

HB

229

<TARGET><BILL>HB 229</BILL><SUBJECT>HB
229</SUBJECT><COMM>HSTA29</COMM></TARGET>

Heard & Held

Nancy copy

2/4/2016

Amendment #1

29-LS1104A.1

Gardner

2/3/16

Keller moved

Greenberg Object For discussion

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLER

TO: HB 229

1 Page 1, line 1:

2 Delete the second occurrence of "and"

3

4 Page 1, line 2, following "Committee":

5 Insert "; relating to the duration, review, and extension of regulations; and
6 providing for an effective date"

7

8 Page 9, following line 9:

9 Insert a new bill section to read:

10 **** Sec. 22.** AS 44.66 is amended by adding a new section to read:

11 **Article 2. Duration, Review, and Extension of Regulations.**

12 **Sec. 44.66.100. Submission of regulations.** According to the schedule
13 established by AS 44.66.110, a state agency shall submit to the legislature for review
14 and possible annulment or repeal by the legislature the regulations that have been
15 adopted by the state agency, including regulations adopted by a state agency located in
16 the state agency or a predecessor of the state agency, and that are still in effect at the
17 time of the submission.

18 **Sec. 44.66.110. Schedule for submission of regulations.** A state agency shall
19 submit regulations under AS 44.66.100 according to the following schedule:

20 (1) if the state agency adopted the regulations on or after January 3,
21 1959, and before January 1, 1999, the state agency shall submit the regulations within
22 the first 10 days after the convening of the Thirty-First Alaska State Legislature;

23 (2) if the state agency adopted the regulations on or after January 1,

On 3/15/16
Recinded
Amendment #1

1 1999, and before July 1, 2009, the state agency shall submit the regulations within the
2 first 10 days after the convening of the Thirty-Second Alaska State Legislature;

3 (3) if the state agency adopted the regulations on or after July 1, 2009,
4 the state agency shall submit the regulations within the first 10 days after the
5 convening of the Thirty-Third Alaska State Legislature.

6 **Sec. 44.66.120. Duration of regulations.** (a) Unless the regulation provides
7 for earlier termination, a regulation adopted on or after January 1, 2017, terminates
8 five years after the date of adoption.

9 (b) Unless the regulation provides for earlier termination, a regulation adopted
10 on or after January 1, 2017, must contain a statement that the regulation terminates
11 five years after the date of its adoption unless the legislature extends the regulation
12 under this section.

13 (c) The legislature may extend a regulation scheduled for termination under
14 (a) of this section by law. Each extension may not exceed five years.

15 **Sec. 44.66.190. Definitions.** In AS 44.66.100 - 44.66.190,

16 (1) "adopted" means filed by the lieutenant governor under
17 AS 44.62.080(a);

18 (2) "regulation" has the meaning given in AS 44.62.640, but does not
19 include an order of repeal; in this paragraph, "order of repeal" has the meaning given
20 in AS 44.62.640;

21 (3) "state agency" means a department, institution, board, commission,
22 division, authority, public corporation, or other administrative unit of the executive
23 branch of state government."
24

25 Renumber the following bill sections accordingly.

26
27 Page 9, following line 22:

28 Insert a new bill section to read:

29 **** Sec. 25.** Section 22 of this Act takes effect January 1, 2017."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

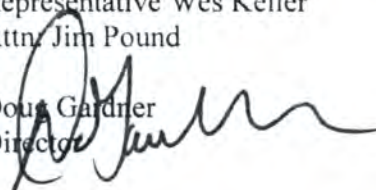
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 3, 2016

SUBJECT: Amendment to HB 229; (Work Order No. 29-LS1104\A.1)

TO: Representative Wes Keller
Attn: Jim Pound

FROM: Doug Gardner
Director 

Mr. Pound requested an amendment based on sec. 6 of work order no. 29-LS0125\A, to HB 229. Please find the amendment attached. We noticed several issues that to us, warranted a fix. They are:

- Page 1, line 21 of the amendment -- change of date from July 1, 1999, in proposed AS 44.66.110(1), to January 1, 1999, to avoid overlap with proposed AS 44.66.110(2);
- page 2, lines 7 and 10 -- change of date from January 1, 2016, to January 1, 2017, to reflect the same timeline drafted in work order no. 29-LS0125\A when drafted in 2014;
- page 2, line 15 -- "in this chapter" was narrowed for purposes of the definitions in proposed AS 44.66.190 to AS 44.66.100 - 44.66.190.

Please confirm that these changes are o.k. We were handling this project as a rush and made the changes, which we recommend, on Wednesday night so that you could have the amendment for 8:00 on Thursday morning.

DDG:lem
16-082.lem

Attachment

How the Amendment (Version 29-LS1104\A.4 Gardner 3/10/16) to HB 229 by Rep. Keller Affects the Division of Insurance

Background

The division of insurance, like most other rule-making entities of the state, ensures members of the public, interested parties, and legislators, among others, are provided administrative due process in rule-making through the notice and public comment provisions in the State Administrative Procedure Act. AS 44.62.010 – 44.62.950 (APA). Additionally, although not required under the APA, the division conducts hearings on every regulation project as required under AS 21.06.090. During the public comment period and hearing anyone may provide comments on the division's regulation project including legislators. We have found the public comments received at this stage of the process to be very helpful in determining the effect the proposed regulations have on the regulated community and in drafting changes based on the public comments. After, the division's final packet is complete and an order adopting the regulations has been signed, the regulations undergo an extensive and exhaustive review both by the division's attorneys and by the Regulations Attorney. Only after the Regulations Attorney approves the regulations are they submitted to the Lt. Governor for filing. The Regulations take effect 30 days after filing unless another effective date is provided for in the regulations.

Uncertainty Created

The proposed amendment ignores these existing extensive notice and public comment statutory provisions. Instead, after the division completes the costly, and already long and complex regulations adoption, repeal, or amendment process, the amendment adds uncertainty at the very end of the process concerning the status of the regulations project. Currently, unless there is a court challenge, both the division and the regulated community know the regulations will take effect either 30 days after the Lt. Governor files the regulations or, if the regulations themselves provide for a different effective date, on the date set forth in the regulations. Both the division and the regulated community at this point commit time, energy, and resources toward implementing or complying with the regulations. This work would likely come to a standstill as neither the division or the regulated community would want to devote their time, energy, or resources in implementing or complying with a regulation that might be disapproved by the legislature.

Time Delay Even If a Committee Does Not Take Action

The amendment provides that "[a]t the same time a regulation¹ is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the presiding officer of each house of the legislature..." The amendment also provides that "[a]t the same time as a regulation is submitted to the governor under AS 44.62.040(c), the state agency shall submit the regulation to the presiding officer of each house of the legislature..."

¹ The term "regulation" as used in this document means a proposed regulation, amendment, or order of repeal.

The amendment then provides "[w]ithin 10 days after receiving a regulation under [either of the above provisions] the presiding officer of each house of the legislature shall provide copies of the regulation to [(for us) the labor and commerce committees]."

Then, the labor and commerce committees have "35 days after receipt of the [regulation to] approve or disapprove the [regulation]. If neither committee takes action then "35 days after receipt of the [regulation, the regulation shall be considered approved."

Thus, even if the committees do nothing, the division and regulated community will not know if they can proceed with implementing and complying with the regulation until 45 days after the date of filing. The effect is to essentially delay the effective date of the regulation by another 15 days.

Time Delay If a Committee Does Disapprove a Regulation but the Legislature Does Not Annul the Regulation

If, under the amendment, a committee does disapprove or return a regulation to the division, other than an emergency regulation, the regulation is "suspended until the adjournment of the next² regular legislative session following the date of the committee's disapproval. The notice of disapproval under this section expires upon adjournment of the regular legislative session during which the disapproval or amendment was made or, if the legislature is not in regular session, the next regular session following the date of disapproval, unless the legislature enacts a law that annuls the [regulation]".

Thus, even if the legislature does not annul the regulation, the committee's suspension remains in place until the adjournment of the legislative regular session. This could be for as long as one year. For example, if a committee disapproved a regulation on the day after the adjournment of the first regular session of the legislature, the committee's suspension would continue until the day after the adjournment of the second regular session of the legislature meaning the regulation would be suspended for a year and division and the regulated community would be in limbo for the same amount of time.

Agencies with a controversial regulations project might consider timing their project so if a suspension occurred the legislature would be in session yet close to adjournment, however, this too could delay the project at the front end of the regulations process.

The Legislature Could Annul a Division Regulation

As noted above, the amendment would provide that "[t]he legislature may, in the regular legislative session during which a disapproval or amendment is made or, if the legislature is not in regular session, the next regular session following the disapproval or amendment of a proposed regulation, amendment, or order of repeal by [(for us) one of the labor and commerce

² Use of the word "next" in this sentence conflicts with the intent of the next sentence. If the committee disapproved the regulation on the first day of the first session of the legislature, the use of the word "next" means that the suspension of the regulation would continue until the adjournment of the second session of the legislature, however, the following sentence directly contradicts this plain reading.

committees] ...annul the proposed regulation, amendment of the proposed regulation, or order of repeal by law."

Lack of Public Process

There is no provision providing for the division, the regulated community, or members of the public to participate or be heard regarding a committee's deliberations concerning a regulation. A committee under the amendment could suspend or return a regulation without any input from anyone.

A committee also has the option of returning a regulation to the division with a proposal for "an amendment to the regulation, amendment, or order of appeal." The division then "may request leave of the standing committee to withdraw or amend the [regulation]." The purpose of the phrase "may request leave of the standing committee" is not described in the bill but it suggests an agency "with leave" would not have to meet the requirements of the APA in withdrawing or amending the regulation. Again, such a result, would remove the public and regulated community from the process which, as noted, would be detrimental to the quality of the division's final regulation.

Inconsistencies, Gaps, and Errors in the Regulations

The amendment fails to clarify whether a committee's actions or the legislature's actions relating to a regulation applies to the entire regulations project or part of the regulations project. It appears a committee could disapprove or propose an amendment to part of a regulations project in which case series problems could arise given the complexity of the division's regulations which often cross-reference each other. Further our regulations often require numerous sections, subsections, paragraphs, subparagraphs, and sub-subparagraphs to express a single regulatory goal. The disapproval or amendment of one provision, therefore, could result in the remaining provisions becoming unworkable or moot.

An Expensive and Time-Consuming New Fiscal Note Requirement is Created

Currently, under AS 44.62.195, "[i]f the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years."

The amendment changes this to say "[i]f the adoption, amendment, or repeal of a regulation has an economic effect on a department, agency, or person, the proposed regulation or order of repeal must include a fiscal note prepared by the department or agency in accordance with this section." A new subsection (b) then lists 8 subject areas which the fiscal note must address:

1. a determination of the present need for the regulation and the expected need for the regulation;
2. a determination of the costs and benefits of the regulation and an explanation by the department or agency of whether the proposed regulation is the most cost-effective, efficient, and feasible means of allocating public and private resources to achieve the stated purpose;

3. the effect of the regulation on market competition;
4. the effect of the regulation on the cost of living, employment, and doing business in the geographical regions where the regulation would have the greatest effect;
5. the source of revenue to implement and enforce the regulation;
6. a summary of the short-term and long-term economic effects of the regulation, including an analysis of the persons or groups that would bear the costs of the regulation and the persons or groups that would benefit directly or indirectly from the regulation;
7. the difficulties the department or agency encountered, if any, in estimating the persons or groups that would benefit from the regulation or bear the costs of the regulation;
8. the effect that adopting or failing to adopt the regulation would have on the environment and public health.

The amendment does not define "economic effect" but one could say that just about anything has an "economic effect". The difficulty the division will have in meeting this provision is the lack of economic modelling expertise needed to meet this provision. The division does not currently have the time, resources, or expertise to address all of the requirements of this new fiscal note.

Moreover, much of the data and information we would need to meet this new requirement is in the possession of the regulated community which be costly for them to provide to us in a timely way. This also raises confidentiality issues unless the amendment could be clarified to allow us to provide some of the required information in the aggregate. Even then, we may still have problems given some of our small markets with only a couple of entities.

Another difficulty is we would be required to provide this information at the time of noticing a project, however, to be able to obtain the information we would first have to provide the draft regulation to the regulated community in order for them to be able to provide the information to us. This may require us to use the negotiated rule-making provisions in the APA which only adds to the complexity, costs, and time necessary to complete a project.

Negative Effect on the Division's Ability to Respond to Emerging Issues in a Timely Manner

The new procedures and requirements called for in the amendment will adversely affect the division's ability to respond promptly when necessary to protect Alaska consumers because these statutory changes depending on the complexity of our projects will require significant additional time and resources to complete a regulations project.

The Division's NAIC Accreditation May be Affected

In addition to not being able to meet the deadlines required to have regulations in place for accreditation, a committee or the legislature could suspend, amend, disapprove, or annul a

regulatory provision which the NAIC has determined to be a "significant element" for meeting the Part A: Laws and Regulations requirements of the NAIC Accreditation Program Manual.

The Commissioner's Office and the Division will Need to Devote Additional Resources to the Legislative Process

Additional time and resources will be required to stay in contact with the Labor and Commerce committees both during the session and in the interim to ensure they are in the loop and informed of our regulations projects and regulatory goals in order to head off the possibility of issues later on. This should help avoid issues after we have already expended considerable effort and expense in getting a regulations project completed and filed. While we are fortunate in having a good relationship with our committees and regulated industry, additional resources will still be required to communicate our mission and regulations projects in a meaningful and persuasive manner.

Although it would require even more time and effort than required by the amendment, the division might want to consider addressing the criteria the Labor and Commerce committees would use in determining whether to approve, disapprove, or amend a regulation. The Division could do this when developing regulations and when communicating with the committee members. These criteria are:

1. whether the absence of a regulation would significantly harm or endanger public health, safety, or welfare;
2. whether a less restrictive regulation would address the regulatory concerns while adequately protecting the public;
3. whether the regulation would directly or indirectly increase the cost of any goods or services;
4. whether the increased cost of implementing and enforcing the regulation would be more detrimental than the purpose of the regulation;
5. whether the regulation was designed solely for the purpose of the protection of the public and would have the primary effect of protecting the public; and
6. any other factors the committee considers to be appropriate.

Delay of Legislative Goals

The Legislation and Regulations section of the Department of Law is already swamped and will be more so if this amendment passes. This amendment, therefore, will affect and further delay the division's legislative goals.

Additional Attorney Costs

The proposed amendment will likely require us to expend additional funds for our division's assigned attorneys' time in working through all of the unanswered questions posed and in meeting the amendment's intent.

Nancy Manly

From: McClanahan, Natasha S (GOV) <natasha.mcclanahan@alaska.gov>
Sent: Wednesday, March 16, 2016 8:33 PM
To: Jim Pound; Nancy Manly
Cc: Peterson, Darwin R (GOV); Tom Wright
Subject: RE: Review of amendment for HB 229

Jim and Nancy –

I neglected to mention that some departments weren't able to respond today with their take on the fiscal impacts of amendment A.4 but we wanted to get the collected information over as soon as possible so as not to hold up the process. Once we receive information from the missing departments we will send it over. Further, if any department is able to identify more specific fiscal impacts after having more time to review we will send that your way as well.

Please let me know if I can be of further assistance.

All the best,

Natasha McClanahan

Assistant Legislative Director

Office of Governor Bill Walker
State Capitol, Room 305
Juneau, AK 99801

Phone: (907) 465-4021
Email: natasha.mcclanahan@alaska.gov

From: McClanahan, Natasha S (GOV)
Sent: Wednesday, March 16, 2016 7:42 PM
To: Pound, Jim (LAA); Manly, Nancy S (LAA)
Cc: Peterson, Darwin R (GOV); Wright, Tom (LAA)
Subject: Review of amendment for HB 229
Importance: High

Good Evening -

Per your request we have reached out to agencies in regards to amendment A.4.

The following (with further comments in the attached word document) contains a rough compilation of the agencies' quick review of what fiscal impacts might be:

DCCED

AIDEA:

I would think it would add to the cost of adopting regulations, since AIDEA would need to be mindful of the tripwires for triggering legislative disapproval and tread more slowly in developing regulations. The exact amount of increased costs, I am not sure, 10-20% more maybe as a guess??

The legislation also raises separation of powers issues and an issue of whether legislative authority over regulations can be exercised by a committee as proposed. Legislative disapproval of administrative regulations generally can be a thorny problem.

