

**ALASKA LEGISLATURE**

**2051**

**HOUSE and SENATE FINANCE COMMITTEE FILES, 1999 - 2000**

202

SENATE FINANCE COMMITTEE  
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	# 10
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u> w/out object	

to "W"

SENATE FINANCE  
COMMITTEE

Not Offered

Amendment Number: # 11 1-LS0274X.1  
Bill Number: CSSB 24(FIN) X Bannister /  
Sponsor: Donley Date: 3/29/99 3/27/99  
Logged In By: J. Seclaire

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "X"

1 Page 1, line 1, following "regulations":

2 Insert "and administrative adjudications"

3 Page 1, line 4:

4 Delete "This"

5 Insert "Sections 2 - 15 and 18 of this"

6 Page 9, following line 18:

7 Insert new bill sections to read:

8 **\*\* Sec. 16.** AS 44.62.500(c) is repealed and reenacted to read:

9 (c) The agency may remand a case to the same or another hearing officer only  
10 if the proposed decision prepared under (b) of this section fails to address an issue  
11 necessary to the resolution of the case. The agency shall identify and give notice to  
12 the parties of the issues being remanded and any instructions to the hearing officer.  
13 After remand, the hearing officer shall prepare a proposed decision as provided in (b)  
14 of this section based on the original and additional records. A copy of the proposed  
15 decision shall be filed and distributed as prescribed by (b) of this section.

16 **\* Sec. 17.** AS 44.62.500 is amended by adding a new subsection to read:

17 (d) An agency may not remand a case more than one time unless the  
18 lieutenant governor approves the remand in writing. If the lieutenant governor does  
19 not approve the remand, the agency has 90 days from the date of the hearing officer's  
20 proposed decision to decide the case itself without remand to a hearing officer.  
21 Notwithstanding other provisions of this chapter, if the agency does not produce a  
22 final decision within the 90 days, the respondent may file an action in superior court  
23 and receive a trial de novo of the case in the superior court. If the agency decides

1           the case under this subsection, the agency shall give the parties the opportunity to  
2           present either oral or written argument before the agency. An agency member may  
3           not vote on the decision unless that member has reviewed the evidence and record of  
4           proceedings before the hearing officer and any additional evidence and arguments  
5           presented before the agency."

6           Renumber the following bill sections accordingly.

Amend #12

ADOPT

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CSSB 24(Fin)  
workdraft X

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Fish and Game  
 Title Alaska Regulations Reform Act BRU Habitat and Restoration  
 Component Permitting/Title 16  
 Sponsor Senator Donley  
 Requester Senate Finance Component Serial No. 2050

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services		52.0	52.0	52.0	52.0	52.0
Travel		1.0	1.0	1.0	1.0	1.0
Contractual		81.1	79.2	79.2	79.2	79.2
Supplies		2.0	2.0	2.0	2.0	2.0
Equipment		3.0	3.0	3.0	3.0	3.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>139.1</b>	<b>137.2</b>	<b>137.2</b>	<b>137.2</b>	<b>137.2</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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## FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match		139.1	137.2	137.2	137.2	137.2
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>139.1</b>	<b>137.2</b>	<b>137.2</b>	<b>137.2</b>	<b>137.2</b>

Estimate of any current year (FY99) cost:

### POSITIONS

Full-time					
Part-time		2	2	2	2
Temporary					

### ANALYSIS: (Attach a separate page if necessary)

See attached.

Amend #12  
delete all but "supplies"

Prepared by Ken Taylor, Director  
 Division Habitat and Restoration  
 Approved by Commissioner Frank Rue  
 Agency Fish and Game

Phone 465-4105  
 Date/Time 03/26/99  
 Date 3/26/99

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ADF&G Fiscal Note for CSSB 24(Finance) Work draft V

March 26, 1999

Page 2

Analysis

Maintenance and periodic update of the Anadromous Waters catalog, expressly required under AS 16.05.870(a), appears to be exempt from this bill as per Section 4 [re Sec. 44.60.035(e)(2)]. Under the auspices of the Habitat and Restoration Division, ADF&G has three other types of regulations that we believe are affected by this bill.

First are proposals to amend or adopt management plans for legislatively designated special areas (state critical habitat areas, game refuges, or game sanctuaries). In some cases, these management plans are required by statute. In other cases, public interest or controversy may become high enough to require the department to develop or amend a management plan.

Secondly, changes to regulations adopted to guide the public and the department in applying for and issuing permits for development and use activities that are compatible with the purpose for which each special area was designated would also be affected. In the past, ADF&G has needed to make infrequent technical amendments to these regulations to update listed agency addresses, correct incorrect legal citations, etc.

The third set of regulations potentially affected by this bill is 5 AAC 95.010(b), which lays out the procedures and definitions used in issuing permits under the Anadromous Fish Act (AS 16.05.870) and the Fishways Act (AS 16.05.840).

As currently written, this bill would require costly and redundant public noticing for updating existing state regulations to reflect even non-substantive changes such as those made to update contact addresses, modernize terminology and improve overall readability (including changes made by the Department of Law).

Due to state budget cuts, the staff to systematically conduct amendments or develop management plans has been eliminated. The department proposes to perform the work required under this bill by contracting for economic consulting services and adding part time staff. Our fiscal estimate also includes contractual monies for a Department of Law (51.1 in FY01; 49.2K per year thereafter) and an economics specialist. It also includes 0.6PPT clerical and 0.6 PPT habitat biologist to handle all the required in house analyses, coordinate with the department of law, and ensure the accuracy and timeliness of iterative public notices.

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number</b>	SB 24
<b>Amendment</b>	#12
<b>Motion</b>	adopt
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	Adams
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Gary Wilken	Y
Senator Pete Kelly	Y
Senator Lyda Green	Y
Senator Randy Phillips	Y
Senator Dave Donley	Y
Senator Loren Leman	Y
Senator Al Adams	N
Co-Chair Sean Parnell	Y
Co-Chair John Torgerson	Y
<b><u>Tally</u></b>	
Yea	0 8
Nay	0 1
Absent	0
<b><u>MOTION</u></b>	adopt

F&G fiscal note

Adopted #13

Amend #13  
conceptual

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the cost to the public.

(d) Consistent with this section, the adopting state agency head shall determine the type of cost-benefit analysis that is relevant to the proposed regulatory action and that is to be prepared by the designated state agency under this section.

(e) The cost-benefit analysis requirement of this section does not apply when

(1) the proposed regulatory action is necessary to implement a budgetary modification;

(2) the designated state agency is expressly required by statute to adopt the proposed regulation, order of repeal, or amendment; or

(3) the proposed regulatory action is necessary to meet federal requirements *or to exempt or revise the applicability of federal regulations*

(f) A regulation, an order of repeal, or an amendment to a regulation may not be voided because the designated state agency taking the regulatory action failed to comply with this section. A person may not obtain a temporary restraining order, a preliminary injunction, or a permanent injunction from a court to enjoin the operation of a regulation based on a failure to comply with this section.

(g) The designated state agency shall make a copy of the cost-benefit analysis prepared under this section available to the public before a hearing on the proposed regulatory action, or, if a cost-benefit analysis is not required due to the operation of (b) of this section, the designated state agency shall make a copy of the fiscal note identified in (b) of this section available to the public before a hearing on the proposed regulatory action.

(h) In this section, "adopting state agency head" means the commissioner of the department within which the state agency is located.

\* Sec. 5. AS 44.62.190(a) is amended to read:

(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 in the Alaska Administrative Journal; 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

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3/29 10:36 am  
ordered from  
Terry Bannister  
pages 8 & 9

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amendment, or order of repeal.

(c) A regulation, an order of repeal, or an amendment to a regulation of a designated state agency may not be voided because the designated state agency taking the regulatory action failed to comply with this section.

(d) This section does not apply to regulations

(1) adopted under AS 44.62.260 to make emergency regulations permanent; or

(2) that are necessary to meet federal requirements *or that exempt*  
*or revise the applicability*  
*of federal requirements*

\* Sec. 11. AS 44.62.230 is amended to read:

**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 44.62.035, 44.62.040(c), [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. 12. AS 44.62.250 is amended to read:

**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 44.62.035, 44.62.040(c) [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

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number</b>	SB 24
<b>Amendment</b>	#13
<b>Motion</b>	adopt
	conceptual
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	J
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Lemam	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	W/out object

# FISCAL NOTE

Withdrawn

Amend #14

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

BILL NO. CSSB 24 (FIN)

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Environmental Conservation  
 Title The Alaska Regulations Reform Act BRU Administration  
 Component Commissioner's Office  
 Sponsor Senators Donley, Taylor  
 Requester Senate Finance Component Serial No. 633

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	200.8	200.8	200.8	200.8	200.8
Travel	0.0	30.0	30.0	30.0	30.0	30.0
Contractual	0.0	71.5	69.6	69.6	69.6	69.6
Supplies	0.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	18.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>325.3</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	325.3	305.4	305.4	305.4	305.4
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>325.3</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time	0	4	4	4	4	4
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

**ANALYSIS:** (Attach a separate page if necessary)

See attached.

Prepared by Janice Adair, Director Phone 269-7644  
 Division Environmental Health Date/Time 3/26/99 10:41 AM  
 Approved by Commissioner Michele Brown Date 3/26/99  
 Agency Department of Environmental Conservation

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Fiscal Analysis  
CSSB 24 (FIN)

There are four sections in this bill that create significant costs for the department.

Section 3 states that the department may not adopt a regulation that changes the intent of the statute being implemented. In many cases, regulations are interpreting statutes that have been on the books for many years, thus the specific "intent" is not readily known. Similarly, there are no records of specific actions taken in subcommittee or conference committee meetings on legislation, again making the specific "intent" of the drafters unknown. Finally, there are often numerous and conflicting understandings amongst legislators as to the "intent" of legislation. All of these issues would need to be thoroughly researched by a paralegal before regulations were drafted.

Section 4 requires a cost-benefit analysis and provides some exemptions. In the past two years, this department has developed approximately 50 regulation projects. Only one (industrial solid waste fee increases) would have been excluded from the required analysis under the proposed exemption at page 3, lines 6-7. Nearly all of the department's regulations that are based on federal requirements include provisions to "Alaskanize" those requirements. Because those types of provisions are not "necessary to meet federal requirements", those regulations would not qualify for the exemption at page 3, lines 10-11. Mixing zones, site specific water quality criteria, many of the provisions in the solid waste regulations, and exemptions from certain drinking water monitoring requirements are some examples of where we have modified federal requirements to better fit conditions in the state. A full time economist would be necessary to research the costs of compliance for the public and costs of the benefits to the public. In addition, page 2, line 29 specifies that regulations may not be adopted unless the benefits to the public outweigh the costs to the public. Therefore, a cost-benefit analysis would have to be prepared each and every time changes were made to proposed regulations. When coupled with Section 10 of this legislation, this would result in numerous analyses being prepared.

Section 10 requires the department to re-notice regulations whenever changes were made to the draft proposal. Public notice is expensive. Many of our regulation mailing lists exceed 3,000 names. To mitigate the numerous and potentially never-ending public comment periods and to meet the two year time limit in Section 14, we would need to have assistance from the Department of Law in the development of regulations. We have included \$51.1 in FY 01, and \$49.2 in succeeding fiscal years in our contractual costs for assistance. We would also need additional paralegal support in our department to meet the requirements of the Administrative Procedures Act for public notice and to quickly incorporate regulatory changes. Additional clerical assistance would also be needed to deal with the increased paperwork under these sections.

