code and register. The lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf is delegated, to the person to whom this authority is delegated. (§ 2 art III (ch 1) ch 143 SLA 1959)

Sec. 44.62.150. Price.
 Repealed by § 49 ch 127 SLA 1974.

Editor's note. — The repealed section derived from § 3, art. III (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.160. Date and content of register. (a) The Alaska Administrative Register shall be published quarterly on the first day of

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the month, beginning in a month to be designated by the Department of Law, but not later than October 1969. All regulations required to be submitted under § 40 of this chapter which are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment or order of repeal has been filed the regular quarterly register shall be published reflecting that fact. (§ 4 art III (ch 1) ch 143 SLA 1959; am § 3 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.170. Form of publication.
Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Article 4. Procedure for Adopting Regulations.

Section	Section
180. Effective date	260. Limitation on effective period of emergency regulations
190. Notice of proposed action	270. State policy
200. Contents of notice	280. Purpose of §§ 180 — 290 of this chapter
210. Public proceedings	290. Limits of the application of §§ 180 — 290 of this chapter
220. Right to petition	
230. Procedure on petition	
240. Limitation on retroactive action	
250. Emergency regulations	

Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under § 250 of this chapter, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written

instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (§ 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Commissioner not required to follow article when promulgating order under AS 38.05.180. — The commissioner of natural resources is not required to follow

the provisions of this article when promulgating a land classification order under AS 38.05.180. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July 1964).

Cited in Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).



Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent state legislators. + *the legis. Affairs Agency*

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under §§ 180 — 290 of this chapter. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968)

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments,

decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. Kelly v. Zamarello, Sup.

Ct. Op. 2 P.2d 906 Regul Commis subject t Administ and mu procedur required regulati adoption intereste to the a adopted publicat No. 705 (1971).

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Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requirements and sufficiency of notice. — There are few cases and little text discussion of the requirements of notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Lengthy regulation to be summarized. — Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26

But short regulation to be set forth in full. — If only a very short regulation is proposed then ordinarily it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26.

Procedure upon promulgation of many regulations of varied nature. — Where a great many regulations are to be promulgated which are of a varied nature, such as fish and game regulations, or oil leasing regulations, then the only practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted,

amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit its views at the hearing. This should constitute substantial compliance with the Administrative Procedure Act and would serve the purpose of the act. 1959 Op. Att'y Gen., No. 26.

And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and to give notice of the areas in which regulations may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

Applied in *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.200. Contents of notice. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

- (1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;
- (2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;
- (3) an informative summary of the proposed subject of agency action;
- (4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations.

(b) A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a) (3) of this section if the subject

matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970)

Legislative committee report. — For report on ch. 185, SLA 1970 (CSHB 786 am S), see 1970 House Journal, p. 916. Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Quoted in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968). Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.210. Public proceedings. (a) On the date and at the time and place designated in the notice the agency shall give each interested person or his authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.450. — See 1960 Ops. Att'y Gen., No. 7.

And distinction between "adjudicative facts" and "legislative facts." — See 1960 Ops. Att'y Gen., No. 7.

Article applicable to exercise of quasi-legislative power. — This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power. 1960 Ops. Att'y Gen., No. 7.

But not to quasi-judicial proceedings. — See 1960 Ops. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Ops. Att'y Gen., No. 7.

Regulations adopted by the Commissioner of Natural Resources are

subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.220. Right to petition. Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in §§ 180 — 290 of this chapter. The petition shall state clearly and concisely

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- (1) the substance or nature of the regulation, amendment, or repeal requested;
- (2) the reasons for the request;
- (3) reference to the authority of the agency to take the action requested. (§ 8 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under §§ 180 — 290 of this chapter, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under §§ 190 — 210 of this chapter. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of §§ 190 — 210 of this chapter do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.240. Limitation on retroactive action. If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter, which is primarily an "interpretative regulation," has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

Cited in Aleut Corp. v. State, Superior Court, 3rd Jud. Dist., C.A. No. 72-2893 (1973).