AEA:

Indeterminate or zero costs but the amendment has many problems such as providing ability for standing committee veto or delay a regulation that has gone through a thorough public process. AEA regs are generally not controversial and help facilitate objective program processes so I'm not seeing a reg we would propose that would get this type of attention.

DED:

if something like HB366 or the creation of a new loan program was to pass then I would need a LTNP position and an increase in legal services to fulfill these changes. Otherwise, we don't do many regs projects.

DBS:

Outlined below are estimated costs and assumptions for FY2017 relating to the proposed amendment on HB229:

- Add one LTNP Regulations Specialist II to analyze bills and coordinate new or amended regulations
- Increase legal services costs for Dept of Law work on regulation packages
Based on actual FY2016 legal billings on recent ANCSA regulation package for a single chapter
Estimated of 12 chapters in FY2017 for new Securities Act and Money Services bills

Legal cost (RSA)	\$106,800.00
1 PCN Reg Spec II	\$57,519.00
<u>TOTAL</u>	<u>\$164,319.00</u>

From FY2018 through FY2020, DBS anticipates issuing updated regulations for banking, mortgage, and ANCSA. Therefore, the estimate of 12 chapters per year will continue over four years and then move into maintenance. The Regulations Specialist II is expected to be a four year project position that would be a PCN decrement in the FY2021 budget.

Estimated cost for staff and legal services for FY2017 through FY2020 is \$657,276 excluding annual increases for personal services and legal rates. Cost estimates do not include travel, training, furniture, equipment, or space costs likely to be incurred by adding one project PCN.

CBPL:

The impacts to Board regs and Department regs will be substantial especially if we lose the window on fees before their renewal cycle which will place some boards further and further in debt. It will be hard to calculate those kinds of potential costs. Likely multiple PCNs would be necessary.

RCA:

The amendment to House Bill 229 introduces into the regulation process an additional substantive review, an uncertain period before conclusion of the review process, and the possible necessity to take additional actions which might include public notice. The Regulatory Commission of Alaska (RCA) would be impacted fiscally when its limited resources and personnel are reallocated to respond to these possible unanticipated additional actions. In addition, the additional elements imposed by the amendment are inconsistent with the intent of AS 42.05.175, which is to provide regulatory certainty within a predictable time period. However, no disproportionate fiscal

impact on the RCA is anticipated beyond the impact felt by all other agencies and departments whose regulations would be required to undergo the additional procedures.

DHSS

Sections 13 and 14 of the amendment (page 5) could have a significant financial impact on the Department.

Section 13 proposes to amend AS 44.62.195, Fiscal notes on regulations, to read: "If the adoption, amendment, or repeal of a regulation has an economic effect on a department, agency, or person, the proposed regulation or order of repeal must include a fiscal note prepared by the department or agency in accordance with this section.

Section 14 adds a new section to AS 44.62.195 that delineates the metrics to be included in the required fiscal notes. Among other measures, these fiscal notes must contain:

- a determination of the costs and benefits of the regulation and an explanation by the department or agency of whether the proposed regulation is the most cost-effective, efficient, and feasible means of allocating public and private resources to achieve the stated purpose;*
- the effect of the regulation on market competition; (again, we could not find a definition of "market competition")*
- the effect of the regulation on the cost of living, employment, and doing business in the geographical regions where the regulation would have the greatest effect;*
- a summary of the short-term and long-term economic effects of the regulation, including an analysis of the persons or groups that would bear the costs of the regulation and the persons or groups that would benefit directly or indirectly from the regulation;*
- the effect that adopting or failing to adopt the regulation would have on the environment and public health.*

Although these measures are important, for the Department to report on each for every fiscal note that has an "economic impact" would be significant and would, at the least, require the addition of a staff person or two for regulations development work.

DOA

A change such as proposed would impact DGS ability timely implement regulations tied to AS 36.30, the State Procurement Code. This could adversely impact the state and/or the vendor community by preventing us from implementing and applying a reg. related to the procurement code. As an example, if we need to implement a regulation regarding a procurement preference, this could be impacted in some ways and we may not be able to apply the preference thereby affecting both the state as we would not be applying the correct preference values and the vendor community as they would not be able to receive the benefit of the preference at the time a solicitation is evaluated.

AOGCC routinely amends its regulations to keep up with changes in technology, new operating practices, and learnings that expose regulatory gaps. All AOGCC regulations are in place to prevent hydrocarbon waste, to encourage greater hydrocarbon recovery, to protect correlative rights, to protect human safety, or to protect fresh ground waters. Thus, delaying or halting any AOGCC regulations puts one or more of these protections in jeopardy. For example, the AOGCC recently adopted hydraulic fracturing regulations. Without these regulations in place, operators would not be required to disclose the fluids used in their hydraulic fracturing treatments nor would they be required to notify nearby landowners of their intent to conduct these operations. Further, without robust hydraulic fracturing regulations in place, Alaska would risk having the Federal Government step in and take over regulating this activity, an activity that affects ¼ of all Alaska oil and gas wells. As another example, the AOGCC is awaiting the results of investigations on the recent California gas storage disaster so that we can determine if any changes to our regulations might be needed to prevent a similar disaster from occurring here. We will want to implement such changes as quickly as possible.

The AOGCC regulations relative to protecting fresh ground waters must meet Federal EPA standards in order for the AOGCC to maintain its MOU with EPA granting AOGCC primacy to regulate underground injection of Class II fluids, i.e., oilfield fluids for disposal or enhanced recovery. Should a change to these regulations be required by EPA and not approved by the legislature, the state would lose this primacy, ceding authority to the Federal Government over an operation the State would be better served by regulating itself.

This proposed legislation will cost AOGCC whatever time, effort, and travel to Juneau are required to justify our regulations changes to legislators. Since most of our regulations relate to complex and highly technical petroleum engineering or geology principles and practices, explaining them to a group of individuals with little or no training and experience in either petroleum engineering or geology will be no small task. Thus, the cost could be very high.

All changes to AOGCC regulations require at least one hearing at which interested parties present all information used to determine what changes will or will not be made. For the legislature to add a step to this process, and one that is conducted outside the hearing process, seems fraught with public process concerns.

Also, this bill could create an entirely new cottage lobbying industry – lobbyists who do nothing but convince legislators not to approve regulations that would impact the industries of their clients.

DNR

The review of a standing committee may delay or extend the process of adopting regulations, but would generally not be expected to have a direct fiscal impact on DNR's operations. However, for regulations needed to implement statutory programs or to generate state revenues, an additional review may have indirect fiscal impacts to the agency proposing the regulations.

The completion of the eight part "fiscal note" called for on the amendment would require significant expenditure for state agencies. An agency will be required to either retain additional state personnel or contract with service providers capable of performing the different commercial, economic, and statistical analyses called for in the amendment.

DMVA

It's not possible to predict what regulatory tasks might come our way or what they might cost us.

This information was gathered as quickly as possible, thank you for your patience.

All the best,

Natasha McClanahan

Assistant Legislative Director

Office of Governor Bill Walker
State Capitol, Room 305
Juneau, AK 99801

Phone: (907) 465-4021

Email: natasha.mcclanahan@alaska.gov

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 229

BY REPRESENTATIVE KELLER

1 Page 1, line 1, following "legislature;":

2 Insert "providing for legislative review, amendment, approval, disapproval,
3 annulment, and delay of proposed agency regulations;"

4

5 Page 1, lines 4 - 6:

6 Delete all material.

7

8 Page 1, line 7:

9 Delete "Sec. 2"

10 Insert "Section 1"

11

12 Renumber the following bill sections accordingly.

13

14 Page 2, lines 1 - 8:

15 Delete all material and insert:

16 "** Sec. 2. AS 24.05.182(a) is amended to read:

17 (a) A standing committee of the legislature furnished notice of a proposed
18 action under AS 44.62.190 or 44.62.320(d) shall, consistent with the committee's
19 jurisdiction as provided in the uniform rules of the legislature, review the
20 proposed regulation, amendment of a regulation, or repeal of a regulation before the
21 date the regulation is scheduled by the department or agency to be adopted, amended,
22 or repealed.

23 * Sec. 3. AS 24.05.182(d) is amended to read:

1 (d) A standing committee that receives a copy of a proposed regulation,
 2 amendment, or order of repeal under AS 44.62.320(d) shall, within 35 days after
 3 receipt of the proposed regulation, amendment, or order of repeal, approve or
 4 disapprove the proposed regulation, amendment, or order of repeal. If the
 5 standing committee does not take action within 35 days after receipt of the
 6 proposed regulation, amendment, or order of repeal, the proposed regulation,
 7 amendment, or order of repeal shall be considered approved. If a standing
 8 committee determines that a regulation, amendment to a regulation, or repeal of a
 9 regulation does not properly implement legislative intent and disapproves or returns
 10 the proposed regulation, amendment, or order of repeal to the department or
 11 agency, the standing committee's findings shall, within 35 days after receipt of the
 12 proposed regulation, amendment, or order of repeal, be transmitted to the

13 (1) department or agency;

14 (2) regulations attorney at the Department of Law; and

15 (3) senate secretary and the chief clerk of the house of
 16 representatives [ADMINISTRATIVE REGULATION REVIEW COMMITTEE].

17 * **Sec. 4.** AS 24.05.182 is amended by adding new subsections to read:

18 (e) A proposed regulation, amendment, or order of repeal that is disapproved
 19 under this section or that is returned to the department or agency with a proposed
 20 amendment, other than an emergency regulation adopted under AS 44.62.250, shall be
 21 suspended until the adjournment of the next regular legislative session following the
 22 date of the committee's disapproval. The notice of disapproval under this section
 23 expires upon adjournment of the regular legislative session during which the
 24 disapproval or amendment was made or, if the legislature is not in regular session, the
 25 next regular legislative session following the date of disapproval, unless the legislature
 26 enacts a law that annuls the proposed regulation or order of repeal.

27 (f) If the standing committee that is reviewing a proposed regulation,
 28 amendment, or order of repeal under this section disapproves the regulation,
 29 amendment, or order of repeal or proposes an amendment to the regulation,
 30 amendment, or order of repeal, the department or agency that proposed the regulation,
 31 amendment, or order of repeal may request leave of the standing committee to

1 withdraw or amend the proposed regulation, amendment, or order of repeal.

2 (g) In determining whether to approve, disapprove, or amend a proposed
3 regulation, amendment, or order of repeal under this section, the standing committee
4 shall consider

5 (1) whether the absence of a regulation would significantly harm or
6 endanger public health, safety, or welfare;

7 (2) whether a less restrictive regulation would address the regulatory
8 concerns while adequately protecting the public;

9 (3) whether the regulation would directly or indirectly increase the cost
10 of any goods or services;

11 (4) whether the increased cost of implementing and enforcing the
12 regulation would be more detrimental than the purpose of the regulation;

13 (5) whether the regulation was designed solely for the purpose of the
14 protection of the public and would have the primary effect of protecting the public;
15 and

16 (6) any other factors the committee considers to be appropriate."
17

18 Renumber the following bill sections accordingly.

19
20 Page 3, lines 4 - 7:

21 Delete all material.
22

23 Renumber the following bill sections accordingly.

24
25 Page 3, line 24, through page 4, line 19:

26 Delete all material.
27

28 Renumber the following bill sections accordingly.

29
30 Page 5, following line 5:

31 Insert a new bill section to read:

1 "* **Sec. 10.** AS 44.62.180 is amended to read:

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

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

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

11 (3) it is an emergency regulation or order of repeal adopted under
12 AS 44.62.250, in which case the finding and the statement of the facts constituting the
13 emergency shall be submitted to the lieutenant governor, together with the emergency
14 regulation or order of repeal, which, in that event only, becomes effective upon filing
15 by the lieutenant governor or upon a later date specified by the state agency in a
16 written instrument submitted with, or as part of, the regulation or order of repeal;

17 (4) a later date is prescribed by the state agency in a written instrument
18 submitted with, or as part of, the regulation or order of repeal;

19 **(5) a standing committee of the legislature disapproves the**
20 **regulation or returns it to the department or agency with a proposed**
21 **amendment, under AS 24.05.182, in which case, if the proposed regulation,**
22 **amendment, or order of repeal takes effect, it takes effect on the later of**

23 **(A) adoption by the agency of an amendment proposed by a**
24 **standing committee of the legislature; or**

25 **(B) one day following adjournment of both houses of the legislature**
26 **as provided under AS 44.62.325."**

27
28 Renumber the following bill sections accordingly.

29
30 Page 5, line 31, following "legislators":

31 Insert "**and to the presiding officer of each house**"

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Page 6, line 4, through page 9, line 9:

Delete all material and insert:

*** Sec. 12.** AS 44.62.190(b) is amended to read:

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute. **In the notice furnished to the legislature under AS 44.62.190(a)(6), new language added to an existing regulation shall be underlined, and language deleted from an existing regulation shall be bracketed and capitalized.**

*** Sec. 13.** AS 44.62.195 is amended to read:

Sec. 44.62.195. Fiscal notes on regulations. If the adoption, amendment, or repeal of a regulation **has an economic effect on a department, agency, or person, the proposed regulation or order of repeal must include a fiscal note prepared by the department or agency in accordance with this section** [WOULD REQUIRE INCREASED APPROPRIATIONS BY THE STATE, THE DEPARTMENT OR AGENCY AFFECTED SHALL PREPARE AN ESTIMATE OF THE APPROPRIATION INCREASE FOR THE FISCAL YEAR FOLLOWING ADOPTION, AMENDMENT, OR REPEAL OF THE REGULATION AND FOR AT LEAST TWO SUCCEEDING FISCAL YEARS].

*** Sec. 14.** AS 44.62.195 is amended by adding a new subsection to read:

(b) A fiscal note required under this section must include, where applicable,

(1) a determination of the present need for the regulation and the expected need for the regulation;

(2) a determination of the costs and benefits of the regulation and an explanation by the department or agency of whether the proposed regulation is the most cost-effective, efficient, and feasible means of allocating public and private resources to achieve the stated purpose;

(3) the effect of the regulation on market competition;

1 (4) the effect of the regulation on the cost of living, employment, and
 2 doing business in the geographical regions where the regulation would have the
 3 greatest effect;

4 (5) the source of revenue to implement and enforce the regulation;

5 (6) a summary of the short-term and long-term economic effects of the
 6 regulation, including an analysis of the persons or groups that would bear the costs of
 7 the regulation and the persons or groups that would benefit directly or indirectly from
 8 the regulation;

9 (7) the difficulties the department or agency encountered, if any, in
 10 estimating the persons or groups that would benefit from the regulation or bear the
 11 costs of the regulation;

12 (8) the effect that adopting or failing to adopt the regulation would
 13 have on the environment and public health.

14 * **Sec. 15.** AS 44.62.245(c) is amended to read:

15 (c) The state agency shall also send the notice described in (b)(2) of this
 16 section to

17 (1) a person who has placed the person's name on a distribution list
 18 kept by the agency that lists persons who want to receive the notice; the agency may
 19 allow a person to request that distribution of the notice be by electronic means and
 20 shall honor that request if appropriate means are available;

21 (2) the regulations attorney in the Department of Law; and

22 (3) **the presiding officer of each house of the legislature** [THE
 23 MEMBERS OF THE ADMINISTRATIVE REGULATION REVIEW
 24 COMMITTEE].

25 * **Sec. 16.** AS 44.62.320(b) is amended to read:

26 (b) At the same time a regulation is filed by the lieutenant governor, the
 27 lieutenant governor shall submit the regulation to the **presiding officer of each house**
 28 **of the legislature** [CHAIRMAN AND ALL MEMBERS OF THE
 29 ADMINISTRATIVE REGULATION REVIEW COMMITTEE FOR REVIEW
 30 UNDER AS 24.20.400 - 24.20.460] together with the fiscal information required to be
 31 prepared under AS 44.62.195.

1 * **Sec. 17.** AS 44.62.320(c) is amended to read:

2 (c) At the same time as a regulation is submitted to the governor under
3 AS 44.62.040(c), the state agency shall submit the regulation to the **presiding officer**
4 **of each house of the legislature** [CHAIR AND ALL MEMBERS OF THE
5 ADMINISTRATIVE REGULATION REVIEW COMMITTEE FOR REVIEW
6 UNDER AS 24.20.400 - 24.20.460] together with the fiscal information required to be
7 prepared under AS 44.62.195.