Summary:

1 Economist	Total Cost FY 01	\$82.5	Cost in succeeding FY	\$78.0
2 Paralegals	Total Cost FY 01	\$148.6	Cost in succeeding FY	\$139.6
1 Clerk	Total Cost FY01	\$43.1	Cost in succeeding FY	\$38.6
RSA with Law	Total Cost: FY01	\$51.1	Cost in succeeding FY	\$49.2

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

Bill Number	SB 24
Amendment	# 14
Motion	adopt
	DEC fiscal note
<u>Motion by</u>	Donley
<u>Objection</u>	
<u>Objection by</u>	
<u>Removed</u>	
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	

3/29 HELD - no action taken  
Withdrawn

SENATE FINANCE  
COMMITTEE

Not offered

Amendment Number: #15

Bill Number: CSSB 24(FIN).Y\*

I-LS0274Y.5

Sponsor: Donley Date: 3/31/99

Bannister

Logged In By: yottari

3/31/99

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "Y"

withdrawn

1 Page 3, line 9, following "amendment":

2 Delete "or"

3 Page 3, line 13, following "state":

4 Insert "; or

5 (4) the proposed regulatory action reduces the regulatory burden

6 imposed on the public"

SENATE FINANCE  
COMMITTEE

*Adopted*

Amendment Number: # 16

Bill Number: CSSB 24(FIN), Y'

1-LS0274\Y.4

Hannister ✓

Sponsor: Donley Date: 3/31/99

3/31/99

Logged In By: J. Settau

A M E N D M E N T

OFFERED IN THE SENATE

*moved* BY SENATOR DONLEY

TO: CSSB 24(FIN), Draft Version "Y"

*w/o obj.* ADOPTED

1 Page 3, line 12:

2 Delete "how a"

3 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

4 the"

5 Page 7, line 12:

6 Delete "how a"

7 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

8 the"

9 Page 9, line 6:

10 Delete "how a"

11 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

12 the"

13 Page 9, line 26:

14 Delete "how a"

15 Insert ", in a manner that reduces any burden imposed by a federal requirement, how

16 the"

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number:</b>	SB 24
<b>Amendment:</b>	16
<b>Motion:</b>	fidbpt
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Pandy Phillips	
Senator Dave Donley	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	W/out object

SENATE FINANCE  
COMMITTEE

Adopted

Amendment Number: 17

I-LS0274\Y.1

Bill Number: SB 24-4

Bannister ✓

Sponsor: Torgerson Date: 3/31/99

3/31/99

Logged In By: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 24(FIN), Draft Version "Y"

moved by Sen. Donley  
w/obj; ADOPTED

- 1 Page 2, line 25, following "estimated cost":
- 2 Insert "to the designated state agency"

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number</b>	
<b>Amendment</b>	17
<b>Motion</b>	
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Co-Chair Sean Parneli	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	W/out object

SENATE FINANCE  
COMMITTEE

*Adopted*

Amendment Number: 18

1-LS0274\Y.3

Bill Number: SB 24 "4"

Bannister/

Sponsor: Torgerson Date: 3/31/99

3/31/99

Logged In By: Mindy

A M E N D M E N T

OFFERED IN THE SENATE

BY SENATOR TORGERSON

TO: CSSB 24(FIN), Draft Version "Y"

*moved by Sen. Donley  
w/o obj. ADOPTED*

- 1 Page 6, line 20, following "rewriting":
- 2 Insert "substantially"

SENATE FINANCE COMMITTEE  
1999 COMMITTEE ACTION

<b>Bill Number</b>	
<b>Amendment</b>	18
<b>Motion</b>	
<b>Motion by</b>	
Donley	
<b>Objection</b>	
<b>Objection by</b>	
<b>Removed</b>	
<b>Second Objection by</b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	
Want object	

Adopted

SENATE FINANCE  
COMMITTEE

Amendment Number: 19  
Bill Number: SB 24 "Y"  
Sponsor: ~~Torgerson~~ Date: 3/31/99  
Logged In By: Mindy

I-LS0274\Y.2  
Bannister ✓  
3/31/99

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 24(FIN), Draft Version "Y"

BY SENATOR TORGERSON

*moved by Sen. DeaLoey  
w/o obj. ADOPTED*

- 1 Page 2, line 7, following "carried out.":
- 2       Insert "(d)"
  
- 3 Page 2, line 8:
- 4       Delete "this subsection"
- 5       Insert "(b) or (c) of this section"
  
- 6 Page 2, line 9:
- 7       Delete "changes the intent of the statute"
- 8       Insert "does not comply with (b) or (c) of this section"
  
- 9 Page 2, line 12:
- 10       Delete "this subsection"
- 11       Insert "(b) or (c) of this section"
  
- 12 Page 10, line 18:
- 13       Delete "AS 44.62.030(c)"
- 14       Insert "AS 44.62.030(d)"

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number</b>	
<b>Amendment</b>	19
<b>Motion</b>	B
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	W/out object

SENATE FINANCE  
COMMITTEE #20

Accepted F-02

Amendment Number: \_\_\_\_\_  
Bill Number: CSSB 24(FIN), Y  
Sponsor: Donley Date: 3/31/99  
Logged In By: Bannister

I-LS0274\Y.S  
Bannister ✓  
3/31/99

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 24(FIN), Draft Version "Y"

moved BY SENATOR DONLEY  
w/o obj. ADOPTED

1 Page 3, line 9, following "amendment":

2 Delete "or"

3 Page 3, line 13, following "state":

4 Insert "; or

5 (4) the proposed regulatory action would reduce the regulatory burden

6 imposed on the public"

SENATE FINANCE COMMITTEE  
1999 COMMITTEE ACTION

<b>Bill Number</b>	
<b>Amendment</b>	20
<b>Motion</b>	
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	J
<b><u>Objection by</u></b>	
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilken	
Senator Pete Kelly	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	w/out object

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Journal; 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 where the full text of the notice can be found;

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

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

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

(A) mailed to a person or group of persons whom the agency believes is interested in the proposed action; and

(B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by AS 44.62.060;

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

~~(7) furnished to the standing committee of each house of the legislature having legislative jurisdiction over the subject matter treated by the regulation under the Uniform Rules of the Alaska State Legislature, together with a copy of the proposed regulation, amendment, or order of repeal for the committee's use in conducting the review authorized by AS 24.05.182;~~

~~(8) furnished to the staff of the Administrative Regulation Review Committee, together with a copy of the proposed regulation, amendment, or order of repeal and, if preparation of an appropriation increase estimate is required by AS 44.62.195, a copy of the estimate;~~

(9) published on the Internet by a designated state agency proposing the action if the designated state agency has the technological capability

**SENATE FINANCE COMMITTEE**  
**1999 COMMITTEE ACTION**

<b>Bill Number:</b>	SB 24
<b>Amendment:</b>	21
<b>Motion:</b>	Adopt
<b><u>Motion by:</u></b>	Wilkin
<b><u>Objection</u></b>	
<b><u>Objection by:</u></b>	S. Torgerson
<b><u>Removed</u></b>	U
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Senator Gary Wilkin	
Senator Pete Kelly	
Senator Lyda Green	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<b><u>Tally</u></b>	
Yea	0
Nay	0
Absent	0
<b><u>MOTION</u></b>	Withdrawn

delete pt line 24-29 delete

# FISCAL NOTE

*Amend # 22  
Adopted*

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. CSSB 24 (FIN)

Revision Date/Time (Note if correction) 3/26/99 Dept. Affected Environmental Conservation  
 Title The Alaska Regulations Reform Act BRU Administration  
 Component Commissioner's Office  
 Sponsor Senators Donley, Taylor  
 Requester Senate Finance Component Serial No. 633

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	0.0	<del>200.8</del>	200.8	200.8	<del>200.8</del>	200.8
Travel	0.0	<del>30.0</del>	30.0	30.0	30.0	30.0
Contractual	0.0	<i>1/2</i> 71.5	69.6	69.6	69.6	69.6
Supplies	0.0	5.0	5.0	5.0	5.0	5.0
Equipment	0.0	<del>18.0</del>	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<del><b>325.3</b></del>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	325.3	305.4	305.4	305.4	305.4
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type)	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>325.3</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>	<b>305.4</b>

Estimate of any current year (FY99) cost: 0.0

**POSITIONS**

Full-time	0	4	4	4	4	4
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by Janice Adair, Director Phone 269-7644  
 Division Environmental Health Date/Time 3/26/99 10:41 AM  
 Approved by Commissioner Michele Brown Date 3/21/99  
 Agency Department of Environmental Conservation

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Fiscal Analysis  
CSSB 24 (FIN)

There are four sections in this bill that create significant costs for the department.

Section 3 states that the department may not adopt a regulation that changes the intent of the statute being implemented. In many cases, regulations are interpreting statutes that have been on the books for many years, thus the specific "intent" is not readily known. Similarly, there are no records of specific actions taken in subcommittee or conference committee meetings on legislation, again making the specific "intent" of the drafters unknown. Finally, there are often numerous and conflicting understandings amongst legislators as to the "intent" of legislation. All of these issues would need to be thoroughly researched by a paralegal before regulations were drafted.

Section 4 requires a cost-benefit analysis and provides some exemptions. In the past two years, this department has developed approximately 50 regulation projects. Only one (industrial solid waste fee increases) would have been excluded from the required analysis under the proposed exemption at page 3, lines 6-7. Nearly all of the department's regulations that are based on federal requirements include provisions to "Alaskanize" those requirements. Because those types of provisions are not "necessary to meet federal requirements", those regulations would not qualify for the exemption at page 3, lines 10-11. Mixing zones, site specific water quality criteria, many of the provisions in the solid waste regulations, and exemptions from certain drinking water monitoring requirements are some examples of where we have modified federal requirements to better fit conditions in the state. A full time economist would be necessary to research the costs of compliance for the public and costs of the benefits to the public. In addition, page 2, line 29 specifies that regulations may not be adopted unless the benefits to the public outweigh the costs to the public. Therefore, a cost-benefit analysis would have to be prepared each and every time changes were made to proposed regulations. When coupled with Section 10 of this legislation, this would result in numerous analyses being prepared.

Section 10 requires the department to re-notice regulations whenever changes were made to the draft proposal. Public notice is expensive. Many of our regulation mailing lists exceed 3,000 names. To mitigate the numerous and potentially never-ending public comment periods and to meet the two year time limit in Section 14, we would need to have assistance from the Department of Law in the development of regulations. We have included \$51.1 in FY 01, and \$49.2 in succeeding fiscal years in our contractual costs for assistance. We would also need additional paralegal support in our department to meet the requirements of the Administrative Procedures Act for public notice and to quickly incorporate regulatory changes. Additional clerical assistance would also be needed to deal with the increased paperwork under these sections.

Summary:

1 Economist	Total Cost FY 01	\$82.5	Cost in succeeding FY	\$78.0
2 Paralegals	Total Cost FY 01	\$148.6	Cost in succeeding FY	\$139.6
1 Clerk	Total Cost FY01	\$43.1	Cost in succeeding FY	\$38.6
RSA with Law	Total Cost FY01	\$51.1	Cost in succeeding FY	\$49.2



Amend #23 adopted

# SENATOR DAVE DONLEY

ALASKA STATE LEGISLATURE

Amend #23  
moved Donley  
w/o obj. ADOPTED

## MEMORANDUM

To: Senator Torgeson, Chair of the Senate Finance Committee  
Fr: Senator Dave Donley *DD*  
Dt: March 31, 1999  
Re: SB 24 Fiscal Note for LAW

I am proposing that the fiscal note supplied by the Department of Law for CSSB 24 (FIN) (1-LS0274\X) be amended to reflect the following changes.

FY 2001

Personal Services	40.0
Travel	1.45
Contractual	23.5
Supplies	0.85
Equipment	<u>6.5</u>
Total	72.3

FY 2002-2005 would remain the same minus the 6.5 one-time equipment costs.

DD/hrn

Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus  
MEMBER: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

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June-December: 716 W. 4TH AVE., STE. 430 • ANCHORAGE, AK • 99501 • (907) 269-0234 • FAX: (907) 269-0238

# FISCAL NOTE

(WD1-LS0274X)

**STATE OF ALASKA  
1999 LEGISLATIVE SESSION**

**BILL NO. CSSB 24 (FIN)**

Revision Date/Time (new work draft)	<u>3/26/99, 11:10 AM</u>	Dept. Affected	<u>Law</u>
Title	<u>"An Act relating to regulations; amending Rule</u>	BRU	<u>Civil Division</u>
	<u>65, Alaska Rules of Civil Procedure; and ... effective date."</u>	Component	<u>Legislation/Regulations</u>
Sponsor	<u>Senator Donley</u>		
Requester	<u>Senate Finance Committee</u>	Component Serial No.	<u>2209</u>

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services		112.3	112.3	112.3	112.3	112.3
Travel		2.9	2.9	2.9	2.9	2.9
Contractual		47.0	47.0	47.0	47.0	47.0
Supplies		1.7	1.7	1.7	1.7	1.7
Equipment		6.5				
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>170.4</b>	<b>163.9</b>	<b>163.9</b>	<b>163.9</b>	<b>163.9</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
1002 Federal Receipts						
1003 GF Match						
1004 GF		68.2	65.6	65.6	65.6	65.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Rcpts		102.2	98.3	98.3	98.3	98.3
<b>TOTAL</b>	<b>0.0</b>	<b>170.4</b>	<b>163.9</b>	<b>163.9</b>	<b>163.9</b>	<b>163.9</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

POSITIONS	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Full-time		1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*

CSSB 24 (FIN) (WD 1-LS0274X) makes a number of significant changes to the way regulations are adopted by the Departments of Natural Resources and Environmental Conservation, and parts of the Department of Fish and Game (Habitat and Restoration). These changes would take effect July 1, 2000.