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of §§ 60 and 190 — 210 of this chapter do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with § 190(a) (1) — (6) of

this chapter. Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Effect of amendment. — The 1972 amendment added the language beginning "however" in the second sentence, and added the last sentence. see 1969 House Journal, p. 414. For report on ch. 46, SLA 1972 (HB 108 am S), see 1972 House Journal, pp. 265, 512.

Legislative committee reports. — For report on ch. 45, SLA 1969 (HB 20 am S),

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with §§ 60 and 190 — 210 of this chapter either before submitting the regulation to the lieutenant governor or during the 120 day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that §§ 60 and 190 — 210 of this chapter were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.280. Purpose of §§ 180 — 290 of this chapter. It is the purpose of §§ 180 — 290 of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in § 250 of this chapter, §§ 180 — 290 of this chapter apply to the exercise of quasi-legislative power conferred by a statute, but nothing in §§ 180 — 290 of this chapter repeals or diminishes additional requirements imposed by the statute. Sections 180 — 290 of this chapter are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.290. Limits of the application of §§ 180 — 290 of this chapter. (a) Sections 180 — 290 of this chapter do not apply to a regulation not required to be submitted to the lieutenant governor under §§ 10 — 320 of this chapter.

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(b) Only this section and § 180 of this chapter apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For Am. Jur. reference. — 42 Am. Jur., report on ch. 45, SLA 1969 (HB 20 am S), Public Administrative Law, §§ 26, 27, see 1969 House Journal, p. 414.

Article 5. Judicial Review.

Section

300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to comply with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS

15.15.330, dealing with early counting of election votes. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The distinction between legislative and interpretative rule making is a helpful one when reviewing regulations adopted by state administrative agencies. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The difference in judicial attitude toward certain administrative rules has been characterized as a distinction between "legislative regulations" and "interpretative regulations." "Legislative rule" has been defined as "the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body." "Interpretative rules" are rules which do not rest upon a legislative grant of power (whether explicit or implicit) to the agency to make law. The distinction is not always easy to draw, since interpretative

rules sometimes rest upon statutory authority to issue them. The distinction can be demonstrated better by examining representative cases than by an abstract definition. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Two distinct types of administrative decisions on questions of law are recognized. One type involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The amount of deference will vary depending upon the apparent degree of reasonableness of the administrative decision and the degree to which the problem involves knowledge peculiar to an industry, business, etc. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P. 2d 906 (1971).

Manner of review. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Scope of review. — When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review generally. — AS 44.62.020 and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

"Reasonable basis" standard of review. — See *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach, in the review of agency action which is essentially executive in character, recognizes that the application of law to facts in an administrative setting may require techniques quite different from those traditionally associated with judicial functions. *Kelly v. Zamarelo*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Stated in *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960); *Bradley v. State*, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 186 to 250.

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the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction or acquisition;

(9) "project occupant" means a business enterprise or enterprises proposing to use and occupy a project;

(10) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(11) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, real property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy real property. (§ 1 ch 64 SLA 1967)

Part 5. Administrative Procedure.

Chapter

62. Administrative Procedure Act (§§ 44.62.010 — 44.62.650)

Chapter 62. Administrative Procedure Act.

Article

1. Application and Effect (§§ 44.62.010 — 44.62.030)
2. Submission, Filing and Publication of Regulations (§§ 44.62.040 — 44.62.125)
3. The Alaska Administrative Register and Code (§§ 44.62.130 — 44.62.170)
4. Procedure for Adopting Regulations (§§ 44.62.180 — 44.62.290)
5. Judicial Review (§ 44.62.300)
6. Agency Meetings Public (§§ 44.62.310 — 44.62.312)
7. Legislative Review of Rules (§ 44.62.320)
8. Administrative Adjudication (§§ 44.62.330 — 44.62.630)
9. General Provisions (§§ 44.62.640 — 44.62.650)

Revisor's note (1971). — In th's chapter the 1970 Alaska constitutional amendment "secretary of state" has been changed to (SJR 2) changing the designation of that "lieutenant governor" in conformity with office.