8 * **Sec. 18.** AS 44.62.320(d) is amended to read:

9 (d) Within 10 days after receiving a regulation under **(b) or (c)** of this section
10 **or under AS 44.62.190(a)(6), the presiding officer of each house of the legislature**
11 **shall provide copies of the regulation to the standing committee with jurisdiction**
12 **over the subject matter of the regulation as provided in the uniform rules of the**
13 **legislature for review under AS 24.05.182** [, THE CHAIR OF THE
14 ADMINISTRATIVE REGULATION REVIEW COMMITTEE MAY SUBMIT TO
15 THE GOVERNOR, BY LEGISLATIVE MEMORANDUM OR LETTER,
16 COMMENTS ON THE REGULATION].

17 * **Sec. 19.** AS 44.62 is amended by adding a new section to article 7 to read:

18 **Sec. 44.62.325. Legislative annulment of regulations.** (a) The legislature
19 may, in the regular legislative session during which a disapproval or amendment is
20 made or, if the legislature is not in regular session, the next regular session following
21 the disapproval or amendment of a proposed regulation, amendment, or order of repeal
22 by a standing committee under AS 24.05.182, annul the proposed regulation,
23 amendment of the proposed regulation, or order of repeal by law.

24 (b) If the legislature, following adjournment of the regular legislative session
25 during which a disapproval or amendment is made or, if the legislature is not in
26 regular session, the next regular session following disapproval or amendment of a
27 proposed regulation, amendment, or order of repeal by a standing committee under
28 AS 24.05.182, has not enacted a law that annuls the proposed regulation, amendment
29 of the proposed regulation, or order of repeal, the proposed regulation, amendment of
30 the proposed regulation, or order of repeal takes effect one day after adjournment of
31 both houses of the legislature."

1

2 Renumber the following bill sections accordingly.

3

4 Page 9, line 13:

5 Delete "(AS 44.62.040 - 44.62.319) [AS 44.62.040 - 44.62.320]"

6 Insert "(AS 44.62.040 - 44.62.320)"

7

8 Page 9, line 20:

9 Delete "AS 24.05.182(b), 24.05.182(c), 24.05.182(d);"

10

11 Page 9, line 22:

12 Delete "AS 40.25.120(a)(11); and AS 44.62.320"

13 Insert "and AS 40.25.120(a)(11)"

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

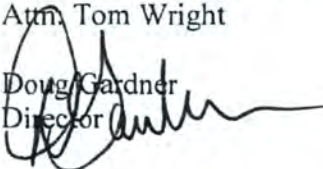
State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 16, 2016

SUBJECT: Amendment to HB 229 (Work Order No. 29-LS1104\A.4)

TO: Representative Mike Chenault
Attn. Tom Wright

FROM: Doug Gardner
Director 

Discussion

The question you asked regarding 29-LS1104\A.4, is whether a process, which allows a legislative committee to disapprove of and delay proposed regulations from taking effect until the legislature has met in session and passed legislation that would annul the regulations, would infringe on and bind executive branch regulatory authority in violation of the legislature's law-making function, as interpreted by the Alaska Supreme Court in *State Department of Revenue v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980).

In the *A.L.I.V.E.* case, the majority opinion, decided by a three-two vote of the justices, held that legislative annulment of regulations by the legislature through the adoption of a concurrent resolution, was a violation of constraints imposed by article II of the Constitution of the State of Alaska to act by passage of a bill. The relevant part of the *A.L.I.V.E.* decision is:

The Amici argue that since the legislature may delegate law-making power to an administrative agency, it follows that it may reserve to itself a part of the delegable power, and that a delegation can be made subject to a condition that the legislature may later change the terms of the delegation by informal action. The answer to this argument, in our opinion, is that while the legislature can delegate the power to make laws conditionally, the condition must be lawful and may not contain a grant of power to any branch of government to function in a manner prohibited by the constitution. The legislature is bound to act in accordance with the constraints provided in article II of the constitution. The fact that it can delegate legislative power to others who are not bound by article II does not mean that it can delegate the same power to itself and, in the process, escape from the constraints under which it must operate.

To illustrate this point we may assume that the legislature has the power to establish an independent agency which would have the power to disapprove of agency regulations. Since the agency would be a part of the

executive department the article II constraints on legislative action would not govern its functions. Could the legislature instead convey to its own members the power to act as such an agency free from these constraints? The answer, we think, is clearly no for that would amount to dual office holding, prohibited by article II, section 5, and would infringe on the executive appointment power set out in article III, section 26. *While the power to void agency regulations could be exercised by either the legislature, or by an agency, when the legislature exercises such power it must do so while acting as a legislature. It may not grant itself the power to act as an agency.*

It might be supposed that if the legislature could condition the validity of a regulation upon the subsequent disapproval by both of its houses by concurrent resolution, it could condition the same upon disapproval by a committee, or a single legislator. Using the theory, propounded by the Amici, that a veto is merely a condition there is no principled distinction between these cases. *It is therefore worth observing that most authorities have rejected the validity of laws conferring either affirmative or negatory legislative powers on individual legislators or legislative committees.* [Internal citations omitted.]

State Department of Revenue v. A.L.I.V.E. Voluntary, 606 P.2d 769 at 777 - 778. [Emphasis added.]

Based on the language of the *A.L.I.V.E.* decision and the discussion set out in part above, it is very possible that the court could view the disapproval process in amendment A.4 by a committee of the legislature, even though it is not a final annulment, as an invalid exercise of legislative authority. Conversely, it is also possible that the court might see the temporary halt of the process for an agency to adopt regulations until the legislature has had an opportunity to pass a bill addressing the proposed regulations as a permissible procedure to allow legislative action to address regulations before they become law. But rather than conferring discretionary authority to delay implementation of an otherwise validly adopted agency regulation on a standing committee of the legislature, a better approach to avoid a risk of constitutionally prohibited action may be to extend the timeframe for the effective date of a regulation from 30 days to 120 or even 180 days, except in specified circumstances. The *A.L.I.V.E.* opinion considers that to be a constitutionally acceptable exercise of legislative authority.

In light of the strong language in *A.L.I.V.E.* describing the process of passing a bill as a "constraint" on legislative power, a court would likely find temporary disapproval of a proposed regulation by the legislature without passing a bill in compliance with the legislature's article II powers a violation of this "constraint" and exceeding the legislature's constitutional authority.

FISCAL NOTE

STATE OF ALASKA
2016 LEGISLATIVE SESSION

Bill Version HB 229
 Fiscal Note Number _____
 () Publish Date _____
 Dept. Affected Various
 Appropriation Various
 Allocation Executive Branch
 OMB Component Number _____

Identifier (file name) HB 229 Ex Branch 3-16-16
 Title Repeal Admin. Reg. Review Committee
 Sponsor Rep. Chenault
 Requester House State Affairs Committee

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	FY17 Appropriation Requested	Included in Governor's FY17 Request	Out-Year Cost Estimates				
			FY18	FY19	FY20	FY21	FY22
OPERATING EXPENDITURES	FY17	FY17	FY18	FY19	FY20	FY21	FY22
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants, Benefits							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE (Thousands of Dollars)

1002	Federal Receipts							
1003	GF Match							
1004	GF							
1005	GF/Prgm (DGF)							
1007	I/A Rcpts (Other)							
1178	temp code (UGF)							
		0.0	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS

Full-time							
Part-time							
Temporary							

CHANGE IN REVENUES

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Estimated SUPPLEMENTAL (FY16) operating costs _____ (separate supplemental appropriation required)
 (discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY17) costs _____ (separate capital appropriation required)
 (discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
 If yes, by what date are the regulations to be adopted, amended, or repealed? _____ Discuss details in analysis section.

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial Version: The Committee does not anticipate fiscal impact to any agency and therefore submits this one page zero fiscal note for all executive branch agencies. This legislation repeals the Administrative Regulation Review Committee within the legislature and distributes the duties to the legislative committee of jurisdiction. Additionally, the companion fiscal note in Legislative Council reflects a \$52.3 savings as a result of this legislation.

Prepared by Representative Bob Lynn, Chair
 Division House State Affairs Committee
 Approved by _____
 Agency _____

Phone 907-465-4931
 Date/Time 3:30pm
 Date 3/16/2016

Additional Documents *for*
HB 229

- New Amendment A.4 (Rep Keller) _____

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Keller Calls New State HSS Regs a 'Hidden Gun Grab'

Wes Keller Info



HOUSE DISTRICT 10
 TOOK OFFICE: 2007
 CAPITOL ROOM 403
 JUNEAU: 465-2186
 MAT-SU: 373-1842

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Wednesday, February 24th, 2016 @ 12:37PM
 Contact: [Will Vandergriff](#), 465-5284

Wednesday, February 24, 2016, Juneau, Alaska – Representative Wes Keller, R-Wasilla, spoke before the House today on proposed regulations being considered by the Alaska Department of Health and Social Services that, according to Keller, “certainly appear to be a form of gun control.” Regulations under consideration would forbid any home receiving funds for assisted living from having firearms or ammunition on the premises.

Assisted living homes with six or more residents are currently restricted from having firearms on premise but tend to be more of an institutional setting. The new regulations address homes that are private residences and may only care for one or two individuals.

“Small assisted living homes are a ‘mom and pop’ type operation giving the resident special care and assuring their needs are met,” Keller said. “In some cases caregivers are simply going to ask the individuals to leave because the regulation prevents them from protecting their homes.

“Clearly we have bureaucrats writing laws through the regulation process that are unconstitutional,” Keller said. “This language is buried in 58 pages of new HSS regulatory proposals. When you take away a person’s rights in little bites, no one notices until everyone’s rights are gone.

“The public has until the close of business Monday to comment to the Department of Health and Social Services at karen.benson@alaska.gov on this assault on the Second Amendment,” Keller said.

Regulation extended thru april or sometime in april.

Regulation Review Committee if repealed leaves all Gov & Regulations

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Categories: [Rep. Wes Keller](#)

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Contact

House Majority Press Office
State Capitol Room 116
Juneau, AK 99801-1182

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State Capitol Room 208
Juneau, AK 99801-1182

Phone: (907) 465-5284
Email: press@housemajority.org

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AMENDMENT

OFFERED IN THE HOUSE
TO: HB 229

BY REPRESENTATIVE KELLER

1 Page 1, line 1, following "**legislature**";:

2 Insert "**providing for legislative review, amendment, approval, annulment, and**
3 **delay of proposed agency regulations**;"

4
5 Page 1, lines 4 - 6:

6 Delete all material.

7
8 Page 1, line 7:

9 Delete "**Sec. 2**"

10 Insert "**Section 1**"

11

12 Renumber the following bill sections accordingly.

13

14 Page 2, lines 1 - 8:

15 Delete all material and insert:

16 **"* Sec. 2.** AS 24.05.182(a) is amended to read:

17 (a) A standing committee of the legislature furnished notice of a proposed
18 action under AS 44.62.190 or 44.62.320(d) shall, consistent with the committee's
19 jurisdiction as provided in the uniform rules of the legislature, review the
20 proposed regulation, amendment of a regulation, or repeal of a regulation before the
21 date the regulation is scheduled by the department or agency to be adopted, amended,
22 or repealed.

23 *** Sec. 3.** AS 24.05.182(d) is amended to read:

1 (d) A standing committee that receives a copy of a proposed regulation,
 2 amendment, or order of repeal under AS 44.62.320(d) shall, within 35 days after
 3 receipt of the proposed regulation, amendment, or order of repeal, return the
 4 regulation, amendment, or order of repeal for consideration of a legislative
 5 amendment or approve or delay the effective date of the proposed regulation,
 6 amendment, or order of repeal. If the standing committee does not take action
 7 within 35 days after receipt of the proposed regulation, amendment, or order of
 8 repeal, the proposed regulation, amendment, or order of repeal shall be
 9 considered approved. If a standing committee determines that a regulation,
 10 amendment to a regulation, or repeal of a regulation does not properly implement
 11 legislative intent and delays the effective date or returns the proposed regulation,
 12 amendment, or order of repeal to the department or agency for consideration of
 13 a legislative amendment, the standing committee's findings shall, within 35 days
 14 after receipt of the proposed regulation, amendment, or order of repeal, be
 15 transmitted to the

16 (1) department or agency;

17 (2) regulations attorney at the Department of Law; and

18 (3) senate secretary and the chief clerk of the house of
 19 representatives [ADMINISTRATIVE REGULATION REVIEW COMMITTEE].

20 * **Sec. 4.** AS 24.05.182 is amended by adding new subsections to read:

21 (e) A proposed regulation, amendment, or order of repeal that is delayed under
 22 this section or that is returned to the department or agency with a proposed
 23 amendment, other than an emergency regulation adopted under AS 44.62.250, shall be
 24 suspended until the adjournment of the next regular legislative session following the
 25 date of the committee's decision to delay the effective date of the proposed regulation,
 26 amendment, or order of repeal. The notice of delay under this section expires upon
 27 adjournment of the regular legislative session during which the decision to delay was
 28 made or, if the legislature is not in regular session, the next regular legislative session
 29 following the date of the decision to delay, unless the legislature enacts a law that
 30 annuls the proposed regulation, amendment, or order of repeal.

31 (f) If the standing committee that is reviewing a proposed regulation,

1 amendment, or order of repeal under this section delays the effective date of the
2 regulation, amendment, or order of repeal or proposes an amendment to the regulation,
3 amendment, or order of repeal, the department or agency that proposed the regulation,
4 amendment, or order of repeal may request leave of the standing committee to
5 withdraw or amend the proposed regulation, amendment, or order of repeal.

6 (g) In determining whether to approve, delay, or amend a proposed regulation,
7 amendment, or order of repeal under this section, the standing committee shall
8 consider

9 (1) whether the absence of a regulation would significantly harm or
10 endanger public health, safety, or welfare;

11 (2) whether a less restrictive regulation would address the regulatory
12 concerns while adequately protecting the public;

13 (3) whether the regulation would directly or indirectly increase the cost
14 of any goods or services;

15 (4) whether the increased cost of implementing and enforcing the
16 regulation would be more detrimental than the purpose of the regulation;

17 (5) whether the regulation was designed solely for the purpose of the
18 protection of the public and would have the primary effect of protecting the public;
19 and

20 (6) any other factors the committee considers to be appropriate."
21

22 Renumber the following bill sections accordingly.

23
24 Page 3, lines 4 - 7:

25 Delete all material.
26

27 Renumber the following bill sections accordingly.

28
29 Page 3, line 24, through page 4, line 19:

30 Delete all material.
31

1 Renumber the following bill sections accordingly.

2

3 Page 5, following line 5:

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Insert a new bill section to read:

5

"* **Sec. 10.** AS 44.62.180 is amended to read:

6

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

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(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;

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(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;

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(3) it is an emergency regulation or order of repeal adopted under AS 44.62.250, 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;

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(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;

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(5) a standing committee of the legislature delays the effective date of the regulation, amendment, or order of repeal, or returns it to the department or agency with a proposed amendment, under AS 24.05.182, in which case, if the proposed regulation, amendment, or order of repeal takes effect, it takes effect on the later of

24

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(A) adoption by the agency of an amendment proposed by a standing committee of the legislature; or

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(B) one day following adjournment of both houses of the legislature as provided under AS 44.62.325."

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Renumber the following bill sections accordingly.

Page 5, line 31, following "legislators":

Insert "**and to the chair of the rules committee of each house**"

Page 6, line 4, through page 9, line 9:

Delete all material and insert:

"* **Sec. 12.** AS 44.62.190(b) is amended to read:

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute. **In the notice furnished to the legislature under AS 44.62.190(a)(6), new language added to an existing regulation shall be underlined, and language deleted from an existing regulation shall be bracketed and capitalized.**

* **Sec. 13.** AS 44.62.195 is amended to read:

Sec. 44.62.195. Fiscal notes on regulations. If the adoption, amendment, or repeal of a regulation **has an economic effect on a department, agency, or person, the proposed regulation, amendment, or order of repeal must include a fiscal note prepared by the department or agency in accordance with this section** [WOULD REQUIRE INCREASED APPROPRIATIONS BY THE STATE, THE DEPARTMENT OR AGENCY AFFECTED SHALL PREPARE AN ESTIMATE OF THE APPROPRIATION INCREASE FOR THE FISCAL YEAR FOLLOWING ADOPTION, AMENDMENT, OR REPEAL OF THE REGULATION AND FOR AT LEAST TWO SUCCEEDING FISCAL YEARS].