Of significance to the Department of Law from a cost perspective are four of the proposed changes for the designated state agencies in the regulations provisions of the bill: (1) a requirement for the preparation of cost-benefit analyses on most regulation adoption, repeal, and amendment showing that benefits to the public outweigh costs; (2) a requirement for supplemental notices and public comment for substance changes in proposed regulations after initial notice and public comment has occurred; (3) a new standard for regulation challenges in court based on if the proposed regulation

Prepared by Joan M. Kasson *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner [Signature] *Blura M. Bole*  
 Agency Department of Law

Phone 465-5370  
 Date/Time 3/26/99, 11:10 AM  
 Date 3/26/99

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FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

(WD1-LS0274X)  
BILL NO. CSSB 24 (FIN)

**ANALYSIS CONTINUATION**

uses an approach that causes the least necessary intrusion on the rights and property of the persons affected by the regulation, and if there is a substantial state interest in using the approach; and (4) a requirement that regulations be within the intent of the statute to be valid. While there are exceptions for some situations, most state regulations by the designated agencies would be covered by these provisions.

Each of these proposed changes will cause a significant increase in the workload of the department in terms of preventative advice to the designated state agencies and additional time for regulations review to ensure the proposed requirements are met, and to defend the regulations of those designated agencies when they are challenged in court.

The Department of Law anticipates that a significant increase in the level of litigation attempting to overturn regulations would result. Quantifying costs and benefits of regulations for these designated will be, in many cases, a subjective process open to considerable interpretation. In addition, a determination that a regulation uses the least necessary intrusion possible on rights and property of affected individuals would also be open to various interpretations in many cases. For example, it is difficult to determine even who might be affected in the case of many natural resources regulations, and proving a substantial state interest in using a particular scheme, would almost certainly involve extensive litigation because of the economic interests at stake in natural resource decisions of the designated state agencies.

The department estimates that its attorneys presently spend 7500 hours per year on regulations review projects and litigation challenging regulations. We estimate a 20 percent increase in time for regulations-related projects for these designated agencies would result from this bill. At 20 percent, an additional 1500 hours would be required, a total of 1 full-time equivalent attorney. In addition, many of the cases in litigation would require the use of "outside" expert economists. The department anticipates that the new workload generated by this bill would be split approximately 40/60 between general funds and interagency agreements.

Based on the department's FY00 standard full-time equivalent attorney cost schedule, which includes clerical support, communications, space, supplies, data processing, and other normal overhead expenses, the cost of 1 FTE attorney is \$133,926. An additional \$5,000 is included for direct case costs, \$6,500 for one-time equipment purchases, and \$25,000 for outside experts, costs that cannot be included in the rate as overhead.

12/14/98

16:01:30.7

PERSONAL SERVICES EXPENDITURES DETAIL REPORT

PAGE: 17

DEPARTMENT OF LAW

SCENARIO: 1 (FY00 AGENCY SCENARIO 1)

COMP #: 03 97-01-02-08-00 NAME: LEGISLATION/REGULATIONS

BRU NAME: CIVIL DIVISION

PCN	JOB CLASS TITLE	T R B S C U	LOCATION NAME	S R&S	BUDG	ANNUAL SALARY	PREM PAY	ANNUAL BENES	TOTAL COSTS	G.F. AMT	COLA AMT
030009	ATTORNEY V	F A XE	JUNEAU	AA 25K	12.00	86892	0	22837	109,729	109,729	0
030013	LEGAL SECRETARY II	F A CG	JUNEAU	2A 11DE	12.00	30667	0	12327	42,995	42,995	0
030069	ATTORNEY V	F A XE	JUNEAU	99	12.00	58487	0	17831	76,318	0	0
030146	ASSOC ATTORNEY II	F A XE	JUNEAU	AA 19LM	12.00	60649	0	18278	78,928	78,928	0
030290	ASSOC ATTORNEY II	F A XE	JUNEAU	AA 19DE	12.00	51304	0	16343	67,647	67,647	0

COMPONENT TOTALS:

STAFF MONTHS	60.00	NEW+AUTH TOTAL	NEW	DELETED	TOTAL SALARY COSTS	288,000.50	TOTAL PREMIUM PAY COSTS	0.00	TOTAL BENEFITS COSTS	87,619.12	TOTAL PERSONAL SERVICES	375,619.62	0.00
FULL TIME POSITIONS		5			TOTAL PERSONAL SERVICES	375,619.62	PLUS LUMP SUM PREMIUM PAY	0.00					
PART TIME/SEASONAL POSITIONS					SUB-TOTAL	375,619.62							
NON PERMANENT POSITIONS		=====	=====	=====	- 0.00000 % VACANCY FACTOR	0.00							0.00
NUMBER OF POSITIONS IN COMPONENT 9701020800 =		5			PERSONAL SERVICES, LINE 100	375,619.62							0.00
FUND SOURCE	FUNDING AMOUNT	PERCENT											
1004 GENERAL FUND RECEIPTS	299,300.90	79.68											
1007 INTER-AGENCY RECEIPTS	76,318.72	20.32											
TOTAL W/O VACANCY ADJUSTMENT:	375,619.62												

This is the sheet I used to estimate numbers on salaries

Amend #24

ADOPTED

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB24 version X

Revision Date: 31-Mar-99 Dept Affected: Natural Resources  
 Title: An Act relating to the adoption, amendment, BRU: Management & Administration  
repeal, legislative review, and judicial review of regulations... Component: Commissioner's Office  
 Sponsor: Senator DONLEY  
 Requestor: (S) FIN Component Serial No. #423

Expenditures/Revenues (Inflation not included unless otherwise noted below) (Thousands of Dollars)

OPERATING EXPENDITURES	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL SUPPLIES		164.2	54.9	81.6	88.3	81.6
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES (fund code)	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
1002 Federal Receipts						
1003 GF Match						
1004 GF		164.2	54.9	81.6	88.3	81.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>164.2</b>	<b>54.9</b>	<b>81.6</b>	<b>88.3</b>	<b>81.6</b>

Estimate of any current year (FY99) cost: \$ none

### POSITIONS

POSITIONS	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

### ANALYSIS: (Attach a separate page if necessary)

The Department of Natural Resources initiates regulations projects each year (in this fiscal year we have 13 projects in various stages). The projects can be highly complex or merely housekeeping. Some can be highly controversial and require multiple public notice and hearings. Many will require a cost/benefit analysis or a detailed, considered approach to waiving a cost/benefit analysis. DNR will contract for a professional cost/benefit analysis as the need arises. The department believes that it would not be able to hire an economist proficient in all of the issues involved in oil and gas, land, mining, parks, forestry, etc. We estimate that "prohibitive" cost for a cost/benefit analysis is anything over \$40,000. It is very difficult to estimate how much the required written reports, time limits, decisions on whether or not to perform a cost/benefit analysis, will add to the cost of a regulation project. We have added nothing in the fiscal note but believe the cost may be high.

Prepared by: Carol Carroll, Director Phone: 465-4730  
 Division: Support Services Date: 31-Mar-99  
 Approved by Commissioner: *Carol Carroll* Date: 3/31/99  
 Agency: Natural Resources

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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, notwithstanding any other provision of law, unless the regulation takes a reasonable approach within the intent of the statute.

(c) In addition to the requirements of (b) of this section, a designated state agency may not adopt a regulation that changes the intent of the statute being implemented, interpreted, made specific, or otherwise carried out. When challenging a regulation under this subsection, the burden of proof is on the person challenging the regulation to prove that the regulation changes the intent of the statute. A person may not obtain a temporary restraining order, a preliminary injunction, or a permanent injunction from a court to enjoin the operation of a regulation based on a failure to comply with this subsection.

\* Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

**Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation, an order of repeal, or an amendment to a regulation, unless the adopting state agency head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive ~~or that the costs and benefits cannot be easily determined~~, a designated state agency shall prepare a cost-benefit analysis of the costs to the public to comply with the proposed regulatory action and the benefits to the public from the proposed regulatory action. The designated state agency shall consider a cost or benefit even if the cost or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state agency is not required to give the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

(b) Notwithstanding (a) of this section, a designated state agency is not required to prepare a cost-benefit analysis if the estimated cost of implementing the proposed regulatory action is equal to or not substantially greater than the cost of implementing the proposed regulatory action as estimated in the fiscal note prepared for the bill that enacted the authorizing statute.

(c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is required by this section, the designated state agency may not adopt a regulation, order of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

SENATE FINANCE COMMITTEE  
1999 COMMITTEE ACTION

<b>Bill Number</b>	SB 24
<b>Amendment</b>	25
<b>Motion</b>	adopt
<b><u>Motion by</u></b>	Donley
<b><u>Objection</u></b>	(
<b><u>Objection by</u></b>	Wilken
<b><u>Removed</u></b>	
<b><u>Second Objection by</u></b>	
<b><u>Committee Member</u></b>	<b><u>Vote</u></b>
Senator Loren Leman	2
Senator Al Adams	1
Senator Gary Wilken	2
Senator Pete Kelly	2
Senator Lyda Green	2
Senator Randy Phillips	1
Senator Dave Donley	2
Co-Chair Sean Parnell	1
Co-Chair John Torgerson	2
<b><u>Tally</u></b>	
Yea	0 4
Nay	0 2
Absent	0 3
<b><u>MOTION</u></b>	Pass

*Adopted*

1-LS0274Y ✓  
Bannister  
3/29/99

**CS FOR SENATE BILL NO. 24(FIN)**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered:**  
**Referred:**

**Sponsor(s): SENATORS DONLEY, Taylor**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulations; amending Rule 65, Alaska Rules of Civil  
2 Procedure; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. SHORT TITLE.** This Act may be known as the Alaska Regulations Reform  
5 Act.

6 \* **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute. Except for**  
8 **designated state agencies, if [IF], by express or implied terms of a statute, a state**  
9 **agency has authority to adopt regulations to implement, interpret, make specific, or**  
10 **otherwise carry out the provisions of the statute, a regulation adopted is not valid or**  
11 **effective unless consistent with the statute and reasonably necessary to carry out the**  
12 **purpose of the statute.**

13 \* **Sec. 3.** AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry  
2 out the provisions of the statute, a regulation adopted is not valid or effective,  
3 notwithstanding any other provision of law, unless the regulation takes a reasonable  
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state  
6 agency may not adopt a regulation that changes the intent of the statute being  
7 implemented, interpreted, made specific, or otherwise carried out. When challenging  
8 a regulation under this subsection, the burden of proof is on the person challenging the  
9 regulation to prove that the regulation changes the intent of the statute. A person may  
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent  
11 injunction from a court to enjoin the operation of a regulation based on a failure to  
12 comply with this subsection.

13 \* Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,  
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency  
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive  
17 or that the costs and benefits cannot be easily determined, a designated state agency  
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the  
19 proposed regulatory action and the benefits to the public from the proposed regulatory  
20 action. The designated state agency shall consider a cost or benefit even if the cost  
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state  
22 agency is not required to give the cost or benefit a dollar value in order to prepare a  
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not  
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the  
26 proposed regulatory action is equal to or not substantially greater than the cost of  
27 implementing the proposed regulatory action as estimated in the fiscal note prepared  
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is  
30 required by this section, the designated state agency may not adopt a regulation, order  
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine  
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and  
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a  
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt  
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal  
11 requirements, to obtain an exemption for a person, program, or situation in the state  
12 from federal requirements, or to revise how a federal requirement will apply to a  
13 person, program, or situation in the state.

14 (f) A regulation, an order of repeal, or an amendment to a regulation may not  
15 be voided because the designated state agency taking the regulatory action failed to  
16 comply with this section. A person may not obtain a temporary restraining order, a  
17 preliminary injunction, or a permanent injunction from a court to enjoin the operation  
18 of a regulation based on a failure to comply with this section.

19 (g) The designated state agency shall make a copy of the cost-benefit analysis  
20 prepared under this section available to the public before a hearing on the proposed  
21 regulatory action, or, if a cost-benefit analysis is not required due to the operation of  
22 (b) of this section, the designated state agency shall make a copy of the fiscal note  
23 identified in (b) of this section available to the public before a hearing on the proposed  
24 regulatory action.

25 (h) In this section, "adopting state agency head" means the commissioner of  
26 the department within which the state agency is located.