Article 1. Application and Effect.

Section

10. Application to State Organization Act of 1959
20. Authority to adopt, administer, or enforce regulations

Section

30. Consistency between regulation and statute

Sec. 44.62.010. Application to State Organization Act of 1959. Rule-making power conferred by ch. 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

Revisor's note. — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision. However, most of ch 64 SLA 1959 is found in part 2 of this title.

Legislative committee report. — For legislative committee report on original bill, see House Journal (1959), pp. 394-397.

This chapter applies to the Alaska State Housing Authority. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

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And its provisions must be adhered to. — There being no express exclusion of Alaska State Housing Authority from the Administrative Procedure Act, ASHA is bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. *Alaska State Housing Auth. v. Dixon*, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Not every administrative determi-

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in §§ 130 — 170 of this chapter, §§ 10 — 320 of this chapter do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

Meaning of "in accordance with standards prescribed by other provisions of law." — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of

nation requires that this chapter be followed. *Bradley v. State*, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Cited in *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969); *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); *In re Application of Sullivan*, Sup. Ct. Op. No. 1274 (File No. 278), 51 P.2d 531 (1976).

Am. Jur. ref. — 11 Am. Jur., Constitutional Law, §§ 240 to 242; 42 Am. Jur., Public Administrative Law, §§ 8 to 250.

the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it

appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following

manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any

legislative enactment. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Article 2. Submission, Filing and Publication of Regulations.

Section

- 40. Submitting regulations
- 50. Style and forms
- 60. Preparation and filing
- 70. Fees
- 80. Endorsement and file
- 90. [Repealed]

Section

- 100. Presumptions from filing
- 110. Presumptions from publication
- 120. Voluntary submitting and publication
- 125. Regulations attorney

Sec. 44.62.040. Submitting regulations. (a) Every state agency which by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one which

- (1) establishes or fixes rates, prices or tariffs;
- (2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or
- (3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted under (a) of this section. (§ 1 art II (ch 1) ch 143 SLA 1959; am § 1 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 115.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations promulgated under AS 15.15.330, dealing with the early counting

of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of this section and AS 44.62.640. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The lieutenant governor's supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

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* **Sec. 44.62.050. Style and forms.** The Legislative Affairs Agency shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969) *

See AS Supplement

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

*See AS Supplement **
* **Sec. 44.62.060. Preparation and filing.** (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Legislative Affairs Agency under § 50 of this chapter.

(b) In the performance of duties under § 125 of this chapter, the Department of Law shall advise the agencies on legal matters relevant to the promulgation of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment or order of repeal required by § 40 of this chapter unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment or order of repeal. (§ 3 art II (ch 1) ch 143 SLA 1959; am § 1 ch 149 SLA 1962; am § 4 ch 70 SLA 1966; am § 1 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.070. Fees. No state officer or public official may charge a fee to perform an official act in connection with the certification, submission or filing of regulations under §§ 40 — 120 of this chapter. (§ 4 art II (ch 1) ch 143 SLA 1959; am § 2 ch 40 SLA 1969)

Sec. 44.62.080. Endorsement and file. The lieutenant governor shall (1) endorse on the certified copy of each regulation or order of repeal

filed by him, the time and date of filing, and (2) maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. (§ 5 art II (ch 1) ch 143 SLA 1959; am § 3 ch 40 SLA 1969)

Sec. 44.62.090. Filing with local government unit clerks.
 Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Sec. 44.62.100. Presumptions from filing. (a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

- (1) it was duly adopted;
- (2) it was duly filed and made available for public inspection at the day and hour endorsed on it;
- (3) all requirements of this chapter and the regulations relative to the regulation have been complied with;
- (4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed. (§ 7 art II (ch 1) ch 143 SLA 1959; am § 4 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