* **Sec. 14.** AS 44.62.195 is amended by adding a new subsection to read:

(b) A fiscal note required under this section must include, where applicable,

(1) a determination of the present need for the regulation and the expected need for the regulation;

1 (2) a determination of the costs and benefits of the regulation and an
 2 explanation by the department or agency of whether the regulation is the most cost-
 3 effective, efficient, and feasible means of allocating public and private resources to
 4 achieve the stated purpose;

5 (3) the effect of the regulation on market competition;

6 (4) the effect of the regulation on the cost of living, employment, and
 7 doing business in the geographical regions where the regulation would have the
 8 greatest effect;

9 (5) the source of revenue to implement and enforce the regulation;

10 (6) a summary of the short-term and long-term economic effects of the
 11 regulation, including an analysis of the persons or groups that would bear the costs of
 12 the regulation and the persons or groups that would benefit directly or indirectly from
 13 the regulation;

14 (7) the difficulties the department or agency encountered, if any, in
 15 estimating the persons or groups that would benefit from the regulation or bear the
 16 costs of the regulation;

17 (8) the effect that adopting or failing to adopt the regulation would
 18 have on the environment and public health.

19 * **Sec. 15.** AS 44.62.245(c) is amended to read:

20 (c) The state agency shall also send the notice described in (b)(2) of this
 21 section to

22 (1) a person who has placed the person's name on a distribution list
 23 kept by the agency that lists persons who want to receive the notice; the agency may
 24 allow a person to request that distribution of the notice be by electronic means and
 25 shall honor that request if appropriate means are available;

26 (2) the regulations attorney in the Department of Law; and

27 (3) **the person who chairs the rules committee of each house of the**
 28 **legislature** [THE MEMBERS OF THE ADMINISTRATIVE REGULATION
 29 REVIEW COMMITTEE].

30 * **Sec. 16.** AS 44.62.320(b) is amended to read:

31 (b) At the same time a regulation is filed by the lieutenant governor, the

1 lieutenant governor shall submit the regulation to the person who chairs the rules
2 committee of each house of the legislature [CHAIRMAN AND ALL MEMBERS
3 OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE FOR
4 REVIEW UNDER AS 24.20.400 - 24.20.460] together with the fiscal information
5 required to be prepared under AS 44.62.195.

6 * **Sec. 17.** AS 44.62.320(c) is amended to read:

7 (c) At the same time as a regulation is submitted to the governor under
8 AS 44.62.040(c), the state agency shall submit the regulation to the person who
9 chairs the rules committee of each house of the legislature [CHAIR AND ALL
10 MEMBERS OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE
11 FOR REVIEW UNDER AS 24.20.400 - 24.20.460] together with the fiscal
12 information required to be prepared under AS 44.62.195.

13 * **Sec. 18.** AS 44.62.320(d) is amended to read:

14 (d) Within 10 days after receiving a regulation under (b) or (c) of this section
15 or under AS 44.62.190(a)(6), the person who chairs the rules committee of each
16 house of the legislature shall provide copies of the regulation to the standing
17 committee with jurisdiction over the subject matter of the regulation as provided
18 in the uniform rules of the legislature for review under AS 24.05.182 [, THE
19 CHAIR OF THE ADMINISTRATIVE REGULATION REVIEW COMMITTEE
20 MAY SUBMIT TO THE GOVERNOR, BY LEGISLATIVE MEMORANDUM OR
21 LETTER, COMMENTS ON THE REGULATION].

22 * **Sec. 19.** AS 44.62 is amended by adding a new section to article 7 to read:

23 **Sec. 44.62.325. Legislative annulment of regulations.** (a) The legislature
24 may, in the regular legislative session during which a decision to delay the effective
25 date of a proposed regulation, amendment, or order of repeal is made or, if the
26 legislature is not in regular session, the next regular session following the decision to
27 delay the effective date of a proposed regulation, amendment, or order of repeal by a
28 standing committee under AS 24.05.182, annul the proposed regulation, amendment,
29 or order of repeal by law.

30 (b) If the legislature, following adjournment of the regular legislative session
31 during which a decision to delay the effective date of a proposed regulation,

1 amendment, or order of repeal is made or, if the legislature is not in regular session,
2 the next regular session following a decision to delay the effective date of a proposed
3 regulation, amendment, or order of repeal by a standing committee under
4 AS 24.05.182, has not enacted a law that annuls the proposed regulation, amendment,
5 or order of repeal, the proposed regulation, amendment, or order of repeal takes effect
6 one day after adjournment of both houses of the legislature."
7

8 Renumber the following bill sections accordingly.
9

10 Page 9, line 13:

11 Delete "AS 44.62.040 - 44.62.319 [AS 44.62.040 - 44.62.320]"

12 Insert "(AS 44.62.040 - 44.62.320)"
13

14 Page 9, line 20:

15 Delete "AS 24.05.182(b), 24.05.182(c), 24.05.182(d);"
16

17 Page 9, line 22:

18 Delete "AS 40.25.120(a)(11); and AS 44.62.320"

19 Insert "and AS 40.25.120(a)(11)"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KELLER

TO: HB 229

1 Page 1, line 1:

2 Delete the second occurrence of "and"

3

4 Page 1, line 2, following "Committee":

5 Insert "; relating to the duration, review, and extension of regulations; and
6 providing for an effective date"

7

8 Page 9, following line 9:

9 Insert a new bill section to read:

10 "* **Sec. 22.** AS 44.66 is amended by adding a new section to read:

11 **Article 2. Duration, Review, and Extension of Regulations.**

12 **Sec. 44.66.100. Submission of regulations.** According to the schedule
13 established by AS 44.66.110, a state agency shall submit to the legislature for review
14 and possible annulment or repeal by the legislature the regulations that have been
15 adopted by the state agency, including regulations adopted by a state agency located in
16 the state agency or a predecessor of the state agency, and that are still in effect at the
17 time of the submission.

18 **Sec. 44.66.110. Schedule for submission of regulations.** A state agency shall
19 submit regulations under AS 44.66.100 according to the following schedule:

20 (1) if the state agency adopted the regulations on or after January 3,
21 1959, and before January 1, 1999, the state agency shall submit the regulations within
22 the first 10 days after the convening of the Thirty-First Alaska State Legislature;

23 (2) if the state agency adopted the regulations on or after January 1,

1 1999, and before July 1, 2009, the state agency shall submit the regulations within the
2 first 10 days after the convening of the Thirty-Second Alaska State Legislature;

3 (3) if the state agency adopted the regulations on or after July 1, 2009,
4 the state agency shall submit the regulations within the first 10 days after the
5 convening of the Thirty-Third Alaska State Legislature.

6 **Sec. 44.66.120. Duration of regulations.** (a) Unless the regulation provides
7 for earlier termination, a regulation adopted on or after January 1, 2017, terminates
8 five years after the date of adoption.

9 (b) Unless the regulation provides for earlier termination, a regulation adopted
10 on or after January 1, 2017, must contain a statement that the regulation terminates
11 five years after the date of its adoption unless the legislature extends the regulation
12 under this section.

13 (c) The legislature may extend a regulation scheduled for termination under
14 (a) of this section by law. Each extension may not exceed five years.

15 **Sec. 44.66.190. Definitions.** In AS 44.66.100 - 44.66.190,

16 (1) "adopted" means filed by the lieutenant governor under
17 AS 44.62.080(a);

18 (2) "regulation" has the meaning given in AS 44.62.640, but does not
19 include an order of repeal; in this paragraph, "order of repeal" has the meaning given
20 in AS 44.62.640;

21 (3) "state agency" means a department, institution, board, commission,
22 division, authority, public corporation, or other administrative unit of the executive
23 branch of state government."
24

25 Renumber the following bill sections accordingly.

26
27 Page 9, following line 22:

28 Insert a new bill section to read:

29 **** Sec. 25.** Section 22 of this Act takes effect January 1, 2017."

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 3, 2016

SUBJECT: Amendment to HB 229; (Work Order No. 29-LS1104\A.1)

TO: Representative Wes Keller
Attn: Jim Pound

FROM: Doug Gardner
Director

Mr. Pound requested an amendment based on sec. 6 of work order no. 29-LS0125\A, to HB 229. Please find the amendment attached. We noticed several issues that to us, warranted a fix. They are:

- Page 1, line 21 of the amendment -- change of date from July 1, 1999, in proposed AS 44.66.110(1), to January 1, 1999, to avoid overlap with proposed AS 44.66.110(2);
- page 2, lines 7 and 10 -- change of date from January 1, 2016, to January 1, 2017, to reflect the same timeline drafted in work order no. 29-LS0125\A when drafted in 2014;
- page 2, line 15 -- "in this chapter" was narrowed for purposes of the definitions in proposed AS 44.66.190 to AS 44.66.100 - 44.66.190.

Please confirm that these changes are o.k. We were handling this project as a rush and made the changes, which we recommend, on Wednesday night so that you could have the amendment for 8:00 on Thursday morning.

DDG:lem
16-082.lem

Attachment

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

SPONSOR STATEMENT

HOUSE BILL 229: "An Act relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee."

The purpose of House Bill 229 is to repeal the statutes pertaining to the Administrative Regulation Review Committee. According to the analysis provided by Legislative Research, included in your packets, the ARRC has not overturned any regulations as a result of these committee hearings. Although AS 24.20.445 provides that the committee can suspend regulations for a "certain time period," the Alaska Supreme Court found in a 1980 case, that the Legislature has no implied power to veto agency regulations by informal legislative action and such actions would violate Article II of the state Constitution. The actions available to the ARRC are to introduce legislation to supersede or nullify regulations. However, Legislative Research was not able to find any effort to do so from 2003 to the present.

House Bill 229 repeals all references to the ARRC throughout the statutes. The sectional analysis references the statutes where the ARRC is repealed.

A uniform rule change, House Concurrent Resolution 15, is being proposed that allows the jurisdiction of a standing committee to oversee proposed or adopted regulations to replace regulation oversight that are currently under the jurisdiction of ARRC.

It is anticipated House Bill 229 will result in a savings of \$50,000 for the next fiscal year.

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

SECTIONAL ANALYSIS

HOUSE BILL 229: "An Act relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee."

Section 1: Amends AS 16.43.120(b), Application of Administrative Procedures Act. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 2: Amends AS 18.56.088(a), (Housing, Public Buildings, Urban Renewal, and Regional Housing Authorities), Administrative procedure; regulations. Deletes language requiring submission of regulations to the chair of the Administrative Regulation Review Committee (ARRC).

Section 3: Amends AS 24.05.182(a), Review of administrative regulations by standing committees of the legislature. Allows a standing committee of jurisdiction, consistent with the Legislature's Uniform Rules, review a proposed or adopted regulation, amendment of a regulation of repeal of a regulation. Repeals language stating before the date the regulation is scheduled by a department or agency to be adopted, amended or repealed.

Section 4: Amends AS 24.06.060(b), Introduction of bills. Conforming revision deleting references to the ARRC.

Section 5: Amends AS 26.27.110(b), (Alaska Aerospace Corporation), Regulations. Conforming revision deleting references to the ARRC.

Section 6: Amends AS 30.17.120, (Adak Reuse Authority), Administrative procedure. Conforming revision deleting references to the ARRC.

Section 7: Amends AS 31.25.130(a), (Alaska Gasline Development Corporation), Administrative procedure; regulation. Conforming revision deleting references to the ARRC.

Section 8: Amends AS 37.13.206(g), (Alaska Permanent Fund Corporation), Regulations. Conforming revision deleting references to the ARRC.

Section 9: Amends AS 38.35.190(a), (Public Land, right of Way Leasing Act), Application of the Administrative Procedure Act. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 10: Amends AS 42.40.920(b), (Alaska Railroad Corporation), Application of existing laws. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 11: Amends AS 44.62.020, (Administrative Procedure Act), Authority to adopt, administer, or enforce regulations. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 12: Amends 44.62.040(c), (Administrative Procedure Act), Submitting regulations. Deletes language referencing the ARRC.

Section 13: Amends 44.62.190(a), (Administrative Procedure Act), Notice of proposed action. Deletes a portion of subsection 6 referencing furnishing the Legislative Affairs Agency and deletes subsection (7) referencing furnishing electronic copies required under AS 24.20.105(c), Review of proposed regulations.

Section 14: Amends AS 44.62.245(c), (Administrative Procedure Act), Material incorporated by reference. Deletes language referencing the ARRC.

Section 15: Amends AS 44.62.290(a), (Administrative Procedure Act), State policy. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 16: Amends AS 44.62.300(a), (Administrative Procedure Act), Judicial review of validity. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 17: Amends AS 44.62.240(a), (Administrative Procedure Act), Limitation on retroactive action. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 18: Amends AS 44.62.710(a), (Administrative Procedure Act), Purpose and applicability of AS 44.62.710 – 44.62.800. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 19: Amends 44.62.720(a), (Administrative Procedure Act), Determination of need for negotiated regulation making committee. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 20: Amends AS 44.62.740(c), (Administrative Procedure Act), Establishment, time line, support, and termination of committee. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 21: Amends AS 44.62.790, (Administrative Procedure Act), Relationship to other requirements. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 22: Amends AS 44.88.085(a), (Alaska Industrial Development and Export Authority), Administrative procedure. Conforming revision that deletes AS 44.62.320, Submittal for legislative review.

Section 23: Repealed statutes.

AS 24.05.182(b), (Legislature and Lobbying), Review of administrative regulations by standing committees of the legislature.

AS 24.05.182(c), (Legislature and Lobbying), Review of administrative regulations by standing committees of the legislature.

AS 24.05.182(d), (Legislature and Lobbying), Review of administrative regulations by standing committees of the legislature.

AS 24.08.035(f), (Legislature and Lobbying, Enactments), Fiscal notes on bills.

AS 24.20.105, (Legislature and Lobbying, Agencies and Permanent Committees), Review of proposed regulations.

AS 24.20.400, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Administrative Regulation Review Committee established.

AS 24.20.410, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Membership.

AS 24.20.420, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Term of membership.

AS 24.20.430, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Vacancies.

AS 24.20.440, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Meetings.

AS 24.20.445, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Power of suspension.

AS 24.20.450, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Staff.

AS 24.20.460, (Legislature and Lobbying, Agencies and Permanent Committees, (Legislature and Lobbying, Agencies and Permanent Committees, Administrative Regulation Review Committee), Powers.

AS 40.25.120(a)(11), (Public Records and Recorders, Public Record Disclosures), Public records, exceptions; certified copies.

AS 44.62.320, (State Government, Administrative Procedure Act), Submittal for legislative review.

LEGISLATIVE RESEARCH SERVICES

29th Alaska Legislature
LRS Report 16.103
December 10, 2015



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Administrative Regulation Review

Tim Spengler, Legislative Analyst

You asked how many Administrative Regulation Review Committee meetings have been held in the past ten years. Additionally, you wished to know if any regulations were overturned as a result of these meetings.

The Administrative Regulation Review Committee (ARRC) is made up of six members, three from the senate and three from the house. From 2003 until the present—the 23rd Legislature through the first session of the 29th Legislature—the AARC has met 30 times.¹ It is notable that 15 of these meetings occurred during the 28th legislature alone. In no other legislature did the committee meet more than five times. We disaggregate these data in the table below.

No regulations were overturned as a result of these ARRC meetings. While AS 24.20.445 provides that the committee can suspend regulations for a certain time period, the Alaska Supreme Court found in the 1980 case *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, that the legislature has no implied general power to veto agency regulations by informal legislative action, and that such actions would violate article II of the state constitution.² Pursuant to AS 24.20.460, the ARRC can, among other things, introduce bills that would enact a statute to supersede or nullify a regulation; however, in reviewing the legislature's Bill Action and Status Inquiry System (BASIS), we found no such efforts put forward by the ARRC from 2003 to the present.³

Administrative Regulation Review Committee Meetings, 2003-2015		
Legislature	Number of Meetings	Committee Chairs
23rd (2003-2004)	2	Senator Therriault
24th (2005-2006)	5	Representative Anderson
25th (2007-2008)	2	Senator McGuire
26th (2009-2010)	4	Representative Keller
27th (2011-2012)	2	Senator French
28th (2013-2014)	15	Representative Reinbold
29th (2015)	0	Senator McGuire
Total	30	

Source: Bill Action and Status Inquiry System (BASIS), Alaska State Legislature.