27 \* Sec. 5. AS 44.62.190(a) is amended to read:

28 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,  
29 notice of the proposed action shall be

30 (1) published in the newspaper of general circulation or trade or  
31 industry publication that the state agency prescribes and in the Alaska Administrative

1 Journal; in the discretion of the state agency giving the notice, the requirement of  
2 publication in a newspaper or trade or industry publication may be satisfied by using  
3 a combination of publication and broadcasting; when broadcasting the notice, an  
4 agency may use an abbreviated form of the notice if the broadcast provides the name  
5 and date of the newspaper or trade or industry journal where the full text of the notice  
6 can be found;

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

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

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

12 (A) mailed to a person or group of persons whom the agency  
13 believes is interested in the proposed action; and

14 (B) published in the additional form and manner the state  
15 agency prescribes;

16 (5) furnished the Department of Law together with a copy of the  
17 proposed regulation, amendment, or order of repeal for the department's use in  
18 preparing the opinion required after adoption and before filing by AS 44.62.060;

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

21 (7) furnished to the standing committee of each house of the legislature  
22 having legislative jurisdiction over the subject matter treated by the regulation under  
23 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
24 proposed regulation, amendment, or order of repeal for the committee's use in  
25 conducting the review authorized by AS 24.05.182;

26 (8) furnished to the staff of the Administrative Regulation Review  
27 Committee, together with a copy of the proposed regulation, amendment, or order of  
28 repeal and, if preparation of an appropriation increase estimate is required by  
29 AS 44.62.195, a copy of the estimate;

30 (9) published on the Internet by a designated state agency  
31 proposing the action if the designated state agency has the technological capability

1 to publish on the Internet.

2 \* Sec. 6. AS 44.62.200(a) is amended to read:

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

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

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

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

11 (4) other matters prescribed by a statute applicable to the specific  
12 agency or to the specific regulation or class of regulations;

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

15 (6) a statement that a copy of the cost-benefit analysis is available  
16 from the designated state agency proposing the regulatory action if the cost-  
17 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not  
18 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note  
19 identified in AS 44.62.035(b) is available from the designated state agency  
20 proposing the regulatory action.

21 \* Sec. 7. AS 44.62.200(b) is amended to read:

22 (b) Except for designated state agencies, a [A] regulation that is adopted,  
23 amended, or repealed may vary in content from the summary specified in (a)(3) of this  
24 section if the subject matter of the regulation remains the same and the original notice  
25 was written so as to assure that members of the public are reasonably notified of the  
26 proposed subject of agency action in order for them to determine whether their  
27 interests could be affected by agency action on that subject.

28 \* Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

29 (d) A regulation that is adopted, amended, or repealed by a designated state  
30 agency may vary in content from the summary specified in (a)(3) of this section if the  
31 subject matter of the regulation remains the same and the notice was written so as to

1 assure that members of the public are reasonably notified of the proposed subject of  
2 agency action in order for them to determine whether their interests could be affected  
3 by agency action on that subject.

4 \* Sec. 9. AS 44.62.210(a) is amended to read:

5 (a) On the date and at the time and place designated in the notice, the agency  
6 shall give each interested person or the person's authorized representative, or both, the  
7 opportunity to present statements, arguments, or contentions in writing, with or without  
8 opportunity to present them orally. The state agency may accept material presented  
9 by any form of communication authorized by this chapter and shall consider all  
10 factual, substantive, and other relevant matter presented to it before adopting,  
11 amending, or repealing a regulation. When considering the factual, substantive, and  
12 other relevant matter, the agency shall pay special attention to the cost to private  
13 persons of the proposed regulatory action. A designated state agency shall also pay  
14 special attention to the benefit to private persons of the proposed regulatory  
15 action.

16 \* Sec. 10. AS 44.62 is amended by adding a new section to read:

17 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a  
18 designated state agency rewrites a proposed regulation, amendment of a regulation, or  
19 order of repeal after the designated state agency has complied with AS 44.62.190,  
20 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,  
21 amendment, or order but the designated state agency would not normally consider the  
22 change to be significant enough to require additional notice and opportunity for  
23 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the  
24 designated state agency shall provide notice and opportunity for public comment under  
25 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,  
26 amendment, or order of repeal.

27 (b) If a designated state agency does not provide the notice and opportunity  
28 for public comment under (a) of this section for a rewritten proposed regulation,  
29 amendment, or order of repeal, the designated state agency shall prepare a written  
30 explanation of the reasons why the requirement of (a) of this section does not apply.  
31 When the adopted regulation, amendment, or order of repeal is published in the Alaska

1 Administrative Journal, the lieutenant governor shall include the designated state  
2 agency explanation with the text or a summary of the text of the regulation,  
3 amendment, or order of repeal.

4 (c) A regulation, an order of repeal, or an amendment to a regulation of a  
5 designated state agency may not be voided because the designated state agency taking  
6 the regulatory action failed to comply with this section.

7 (d) This section does not apply to regulations

8 (1) adopted under AS 44.62.260 to make emergency regulations  
9 permanent; or

10 (2) that are necessary to meet federal requirements, to obtain an  
11 exemption for a person, program, or situation in the state from federal requirements,  
12 or to revise how a federal requirement will apply to a person, program, or situation in  
13 the state.

14 \* Sec. 11. AS 44.62.230 is amended to read:

15 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting  
16 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,  
17 a state agency shall, within 30 days, deny the petition in writing or schedule the matter  
18 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an  
19 emergency regulation, and the agency finds that an emergency exists, the requirements  
20 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not  
21 apply, and the agency may submit the regulation to the lieutenant governor  
22 immediately after making the finding of emergency and putting the regulation into  
23 proper form.

24 \* Sec. 12. AS 44.62.250 is amended to read:

25 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may  
26 be adopted as an emergency regulation or order of repeal if a state agency makes a  
27 written finding, including a statement of the facts that constitute the emergency, that  
28 the adoption of the regulation or order of repeal is necessary for the immediate  
29 preservation of the public peace, health, safety, or general welfare. The requirements  
30 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -  
31 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon

1 adoption of an emergency regulation, the adopting agency shall immediately submit  
2 a copy of it to the lieutenant governor for filing and for publication in the Alaska  
3 Administrative Register, and, within five days after filing by the lieutenant governor,  
4 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).  
5 Failure to give the required notice by the end of the 10th day automatically repeals the  
6 regulation.

7 \* Sec. 13. AS 44.62.260 is amended to read:

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

9 (a) A regulation adopted as an emergency regulation does not remain in effect more  
10 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)  
11 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are  
12 applicable to the regulation, either before submitting the regulation to the lieutenant  
13 governor or during the 120-day period.

14 (b) Before the expiration of the 120-day period, the agency shall transmit to  
15 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)  
16 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were  
17 applicable to the regulation, were complied with before submitting the regulation to  
18 the lieutenant governor, or that the agency complied with those sections within the  
19 120-day period. Failure to so certify repeals the emergency regulation; it may not be  
20 renewed or refiled as an emergency regulation.

21 \* Sec. 14. AS 44.62 is amended by adding a new section to read:

22 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may  
23 not take more than two years to adopt regulations that the designated state agency is  
24 required to adopt by a statute. The two-year period begins on the effective date of  
25 enactment of the statute requiring the adoption of the regulations.

26 (b) If a designated state agency fails to comply with (a) of this section, the  
27 designated state agency shall prepare a written report containing the reasons for the  
28 failure and submit the report to the president of the senate, the speaker of the house  
29 of representatives, and the Administrative Regulation Review Committee established  
30 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a  
31 regulation invalid for failure to comply with this section.

1 (c) The requirement of (a) of this section is not intended to prohibit a  
2 designated state agency from amending a regulation after the regulation has been  
3 adopted.

4 (d) This section does not apply to regulations that are necessary to meet  
5 federal requirements, to obtain an exemption for a person, program, or situation in the  
6 state from federal requirements, or to revise how a federal requirement will apply to  
7 a person, program, or situation in the state.

8 \* Sec. 15. AS 44.62.300 is amended by adding new subsections to read:

9 (b) Except where a court has other grounds for holding the regulation invalid,  
10 a court that reviews the validity of a regulation of a designated state agency shall hold  
11 the regulation valid unless

12 (1) the regulation uses an approach that causes more than the least  
13 necessary intrusion on the rights and property of the persons affected by the regulation;  
14 and

15 (2) the approach taken by the regulation is not required by a substantial  
16 state interest.

17 (c) Notwithstanding (b) of this section, when an action for declaratory relief  
18 is brought under (a) of this section, a court may not issue a temporary restraining  
19 order, a preliminary injunction, or a permanent injunction based on (b) of this section  
20 to stop the operation of a regulation of a designated state agency.

21 (d) In (b)(2) of this section, the person challenging the regulation carries the  
22 burden of proving that there is not a substantial state interest that requires using the  
23 approach taken by the regulation.

24 (e) The provisions of (b) - (d) of this section do not apply to regulations that  
25 are necessary to meet federal requirements, to obtain an exemption for a person,  
26 program, or situation in the state from federal requirements, or to revise how a federal  
27 requirement will apply to a person, program, or situation in the state.

28 \* Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

29 (5) "designated state agency"

30 (A) means

31 (i) the Department of Environmental Conservation;

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(ii) the Department of Natural Resources; and  
(iii) the Department of Fish and Game for habitat and restoration programs;

(B) does not include

- (i) a board or commission located in an agency described in (A) of this paragraph; or
- (ii) any other organizational entity located in an agency described in (A) of this paragraph if the organizational entity is governed by a board whose members are subject to confirmation by the legislature.

\* Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the effective date of this Act.

(b) Section 14 of this Act applies to the adoption of regulations if the effective date of the Act enacting the statutory authority requiring the adoption is the same as or after the effective date of this Act.

\* Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

\* Sec. 19. This Act takes effect July 1, 2000.

Adopted

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2 Procedure; and providing for an effective date."

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

4 \* Section 1. SHORT TITLE. This Act may be known as the Alaska Regulations Reform  
5 Act.

6 \* Sec. 2. AS 44.62.030 is amended to read:

7           Sec. 44.62.030. Consistency between regulation and statute. Except for  
8 designated state agencies, if [IF], by express or implied terms of a statute, a state  
9 agency has authority to adopt regulations to implement, interpret, make specific, or  
10 otherwise carry out the provisions of the statute, a regulation adopted is not valid or  
11 effective unless consistent with the statute and reasonably necessary to carry out the  
12 purpose of the statute.

13 \* Sec. 3. AS 44.62.030 is amended by adding new subsections to read:

14           (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry  
2 out the provisions of the statute, a regulation adopted is not valid or effective,  
3 notwithstanding any other provision of law, unless the regulation takes a reasonable  
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state  
6 agency may not adopt a regulation that changes the intent of the statute being  
7 implemented, interpreted, made specific, or otherwise carried out. When challenging  
8 a regulation under this subsection, the burden of proof is on the person challenging the  
9 regulation to prove that the regulation changes the intent of the statute. A person may  
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12 comply with this subsection.

13 \* **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

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15 an order of repeal, or an amendment to a regulation, unless the adopting state agency  
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive  
17 or that the costs and benefits cannot be easily determined, a designated state agency  
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the  
19 proposed regulatory action and the benefits to the public from the proposed regulatory  
20 action. The designated state agency shall consider a cost or benefit even if the cost  
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state  
22 agency is not required to give the cost or benefit a dollar value in order to prepare a  
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not  
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the  
26 proposed regulatory action is equal to or not substantially greater than the cost of  
27 implementing the proposed regulatory action as estimated in the fiscal note prepared  
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is  
30 required by this section, the designated state agency may not adopt a regulation, order  
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine  
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and  
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a  
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt  
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal  
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not  
13 be voided because the designated state agency taking the regulatory action failed to  
14 comply with this section. A person may not obtain a temporary restraining order, a  
15 preliminary injunction, or a permanent injunction from a court to enjoin the operation  
16 of a regulation based on a failure to comply with this section.

17 (g) The designated state agency shall make a copy of the cost-benefit analysis  
18 prepared under this section available to the public before a hearing on the proposed  
19 regulatory action, or, if a cost-benefit analysis is not required due to the operation of  
20 (b) of this section, the designated state agency shall make a copy of the fiscal note  
21 identified in (b) of this section available to the public before a hearing on the proposed  
22 regulatory action.

23 (h) In this section, "adopting state agency head" means the commissioner of  
24 the department within which the state agency is located.

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27 notice of the proposed action shall be

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30 Journal; in the discretion of the state agency giving the notice, the requirement of  
31 publication in a newspaper or trade or industry publication may be satisfied by using

1 a combination of publication and broadcasting; when broadcasting the notice, an  
2 agency may use an abbreviated form of the notice if the broadcast provides the name  
3 and date of the newspaper or trade or industry journal where the full text of the notice  
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5 (2) mailed to every person who has filed a request for notice of  
6 proposed action with the state agency;

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

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11 believes is interested in the proposed action; and

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16 preparing the opinion required after adoption and before filing by AS 44.62.060;

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

19 (7) furnished to the standing committee of each house of the legislature  
20 having legislative jurisdiction over the subject matter treated by the regulation under  
21 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
22 proposed regulation, amendment, or order of repeal for the committee's use in  
23 conducting the review authorized by AS 24.05.182;

24 (8) furnished to the staff of the Administrative Regulation Review  
25 Committee, together with a copy of the proposed regulation, amendment, or order of  
26 repeal and, if preparation of an appropriation increase estimate is required by  
27 AS 44.62.195, a copy of the estimate;

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3 (1) a statement of the time, place, and nature of proceedings for  
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7 implemented, interpreted, or made specific;

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10 agency or to the specific regulation or class of regulations;

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

13 (6) a statement that a copy of the cost-benefit analysis is available  
14 from the designated state agency proposing the regulatory action if the cost-  
15 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not  
16 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note  
17 identified in AS 44.62.035(b) is available from the designated state agency  
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12 special attention to the benefit to private persons of the proposed regulatory  
13 action.