This section establishes a rebuttable presumption that the procedural requirements for the promulgation of

administrative regulations have been satisfied. *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *College Enterprises, Inc. v. State*, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.110. Presumptions from publication. (a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register. (§ 8 art II (ch 1) ch 143 SLA 1959)

Sec. 44.62.120. Voluntary submitting and publication. With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by § 40 of this chapter to be submitted. If he accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in § 80 of this chapter, and may publish the regulation or order of repeal in the manner he considers proper. (§ 9 art II (ch 1) ch 143 SLA 1959; am § 5 ch 40 SLA 1969)

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Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

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pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Ops. Att'y Gen., No. 27.

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See AS Supplement
Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Legislative Affairs Agency under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969)

Editor's note. — Section 4, ch. 58, SLA 1969, provides: "Until the revision of the Alaska Administrative Code under 1967 SCR No. 15 and sec. 2(a), ch. 70 SLA 1966 has been completed, the regulations attorney shall assist the staff of the

Legislative Affairs Agency on that project."

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Article 3. The Alaska Administrative Register and Code.

<p>Section: 130. Codification and publication 140. Distribution of code and register 150. [Repealed]</p>	<p>Section 160. Date and content of register 170. [Repealed]</p>
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Sec. 44.62.130. Codification and publication. The lieutenant governor shall provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations filed by his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register shall contain appropriate annotations to judicial decisions and opinions of the Alaska attorney general.

(b) The legislative council shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Alaska Administrative Code. (§ 1 art III (ch 1) ch 143 SLA 1959; am § 1 ch 70 SLA 1966; am § 6 ch 40 SLA 1969)

Revisor's note (1968). — Subsection (b) has been complied with by the publication of the "Drafting Manual for Administrative Regulations" under sec. 2(a), ch. 70, SLA 1966 and AS 44.62.050.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the

required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in *College Enterprises, Inc. v. State*, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.140. Distribution of code and register. The lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf is delegated, to the person to whom this authority is delegated. (§ 2 art III (ch 1) ch 143 SLA 1959)

Sec. 44.62.150. Price.
 Repealed by § 49 ch 127 SLA 1974.

Editor's note. — The repealed section derived from § 3, art. III (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.160. Date and content of register. (a) The Alaska Administrative Register shall be published quarterly on the first day of

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the month, beginning in a month to be designated by the Department of Law, but not later than October 1969. All regulations required to be submitted under § 40 c of this chapter which are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment or order of repeal has been filed the regular quarterly register shall be published reflecting that fact. (§ 4 art III (ch 1) ch 143 SLA 1959; am § 3 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.170. Form of publication.
 Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Article 4. Procedure for Adopting Regulations.

<p>Section 180. Effective date 190. Notice of proposed action 200. Contents of notice 210. Public proceedings 220. Right to petition 230. Procedure on petition 240. Limitation on retroactive action 250. Emergency regulations</p>	<p>Section 260. Limitation on effective period of emergency regulations 270. State policy 280. Purpose of §§ 180 — 290 of this chapter 290. Limits of the application of §§ 180 — 290 of this chapter</p>
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Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

- (1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;
- (2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;
- (3) it is an emergency regulation or order of repeal adopted under § 250 of this chapter, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written

instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (§ 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Commissioner not required to follow article when promulgating order under AS 38.05.180. — The commissioner of natural resources is not required to follow

the provisions of this article when promulgating a land classification order under AS 38.05.180. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July 1964).

Cited in Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

*See AS * Supplement*

Sec. 44.62.150. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent state legislators.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under §§ 180 — 290 of this chapter. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968)

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments,

decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. Kelly v. Zamarelli, Sup.

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Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requirements and sufficiency of notice. — There are few cases and little text discussion of the requirements of notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Lengthy regulation to be summarized. — Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26.