We hope this is helpful. If you have questions or need additional information, please let us know.

¹ Information from the Bill Action and Status Inquiry System (BASIS), Alaska Legislature.

² More information on this case is available at <http://law.justia.com/cases/alaska/supreme-court/1980/3670-1.html>.

³ It is possible that individual committee members may have put forth measures related to regulations.

KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Martinez v. Department of Industry, Labor and Human Relations, Wis., January 15, 1992

606 P.2d 769
Supreme Court of Alaska.

STATE of Alaska and Department of Revenue, Appellants,
v.
A.L.I.V.E. VOLUNTARY, Appellee.

No. 3670.
|
Feb. 19, 1980.

Unincorporated association, which was political action committee for unions, brought suit based on allegation that Department of Revenue's denial of permit allowing association to operate lotteries was wrongful for certain reasons including fact that such denial was based on continuing enforcement of a regulation despite its nullification by legislature. The Superior Court, Third Judicial District, Peter J. Kalamarides, J., granted association partial summary judgment, and State and Department of Revenue appealed. The Supreme Court, Matthews, J., held that statute providing that legislature, by concurrent resolution adopted by vote of both houses, could annul a regulation of an agency or department violated state constitutional provisions defining the mechanics of legislation.

Reversed and remanded with directions.

Boochever, C. J., dissented and filed opinion in which Connor, J., joined.

West Headnotes (10)

- [1] **Statutes**
☞ Purpose of single-subject rule
Statutes
☞ Purpose of rule that title expresses subject of statute

Constitutional requirements that every bill be confined to one subject and that there be a descriptive title are intended to

prevent inclusion of incongruous and unrelated matters in same bill and to guard against inadvertence, stealth and fraud in legislation. Const. art. 2, § 13.

Cases that cite this headnote

- [2] **Statutes**
☞ Reading and consideration of bills
Statutes
☞ Mode of voting, and entry of yeas and nays

Purpose of state constitutional provision requiring three readings of a bill on three separate days, requiring that vote of each legislator on final passage of a bill be recorded and requiring that no bill pass without an affirmative vote of the majority of the membership of each house is to ensure deliberation prior to passage, to ensure that requisite majority of each house affirmatively votes to enact a bill into law and to provide a public record of the vote cast by each legislator. Const. art. 2, § 14.

1 Cases that cite this headnote

- [3] **Statutes**
☞ Necessity for approval and authority to veto

Purpose of state constitutional provisions to effect that no bill shall become law unless governor has opportunity to veto it is to preserve integrity of executive branch of government, and thus maintain equilibrium of governmental powers, and to act as a check on hasty and ill-considered legislation. Const. art. 2, §§ 15, 17.

6 Cases that cite this headnote

[4]

Statutes

⚡ Passage, approval, or enactment; time computed therefrom

Purpose of state constitutional provision that laws are not to become effective, unless a two-thirds vote of membership of each house provides otherwise, until 90 days after they are enacted is to provide fair opportunity to those people affected by the legislation to learn of it. Const. art. 2, § 18.

1 Cases that cite this headnote

[5]

States

⚡ Orders and resolutions

Statute providing that legislature, by concurrent resolution adopted by vote of both houses, could annul a regulation of an agency or department violated state constitutional provisions defining the mechanics of legislation. Const. art. 2, §§ 1 et seq., 5, 13-18; art. 3, § 23; art. 10, § 12; AS 44.62.320(a).

5 Cases that cite this headnote

[6]

States

⚡ Orders and resolutions

When legislature wishes to act in an advisory capacity it may act by resolution, but if it wishes to take action having a binding effect on those outside the legislature, it may do so only by following the enactment procedure set forth in State Constitution. Const. art. 2, § 1 et seq.

4 Cases that cite this headnote

[7]

States

⚡ Orders and resolutions

Legislature has no implied general power

to veto agency regulations by informal legislative actions. Const. art. 3, § 23; art. 10, § 12.

10 Cases that cite this headnote

[8]

Administrative Law and Procedure

⚡ Power to Make

Power granted by state constitutional provisions to effect that, unless they are disapproved by legislature within 60 days, changes in the law by executive order shall become effective at a date thereafter to be designated by governor and that recommendations made by a state local boundary commission become effective 45 days after presentation to the legislature unless vetoed is not rule-making power, but, rather, power to change statutes, and, thus, expression of such power in Constitution does not carry any implication that general administrative rule making is meant to be forbidden. Const. art. 3, § 23; art. 10, § 12.

2 Cases that cite this headnote

[9]

Constitutional Law

⚡ Delegation of Powers

Though legislature can delegate power to make laws conditionally, the condition must be lawful and may not contain a grant of power to any branch of government to function in a manner prohibited by Constitution; fact that legislature can delegate legislative powers to others, who are not bound by constitutional provisions defining the mechanics of legislation, does not mean that legislature can delegate the same power to itself and, in the process, escape from such constitutional constraints under which it must operate. Const. art. 2, § 1 et seq.

3 Cases that cite this headnote

^[10] **Constitutional Law**
Encroachment on Executive

Though power to void agency regulations can be exercised by either legislature or agency, if legislature exercises such power it must do so while acting as a legislature; it may not grant itself the power to act as an agency. Const. art. 2, §§ 1 et seq., 5; art. 3, § 26.

Cases that cite this headnote

Attorneys and Law Firms

*770 Joseph K. Donohue, Asst. Atty. Gen., Avrum M. Gross, Atty. Gen., Juneau, for appellants.

Joe P. Josephson, Josephson & Trickey, Inc., Anchorage, for appellee.

Stephen M. Ellis, Delaney, Wiles, Moore, Hayes & Reitman, Inc., Anchorage, for amici curiae Alaska Legislative Council and Administrative Regulation Review Committee.

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, BURKE and MATTHEWS, JJ.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 229
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB229-LAW-CIV-01-29-16
Title: REPEAL ADMIN. REG. REVIEW COMMITTEE
Sponsor: CHENAULT
Requester: House State Affairs

Department: Department of Law
Appropriation: Civil Division
Allocation: Legislation/Regulations
OMB Component Number: 2209

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time							
Part-time							
Temporary							

Change in Revenues							
---------------------------	--	--	--	--	--	--	--

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Initial version, not applicable.

Prepared By: Valerie Rose, Budget Analyst	Phone: (907)465-3674
Division: Administrative Services Division	Date: 01/29/2016 03:23 PM
Approved By: Craig W. Richards, Attorney General	Date: 01/29/16
Agency: Department of Law	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB229

Analysis

HB 229 would repeal the statutes that establish and reference the Administrative Regulation Review Committee, a permanent interim committee tasked to review administrative regulations. As part of the repeal, statutes in AS 24.05, 24.20 and AS 44.62 (Administrative Procedure Act) would also be amended or repealed. The Department of Law is tasked with review of regulations under the Administrative Procedure Act before regulations are submitted to the lieutenant governor for filing.

This bill would repeal existing provisions that require notice of proposed or adopted regulations be furnished to the Administrative Regulation Review Committee as well as provisions in AS 24.20 related to review of proposed regulations by the Legislative Affairs Agency.

HB 229 would amend AS 24.05.182 so that a standing committee of the legislature with jurisdiction over the subject matter of the regulation would be authorized to review proposed or adopted regulations. The bill would amend the Administrative Procedure Act to remove references to the Administrative Regulation Review Committee, but the bill does not include substantive changes to the Administrative Procedure Act. Similar references would be removed from statutes for agencies with regulations not subject to the Administrative Procedure Act, without substantively changing the regulations procedures that apply to those agencies.

Under HB 229 notice of a proposed regulatory action would still be furnished to all incumbent legislators, published, and other notice given as required under AS 44.62.190(a). Regulations would still be submitted to the governor for review before they are submitted to the lieutenant governor's office for filing.

The Department of Law expects no fiscal impact to the department should this bill become law.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 229
 Fiscal Note Number: _____
 () Publish Date: _____

Identifier: HB229-LEG-COU-01-29-2016
 Title: REPEAL ADMIN. REG. REVIEW COMMITTEE
 Sponsor: CHENAULT
 Requester: HOUSE STATE AFFAIRS

Department: Alaska Legislature
 Appropriation: Legislative Council
 Allocation: Council and Subcommittees
 OMB Component Number: 783

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)

Fund Source (Operating Only)

1004 Gen Fund	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)
Total	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)	(52.3)

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?
 If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

N/A INITIAL VERSION

Prepared By: <u>Jessica Geary, Finance Manager</u>	Phone: <u>(907)465-6626</u>
Division: <u>Legislative Affairs Agency</u>	Date: <u>02/01/2016 09:20 AM</u>
Approved By: <u>Pam Varni, Executive Director</u>	Date: <u>02/01/16</u>
Agency: <u>Legislative Affairs Agency</u>	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. HB 229

Analysis

HB 229 repeals the Administrative Regulation Review Committee, which is a permanent interim committee of the Alaska State Legislature. In the FY16 budget under the Legislative Council RDU and the Council & Subcommittees component, we requested 128.3. During the 29th/1st session conference committee, the budget was reduced from 128.3 to 55.0 for FY16.

The FY17 Governor's figures remove the 2.5% COLA increase. As such, we currently have 52.3 in the FY17 budget for the Administrative Regulation Review Committee.

If HB 229 passes, it will result in a net savings of 52.3 in FY17 and FY18-FY22.

**Alaska Statutes
Pertaining to HB 229**

Alaska State Legislature

State Capitol, Room 208
Juneau, Alaska 99801-1182
Phone: 907-465-3779
Fax: 907-465-2833
Toll Free: 800-469-3779

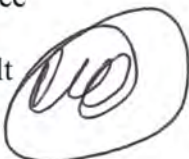


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REPRESENTATIVE MIKE CHENAULT SPEAKER OF THE ALASKA STATE HOUSE

MEMORANDUM

TO: Representative Bob Lynn, Chair
House State Affairs Committee

FROM: Representative Mike Chenault
Speaker, Alaska State House 

DATE: January 21, 2016

RE: Request for Hearing, House Bill 229

Please consider this memorandum as a request to hear House Bill 229: An Act relating to regulation notice and review by the legislature; and relating to the Administrative Regulation Review Committee.

Back up materials will be forwarded to your committee aide.

Thank you for your consideration of my request. Call either myself or Tom Wright of my staff in the event either of us can provide further information.

Sec. 16.43.120. Application of Administrative Procedure Act.

(a) The administrative adjudication procedures of AS 44.62 (Administrative Procedure Act) do not apply to adjudicatory proceedings of the commission except that final administrative determinations by the commission are subject to judicial review as provided in AS 44.62.560 - 44.62.570.

(b) AS 44.62.010 - 44.62.320 and 44.62.640 apply to regulations adopted by the commission.

Sec. 18.56.088. Administrative procedure; regulations.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), AS 44.62 (Administrative Procedure Act) does not apply to this chapter. The corporation shall make available to members of the public copies of the regulations adopted under (b) - (e) of this section. Within 45 days after adoption, the chairman of the board shall submit a regulation adopted under (b) - (e) of this section to the chairman of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The board may adopt regulations by motion or by resolution or in any other manner permitted by its bylaws.

(c) The board may adopt regulations to carry out the purposes of this chapter, and shall adopt regulations necessary for the following purposes:

(1) determination of borrower eligibility including, but not limited to, income limitations and the determination of remote, underdeveloped, or blighted areas of the state;

(2) loan guidelines and terms including but not limited to maximum loan amounts and required loan-to-value ratios, but excluding mortgage loan interest rates;

(3) characteristics of housing eligible for loans or purchase of loans, including compliance with the requirements of AS 18.56.300;

(4) the qualifications of loan originators and servicers and the method of allocating amounts available for the purchase of loans;

(5) establishment of a procedure, including a fee schedule, for the commitment for one year or less of money for the purchase of an individual mortgage loan at a specific interest rate; and

(6) establishment of the program of housing assistance authorized by AS 18.56.090(b) including program regulations that, at minimum,

(A) establish priorities and criteria for providing money and other forms of authorized assistance in response to housing assistance proposals;

(B) define the forms of housing assistance authorized under AS 18.56.090(b);

(C) set out procedures to evaluate housing assistance proposals;

(D) set out procedures to approve the award of housing assistance; and

(E) prescribe methods of monitoring the use of money paid out under AS 18.56.090(b) and the progress of activity under the approved housing assistance program.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation on a subject specified in (c)(1) - (4) of this section, the board shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the board or the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the proposed

subject of the regulation. On the date and at the time and place designated in the notice, the board shall give each interested person or an authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The board shall consider all relevant matter presented to it before adopting, amending, or repealing a regulation. At a hearing under this subsection, the board may continue or postpone the hearing to a time and place that it determines. A regulation that is adopted, or its amendment or repeal, may vary in content from the informative summary specified in this subsection if the subject matter of the regulation, or its amendment or repeal, 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 the board's action in order for them to determine whether their interests could be affected by the board's action on that subject.

(e) A regulation or order of repeal on a subject specified in (c) of this section may be adopted as an emergency regulation or order of repeal if the board makes a finding in its order of adoption or repeal, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the orderly operation of the corporation's loan and bonding programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation covering a subject specified in (c)(1) - (4) of this section; however, upon adoption of an emergency regulation, the board shall, within 10 days after adoption, give notice of the adoption in accordance with (d) of this section. An emergency regulation adopted under this subsection does not remain in effect more than 120 days unless the board complies with (d) of this section during the 120-day period.

(f) A regulation adopted under (b) - (e) of this section becomes effective immediately upon its adoption by the board, unless otherwise specifically provided by the order of adoption.

(g) The provisions of (b) - (e) of this section do not apply to regulations governing interest rates on the corporation's mortgage loan programs.

(h) The board shall adopt regulations in accordance with (a) - (f) of this section that establish a procedure by which a seller of mortgage loans may appeal a decision of the corporation not to purchase mortgage loans offered by the seller.

(i) The board may adopt regulations under (a) - (f) of this section that establish conditions and terms for mobile home loans that are not in accordance with the provisions of this chapter, including conditions and terms relating to owner-occupancy, the number of loans that may be made to a single borrower, and borrower eligibility requirements, if the board first determines that the regulations are necessary to ensure the continued security of the mobile home loan portfolio.

Sec. 24.05.182. Review of administrative regulations by standing committees of the legislature.

(a) A standing committee of the legislature furnished notice of a proposed action under AS 44.62.190 shall review the proposed regulation, amendment of a regulation, or repeal of a regulation before the date the regulation is scheduled by the department or agency to be adopted, amended, or repealed.

(b) A standing committee conducting a review of a regulation under (a) of this section shall determine whether the regulation properly implements legislative intent.

(c) A standing committee shall conduct preliminary reviews under this section while the legislature is in session and during the interim between legislative sessions.

(d) If a standing committee determines that a regulation, amendment to a regulation, or repeal of a regulation does not properly implement legislative intent, the standing committee's findings shall be transmitted to the Administrative Regulation Review Committee.

Sec. 24.08.035. Fiscal notes on bills.

(a) Before a bill or resolution, except an appropriation bill, is reported from the committee of first referral, there shall be attached to the bill a fiscal note containing an estimate of the amount of the appropriation increase or decrease that would result from enactment of the bill for the current fiscal year and five succeeding fiscal years or, if the bill has no fiscal impact, a statement to that effect shall be attached. The fiscal note or statement shall be prepared in conformity with the requirements of this section by the department or departments affected and may be reviewed by the office of management and budget. The fiscal note or statement shall be delivered to the committee requesting it within three days of the request. If the bill is presented by the governor for introduction in accordance with AS 24.08.060(b) and the uniform rules of the legislature, the fiscal note or statement shall be attached to the bill before the bill is introduced. An amendment or a substitute bill proposed by a committee of referral that changes the fiscal impact of a bill shall be explained in a revised fiscal note or statement attached to the bill.

(b) In addition to the fiscal note required by this section, the sponsor of a bill or resolution may prepare a fiscal note in conformity with the requirements of this section and submit it to the committee of first referral or the finance committee. A committee may prepare an additional fiscal note in conformity with the requirements of this section.