14 \* Sec. 10. AS 44.62 is amended by adding a new section to read:

15 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a  
16 designated state agency rewrites a proposed regulation, amendment of a regulation, or  
17 order of repeal after the designated state agency has complied with AS 44.62.190,  
18 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,  
19 amendment, or order but the designated state agency would not normally consider the  
20 change to be significant enough to require additional notice and opportunity for  
21 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the  
22 designated state agency shall provide notice and opportunity for public comment under  
23 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,  
24 amendment, or order of repeal.

25 (b) If a designated state agency does not provide the notice and opportunity  
26 for public comment under (a) of this section for a rewritten proposed regulation,  
27 amendment, or order of repeal, the designated state agency shall prepare a written  
28 explanation of the reasons why the requirement of (a) of this section does not apply.  
29 When the adopted regulation, amendment, or order of repeal is published in the Alaska  
30 Administrative Journal, the lieutenant governor shall include the designated state  
31 agency explanation with the text or a summary of the text of the regulation,

1 amendment, or order of repeal.

2 (c) A regulation, an order of repeal, or an amendment to a regulation of a  
3 designated state agency may not be voided because the designated state agency taking  
4 the regulatory action failed to comply with this section.

5 (d) This section does not apply to regulations

6 (1) adopted under AS 44.62.260 to make emergency regulations  
7 permanent; or

8 (2) that are necessary to meet federal requirements.

9 \* Sec. 11. AS 44.62.230 is amended to read:

10 Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting  
11 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,  
12 a state agency shall, within 30 days, deny the petition in writing or schedule the matter  
13 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an  
14 emergency regulation, and the agency finds that an emergency exists, the requirements  
15 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not  
16 apply, and the agency may submit the regulation to the lieutenant governor  
17 immediately after making the finding of emergency and putting the regulation into  
18 proper form.

19 \* Sec. 12. AS 44.62.250 is amended to read:

20 Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may  
21 be adopted as an emergency regulation or order of repeal if a state agency makes a  
22 written finding, including a statement of the facts that constitute the emergency, that  
23 the adoption of the regulation or order of repeal is necessary for the immediate  
24 preservation of the public peace, health, safety, or general welfare. The requirements  
25 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -  
26 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon  
27 adoption of an emergency regulation, the adopting agency shall immediately submit  
28 a copy of it to the lieutenant governor for filing and for publication in the Alaska  
29 Administrative Register, and, within five days after filing by the lieutenant governor,  
30 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).  
31 Failure to give the required notice by the end of the 10th day automatically repeals the

1 regulation.

2 \* Sec. 13. AS 44.62.260 is amended to read:

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

4 (a) A regulation adopted as an emergency regulation does not remain in effect more  
5 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)  
6 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are  
7 applicable to the regulation, either before submitting the regulation to the lieutenant  
8 governor or during the 120-day period.

9 (b) Before the expiration of the 120-day period, the agency shall transmit to  
10 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)  
11 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were  
12 applicable to the regulation, were complied with before submitting the regulation to  
13 the lieutenant governor, or that the agency complied with those sections within the  
14 120-day period. Failure to so certify repeals the emergency regulation; it may not be  
15 renewed or refiled as an emergency regulation.

16 \* Sec. 14. AS 44.62 is amended by adding a new section to read:

17 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may  
18 not take more than two years to adopt regulations that the designated state agency is  
19 required to adopt by a statute. The two-year period begins on the effective date of  
20 enactment of the statute requiring the adoption of the regulations.

21 (b) If a designated state agency fails to comply with (a) of this section, the  
22 designated state agency shall prepare a written report containing the reasons for the  
23 failure and submit the report to the president of the senate, the speaker of the house  
24 of representatives, and the Administrative Regulation Review Committee established  
25 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a  
26 regulation invalid for failure to comply with this section.

27 (c) The requirement of (a) of this section is not intended to prohibit a  
28 designated state agency from amending a regulation after the regulation has been  
29 adopted.

30 (d) This section does not apply to regulations that are necessary to meet  
31 federal requirements.

1 \* Sec. 15. AS 44.62.300 is amended by adding new subsections to read:

2 (b) Except where a court has other grounds for holding the regulation invalid,  
3 a court that reviews the validity of a regulation of a designated state agency shall hold  
4 the regulation valid unless

5 (1) the regulation uses an approach that causes more than the least  
6 necessary intrusion on the rights and property of the persons affected by the regulation;  
7 and

8 (2) the approach taken by the regulation is not required by a substantial  
9 state interest.

10 (c) Notwithstanding (b) of this section, when an action for declaratory relief  
11 is brought under (a) of this section, a court may not issue a temporary restraining  
12 order, a preliminary injunction, or a permanent injunction based on (b) of this section  
13 to stop the operation of a regulation of a designated state agency.

14 (d) In (b)(2) of this section, the person challenging the regulation carries the  
15 burden of proving that there is not a substantial state interest that requires using the  
16 approach taken by the regulation.

17 (e) The provisions of (b) - (d) of this section do not apply to regulations that  
18 are necessary to meet federal requirements.

19 \* Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

20 (5) "designated state agency"

21 (A) means

22 (i) the Department of Environmental Conservation;

23 (ii) the Department of Natural Resources; and

24 (iii) the Department of Fish and Game for habitat and  
25 restoration programs;

26 (B) does not include

27 (i) a board or commission located in an agency  
28 described in (A) of this paragraph; or

29 (ii) any other organizational entity located in an agency  
30 described in (A) of this paragraph if the organizational entity is  
31 governed by a board whose members are subject to confirmation by the

1 legislature.

2 \* Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the  
3 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as  
4 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the  
5 effective date of this Act.

6 (b) Section 14 of this Act applies to the adoption of regulations if the effective date  
7 of the Act enacting the statutory authority requiring the adoption is the same as or after the  
8 effective date of this Act.

9 \* Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and  
10 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil  
11 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

12 \* Sec. 19. This Act takes effect July 1, 2000.

1-LS0274\W  
Bannister✓  
3/19/99

SFIN  
3/19

**CS FOR SENATE BILL NO. 24(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS DONLEY, Taylor**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulations; amending Rule 65, Alaska Rules of Civil  
2 Procedure; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* **Section 1. SHORT TITLE.** This Act may be known as the Alaska Regulations Reform  
5 Act.

6 \* **Sec. 2.** AS 44.62.030 is amended to read:

7 **Sec. 44.62.030. Consistency between regulation and statute. Except for**  
8 **designated state agencies, if [IF], by express or implied terms of a statute, a state**  
9 **agency has authority to adopt regulations to implement, interpret, make specific, or**  
10 **otherwise carry out the provisions of the statute, a regulation adopted is not valid or**  
11 **effective unless consistent with the statute and reasonably necessary to carry out the**  
12 **purpose of the statute.**

13 \* **Sec. 3.** AS 44.62.030 is amended by adding new subsections to read:

14 (b) If, by express or implied terms of a statute, a designated state agency has

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry  
2 out the provisions of the statute, a regulation adopted is not valid or effective,  
3 notwithstanding any other provision of law, unless the regulation takes a reasonable  
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state  
6 agency may not adopt a regulation that changes the intent of the statute being  
7 implemented, interpreted, made specific, or otherwise carried out. When challenging  
8 a regulation under this subsection, the burden of proof is on the person challenging the  
9 regulation to prove that the regulation changes the intent of the statute. A person may  
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent  
11 injunction from a court to enjoin the operation of a regulation based on a failure to  
12 comply with this subsection.

13 \* Sec. 4. AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,  
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency  
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive  
17 or that the costs and benefits cannot be easily determined, a designated state agency  
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the  
19 proposed regulatory action and the benefits to the public from the proposed regulatory  
20 action. The designated state agency shall consider a cost or benefit even if the cost  
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state  
22 agency is not required to give the cost or benefit a dollar value in order to prepare a  
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not  
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the  
26 proposed regulatory action is equal to or not substantially greater than the cost of  
27 implementing the proposed regulatory action as estimated in the fiscal note prepared  
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is  
30 required by this section, the designated state agency may not adopt a regulation, order  
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine  
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and  
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a  
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt  
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal  
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not  
13 be voided because the designated state agency taking the regulatory action failed to  
14 comply with this section.

15 (g) The designated state agency shall make a copy of the cost-benefit analysis  
16 prepared under this section available to the public before a hearing on the proposed  
17 regulatory action, or, if a cost-benefit analysis is not required due to the operation of  
18 (b) of this section, the designated state agency shall make a copy of the fiscal note  
19 identified in (b) of this section available to the public before a hearing on the proposed  
20 regulatory action.

21 (h) In this section, "adopting state agency head" means the commissioner of  
22 the department within which the state agency is located.

23 \* Sec. 5. AS 44.62.190(a) is amended to read:

24 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,  
25 notice of the proposed action shall be

26 (1) published in the newspaper of general circulation or trade or  
27 industry publication that the state agency prescribes and in the Alaska Administrative  
28 Journal; in the discretion of the state agency giving the notice, the requirement of  
29 publication in a newspaper or trade or industry publication may be satisfied by using  
30 a combination of publication and broadcasting; when broadcasting the notice, an  
31 agency may use an abbreviated form of the notice if the broadcast provides the name

1 and date of the newspaper or trade or industry journal where the full text of the notice  
2 can be found;

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

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

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

8 (A) mailed to a person or group of persons whom the agency  
9 believes is interested in the proposed action; and

10 (B) published in the additional form and manner the state  
11 agency prescribes;

12 (5) furnished the Department of Law together with a copy of the  
13 proposed regulation, amendment, or order of repeal for the department's use in  
14 preparing the opinion required after adoption and before filing by AS 44.62.060;

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

17 (7) furnished to the standing committee of each house of the legislature  
18 having legislative jurisdiction over the subject matter treated by the regulation under  
19 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
20 proposed regulation, amendment, or order of repeal for the committee's use in  
21 conducting the review authorized by AS 24.05.182;

22 (8) furnished to the staff of the Administrative Regulation Review  
23 Committee, together with a copy of the proposed regulation, amendment, or order of  
24 repeal and, if preparation of an appropriation increase estimate is required by  
25 AS 44.62.195, a copy of the estimate;

26 (9) published on the Internet by a designated state agency  
27 proposing the action if the designated state agency has the technological capability  
28 to publish on the Internet.

29 \* Sec. 6. AS 44.62.200(a) is amended to read:

30 (a) The notice of proposed adoption, amendment, or repeal of a regulation  
31 must include

1 (1) a statement of the time, place, and nature of proceedings for  
2 adoption, amendment, or repeal of the regulation;

3 (2) reference to the authority under which the regulation is proposed  
4 and a reference to the particular code section or other provisions of law that are being  
5 implemented, interpreted, or made specific;

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

7 (4) other matters prescribed by a statute applicable to the specific  
8 agency or to the specific regulation or class of regulations;

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

11 (6) a statement that a copy of the cost-benefit analysis is available  
12 from the designated state agency proposing the regulatory action if the cost-  
13 benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not  
14 required due to the operation of AS 44.62.035(b), that a copy of the fiscal note  
15 identified in AS 44.62.035(b) is available from the designated state agency  
16 proposing the regulatory action.

17 \* Sec. 7. AS 44.62.200(b) is amended to read:

18 (b) Except for designated state agencies, a [A] regulation that is adopted,  
19 amended, or repealed may vary in content from the summary specified in (a)(3) of this  
20 section if the subject matter of the regulation remains the same and the original notice  
21 was written so as to assure that members of the public are reasonably notified of the  
22 proposed subject of agency action in order for them to determine whether their  
23 interests could be affected by agency action on that subject.

24 \* Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

25 (d) A regulation that is adopted, amended, or repealed by a designated state  
26 agency may vary in content from the summary specified in (a)(3) of this section if the  
27 subject matter of the regulation remains the same and the notice was written so as to  
28 assure that members of the public are reasonably notified of the proposed subject of  
29 agency action in order for them to determine whether their interests could be affected  
30 by agency action on that subject.