But short regulation to be set forth in full. — If only a very short regulation is proposed then ordinarily it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26.

Procedure upon promulgation of many regulations of varied nature. — Where a great many regulations are to be promulgated which are of a varied nature, such as fish and game regulations, or oil leasing regulations, then the only practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted,

amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit its views at the hearing. This should constitute substantial compliance with the Administrative Procedure Act and would serve the purpose of the act. 1959 Op. Att'y Gen., No. 26.

And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and to give notice of the areas in which regulations may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

Applied in *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.200. Contents of notice. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

- (1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;
- (2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;
- (3) an informative summary of the proposed subject of agency action;
- (4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations.

(b) A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a) (3) of this section if the subject

matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970)

Legislative committee report. — For report on ch. 185, SLA 1970 (CSHB 786 am S), see 1970 House Journal, p. 916.
Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Quoted in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).
Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.210. Public proceedings. (a) On the date and at the time and place designated in the notice the agency shall give each interested person or his authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.450. — See 1960 Ops. Att'y Gen., No. 7.

And distinction between "adjudicative facts" and "legislative facts." — See 1960 Ops. Att'y Gen., No. 7.

Article applicable to exercise of quasi-legislative power. — This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power. 1960 Ops. Att'y Gen., No. 7.

But not to quasi-judicial proceedings. — See 1960 Ops. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Ops. Att'y Gen., No. 7.

Regulations adopted by the Commissioner of Natural Resources are

subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.220. Right to petition. Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in §§ 180 — 290 of this chapter. The petition shall state clearly and concisely

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(1) the substance or nature of the regulation, amendment, or repeal requested;

(2) the reasons for the request;

(3) reference to the authority of the agency to take the action requested. (§ 8 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under §§ 180 — 290 of this chapter, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under §§ 190 — 210 of this chapter. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of §§ 190 — 210 of this chapter do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.240. Limitation on retroactive action. If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter, which is primarily an "interpretative regulation," has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

Cited in Aleut Corp. v. State, Superior Court, 3rd Jud. Dist., C.A. No. 72-2893 (1973).

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of §§ 60 and 190 — 210 of this chapter do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with § 190(a) (1) — (6) of

this chapter. Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Effect of amendment. — The 1972 amendment added the language beginning "however" in the second sentence, and added the last sentence. see 1969 House Journal, p. 414. For report on ch. 46, SLA 1972 (HB 108 am S), see 1972 House Journal, pp. 265, 512.

Legislative committee reports. — For report on ch. 45, SLA 1969 (HB 20 am S),

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with §§ 60 and 190 — 210 of this chapter either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that §§ 60 and 190 — 210 of this chapter were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.280. Purpose of §§ 180 — 290 of this chapter. It is the purpose of §§ 180 — 290 of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in § 250 of this chapter, §§ 180 — 290 of this chapter apply to the exercise of quasi-legislative power conferred by a statute, but nothing in §§ 180 — 290 of this chapter repeals or diminishes additional requirements imposed by the statute. Sections 180 — 290 of this chapter are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.290. Limits of the application of §§ 180 — 290 of this chapter. (a) Sections 180 — 290 of this chapter do not apply to a regulation not required to be submitted to the lieutenant governor under §§ 10 — 320 of this chapter.

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(b) Only this section and § 180 of this chapter apply to
 (1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For Am. Jur. reference. — 42 Am. Jur., report on ch. 45, SLA 1969 (HB 20 am S), Public Administrative Law, §§ 23, 27. see 1969 House Journal, p. 414.

Article 5. Judicial Review.