(c) A fiscal note for a bill or resolution must contain the following information:

- (1) the fiscal impact on existing programs;
- (2) the fiscal impact of new programs or activities;
- (3) a line item detail of the fiscal impact;
- (4) the source of funds expected to be utilized by general fund source, federal fund source, or other identified source;
- (5) the number of new positions that may be required, identified as full-time, part-time, or temporary;
- (6) an analysis of how the figures in the fiscal note were derived;
- (7) additional information necessary to explain the fiscal note;
- (8) a fiscal impact projection for the current fiscal year and for the succeeding five fiscal years; and

(9) formal information consisting of

- (A) the bill or resolution number,
- (B) the name of the prime sponsors,
- (C) the date the fiscal note was prepared,
- (D) the name of the committee requesting the fiscal note,
- (E) the name and phone number of the person who prepared the fiscal note, and
- (F) the budget request unit, program, or subprogram affected.

(d) The original of a fiscal note shall be submitted to the Division of Legislative Finance and copies shall be sent to the prime sponsor, the committee requesting the fiscal note, and the office of management and budget.

(e) [Repealed, Sec. 2 ch 64 SLA 1992].

(f) In addition to the other requirements of this section, if a bill directs an agency in the executive branch of state government to adopt, amend, or repeal a regulation or will result in an agency's adopting, amending, or repealing a regulation, the department affected shall include in the fiscal note for the bill a specific time by which the agency shall adopt, amend, or repeal the regulation. If the agency is not able to meet the deadline set in the fiscal note, the agency shall

- (1) set a new deadline; and
- (2) report to the Administrative Regulation Review Committee the new deadline and the reasons for being unable to meet the deadline set in the fiscal note.

(g) In (f) of this section, "agency" includes the Alaska Housing Finance Corporation, the Alaska Industrial Development and Export Authority, the Alaska Energy Authority, the Alaska Public

Offices Commission, and the Alaska Oil and Gas Conservation Commission, but does not include other boards or commissions.

Sec. 24.08.060. Introduction of bills.

(a) A member of the legislature or a committee chairman, with the concurrence of a majority of the active members of the committee and on behalf of the committee, may introduce a bill or resolution. Bills and resolutions shall be prepared and introduced in the manner and form prescribed in the uniform rules and the legislative style manual.

(b) Bills introduced by the legislative council shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Council"; bills introduced by the Administrative Regulation Review Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Administrative Regulation Review Committee"; bills introduced by the Legislative Budget and Audit Committee shall be delivered with a letter of explanation to the rules committee of either house and bear the inscription "Rules Committee by Request of the Legislative Budget and Audit Committee." Bills presented by the governor shall be delivered with a letter to the rules committee of either house and bear the inscription "Rules Committee by Request of the Governor"; bills so presented and inscribed shall be received as bills carrying the approval of the governor as to policy and budget impact. The governor may submit a statement of purpose and effect with each bill and appear personally or through a representative before any committee considering legislation.

Sec. 24.20.105. Review of proposed regulations.

(a) The Legislative Affairs Agency may review each proposed regulation that is subject to AS 44.62.010 - 44.62.300 (Administrative Procedure Act). A review of proposed regulations under this section must be conducted by an attorney employed by that agency.

(b) Reviews shall be conducted under (a) of this section in the following order of priority:

(1) proposed regulations that would implement newly enacted legislation;

(2) proposed regulations requested in writing to be reviewed by a standing committee, the Administrative Regulation Review Committee, or the legislative council as implicating major policy development.

(c) Under AS 44.62.190(a)(7), the notice of proposed action, along with a copy of the proposed regulation, shall be furnished electronically by the state agency to the

(1) Legislative Affairs Agency;

(2) chairs of the standing committees with jurisdiction over the subject of the proposed regulation;

(3) Administrative Regulation Review Committee;

(4) legislative council.

(d) Within available staff resources and priorities set by the legislative council, the Legislative Affairs Agency shall assign one or more attorneys to conduct a review of proposed regulations. The review shall evaluate

(1) the legality and constitutionality of the proposed regulation;

(2) whether the state agency has statutory authority to adopt the proposed regulation to implement, interpret, make specific, or otherwise carry out a statute; and

(3) whether the proposed regulation is consistent with the applicable statutes.

(e) In conducting its review under this section, the assigned attorney may consult with the Department of Law, the committee or council that requests the review under (b)(2) of this section, and the state agency proposing the regulation change. With respect to proposed regulations that implement newly enacted legislation as described in (b)(1) of this section, the assigned attorney may also consult with the prime sponsor of the legislation if the prime sponsor is a member of the legislature at the time of the review. If the assigned attorney determines that the proposed regulations fail to meet the standards set out in (d) of this section, the assigned attorney shall notify, in writing, the Department of Law, the state agency, the Administrative Regulation Review Committee, the president of the senate, the speaker of the house of representatives, and the committee or council, if any, that requested the review under (b)(2) of this section. If the review involves proposed regulations that implement newly enacted legislation as described in (b)(1) of this section and the prime sponsor of that legislation is a member of the legislature at the time of the review, the assigned attorney shall also notify the prime sponsor, in writing, if the proposed regulations fail to meet the standards set out in (d) of this section. If, after performing a review requested under (b)(2) of this section, the assigned attorney determines that the proposed regulations meet the standards set out in (d) of this section, the assigned attorney shall communicate that determination to the requester.

(f) In addition to the review specified in (d) of this section, the assigned attorney shall notify the Administrative Regulation Review Committee, the president of the senate, and the speaker of the house of representatives of any provision of the proposed regulation that may be inconsistent with legislative intent and appropriate for additional legislative oversight as a result.

(g) Except as provided in this section, the Legislative Affairs Agency may not release any information regarding its review of a proposed regulation under this section.

(h) The process of review of a proposed regulation under this section does not affect a state agency's authority to complete its proposed action regarding the regulation. Suggestions for changes to a proposed regulation made by the Legislative Affairs Agency are not binding on a state agency.

(i) No action may be brought for the failure of the Legislative Affairs Agency to conduct a legal review under this section.

(j) The provisions of (b) - (i) of this section do not apply to proposed regulations of the Board of Game or the Board of Fisheries.

(k) In this section, "proposed regulation" means a proposed adoption, amendment, or repeal of a regulation.

Article 03. ADMINISTRATIVE REGULATION REVIEW COMMITTEE

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.

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.

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.

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.

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.

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 resolution of the Administrative Regulation Review Committee resolving that the regulation be suspended is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a resolution is filed with the lieutenant governor, the effectiveness of the adoption or amendment that is the subject of the committee's resolution is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) Action under (a) of this section may not 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.

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.

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, including proposed regulations, amendments, and orders of repeal, to determine if they properly implement legislative intent and to provide comments on them to the governor and state agencies;
- (5) to prepare and distribute reports, memoranda, or other materials;
- (6) to promote needed revision or repeal of regulations that have been adopted by state departments and agencies and, when the committee determines a regulation should be repealed or amended, to introduce a bill that would enact a statute that would supersede or nullify the regulation;
- (7) to investigate findings that are transmitted to the committee by a standing committee in accordance with AS 24.05.182 and, as appropriate, to either introduce a bill annulling the regulation or exercise the committee's power to suspend the effectiveness of the regulation in accordance with AS 24.20.445.

Sec. 26.27.110. Regulations.

(a) The corporation shall adopt regulations to carry out the purposes of this chapter.

(b) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to the corporation. The corporation shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chair of the corporation shall submit the regulation adopted to the chair of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(c) The corporation may adopt regulations by motion or by resolution or in another manner permitted by its bylaws.

(d) Except as provided in (e) of this section, at least 15 days before the adoption of a regulation, the corporation shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption of the regulation and must include an informative summary of the subject of the proposed action. On the date and at the time and place designated in the notice, the corporation shall give each interested person or an authorized representative of the person, or both, the opportunity to present statements, arguments, or contentions orally or in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The corporation shall consider all relevant matter presented to it before taking the proposed action on the regulation. At a hearing under this subsection, the corporation may continue or postpone the hearing to a time and place determined by the corporation and announced at the hearing before taking the action to continue or postpone the hearing. A regulation adopted by the corporation may vary from the informative summary specified in this subsection if the subject matter of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to assure that members of the public are reasonably notified of the subject matter of the proposed action in order for them to determine whether their interests could be affected by the corporation's proposed action on that subject.

(e) The adoption of a regulation may be made as an emergency regulation if, in the order of adoption, the corporation states the facts constituting the emergency and makes a finding that the adoption of the regulation is necessary for the immediate preservation of the orderly operation of the corporation's programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation; however, upon adoption of an emergency regulation under this subsection, the corporation shall, within 10 days after that adoption, publish notice of the adoption in accordance with the notice procedures specified in (d) of this section. An emergency regulation adopted under this subsection may not remain in effect for more than 120 days unless, before the expiration of that period, the corporation adopts that regulation as a permanent regulation in accordance with the procedures specified in (d) of this section.

(f) A regulation adopted under this section takes effect immediately upon its adoption by the corporation or at another time specified by the corporation in its order of adoption.

Sec. 30.17.120. Administrative procedure.

The provisions of the Administrative Procedure Act regarding the adoption of regulations under AS 44.62.040 - 44.62.320 apply to the authority.

Sec. 31.25.130. Administrative procedure; regulations.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), AS 44.62 (Administrative Procedure Act) does not apply to this chapter. The corporation shall make available to members of the public copies of the regulations adopted under (b) - (e) of this section. Within 45 days after adoption, the chair of the board shall submit a regulation adopted under (b) - (e) of this section to the chair of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The board may adopt regulations by motion or by resolution or in another manner permitted by its bylaws.

(c) The board may adopt regulations to carry out the purposes of this chapter.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the board shall give public notice of the proposed action by posting notice on the corporation's Internet website and on the Alaska Online Public Notice System and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the board or the corporation. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the proposed subject of the regulation. On the date and at the time and place designated in the notice, the board shall give each interested person or an authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The board shall consider all relevant matter presented to it before adopting, amending, or repealing a regulation. At a hearing under this subsection, the board may continue or postpone the hearing to a time and place that it determines. A regulation that is adopted, or its amendment or repeal, may vary in content from the informative summary specified in this subsection if the subject matter of the regulation, or its amendment or repeal, remains the same and the original notice was written to ensure that members of the public are reasonably notified of the proposed subject of the board's action in order for them to determine whether their interests could be affected by the board's action on that subject.

(e) A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if the board makes a finding in its order of adoption or repeal, including a statement of the facts that constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the orderly operation of the corporation's bonding programs. Upon adoption of an emergency regulation, the board shall, within 10 days after adoption, give notice of the adoption in accordance with (d) of this section. An emergency regulation adopted under this subsection does not remain in effect more than 120 days unless the board complies with (d) of this section during the 120-day period.

(f) A regulation adopted under (b) - (e) of this section becomes effective immediately upon its adoption by the board, unless otherwise specifically provided by the order of adoption.

Sec. 37.13.206. Regulations.

(a) The board may adopt regulations to carry out the purposes of this chapter and shall adopt regulations under AS 37.13.120(a). The provisions of AS 44.62 (Administrative Procedure Act) regarding the adoption of regulations do not apply to regulations of the corporation.

(b) The board may adopt regulations under this section by motion, by resolution, or in any other manner permitted by the bylaws of the corporation.

(c) Except as provided in (f) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the corporation shall give public notice of the proposed action by

(1) publishing the notice in a newspaper of general circulation or trade or industry publication that the corporation prescribes;

(2) posting the notice on the Alaska Online Public Notice System;

(3) furnishing the notice, by electronic format, to all legislators; and

(4) providing a copy of the notice to every person who has filed a request for notice of proposed regulation with the corporation.

(d) The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and an informative summary of the subject of the proposed action.

(e) On the date and at the time and place designated in the notice, the corporation shall give each interested person or the person's authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The board may accept material presented by any form of communication and shall consider all factual, substantive, and other relevant matter presented to it before adopting, amending, or repealing a regulation. A regulation adopted, amended, or repealed by the board may vary from the informative summary specified in (d) of this section if the subject of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to ensure that members of the public are reasonably notified of the subject of the proposed action in order for members of the public to determine whether their interests could be affected by the board's proposed action on that subject.

(f) A regulation or order of repeal of a regulation under this section may be made as an emergency regulation if, in the order of adoption, the board states the facts constituting the emergency and makes a finding that the adoption of the regulation or repeal is necessary for the immediate preservation of the orderly operation of the corporation. The requirements of (c) - (e) of this section do not apply to the initial adoption of an emergency regulation or repeal under this subsection; however, upon adoption of an emergency regulation or repeal under this subsection, the corporation shall, within 10 days after that adoption, comply with the notice procedures specified in (c) - (e) of this section. An emergency regulation or repeal adopted under this subsection does not remain in effect for more than 120 days unless, before the expiration of that period, the corporation complies with the procedures specified in (c) - (e) of this section.

(g) A regulation adopted under this section takes effect immediately upon its adoption by the board or at another time specified in the order of adoption. The regulation shall be submitted to the lieutenant governor for publication in the Alaska Administrative Code and Register. Within 45 days after adoption of a regulation under this section, the corporation shall provide a copy of the adopted regulation to the chair of the Administrative Regulation Review Committee (AS 24.20.400).

Sec. 38.35.190. Application of the Administrative Procedure Act.

(a) AS 44.62.010 - 44.62.320, 44.62.640 and 44.62.950 apply to regulations adopted by the commissioner under the authority of this chapter.

(b) [Repealed, Sec. 18 ch 3 FSSLA 1973].

(c) [Repealed, Sec. 18 ch 3 FSSLA 1973].

(d) [Repealed, Sec. 18 ch 3 FSSLA 1973].

Sec. 40.25.120. Public records; exceptions; certified copies.

(a) Every person has a right to inspect a public record in the state, including public records in recorders' offices, except

(1) records of vital statistics and adoption proceedings, which shall be treated in the manner required by AS 18.50;

(2) records pertaining to juveniles unless disclosure is authorized by law;

(3) medical and related public health records;

(4) records required to be kept confidential by a federal law or regulation or by state law;

(5) to the extent the records are required to be kept confidential under 20 U.S.C. 1232g and the regulations adopted under 20 U.S.C. 1232g in order to secure or retain federal assistance;

(6) records or information compiled for law enforcement purposes, but only to the extent that the production of the law enforcement records or information

(A) could reasonably be expected to interfere with enforcement proceedings;

(B) would deprive a person of a right to a fair trial or an impartial adjudication;

(C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;

(D) could reasonably be expected to disclose the identity of a confidential source;

(E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;

(F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or

(G) could reasonably be expected to endanger the life or physical safety of an individual;

(7) names, addresses, and other information identifying a person as a participant in the Alaska Higher Education Savings Trust under AS 14.40.802 or the advance college tuition savings program under AS 14.40.803 - 14.40.817;

(8) public records containing information that would disclose or might lead to the disclosure of a component in the process used to execute or adopt an electronic signature if the disclosure would or might cause the electronic signature to cease being under the sole control of the person using it;

(9) reports submitted under AS 05.25.030 concerning certain collisions, accidents, or other casualties involving boats;

(10) records or information pertaining to a plan, program, or procedures for establishing, maintaining, or restoring security in the state, or to a detailed description or evaluation of systems, facilities, or infrastructure in the state, but only to the extent that the production of the records or information

(A) could reasonably be expected to interfere with the implementation or enforcement of the security plan, program, or procedures;

(B) would disclose confidential guidelines for investigations or enforcement and the disclosure could reasonably be expected to risk circumvention of the law; or

(C) could reasonably be expected to endanger the life or physical safety of an individual or to present a real and substantial risk to the public health and welfare;

(11) the written notification regarding a proposed regulation provided under AS 24.20.105 to the Department of Law and the affected state agency and communications between the Legislative Affairs Agency, the Department of Law, and the affected state agency under AS 24.20.105;

(12) records that are

(A) proprietary, privileged, or a trade secret in accordance with AS 43.90.150 or 43.90.220(e);

(B) applications that are received under AS 43.90 until notice is published under AS 43.90.160;

(13) information of the Alaska Gasline Development Corporation created under AS 31.25.010 or a subsidiary of the Alaska Gasline Development Corporation that is confidential by law or under a valid confidentiality agreement;

(14) information under AS 38.05.020(b)(11) that is subject to a confidentiality agreement under AS 38.05.020(b)(12).