31 \* Sec. 9. AS 44.62.210(a) is amended to read:

1 (a) On the date and at the time and place designated in the notice, the agency  
2 shall give each interested person or the person's authorized representative, or both, the  
3 opportunity to present statements, arguments, or contentions in writing, with or without  
4 opportunity to present them orally. The state agency may accept material presented  
5 by any form of communication authorized by this chapter and shall consider all  
6 factual, substantive, and other relevant matter presented to it before adopting,  
7 amending, or repealing a regulation. When considering the factual, substantive, and  
8 other relevant matter, the agency shall pay special attention to the cost to private  
9 persons of the proposed regulatory action. A designated state agency shall also pay  
10 special attention to the benefit to private persons of the proposed regulatory  
11 action.

12 \* Sec. 10. AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a  
14 designated state agency rewrites a proposed regulation, amendment of a regulation, or  
15 order of repeal after the designated state agency has complied with AS 44.62.190,  
16 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,  
17 amendment, or order but the designated state agency would not normally consider the  
18 change to be significant enough to require additional notice and opportunity for  
19 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the  
20 designated state agency shall provide notice and opportunity for public comment under  
21 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,  
22 amendment, or order of repeal.

23 (b) If a designated state agency does not provide the notice and opportunity  
24 for public comment under (a) of this section for a rewritten proposed regulation,  
25 amendment, or order of repeal, the designated state agency shall prepare a written  
26 explanation of the reasons why the requirement of (a) of this section does not apply.  
27 When the adopted regulation, amendment, or order of repeal is published in the Alaska  
28 Administrative Journal, the lieutenant governor shall include the designated state  
29 agency explanation with the text or a summary of the text of the regulation,  
30 amendment, or order of repeal.

31 (c) A regulation, an order of repeal, or an amendment to a regulation of a

1 designated state agency may not be voided because the designated state agency taking  
2 the regulatory action failed to comply with this section.

3 (d) This section does not apply to regulations

4 (1) adopted under AS 44.62.260 to make emergency regulations  
5 permanent; or

6 (2) that are necessary to meet federal requirements.

7 \* Sec. 11. AS 44.62.230 is amended to read:

8 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting  
9 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,  
10 a state agency shall, within 30 days, deny the petition in writing or schedule the matter  
11 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an  
12 emergency regulation, and the agency finds that an emergency exists, the requirements  
13 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not  
14 apply, and the agency may submit the regulation to the lieutenant governor  
15 immediately after making the finding of emergency and putting the regulation into  
16 proper form.

17 \* Sec. 12. AS 44.62.250 is amended to read:

18 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may  
19 be adopted as an emergency regulation or order of repeal if a state agency makes a  
20 written finding, including a statement of the facts that constitute the emergency, that  
21 the adoption of the regulation or order of repeal is necessary for the immediate  
22 preservation of the public peace, health, safety, or general welfare. The requirements  
23 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -  
24 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon  
25 adoption of an emergency regulation, the adopting agency shall immediately submit  
26 a copy of it to the lieutenant governor for filing and for publication in the Alaska  
27 Administrative Register, and, within five days after filing by the lieutenant governor,  
28 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).  
29 Failure to give the required notice by the end of the 10th day automatically repeals the  
30 regulation.

31 \* Sec. 13. AS 44.62.260 is amended to read:

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

2           (a) A regulation adopted as an emergency regulation does not remain in effect more  
3           than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)  
4           [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are  
5           applicable to the regulation, either before submitting the regulation to the lieutenant  
6           governor or during the 120-day period.

7           (b) Before the expiration of the 120-day period, the agency shall transmit to  
8           the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)  
9           [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were  
10           applicable to the regulation, were complied with before submitting the regulation to  
11           the lieutenant governor, or that the agency complied with those sections within the  
12           120-day period. Failure to so certify repeals the emergency regulation; it may not be  
13           renewed or refiled as an emergency regulation.

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

15           **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may  
16           not take more than two years to adopt regulations that the designated state agency is  
17           required to adopt by a statute. The two-year period begins on the effective date of  
18           enactment of the statute requiring the adoption of the regulations.

19           (b) If a designated state agency fails to comply with (a) of this section, the  
20           designated state agency shall prepare a written report containing the reasons for the  
21           failure and submit the report to the president of the senate, the speaker of the house  
22           of representatives, and the Administrative Regulation Review Committee established  
23           under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a  
24           regulation invalid for failure to comply with this section.

25           (c) The requirement of (a) of this section is not intended to prohibit a  
26           designated state agency from amending a regulation after the regulation has been  
27           adopted.

28           (d) This section does not apply to regulations that are necessary to meet  
29           federal requirements.

30       \* **Sec. 15.** AS 44.62.300 is amended by adding new subsections to read:

31           (b) Except where a court has other grounds for holding the regulation invalid,

1 a court that reviews the validity of a regulation of a designated state entity shall hold  
2 the regulation valid unless

3 (1) the regulation uses an approach that causes more than the least  
4 necessary intrusion on the rights and property of the persons affected by the regulation;  
5 and

6 (2) the approach taken by the regulation is not required by a substantial  
7 state interest.

8 (c) Notwithstanding (b) of this section, when an action for declaratory relief  
9 is brought under (a) of this section, a court may not issue a temporary restraining  
10 order, a preliminary injunction, or a permanent injunction based on (b) of this section  
11 to stop the operation of a regulation of a designated state agency.

12 (d) In (b)(2) of this section, the person challenging the regulation carries the  
13 burden of proving that there is not a substantial state interest that requires using the  
14 approach taken by the regulation.

15 (e) The provisions of (b) - (d) of this section do not apply to regulations that  
16 are necessary to meet federal requirements.

17 \* Sec. 16. AS 44.62.640(a) is amended by adding a new paragraph to read:

18 (5) "designated state agency"

19 (A) means the Department of Environmental Conservation, the  
20 Department of Natural Resources, and the division of habitat and restoration  
21 of the Department of Fish and Game;

22 (B) does not include

23 (i) a board or commission located in an entity described  
24 in (A) of this paragraph; or

25 (ii) any other organizational entity located in an entity  
26 described in (A) of this paragraph if the organizational entity is  
27 governed by a board whose members are subject to confirmation by the  
28 legislature.

29 \* Sec. 17. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the  
30 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as  
31 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the

1 effective date of this Act.

2 (b) Section 14 of this Act applies to the adoption of regulations if the effective date  
3 of the Act enacting the statutory authority requiring the adoption is the same as or after the  
4 effective date of this Act.

5 \* Sec. 18. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and  
6 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil  
7 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

8 \* Sec. 19. This Act takes effect July 1, 2000.

*Amended & Adopted*

*(removed)  
Sec. 8*

1-LS0274V  
Bannister ✓  
3/17/99

**CS FOR SENATE BILL NO. 24(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS DONLEY, Taylor**

**A BILL**

**FOR AN ACT ENTITLED**

**1 "An Act relating to regulations; relating to administrative adjudications; amending  
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date"**

**3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

**4 \* Section 1. SHORT TITLE. Sections 2 - 15 of this Act may be known as the Alaska  
5 Regulations Reform Act.**

**6 \* Sec. 2. AS 44.62.030 is amended to read:**

**7 Sec. 44.62.030. Consistency between regulation and statute. Except for  
8 designated state agencies, if [IF], by express or implied terms of a statute, a state  
9 agency has authority to adopt regulations to implement, interpret, make specific, or  
10 otherwise carry out the provisions of the statute, a regulation adopted is not valid or  
11 effective unless consistent with the statute and reasonably necessary to carry out the  
12 purpose of the statute.**

**13 \* Sec. 3. AS 44.62.030 is amended by adding new subsections to read:**

**14 (b) If, by express or implied terms of a statute, a designated state agency has**

1 authority to adopt regulations to implement, interpret, make specific, or otherwise carry  
2 out the provisions of the statute, a regulation adopted is not valid or effective,  
3 notwithstanding any other provision of law, unless the regulation takes a reasonable  
4 approach within the intent of the statute.

5 (c) In addition to the requirements of (b) of this section, a designated state  
6 agency may not adopt a regulation that changes the intent of the statute being  
7 implemented, interpreted, made specific, or otherwise carried out. When challenging  
8 a regulation under this subsection, the burden of proof is on the person challenging the  
9 regulation to prove that the regulation changes the intent of the statute. A person may  
10 not obtain a temporary restraining order, a preliminary injunction, or a permanent  
11 injunction from a court to enjoin the operation of a regulation based on a failure to  
12 comply with this subsection.

13 \* **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

14 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,  
15 an order of repeal, or an amendment to a regulation, unless the adopting state agency  
16 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive  
17 or that the costs and benefits cannot be easily determined, a designated state agency  
18 shall prepare a cost-benefit analysis of the costs to the public to comply with the  
19 proposed regulatory action and the benefits to the public from the proposed regulatory  
20 action. The designated state agency shall consider a cost or benefit even if the cost  
21 or benefit relates to aesthetics or is otherwise nonquantifiable, and the designated state  
22 agency is not required to give the cost or benefit a dollar value in order to prepare a  
23 cost-benefit analysis.

24 (b) Notwithstanding (a) of this section, a designated state agency is not  
25 required to prepare a cost-benefit analysis if the estimated cost of implementing the  
26 proposed regulatory action is equal to or not substantially greater than the cost of  
27 implementing the proposed regulatory action as estimated in the fiscal note prepared  
28 for the bill that enacted the authorizing statute.

29 (c) Notwithstanding other laws to the contrary, if a cost-benefit analysis is  
30 required by this section, the designated state agency may not adopt a regulation, order  
31 of repeal, or amendment unless, under the analysis, the benefit to the public outweighs

1 the cost to the public.

2 (d) Consistent with this section, the adopting state agency head shall determine  
3 the type of cost-benefit analysis that is relevant to the proposed regulatory action and  
4 that is to be prepared by the designated state agency under this section.

5 (e) The cost-benefit analysis requirement of this section does not apply when

6 (1) the proposed regulatory action is necessary to implement a  
7 budgetary modification;

8 (2) the designated state agency is expressly required by statute to adopt  
9 the proposed regulation, order of repeal, or amendment; or

10 (3) the proposed regulatory action is necessary to meet federal  
11 requirements.

12 (f) A regulation, an order of repeal, or an amendment to a regulation may not  
13 be voided because the designated state agency taking the regulatory action failed to  
14 comply with this section.

15 (g) The designated state agency shall make a copy of the cost-benefit analysis  
16 prepared under this section available to the public before a hearing on the proposed  
17 regulatory action, or, if a cost-benefit analysis is not required due to the operation of  
18 (b) of this section, the designated state agency shall make a copy of the fiscal note  
19 identified in (b) of this section available to the public before a hearing on the proposed  
20 regulatory action.

21 (h) In this section, "adopting state agency head" means the commissioner of  
22 the department within which the state agency is located.

23 \* Sec. 5. AS 44.62.190(a) is amended to read:

24 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,  
25 notice of the proposed action shall be

26 (1) published in the newspaper of general circulation or trade or  
27 industry publication that the state agency prescribes and in the Alaska Administrative  
28 Journal; in the discretion of the state agency giving the notice, the requirement of  
29 publication in a newspaper or trade or industry publication may be satisfied by using  
30 a combination of publication and broadcasting; when broadcasting the notice, an  
31 agency may use an abbreviated form of the notice if the broadcast provides the name

1 and date of the newspaper or trade or industry journal where the full text of the notice  
2 can be found;

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

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

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

8 (A) mailed to a person or group of persons whom the agency  
9 believes is interested in the proposed action; and

10 (B) published in the additional form and manner the state  
11 agency prescribes;

12 (5) furnished the Department of Law together with a copy of the  
13 proposed regulation, amendment, or order of repeal for the department's use in  
14 preparing the opinion required after adoption and before filing by AS 44.62.060;

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

17 (7) furnished to the standing committee of each house of the legislature  
18 having legislative jurisdiction over the subject matter treated by the regulation under  
19 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
20 proposed regulation, amendment, or order of repeal for the committee's use in  
21 conducting the review authorized by AS 24.05.182;

22 (8) furnished to the staff of the Administrative Regulation Review  
23 Committee, together with a copy of the proposed regulation, amendment, or order of  
24 repeal and, if preparation of an appropriation increase estimate is required by  
25 AS 44.62.195, a copy of the estimate;

26 (9) published on the Internet by a designated state agency  
27 proposing the action if the designated state agency has the technological capability  
28 to publish on the Internet.