Section

300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to comply with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. *Moore v. State*, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS

15.15.330, dealing with early counting of election votes. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The distinction between legislative and interpretative rule making is a helpful one when reviewing regulations adopted by state administrative agencies. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The difference in judicial attitude toward certain administrative rules has been characterized as a distinction between "legislative regulations" and "interpretative regulations." "Legislative rule" has been defined as "the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body." "Interpretative rules" are rules which do not rest upon a legislative grant of power (whether explicit or implicit) to the agency to make law. The distinction is not always easy to draw, since interpretative

rules sometimes rest upon statutory authority to issue them. The distinction can be demonstrated better by examining representative cases than by an abstract definition. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Two distinct types of administrative decisions on questions of law are recognized. One type involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The amount of deference will vary depending upon the apparent degree of reasonableness of the administrative decision and the degree to which the problem involves knowledge peculiar to an industry, business, etc. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P. 2d 906 (1971).

Manner of review. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Scope of review. — When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review generally. — AS 44.62.020 and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

"Reasonable basis" standard of review. — See *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach, in the review of agency action which is essentially executive in character, recognizes that the application of law to facts in an administrative setting may require techniques quite different from those traditionally associated with judicial functions. *Kelly v. Zamarello*, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Stated in *Kingery v. Chapple*, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in *Boehl v. Sabre Jet Room, Inc.*, Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960); *Bradley v. State*, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 186 to 250.

Section
310. Agency
312. State p

Sec. 44
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Article 6. Agency Meetings Public.**Section**

310. Agency meetings public

312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

Effect of amendments. — The first 1972 amendment inserted "a legislative body or" in the first sentence of subsection (a) and substituted "clearly have an adverse effect upon" for "adversely affect" in subsection (c)(1).

The second 1972 amendment inserted "a board of regents or of" near the beginning of subsection (a).

The 1976 amendment added the second and third sentences of subsection (a).

Legislative committee reports. — For legislative committee report on ch. 78, SLA 1968 (SB 395), see House Journal (1968), p. 707. For report on ch 7, SLA 1969 (HB 32), see 1969 House Journal, p. 142. For report on ch 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158. For report on ch. 100, SLA 1972 (CSHB 605 am), see 1972 House Journal, p. 643.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in § 310(a) of this chapter exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) Section 310(c)(1) of this chapter shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Revisor's note (1972). — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950.

Legislative committee report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section 320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review.

(a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) Within 45 days after a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the

chairman review 1959; am 1975)

Effect of amendment

Section

- 330. Application
- 340. Delegation
- 350. Appointment
- 360. Accusation
- 370. Statement
- 380. Service
- 390. Notice
- 400. Amendment
- 410. Time and
- 420. Form of
- 430. Subpoena
- 440. Deposition
- 450. Hearing
- 460. Evidence
- 470. Evidence
- 480. Official
- 490. Amendment submission

Sec. 44.62. state boards their success conducted un but not limit and time a concerning e and scope reinstatement impartiality, notwithstanding boards, comm that shall be c named function

- (1) Board of
- (2) Board of
- (3) Board of
- (4) State Board of Surveyors

See AS * Supplement

chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975)

Effect of amendment. — The 1975 amendment added subsection (b).

Article 8. Administrative Adjudication.

Section	Section
330. Application of §§ 330 — 630	500. Decision in a contested case
340. Delegation of power by agencies	510. Form and effect of decision
350. Appointment of hearing officers	520. Effective date of decision
360. Accusation	530. Default
370. Statement of issues	540. Reconsideration
380. Service of accusation	550. Petition for reinstatement or reduction of penalty
390. Notice of defense	560. Judicial review
400. Amended or supplemental accusation	570. Scope of review
410. Time and place of hearing	580. Continuances
420. Form of notice of hearing	590. Contempt
430. Subpoena	600. Mail vote
440. Depositions	610. Charge
450. Hearings	620. Power to administer oaths
460. Evidence rules	630. Impartiality
470. Evidence by affidavit	
480. Official notice	
490. Amendment of accusation after submission	

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

- (1) Board of Barber Examiners
- (2) Board of Chiropractic Examiners
- (3) Board of Dental Examiners
- (4) State Board of Registration for Architects, Engineers and Land Surveyors