(b) Every public officer having the custody of records not included in the exceptions shall permit the inspection, and give on demand and on payment of the fees under AS 40.25.110 - 40.25.115 a certified copy of the record, and the copy shall in all cases be evidence of the original.

(c) Recorders shall permit memoranda, transcripts, and copies of the public records in their offices to be made by photography or otherwise for the purpose of examining titles to real estate described in the public records, making abstracts of title or guaranteeing or insuring the titles of the real estate, or building and maintaining title and abstract plants, subject to reasonable rules and regulations as are necessary for the protection of the records and to prevent interference with the regular discharge of the duties of the recorders and their employees.

Sec. 42.40.920. Application of existing laws.

(a) [Repealed, Sec. 38 ch 168 SLA 1990].

(b) Unless specifically provided otherwise in this chapter, the following laws do not apply to the operations of the corporation:

- (1) AS 19;
- (2) AS 30.15;
- (3) AS 35;
- (4) AS 36.30, except as specifically provided in that chapter;
- (5) AS 37.05, except as specifically provided in AS 37.05.210;
- (6) AS 37.07;
- (7) AS 37.10.010 - 37.10.060;
- (8) AS 37.10.085;
- (9) AS 37.20;
- (10) AS 37.25;
- (11) AS 38;
- (12) AS 44.62.010 - 44.62.320.

Chapter 44.62. ADMINISTRATIVE PROCEDURE ACT

Article 01. APPLICATION AND EFFECT

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.

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations.
Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - 44.62.320 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.

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, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

Article 02. SUBMISSION, FILING, AND PUBLICATION OF REGULATIONS

Sec. 44.62.040. Submitting regulations.

(a) Subject to (c) of this section, every state agency that 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 that

- (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;
- (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, must follow the text of each regulation submitted under (a) of this section.

(c) Before submitting the regulations and orders of repeal to the lieutenant governor under (a) of this section, every state agency that by statute possesses regulation making authority, except the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, and the office of the ombudsman, shall submit to the governor for review a copy of every regulation or order of repeal adopted by the agency, except regulations and orders of repeal identified in (a)(1) and (2) of this section. The governor may review the regulations and orders of repeal received under this subsection. The governor may return the regulations and orders of repeal to the adopting agency before they are submitted to the lieutenant governor for filing under (a) of this section within 30 days (1) if they are inconsistent with the faithful execution of the laws, or (2) to enable the adopting agency to respond to specific issues raised by the Administrative Regulation Review Committee. The governor may not delegate the governor's review authority under this subsection to a person other than the lieutenant governor.

Sec. 44.62.050. Style and forms.

The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations that prescribes the style and forms for submitting regulations under AS 44.62.040.

Sec. 44.62.060. Preparation and filing.

(a) Every state agency that by statute possesses regulation-making authority shall work with the Department of Law, under AS 44.62.125, 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 AS 44.62.050.

(b) In the performance of duties under AS 44.62.125, the Department of Law shall advise the agencies on legal matters relevant to the adoption 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 AS 44.62.040 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.

Sec. 44.62.070. Fees.

A state officer or public official may not charge a fee to perform an official act in connection with the certification, submission, or filing of regulations under AS 44.62.040 - 44.62.120.

Sec. 44.62.080. Endorsement and filing.

- (a) The lieutenant governor shall
- (1) endorse on the certified copy of each regulation or order of repeal filed, the time and date of filing; and
 - (2) maintain, for five years after filing, a permanent file of the certified copies of regulations and orders of repeal for public inspection; after the certified copies have been on file for five years, the lieutenant governor shall transfer the permanent file of the copies to the state archivist (AS 40.21.020) annually, on or before January 1 of each year.
- (b) The state archivist shall have and maintain, for public inspection, the permanent file of the certified copies of regulations and orders of repeal transferred to the archivist by the lieutenant governor under (a)(2) of this section.

Sec. 44.62.090. Filing with local government unit clerks. [Repealed, Sec. 2 ch 57 SLA 1969].
Repealed or Renumbered

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.

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.

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 AS 44.62.040 to be submitted. If the lieutenant governor accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in AS 44.62.080, and may publish the regulation or order of repeal in the manner the lieutenant governor considers proper.

Sec. 44.62.125. Regulations attorney.

(a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as the attorney's 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 adopted 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 AS 44.62.050;

(5) assist the agencies in holding public hearings under AS 44.62.210;

(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 under AS 01.05.031;

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

Article 03. THE ALASKA ADMINISTRATIVE REGISTER AND CODE

Sec. 44.62.130. Codification and publication.

(a) The lieutenant governor shall provide for the continuing compilation, codification, and publication, with periodic supplements, of all regulations filed by the lieutenant governor's office, or of appropriate references to any regulations the printing of which the lieutenant governor 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 must contain appropriate annotations to judicial decisions and opinions of the attorney general.

(b) The Department of Law shall prescribe a uniform system of indexing, numbering, arrangement of text, and citation of authority and history notes for the Alaska Administrative Code.

Sec. 44.62.140. Distribution of code and register.

(a) Except as provided in this section, 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 is delegated, to the person to whom this authority is delegated. A local government unit may decide to be excluded from the distribution requirements of this subsection. After receiving notice from the local government unit of the unit's decision to be excluded, the lieutenant governor shall exclude that local government unit from the distribution requirements of this subsection.

(b) A local government unit that requests to be excluded from the distribution requirements of (a) of this section may request to start receiving distributions as described under (a) of this section by providing written notice to the lieutenant governor. No later than July 1 of the fiscal year following receipt of notice by the lieutenant governor, the lieutenant governor shall include the local government unit in the distribution.

Sec. 44.62.150. Price. [Repealed, Sec. 49 ch 127 SLA 1974].

Repealed or Renumbered

Sec. 44.62.160. Date and content of register.

(a) The Alaska Administrative Register shall be published quarterly on the first day of the month. All regulations required to be submitted under AS 44.62.040 that 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.

Sec. 44.62.170. Form of publication. [Repealed, Sec. 2 ch 57 SLA 1969].

Repealed or Renumbered

Sec. 44.62.175. Alaska Online Public Notice System.

(a) The lieutenant governor shall develop and supervise the Alaska Online Public Notice System, to be maintained on the state's site on the Internet. The lieutenant governor shall prescribe the form of notices posted on the system by state agencies. The Alaska Online Public Notice System must include

- (1) notices of proposed actions given under AS 44.62.190(a);
- (2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;
- (3) notices of solicitations to bid issued under AS 36.30.130;
- (4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;
- (5) executive orders and administrative orders issued by the governor;
- (6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;

(7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal regardless of whether it has taken effect;

(8) notices required by AS 44.62.245(b) regarding an amended version of a document or other material incorporated by reference in a regulation;

(9) a summary of the text of recently issued published opinions of the attorney general;

(10) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;

(11) in accordance with AS 39.52.240(h), advisory opinions of the attorney general; and

(12) notices required by AS 26.30.010(d) and (e) regarding applications for military facility zones.

(b) The issuer of the notice, order, delegation, text, summary, or list in (a) of this section shall post on the Alaska Online Public Notice System the notice, order, delegation, text, summary, or list, prepared in the format required by the lieutenant governor.

(c) A request for a printed copy of a required posting on the Alaska Online Public Notice System may be made under AS 40.25.110 - 40.25.220 to any state employee designated by the lieutenant governor to receive requests.

(d) The lieutenant governor shall provide for a permanent, electronic archive system of notices posted on the Alaska Online Public Notice System under this section. Access to the electronic archive system shall be made available to the public.

(e) The lieutenant governor may delegate duties under this section to qualified state employees.

(f) A person may not maintain an action based on a posting or lack of posting on the Alaska Online Public Notice System.

Article 04. PROCEDURE FOR ADOPTING 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 AS 44.62.250, 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.

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 that the state agency prescribes and posted on the Alaska Online Public Notice System; in the discretion of the state agency giving the notice, the requirement of publication in a newspaper or trade or industry publication may be satisfied by using a combination of publication and broadcasting; when

broadcasting the notice, an agency may use an abbreviated form of the notice if the broadcast provides the name and date of the newspaper or trade or industry journal and the Internet address of the Alaska Online Public Notice System where the full text of the notice can be found;

(2) furnished 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, furnished to the commissioner of the department;

(4) when appropriate in the judgment of the agency,

(A) furnished 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 to 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 AS 44.62.060;

(6) furnished by electronic format to all incumbent State of Alaska legislators, and furnished to the Legislative Affairs Agency;

(7) furnished by electronic format, along with a copy of the proposed regulation, amendment, or order of repeal, as required by AS 24.20.105(c).

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and furnishing notice under AS 44.62.010 - 44.62.300, or in addition to the requirements of filing and mailing notice under other sections of this chapter, the notice shall be published, posted, mailed, filed, or otherwise publicized as prescribed by the statute.

(c) The failure to furnish notice to a person as provided in this section does not invalidate an action taken by an agency under AS 44.62.180 - 44.62.290.

(d) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the state agency, except the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission, shall include

(1) the reason for the proposed action, including, if applicable, an identification of the law, order, decision, or other action of the federal government or a federal or state court that is the basis for the proposed action; in this paragraph, "federal government" means a department, agency, corporation, or instrumentality of the United States government;

(2) the initial cost to the state agency of implementation;

(3) the estimated annual costs, based on a good faith effort to estimate the costs in the aggregate for each of the following categories using the information available to the state agency, to

(A) private persons to comply with the proposed action;

(B) the state agency for implementation and to other state agencies to comply with the proposed action; and

(C) municipalities to comply with the proposed action;

(4) the name of the contact person for the state agency; and

(5) the origin of the proposed action.

(e) Notwithstanding (a) of this section, if a person who is to receive a notice under (a) of this section requests that the state agency mail the notice, the state agency shall furnish the notice to the person by mail.

(f) To the extent feasible, the subject line of electronic mail and the title of a written publication providing the information required by (d) of this section must give the reader a fair idea of the substance of the proposed new regulation, the proposed amended regulation, or the regulation proposed for repeal.

(g) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission shall include the reason for the proposed action, the initial cost of

implementation to the state agency, the estimated annual costs of implementation to the state agency, the name of a contact person, and the origin of the proposed action.

Sec. 44.62.195. Fiscal notes on regulations.

If the adoption, amendment, or repeal of a regulation would require increased appropriations by the state, the department or agency affected shall prepare an estimate of the appropriation increase for the fiscal year following adoption, amendment, or repeal of the regulation and for at least two succeeding fiscal years.

Sec. 44.62.200. Contents of notice.

(a) The notice of proposed adoption, amendment, or repeal of a regulation must 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 that 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;

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

(b) A regulation that 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.

(c) An agency that issues a notice under this section shall ensure that the notice is prepared in a form adequate for posting on the Alaska Online Public Notice System. Unless the adoption, amendment, or repeal of a regulation is proposed by the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission, a complete copy of each proposed adoption, amendment, or repeal of a regulation and, if feasible and not prohibited by copyright, any document or other material incorporated by reference, including any document or other material incorporated by reference under this section, in the proposed adoption or amendment shall be made available on the Alaska Online Public Notice System by providing an electronic attachment or link to the complete text.

(d) When a state agency, other than the Regulatory Commission of Alaska, the Board of Fisheries, or the Board of Game, posts, furnishes, or otherwise provides a notice of the proposed adoption, amendment, or repeal of a regulation under AS 44.62.190, a brief description of the changes made by the proposed adoption, amendment, or repeal must accompany the notice. However, if, under AS 44.62.190(a), the notice is published in a newspaper or trade or industry publication or is broadcast, this subsection does not require that the brief description otherwise required by this subsection accompany the publication or the broadcast. To the extent practicable, the brief description shall be written in clear, easily readable language that a person without a legal background is able to understand.

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 the person's 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 may accept material presented by any form of communication authorized by this chapter and shall consider all factual, substantive, and other relevant matter presented to it

before adopting, amending, or repealing a regulation. When considering the factual, substantive, and other relevant matter, the agency shall pay special attention to the cost to private persons of the proposed regulatory action.

(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.

Sec. 44.62.213. Agency contact with the public.

(a) Notwithstanding any other provision of this chapter, while an agency is developing a regulatory action and before the agency provides a notice of proposed action under AS 44.62.190, the agency may contact a person about the development of the regulatory action, and the agency may answer a question from a person that is relevant to the development of the regulatory action. In this subsection, "regulatory action" means the adoption, amendment, or repeal of a regulation.

(b) Notwithstanding any other provision of this chapter, after an agency provides a notice of proposed action under AS 44.62.190, the agency shall make a good faith effort to answer, before the end of the public comment period, a question that is relevant to the proposed action, if the question is received in writing or asked at a public meeting at least 10 days before the end of the public comment period. If a question is received after the 10-day cutoff date, the agency may answer the question. When an agency answers a question under this section, the agency shall answer the question in writing and make the question and answer available to the public. An agency may satisfy the requirements of this section by posting answers to frequently asked questions about the proposed action on the Alaska Online Public Notice System and may aggregate substantially similar questions and agency responses and provide a single consolidated response to substantially similar questions.

(c) In this section, "agency" does not include the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, or the Alaska Oil and Gas Conservation Commission.

Sec. 44.62.215. Record of public comment.

In the drafting, review, or other preparation of a proposed regulation, amendment, or order of repeal, an agency, other than the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, the Alaska Oil and Gas Conservation Commission, the office of victims' rights, and the office of the ombudsman, shall keep a record of its use or rejection of factual or other substantive information that is received in writing or orally as public comment and that is relevant to the accuracy, coverage, or other aspect of the proposed regulatory action.

Sec. 44.62.218. Regulations affecting small businesses. [Repealed, Sec. 2 ch 91 SLA 2005].

Repealed or Renumbered

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 AS 44.62.180 - 44.62.290. The petition must state clearly and concisely

- (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.

Sec. 44.62.230. Procedure on petition.

Upon receipt of a petition requesting the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290, a state agency shall, within 30 days, deny the petition in writing or schedule

the matter for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of AS 44.62.040(c) and 44.62.190 - 44.62.215 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.

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 that 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.

Sec. 44.62.245. Material incorporated by reference.

(a) In adopting a regulation that incorporates a document or other material by reference, a state agency may incorporate future amended versions of the document or other material if the adopted regulation identifies or refers to the document or other material followed by the phrase "as may be amended," the phrase "as amended from time to time," or a similar provision and the

(1) document consists of a regulation of another agency of the state; or

(2) incorporation of a future amended version of the document or other material is explicitly authorized by a statute.

(b) When the amended version of a document or other material incorporated by reference in a regulation as described in (a) of this section becomes available, the state agency shall

(1) make the amended version of the document or other material available to the public for review; and

(2) post on the Alaska Online Public Notice System and publish in a newspaper of general circulation or trade or industry publication or in a regularly published agency newsletter or similar printed publication, not later than 15 days after the amended version of the document or other material becomes available, a notice that describes the affected regulation, the effective date of the amended version of the document or other material, and how a copy of the amended version may be obtained or reviewed.

(c) The state agency shall also send the notice described in (b)(2) of this section to

(1) a person who has placed the person's name on a distribution list kept by the agency that lists persons who want to receive the notice; the agency may allow a person to request that distribution of the notice be by electronic means and shall honor that request if appropriate means are available;

(2) the regulations attorney in the Department of Law; and

(3) the members of the Administrative Regulation Review Committee.

(d) A change in the form, format, or title in a future amended or revised version of a document or material incorporated by reference in a regulation under this section does not affect the validity of the regulation or the state agency's ability to enforce or implement the regulation. The state agency shall notify the regulations attorney in the Department of Law if the title of the document or other material changes. The regulations attorney shall correct the title in the Alaska Administrative Code under AS 44.62.125.

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 that 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 AS

44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 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 filing by the lieutenant governor the agency shall give notice of the adoption in accordance with AS 44.62.190(a). Failure to give the required notice by the end of the 10th day automatically repeals the regulation.

Sec. 44.62.260. Limitation on effective period of emergency regulations.

(a) A regulation adopted as an emergency regulation does not remain in effect more than 120 days unless the adopting agency complies with AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 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 AS 44.62.040(c), 44.62.060, and 44.62.190 - 44.62.215 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.

Sec. 44.62.270. State policy.

It is the state policy that emergencies are held to a minimum and are rarely found to exist.

Sec. 44.62.280. Purpose of AS 44.62.180 - 44.62.290.