29 \* Sec. 6. AS 44.62.200(a) is amended to read:

30 (a) The notice of proposed adoption, amendment, or repeal of a regulation  
31 must include

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(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;

**(6) a statement that a copy of the cost-benefit analysis is available from the designated state agency proposing the regulatory action if the cost-benefit analysis is required under AS 44.62.035, or if a cost-benefit analysis is not required due to the operation of AS 44.62.035(b), that a copy of the fiscal note identified in AS 44.62.035(b) is available from the designated state agency proposing the regulatory action.**

\* Sec. 7. AS 44.62.200(b) is amended to read:

(b) **Except for designated state agencies,** a [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.

\* Sec. 8. AS 44.62.200 is amended by adding a new subsection to read:

(d) A regulation that is adopted, amended, or repealed by a designated state agency 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 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.

\* Sec. 9. AS 44.62.210(a) is amended to read:

removed

1 (a) On the date and at the time and place designated in the notice, the agency  
2 shall give each interested person or the person's authorized representative, or both, the  
3 opportunity to present statements, arguments, or contentions in writing, with or without  
4 opportunity to present them orally. The state agency may accept material presented  
5 by any form of communication authorized by this chapter and shall consider all  
6 factual, substantive, and other relevant matter presented to it before adopting,  
7 amending, or repealing a regulation. When considering the factual, substantive, and  
8 other relevant matter, the agency shall pay special attention to the cost to private  
9 persons of the proposed regulatory action. A designated state agency shall also pay  
10 special attention to the benefit to private persons of the proposed regulatory  
11 action.

12 \* **Sec. 10.** AS 44.62 is amended by adding a new section to read:

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a  
14 designated state agency rewrites a proposed regulation, amendment of a regulation, or  
15 order of repeal after the designated state agency has complied with AS 44.62.190,  
16 44.62.200, and 44.62.210, and if the rewriting changes the substance of the regulation,  
17 amendment, or order but the designated state agency would not normally consider the  
18 change to be significant enough to require additional notice and opportunity for  
19 comment under AS 44.62.190, 44.62.200, and 44.62.210, before adoption, the  
20 designated state agency shall provide notice and opportunity for public comment under  
21 AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten regulation,  
22 amendment, or order of repeal.

23 (b) If a designated state agency does not provide the notice and opportunity  
24 for public comment under (a) of this section for a rewritten proposed regulation,  
25 amendment, or order of repeal, the designated state agency shall prepare a written  
26 explanation of the reasons why the requirement of (a) of this section does not apply.  
27 When the adopted regulation, amendment, or order of repeal is published in the Alaska  
28 Administrative Journal, the lieutenant governor shall include the designated state  
29 agency explanation with the text or a summary of the text of the regulation,  
30 amendment, or order of repeal.

31 (c) A regulation, an order of repeal, or an amendment to a regulation of a

1 designated state agency may not be voided because the designated state agency taking  
2 the regulatory action failed to comply with this section if the designated state agency  
3 made a good faith attempt to comply with this section.

4 (d) This section does not apply to regulations

5 (1) adopted under AS 44.62.260 to make emergency regulations  
6 permanent; or

7 (2) that are necessary to meet federal requirements.

8 \* Sec. 11. AS 44.62.230 is amended to read:

9 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting  
10 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,  
11 a state agency shall, within 30 days, deny the petition in writing or schedule the matter  
12 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an  
13 emergency regulation, and the agency finds that an emergency exists, the requirements  
14 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not  
15 apply, and the agency may submit the regulation to the lieutenant governor  
16 immediately after making the finding of emergency and putting the regulation into  
17 proper form.

18 \* Sec. 12. AS 44.62.250 is amended to read:

19 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may  
20 be adopted as an emergency regulation or order of repeal if a state agency makes a  
21 written finding, including a statement of the facts that constitute the emergency, that  
22 the adoption of the regulation or order of repeal is necessary for the immediate  
23 preservation of the public peace, health, safety, or general welfare. The requirements  
24 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -  
25 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon  
26 adoption of an emergency regulation, the adopting agency shall immediately submit  
27 a copy of it to the lieutenant governor for filing and for publication in the Alaska  
28 Administrative Register, and, within five days after filing by the lieutenant governor,  
29 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).  
30 Failure to give the required notice by the end of the 10th day automatically repeals the  
31 regulation.

1 \* **Sec. 13.** AS 44.62.260 is amended to read:

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

3 (a) A regulation adopted as an emergency regulation does not remain in effect more  
4 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)  
5 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they are  
6 applicable to the regulation, either before submitting the regulation to the lieutenant  
7 governor or during the 120-day period.

8 (b) Before the expiration of the 120-day period, the agency shall transmit to  
9 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)  
10 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215, to the extent they were  
11 applicable to the regulation, were complied with before submitting the regulation to  
12 the lieutenant governor, or that the agency complied with those sections within the  
13 120-day period. Failure to so certify repeals the emergency regulation; it may not be  
14 renewed or refiled as an emergency regulation.

15 \* **Sec. 14.** AS 44.62 is amended by adding a new section to read:

16 **Sec. 44.62.285. Time limit for adoption.** (a) A designated state agency may  
17 not take more than two years to adopt regulations that the designated state agency is  
18 required to adopt by a statute. The two-year period begins on the effective date of  
19 enactment of the statute requiring the adoption of the regulations.

20 (b) If a designated state agency fails to comply with (a) of this section, the  
21 designated state agency shall prepare a written report containing the reasons for the  
22 failure and submit the report to the president of the senate, the speaker of the house  
23 of representatives, and the Administrative Regulation Review Committee established  
24 under AS 24.20.400. Notwithstanding AS 44.62.300, a court may not hold a  
25 regulation invalid for failure to comply with this section.

26 (c) The requirement of (a) of this section is not intended to prohibit a  
27 designated state agency from amending a regulation after the regulation has been  
28 adopted.

29 (d) This section does not apply to regulations that are necessary to meet  
30 federal requirements.

31 \* **Sec. 15.** AS 44.62.300 is amended by adding new subsections to read:

1 (b) Except where a court has other grounds for holding the regulation invalid,  
2 a court that reviews the validity of a regulation of a designated state entity shall hold  
3 the regulation valid unless

4 (1) the regulation uses an approach that causes more than the least  
5 necessary intrusion on the rights and property of the persons affected by the regulation;  
6 and

7 (2) the approach taken by the regulation is not required by a substantial  
8 state interest.

9 (c) Notwithstanding (b) of this section, when an action for declaratory relief  
10 is brought under (a) of this section, a court may not issue a temporary restraining  
11 order, a preliminary injunction, or a permanent injunction based on (b) of this section  
12 to stop the operation of a regulation of a designated state agency.

13 (d) In (b)(2) of this section, the person challenging the regulation carries the  
14 burden of proving that there is not a substantial state interest that requires using the  
15 approach taken by the regulation.

16 (e) The provisions of (b) - (d) of this section do not apply to regulations that  
17 are necessary to meet federal requirements.

18 \* Sec. 16. AS 44.62 is amended by adding a new section to read:

19 **Sec. 44.62.555. Time limit.** (a) An administrative adjudication of a  
20 designated state agency must result in

21 (1) a proposed administrative order within the later of 60 days after the  
22 hearing officer closes the record or two years after the statement of issues under  
23 AS 44.62.370 or an accusation under AS 44.62.360 is filed; and

24 (2) a final administrative order within 30 days after the proposed  
25 administrative order.

26 (b) Notwithstanding any other provision of AS 44.62.330 - 44.62.630 to the  
27 contrary, a designated state agency may not order a record to be reopened after the  
28 hearing officer has closed the record unless a substantial factual question exists that  
29 is necessary to the resolution of the administrative adjudication and the lieutenant  
30 governor approves reopening the record.

31 (c) A time limitation in (a) of this section may be extended if

1 (1) the lieutenant governor approves the extension, but, even with an  
2 extension under this paragraph, the administrative adjudication may not exceed four  
3 years;

4 (2) a respondent other than the designated state agency petitions for  
5 reconsideration under AS 44.62.540 for a stay of execution under AS 44.62.520, for  
6 an extension of a time limit in (a) of this section, or for the record to be reopened in  
7 the administrative adjudication.

8 (d) Unless the time is extended by (c) of this section, if an administrative  
9 adjudication does not result in a final administrative order in the total time allowed by  
10 (a) of this section for a designated state agency to reach a proposed administrative  
11 order and a final administrative order, and if a designated state agency instigated the  
12 administrative adjudication, the respondent may cancel the administrative adjudication  
13 by notifying the designated state agency in writing of the cancellation. The designated  
14 state agency may not subsequently begin another administrative adjudication for the  
15 same matter that was the subject of the cancelled administrative adjudication, and an  
16 appeal may not be taken from the cancelled administrative adjudication or from the  
17 cancellation of the administrative adjudication. However, after the administrative  
18 adjudication is cancelled, the designated state agency may bring an action in superior  
19 court covering the matter that was the subject of the cancelled administrative  
20 adjudication. The complaint must be filed with the superior court within 60 days after  
21 the administrative adjudication is cancelled under this subsection.

22 (e) Unless the time is extended by (c) of this section, if an administrative  
23 adjudication does not result in a final administrative order in the total time allowed by  
24 (a) of this section for a designated state agency to reach a proposed administrative  
25 order and a final administrative order, and if a person other than the designated state  
26 agency instigated the administrative adjudication, the person may cancel the  
27 administrative adjudication by notifying the designated state agency in writing of the  
28 cancellation. The person is considered to have exhausted the person's administrative  
29 remedies with regard to the subject matter of the cancelled administrative adjudication,  
30 and an appeal may not be taken from the cancelled administrative adjudication or from  
31 the cancellation of the administrative adjudication. However, after the administrative

1 adjudication is cancelled, the person may bring an action in superior court covering the  
2 matter that was the subject of the administrative adjudication. The complaint must be  
3 filed with the superior court within 60 days after the administrative adjudication is  
4 cancelled under this subsection.

5 (f) If an administrative adjudication involves an allegation of criminal conduct  
6 and is parallel to a criminal case brought in court for the criminal conduct, this section  
7 does not apply to, and the time limits in this section do not start running for, the  
8 administrative adjudication until the criminal case is resolved.

9 (g) In this section,

10 (1) "administrative adjudication" means the procedure that begins with  
11 filing a statement of issues under AS 44.62.370 or an accusation under AS 44.62.380  
12 and ends with the issuance of a final administrative order;

13 (2) "final administrative order" means a decision under AS 44.62.330 -  
14 44.62.630 that is eligible for judicial review under AS 44.62.560.

15 \* Sec. 17. AS 44.62.640(c) is amended to read:

16 (c) In this chapter,

17 (1) "designated state agency"

18 (A) means the Department of Environmental Conservation,  
19 the Department of Natural Resources, and the division of habitat and  
20 restoration of the Department of Fish and Game;

21 (B) does not include

22 (i) a board or commission located in an entity  
23 described in (A) of this paragraph; or

24 (ii) any other organizational entity located in an  
25 entity described in (A) of this paragraph if the organizational entity  
26 is governed by a board whose members are subject to confirmation  
27 by the legislature;

28 (2) "teleconferencing" means information exchange by audio or video  
29 medium.

30 \* Sec. 18. APPLICABILITY. (a) Sections 1 - 13 and 15 of this Act apply to the  
31 adoption, amendment, or repeal of a regulation if the original notice under AS 44.62.190, as

1 amended by sec. 5 of this Act, of the adoption, amendment, or repeal is given on or after the  
2 effective date of this Act.

3 (b) Section 14 of this Act applies to the adoption of regulations if the effective date  
4 of the Act enacting the statutory authority requiring the adoption is the same as or after the  
5 effective date of this Act.

6 (c) Section 16 of this Act applies to an administrative adjudication if the statement  
7 of issues under AS 44.62.370 or the accusation under AS 44.62.360 is filed on or after the  
8 effective date of this Act.

9 \* Sec. 19. COURT RULE CHANGES. AS 44.62.030(c), enacted by sec. 3 of this Act, and  
10 AS 44.62.300(c), enacted by sec. 15 of this Act, change Rule 65, Alaska Rules of Civil  
11 Procedure, by prohibiting temporary restraining orders and injunctions in certain situations.

12 \* Sec. 20. This Act takes effect July 1, 2000.

SENATE FINANCE COMMITTEE  
1999 COMMITTEE ACTION

Bill Number	SB 24
Amendment	CS "V"
Motion	adopt
<u>Motion by</u>	Donley
<u>Objection</u>	U
<u>Objection by</u>	Adams
<u>Removed</u>	X
<u>Second Objection by</u>	
<u>Committee Member</u>	<u>Vote</u>
Senator Gary Wilken	
Senator Pete Kelly	
Senator Lyda Green	
Senator Randy Phillips	
Senator Dave Donley	
Senator Loren Leman	
Senator Al Adams	
Co-Chair Sean Parnell	
Co-Chair John Torgerson	
<u>Tally</u>	
Yea	0
Nay	0
Absent	0
<u>MOTION</u>	amended + adopted

I-LS0274\S  
Bannister/  
3/10/99

**CS FOR SENATE BILL NO. 24(FIN)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE FINANCE COMMITTEE**

Offered:

Referred:

Sponsor(s): **SENATORS DONLEY, Taylor**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to regulations; relating to administrative adjudications; amending  
2 Rule 65, Alaska Rules of Civil Procedure; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* Section 1. SHORT TITLE. Sections 2 - 13 of this Act may be known as the Alaska  
5 Regulations Reform Act.

6 \* Sec. 2. AS 44.62.030 is amended to read:

7           **Sec. 44.62.030. Relationship [CONSISTENCY] between regulation and**  
8           **statute.** If, by express or implied terms of a statute, a state agency has authority to  
9           adopt regulations to implement, interpret, make specific, or otherwise carry out the  
10          provisions of the statute, a regulation adopted is not valid or effective,  
11          **notwithstanding any other provision of law, unless the regulation takes a**  
12          **reasonable approach clearly within the intent of [CONSISTENT WITH] the statute**  
13          **[AND REASONABLY NECESSARY TO CARRY OUT THE PURPOSE OF THE**  
14          **STATUTE].**

1 \* **Sec. 3.** AS 44.62.030 is amended by adding a new subsection to read:

2 (b) In addition to the requirements of (a) of this section, a state agency may  
3 not adopt a regulation that changes the intent of the statute being implemented,  
4 interpreted, made specific, or otherwise carried out. When challenging a regulation  
5 under this subsection, the burden of proof is on the person challenging the regulation  
6 to prove that the regulation changes the intent of the statute. A person may not obtain  
7 a temporary restraining order, a preliminary injunction, or a permanent injunction from  
8 a court to enjoin the operation of a regulation based on a failure to comply with this  
9 subsection.

10 \* **Sec. 4.** AS 44.62 is amended by adding a new section to article 1 to read:

11 **Sec. 44.62.035. Cost-benefit requirement.** (a) When adopting a regulation,  
12 an order of repeal, or an amendment to a regulation, unless the adopting state agency  
13 head determines in writing that the cost to prepare a cost-benefit analysis is prohibitive  
14 or that the costs and benefits cannot be easily determined, a state agency shall prepare  
15 a cost-benefit analysis of the costs to the public to comply with the proposed  
16 regulatory action and the benefits to the public from the proposed regulatory action.  
17 The state agency shall consider a cost or benefit even if the cost or benefit relates to  
18 aesthetics or is otherwise nonquantifiable, and the state agency is not required to give  
19 the cost or benefit a dollar value in order to prepare a cost-benefit analysis.

20 (b) Notwithstanding other laws to the contrary, if a cost-benefit analysis is  
21 required by this section, the agency may not adopt a regulation, order of repeal, or  
22 amendment unless, under the analysis, the benefit to the public outweighs the cost to  
23 the public.

24 (c) Consistent with this section, the adopting state agency head shall determine  
25 the type of cost-benefit analysis to be prepared by the state agency under this section.

26 (d) The cost-benefit analysis requirement of this section does not apply when  
27 the proposed regulatory action is necessary to implement a budgetary modification or  
28 when the state agency is expressly required by statute to adopt the proposed regulation,  
29 order of repeal, or amendment.

30 (e) A regulation, an order of repeal, or an amendment to a regulation may not  
31 be voided because the state agency taking the regulatory action failed to comply with

1 this section if the state agency made a good faith attempt to comply with this section.

2 (f) The state agency shall make a copy of the cost-benefit analysis prepared  
3 under this section available to the public before a hearing on the proposed regulatory  
4 action.

5 (g) In this section,

6 (1) "adopting state agency head" means the governor if the state agency  
7 is the Office of the Governor, or the commissioner of the department within which the  
8 state agency is located;

9 (2) "state agency" does not include the Department of Corrections, the  
10 Board of Fisheries, the Board of Game, or the Alaska Commercial Fisheries Entry  
11 Commission.

12 \* Sec. 5. AS 44.62.190(a) is amended to read:

13 (a) At least 30 days before the adoption, amendment, or repeal of a regulation,  
14 notice of the proposed action shall be

15 (1) published in the newspaper of general circulation or trade or  
16 industry publication that the state agency prescribes and in the Alaska Administrative  
17 Journal; in the discretion of the state agency giving the notice, the requirement of  
18 publication in a newspaper or trade or industry publication may be satisfied by using  
19 a combination of publication and broadcasting; when broadcasting the notice, an  
20 agency may use an abbreviated form of the notice if the broadcast provides the name  
21 and date of the newspaper or trade or industry journal where the full text of the notice  
22 can be found;

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

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

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

28 (A) mailed to a person or group of persons whom the agency  
29 believes is interested in the proposed action; and

30 (B) published in the additional form and manner the state  
31 agency prescribes;

1 (5) furnished the Department of Law together with a copy of the  
2 proposed regulation, amendment, or order of repeal for the department's use in  
3 preparing the opinion required after adoption and before filing by AS 44.62.060;

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

6 (7) furnished to the standing committee of each house of the legislature  
7 having legislative jurisdiction over the subject matter treated by the regulation under  
8 the Uniform Rules of the Alaska State Legislature, together with a copy of the  
9 proposed regulation, amendment, or order of repeal for the committee's use in  
10 conducting the review authorized by AS 24.05.182;

11 (8) furnished to the staff of the Administrative Regulation Review  
12 Committee, together with a copy of the proposed regulation, amendment, or order of  
13 repeal and, if preparation of an appropriation increase estimate is required by  
14 AS 44.62.195, a copy of the estimate;

15 (9) published on the Internet by the state agency proposing the  
16 action if the state agency has the technological capability to publish on the  
17 Internet; in this paragraph, "state agency" does not include the Department of  
18 Corrections, the Board of Fisheries, the Board of Game, or the Alaska  
19 Commercial Fisheries Entry Commission.

20 \* Sec. 6. AS 44.62.200(a) is amended to read:

21 (a) The notice of proposed adoption, amendment, or repeal of a regulation  
22 must include

23 (1) a statement of the time, place, and nature of proceedings for  
24 adoption, amendment, or repeal of the regulation;

25 (2) reference to the authority under which the regulation is proposed  
26 and a reference to the particular code section or other provisions of law that are being  
27 implemented, interpreted, or made specific;

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

29 (4) other matters prescribed by a statute applicable to the specific  
30 agency or to the specific regulation or class of regulations;

31 (5) a summary of the fiscal information required to be prepared under

1 AS 44.62.195;

2 (6) a statement that a copy of the cost-benefit analysis is available  
3 from the agency proposing the regulatory action if a summary of the cost-benefit  
4 analysis is required under AS 44.62.035.

5 \* Sec. 7. AS 44.62.200(b) is amended to read:

6 (b) A regulation that is adopted, amended, or repealed may vary in content  
7 from the summary specified in (a)(3) of this section if the subject matter of the  
8 regulation remains the same and the [ORIGINAL] notice was written so as to assure  
9 that members of the public are reasonably notified of the proposed subject of agency  
10 action in order for them to determine whether their interests could be affected by  
11 agency action on that subject.

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

13 **Sec. 44.62.213. Supplemental notice and public proceedings.** (a) If a state  
14 agency rewrites a proposed regulation, amendment of a regulation, or order of repeal  
15 after the agency has complied with AS 44.62.190, 44.62.200, and 44.62.210, and if the  
16 rewriting changes the substance of the regulation, amendment, or order but the state  
17 agency would not normally consider the change to be significant enough to require  
18 additional notice and opportunity for comment under AS 44.62.190, 44.62.200, and  
19 44.62.210, before adoption, the agency shall provide notice and opportunity for public  
20 comment under AS 44.62.190(a)(2) - (9), 44.62.200, and 44.62.210 for the rewritten  
21 regulation, amendment, or order of repeal.

22 (b) If a state agency does not provide the notice and opportunity for public  
23 comment under (a) of this section for a rewritten proposed regulation, amendment, or  
24 order of repeal, the agency shall prepare a written explanation of the reasons why the  
25 requirement of (a) of this section does not apply. When the adopted regulation,  
26 amendment, or order of repeal is published in the Alaska Administrative Journal, the  
27 lieutenant governor shall include the agency explanation with the text or a summary  
28 of the text of the regulation, amendment, or order of repeal.

29 (c) A regulation, an order of repeal, or an amendment to a regulation may not  
30 be voided because the state agency taking the regulatory action failed to comply with  
31 this section if the state agency made a good faith attempt to comply with this section.

1 (d) This section does not apply to regulations

2 (1) adopted under AS 44.62.260 to make emergency regulations  
3 permanent; or

4 (2) that are necessary to meet federal requirements.

5 (e) In this section, "state agency" does not include the Department of  
6 Corrections, the Board of Fisheries, the Board of Game, or the Alaska Commercial  
7 Fisheries Entry Commission.

8 \* Sec. 9. AS 44.62.230 is amended to read:

9 **Sec. 44.62.230. Procedure on petition.** Upon receipt of a petition requesting  
10 the adoption, amendment, or repeal of a regulation under AS 44.62.180 - 44.62.290,  
11 a state agency shall, within 30 days, deny the petition in writing or schedule the matter  
12 for public hearing under AS 44.62.190 - 44.62.215. However, if the petition is for an  
13 emergency regulation, and the agency finds that an emergency exists, the requirements  
14 of AS 44.62.035, 44.62.040(c), [AS 44.62.040(c)] and 44.62.190 - 44.62.215 do not  
15 apply, and the agency may submit the regulation to the lieutenant governor  
16 immediately after making the finding of emergency and putting the regulation into  
17 proper form.

18 \* Sec. 10. AS 44.62.250 is amended to read:

19 **Sec. 44.62.250. Emergency regulations.** A regulation or order of repeal may  
20 be adopted as an emergency regulation or order of repeal if a state agency makes a  
21 written finding, including a statement of the facts that constitute the emergency, that  
22 the adoption of the regulation or order of repeal is necessary for the immediate  
23 preservation of the public peace, health, safety, or general welfare. The requirements  
24 of AS 44.62.035, 44.62.040(c) [AS 44.62.040(c)], 44.62.060, and 44.62.190 -  
25 44.62.215 do not apply to the initial adoption of emergency regulations; however, upon  
26 adoption of an emergency regulation, the adopting agency shall immediately submit  
27 a copy of it to the lieutenant governor for filing and for publication in the Alaska  
28 Administrative Register, and, within five days after filing by the lieutenant governor,  
29 the agency shall give notice of the adoption in accordance with AS 44.62.190(a).  
30 Failure to give the required notice by the end of the 10th day automatically repeals the  
31 regulation.

1 \* Sec. 11. AS 44.62.260 is amended to read:

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

3 (a) A regulation adopted as an emergency regulation does not remain in effect more  
4 than 120 days unless the adopting agency complies with AS 44.62.035, 44.62.040(c)  
5 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 either before submitting the  
6 regulation to the lieutenant governor or during the 120-day period.

7 (b) Before the expiration of the 120-day period, the agency shall transmit to  
8 the lieutenant governor for filing a certification that AS 44.62.035, 44.62.040(c)  
9 [AS 44.62.040(c)], 44.62.060, and 44.62.190 - 44.62.215 were complied with before  
10 submitting the regulation to the lieutenant governor, or that the agency complied with  
11 those sections within the 120-day period. Failure to so certify repeals the emergency  
12 regulation; it may not be renewed or refiled as an emergency regulation.

13 \* Sec. 12. AS 44.62 is amended by adding a new section to read:

14 **Sec. 44.62.285. Time limit for adoption.** (a) A state agency may not take  
15 more than two years to adopt regulations that the state agency is required to adopt by  
16 a statute. The two-year period begins on the effective date of enactment of the statute  
17 requiring the adoption of the regulations.

18 (b) If a state agency fails to comply with (a) of this section, the state agency  
19 shall prepare a written report containing the reasons for the failure and submit the  
20 report to the president of the senate, the speaker of the house of representatives, and  
21 the Administrative Regulation Review Committee established under AS 24.20.400.  
22 Notwithstanding AS 44.62.300, a court may not hold a regulation invalid for failure  
23 to comply with this section.

24 (c) The requirement of (a) of this section is not intended to prohibit a state  
25 agency from amending a regulation after the regulation has been adopted.

26 \* Sec. 13. AS 44.62.300 is amended by adding new subsections to read:

27 (b) Except where a court has other grounds for holding the regulation invalid,  
28 a court that reviews the validity of a regulation shall hold the regulation valid unless

29 (1) the regulation uses an approach that causes more than the least  
30 necessary intrusion on the rights and property of the persons affected by the regulation;  
31 and