It is the purpose of AS 44.62.180 - 44.62.290 to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations. Except as provided in AS 44.62.250, AS 44.62.180 - 44.62.290 apply to the exercise of quasi-legislative power conferred by a statute, but nothing in AS 44.62.180 - 44.62.290 repeals or diminishes additional requirements imposed by the statute. AS 44.62.180 - 44.62.290 are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly.

Sec. 44.62.290. Limits of the application of AS 44.62.180 - 44.62.290.

(a) AS 44.62.180 - 44.62.290 do not apply to a regulation not required to be submitted to the lieutenant governor under AS 44.62.010 - 44.62.320.

(b) Only this section and AS 44.62.180 apply to a regulation that prescribes the organization or procedure of an agency.

Article 05. JUDICIAL REVIEW

Sec. 44.62.300. Judicial review of validity.

(a) 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 AS 44.62.010 - 44.62.320; 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 AS 44.62.250.

(b) Notwithstanding (a) of this section, a person may not bring an action in court to challenge the adoption, repeal, or amendment of a regulation by a state agency for

(1) insufficiency or inaccuracy of the information provided under AS 44.62.190(d) or (g);
(2) failure of the subject line of electronic mail or the title of a written publication to meet the requirements of AS 44.62.190(f);

(3) failure of the brief description required by AS 44.62.200(d) to comply with the requirements of AS 44.62.200(d) relating to

(A) the clarity and readability of the brief description; or

(B) the description of the changes made by the proposed adoption, amendment, or repeal of a regulation; or

(4) inaccuracy or insufficiency of the answer to a question provided by the state agency under AS 44.62.213.

Sec. 44.62.305. Judicial relief in administrative matters.

(a) Notwithstanding any other provision of law to the contrary and except as provided in (f) and (g) of this section, a person may obtain judicial relief in an administrative matter from the superior court before the state agency handling the administrative proceeding on the matter issues a final administrative decision if

(1) the person is a party to the administrative proceeding;

(2) the person has satisfied the procedural requirements of the administrative proceeding up to the time that the person petitions for judicial relief under (b) of this section;

(3) the state agency has unreasonably delayed the progress of the administrative proceeding; and

(4) further delay in reaching a final administrative decision will cause the person immediate and irreparable damage.

(b) A person may seek judicial relief under (a) of this section by filing a petition in the superior court. A person may not file the petition until 30 days after the person has filed with the state agency handling the administrative proceeding a written notice that the person intends to file the petition.

(c) In a proceeding begun under (b) of this section, if the superior court determines that the person is eligible for judicial relief under (a) of this section, the superior court may

(1) enjoin the administrative proceeding and determine the administrative matter in the superior court;

(2) order that the administrative matter be handled by another form of dispute resolution;

or

(3) establish a deadline for the state agency to issue a final administrative decision.

(d) After a person files a petition under (b) of this section, the state agency shall continue with the administrative proceeding unless the superior court

(1) enjoins the administrative proceeding under (c)(1) of this section; or

(2) issues an order under (c)(2) of this section.

(e) If the superior court decides that a person is not eligible for judicial relief under (a) of this section, a party to the administrative proceeding may exercise any right of appeal allowed under law for the final administrative decision as if the person had not filed a petition under (b) of this section.

(f) A person may not obtain judicial relief under this section in a personnel proceeding by a state agency. In this subsection, "personnel proceeding" includes a proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance arbitration procedure under a collective bargaining agreement.

(g) This section does not apply to an administrative proceeding of a state agency if another statute of this state establishes a deadline for the state agency to make a final decision in the administrative proceeding.

(h) In this section,

(1) "administrative matter" means the subject matter of an administrative proceeding;

(2) "administrative proceeding" means

(A) a proceeding subject to AS 44.62.330 - 44.62.630; and

(B) a proceeding that is not subject to AS 44.62.330 - 44.62.630, that is authorized by statute for the adjudication of a state agency matter by the state agency handling the matter or by a person appointed by the state agency, and that involves a matter that directly affects the personal, professional, or business interests of a specific person who is named in the adjudication;

(3) "damage" means damage to the personal, professional, or business interests of a person;

(4) "party" means a specific person whose personal, professional, or business interests are the subject of an administrative proceeding and who is named in the administrative proceeding;

(5) "person" does not include a state agency or other governmental agency;

(6) "state agency" means a department, an institution, a board, a commission, a division, an authority, and any other administrative unit of the executive branch of state government, except a public corporation; the term includes the University of Alaska.

Article 06. OPEN MEETINGS OF GOVERNMENTAL BODIES

Sec. 44.62.310. Government meetings public.

(a) All meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law. Attendance and participation at meetings by members of the public or by members of a governmental body may be by teleconferencing. Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable. 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. The vote at a meeting held by teleconference shall be taken by roll call. This section does not apply to any votes required to be taken to organize a governmental body described in this subsection.

(b) If permitted subjects are to be discussed at a meeting in executive session, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that are listed in (c) of this section shall be determined by a majority vote of the governmental body. The motion to convene in executive session must clearly and with specificity describe the subject of the proposed executive session without defeating the purpose of addressing the subject in private. Subjects may not be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. Action may not be taken at an executive session, except to give direction to an attorney or labor negotiator regarding the handling of a specific legal matter or pending labor negotiations.

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

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

(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;

(4) matters involving consideration of government records that by law are not subject to public disclosure.

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function 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;

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

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents;

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings; or

(8) meetings of municipal service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

(e) Reasonable public notice shall be given for all meetings required to be open under this section. The notice must include the date, time, and place of the meeting and if, the meeting is by teleconference, the location of any teleconferencing facilities that will be used. Subject to posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a), the notice may be given using print or broadcast media. The notice shall be posted at the principal office of the public entity or, if the public entity has no principal office, at a place designated by the governmental body. The governmental body shall provide notice in a consistent fashion for all its meetings.

(f) Action taken contrary to this section is voidable. A lawsuit to void an action taken in violation of this section must be filed in superior court within 180 days after the date of the action. A member of a governmental body may not be named in an action to enforce this section in the member's personal capacity. A governmental body that violates or is alleged to have violated this section may cure the violation or alleged violation by holding another meeting in compliance with notice and other requirements of this section and conducting a substantial and public reconsideration of the matters considered at the original meeting. If the court finds that an action is void, the governmental body may discuss and act on the matter at another meeting held in compliance with this section. A court may hold that an action taken at a meeting held in violation of this section is void only if the court finds that, considering all of the circumstances, the public interest in compliance with this section outweighs the harm that would be caused to the public interest and to the public entity by voiding the action. In making this determination, the court shall consider at least the following:

(1) the expense that may be incurred by the public entity, other governmental bodies, and individuals if the action is voided;

(2) the disruption that may be caused to the affairs of the public entity, other governmental bodies, and individuals if the action is voided;

(3) the degree to which the public entity, other governmental bodies, and individuals may be exposed to additional litigation if the action is voided;

(4) the extent to which the governing body, in meetings held in compliance with this section, has previously considered the subject;

(5) the amount of time that has passed since the action was taken;

(6) the degree to which the public entity, other governmental bodies, or individuals have come to rely on the action;

(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity;

"governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Sec. 44.62.312. State policy regarding meetings.

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) 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 that 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;

(6) the use of teleconferencing under this chapter is for the convenience of the parties, the public, and the governmental units conducting the meetings.

(b) AS 44.62.310(c) and (d) shall be construed narrowly in order to effectuate the policy stated in (a) of this section and to avoid exemptions from open meeting requirements and unnecessary executive sessions.

Sec. 44.62.319. Short title.

AS 44.62.310 - 44.62.319 may be cited as the Open Meetings Act.

Article 07. LEGISLATIVE REVIEW OF RULES

Sec. 44.62.320. Submittal for legislative review.

(a) [Repealed, Sec. 7 ch 164 SLA 2004].

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 - 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195.

(c) At the same time as a regulation is submitted to the governor under AS 44.62.040(c), the state agency shall submit the regulation to the chair and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 - 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195.

(d) Within 10 days after receiving a regulation under (c) of this section, the chair of the Administrative Regulation Review Committee may submit to the governor, by legislative memorandum or letter, comments on the regulation.

Sec. 44.62.640. Definitions for AS 44.62.010 - 44.62.630.

(a) In AS 44.62.010 - 44.62.320, unless the context otherwise requires,

(1) "lieutenant governor" means the office of the lieutenant governor in the executive branch of the state government, or another agency designated by executive order under the constitution;

(2) "order of repeal" means a resolution, order, or other official act of a state agency that expressly repeals a regulation in whole or in part;

(3) "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of a rule, regulation, order, or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, that have the effect of rules, orders, regulations, or standards of general application, and this and similar phraseology may not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

(b) In AS 44.62.330 - 44.62.630, unless the context otherwise requires,

(1) "agency" includes the state boards, commissions, and officers listed in AS 44.62.330 and those to which this chapter is made applicable by law or executive order involving reorganization under the constitution;

(2) "agency member" means a person who is a member of an agency to which AS 44.62.330 - 44.62.630 apply, and includes a person who individually is an agency;

(3) "hearing officer" means a hearing officer qualified under AS 44.62.350;

(4) "party" includes the agency, the respondent, and a person, other than an officer or an employee of the agency in an official capacity, who has been allowed to appear in the proceeding;

(5) "respondent" means a person against whom an accusation is filed under AS 44.62.360 or against whom a statement of issues is filed under AS 44.62.370.

(c) In this chapter "teleconferencing" means information exchange by audio or video medium.

Sec. 44.62.710. Purpose and applicability of AS 44.62.710 - 44.62.800.

(a) The purpose of AS 44.62.710 - 44.62.800 is to establish a framework for the conduct of negotiated regulation making consistent with AS 44.62.010 - 44.62.320. Negotiated regulation making is not a substitute for the requirements of AS 44.62.010 - 44.62.320 but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new regulations or the amendment or repeal of existing regulations. A consensus agreement reached by a negotiated regulation making committee may be modified by an agency head as a result of the subsequent regulation making process. AS 44.62.710 - 44.62.800 may not be construed as an attempt to limit innovation and experimentation with the negotiated regulation making process or to limit other means to obtain public participation in the regulation making process.

(b) The provisions of AS 44.62.710 - 44.62.800 may be used by an agency even if other provisions of this chapter do not apply to that agency.

Sec. 44.62.720. Determination of need for negotiated regulation making committee.

(a) In addition to the regulation adoption requirements under AS 44.62.010 - 44.62.320, an agency head may determine that the use of a negotiated regulation making committee to negotiate and develop a proposed regulation is in the public interest. In making that determination, the agency head is advised to consider whether

(1) there is a need for a regulation, including whether any legal action is pending that might resolve the need;

(2) there are a limited number of identifiable interests that are held by more than one person and that will be significantly affected by the regulation;

(3) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who

(A) can adequately represent the interests identified under (2) of this section; and

(B) are willing to negotiate in good faith to reach a consensus on the proposed regulation;

(4) there is a reasonable likelihood that a committee will reach a consensus on the proposed regulation within a fixed period of time;

(5) the negotiated regulation making procedure will not unreasonably delay the adoption of the final regulation;

(6) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(7) the agency head, to the maximum extent possible consistent with the legal or other obligations of the agency, will use the consensus of the committee as the basis for the regulation proposed by the agency under AS 44.62.010 - 44.62.320.

(b) Upon determining that a negotiated regulation making committee will be formed, an agency head shall notify the public so that interested persons can apply to be appointed to the committee.

Sec. 44.62.740. Establishment, time line, support, and termination of committee.

(a) The agency head may establish a negotiated regulation making committee to assist in the formulation of a proposed regulation. The agency head should strive to achieve and maintain throughout the negotiated regulation making process the balanced committee representation described under AS 44.62.720(a)(3). Members of the committee serve at the pleasure of the agency head. If a committee member is unable to attend a meeting, the agency head may select a designee to serve in that member's place for a meeting.

(b) Before notifying the public under AS 44.62.720(b), the agency head shall establish a time line for the work of the committee. The time line must include a completion date for the transmission to the agency of the report described in AS 44.62.750(d) or (e). The agency shall provide the time line to persons who apply for appointment to the committee. At its first meeting, the committee shall review the time line and recommend to the agency head any revisions to the time line. The agency head shall consider any recommendations and revise the time line if necessary to further the purposes of the negotiated regulation making process.

(c) The agency head may expand the membership of the negotiated regulation making committee if necessary to facilitate the workings of the committee.

(d) The agency shall make available administrative support to the negotiated regulation making committee, including technical support, that the agency head determines necessary.

(e) A negotiated regulation making committee terminates upon adoption under AS 44.62.010 - 44.62.320 of the final regulation under consideration unless the agency head specifies an earlier termination date.

Sec. 44.62.790. Relationship to other requirements.

The negotiated regulation making authorized by AS 44.62.710 - 44.62.800 is in addition to the procedures required under AS 44.62.010 - 44.62.320 for adopting, amending, or repealing regulations, and, if an agency head decides to use negotiated regulation making, the negotiated regulation making shall, where possible, occur before the procedures under AS 44.62.010 - 44.62.320 begin.

Sec. 44.88.085. Administrative procedure.

(a) Except for AS 44.62.310 - 44.62.319 (Open Meetings Act), the provisions of the Administrative Procedure Act regarding the adoption of regulations (AS 44.62.040 - 44.62.320) do not apply to the authority. The authority shall make available to members of the public copies of the regulations adopted under this section. Within 45 days after adoption of a regulation under this section, the chairman of the authority shall submit the regulation adopted to the chairman of the Administrative Regulation Review Committee under AS 24.20.400 - 24.20.460.

(b) The authority may adopt regulations under this section by motion or by resolution or in any other manner permitted by its bylaws.

(c) The authority may adopt regulations to carry out the purposes of this chapter and shall adopt regulations as provided in (g) of this section.

(d) Except as provided in (e) of this section, at least 15 days before the adoption, amendment, or repeal of a regulation, the authority shall give public notice of the proposed action by publishing the notice in at least three newspapers of general circulation in the state and by mailing a copy of the notice to every person who has filed a request for notice of proposed regulations with the authority. The public notice must include a statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the regulation and must include an informative summary of the subject of the proposed action. On the date and at the time and place designated in the notice, the authority shall give each interested person or an authorized representative of the person, or both, the opportunity to present statements, arguments, or contentions orally or in writing and shall give members of the public an opportunity to present oral statements, arguments, or contentions for a total period of at least one hour. The authority shall consider all relevant matter presented to it before taking the proposed action on the regulation. At a hearing under this subsection, the authority may continue or postpone the hearing to a time and place determined by the authority and announced at the hearing before taking the action to continue or postpone the hearing. A regulation adopted, amended, or repealed by the authority may vary from the informative summary specified in this subsection if the subject matter of the action taken on the regulation remains the same and if the original notice of the proposed action was written so as to assure that members of the public are reasonably notified of the subject matter of the proposed action in order for them to determine whether their interests could be affected by the authority's proposed action on that subject.

(e) The adoption, amendment, or repeal of a regulation may be made as an emergency regulation if, in the order of adoption, the authority states the facts constituting the emergency and makes a finding that the adoption of the regulation is necessary for the immediate preservation of the orderly operation of the authority's programs. The requirements of (d) of this section do not apply to the initial adoption of an emergency regulation; however, upon adoption of an emergency regulation under this subsection, the authority shall, within 10 days after that adoption, publish notice of the adoption in accordance with the notice procedures specified in (d) of this section. An emergency regulation adopted under this subsection may not remain in effect for more than 120 days unless, before the expiration of that period, the authority adopts that regulation as a permanent regulation in accordance with the procedures specified in (d) of this section.

(f) A regulation adopted under this section takes effect immediately upon its adoption by the authority or at another time specified by the authority in its order of adoption.

(g) The authority shall adopt regulations necessary for the following purposes in connection with its programs for the financing of projects under AS 44.88.155 - 44.88.159:

- (1) determination of borrower eligibility;
- (2) loan guidelines and terms, including
 - (A) maximum loan amounts;
 - (B) required loan-to-value ratios; and
 - (C) a method for determining loan interest rates;

- (3) characteristics of projects eligible for loans or purchase of loans; and
- (4) the qualifications of loan originators and servicers and the method of allocating amounts available for the purchase of loans.
- (h) [Repealed, Sec. 21 ch 109 SLA 1998].