

600 ARKANSAS ELECTRICAL CODES - STATUTES RE: COMMITTEE

ELECT.

CODES

From the Desk of
SENATOR DON BENNETT

Carla

Folder under

ARRC for

Electrical Codes



CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701

File
Elect
Code



March 14, 1980

Senator Donald A. Bennett
Alaska State Legislature
Administrative Regulation Review Committee
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: State of Alaska proposed code changes

Dear Senator Bennett:

As Chairman of the Code Review Commission of the City of Fairbanks, I wish to register strong opposition to this effort on the part of the State of Alaska to dictate building and related code amendments to the City of Fairbanks. Through this Commission, Fairbanks has worked hard for many years to adopt a comprehensive set of codes that we feel will best meet the needs of Fairbanks.

Effective January 1, 1980, the City upgraded all the codes of long standing and substituted the 1979 Edition of the Uniform Fire Code for the old Fire Prevention Code. The attached Ordinances 3844 and 3852, As Amended, identify the code package currently being enforced by the City of Fairbanks. This code package was recommended because the Commission recognizes the importance of having the building and fire codes prepared by the same bodies, International Conference of Building Officials and The Western Fire Chiefs Association, whereby each code cross references the other as applicable and contradictions are minimized. Further, the Commission recognizes the vast amount of expertise afforded the code preparation and adoption process at the national level and appreciates the efforts of the various code groups representing the different sections of the United States and Canada to join forces in the preparation of a "model code" acceptable to all. With these things in mind, the "whereas" portions of Ordinance Number 3844 (attached) clearly establish the desire of the City of Fairbanks to benefit from the studies and recommendations of the national groups as supplemented by amendments addressing "problems unique to the Fairbanks area". The City Council accepted said Ordinance Number 3844 for First Reading on September 24, 1979 and duly passed it effective October 26, 1979.

We can develop several additional points to support our position and will gladly do so if necessary or desirable. On the other hand we see little the State's efforts will accomplish other than to expand the bureaucracy at the expense of a highly professional (primarily donated) local effort.

Again, we feel that our Commission, which by City Ordinance is required to be composed of six (6) licensed architects and engineers and a seventh

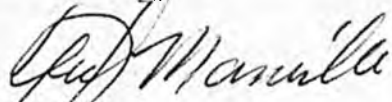


Senator Donald A. Bennett
State of Alaska proposed code changes
March 14, 1980

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member who at present is a contractor of long standing in the City of Fairbanks (the undersigned), is highly qualified to perform and is in fact performing the duties assigned it by the Fairbanks Code of Ordinances and hope you will agree that the codes used in the various cities should be the responsibility of the cities so long as the codes used are recognized codes properly amended to reflect the needs of each city, and that you, your committee, and all members of our Fairbanks delegation will support us in our efforts to regulate ourselves properly!

Sincerely,



Ted Manville, Chairman
Code Review Commission
City of Fairbanks

TM:nd

cc: All Members of the Administrative Regulation Review Committee
All Members of the Fairbanks Legislative Delegation
All Members of the Fairbanks Code Review Commission
W. C. Droz, Fairbanks City Manager

Enc: Copy of Fairbanks Ordinances 3844 and 3852, As Amended

Introduced By: Code Review Commission
First Reading: September 24, 1979

ORDINANCE NO. 3844

AN ORDINANCE REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERNATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES IN THE CITY OF FAIRBANKS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; REPEALING CHAPTER 9 OF THE CITY OF FAIRBANKS CODE OF ORDINANCES AND ALL ORDINANCES AND PARTS OF ORDINANCES INCONSISTENT THEREWITH, AND SETTING AN EFFECTIVE DATE.

WHEREAS the City of Fairbanks desires to benefit from the changes and trends in methods and materials of construction developed by national study groups and professional laboratories, made available in the latest editions of the codes, and

WHEREAS the Code Review Commission of the City of Fairbanks has reviewed the additions to and revisions of codes now in effect in this jurisdiction and has also reviewed the provisions of certain new codes recommended for adoption by the Building Department and the Fire Department of the City of Fairbanks, and

WHEREAS the Code Review Commission recommends that the City Council now adopt these latest editions and new codes effective January 1, 1980, thereby providing a reasonable period of transition as well as sufficient time for the appropriate City Departments to prepare an ordinance amending and supplementing this ordinance by including carryover code amendments addressing problems unique to the Fairbanks area,

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That Chapter 9, Fairbanks General Code is hereby repealed and reenacted as follows:

There is hereby adopted, by reference, the provisions of the following administrative and technical codes, three (3) copies of each which are on file in the office of the City Clerk of the City of Fairbanks, Alaska, being marked and designated as:

1. The Uniform Administrative Code, 1979 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601;

Introduced By: Administration
Recommended By: Code Review
Commission
First Reading: November 19, 1979

ORDINANCE NO. 3852, AS AMENDED

AN ORDINANCE TO AMEND THE FAIRBANKS GENERAL CODE OF ORDINANCES CHAPTER 9, AS ESTABLISHED BY ORDINANCE NO. 3844, BY ADDING THE FOLLOWING PROVISIONS, AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Code Review Commission of the City of Fairbanks, Alaska, has recommended to the City Council that the latest editions of the codes be adopted with certain amendments to various codes; and

WHEREAS, the City Council did adopt the latest editions of the codes as set forth in Ordinance No. 3844; and

WHEREAS, the City Council has met with members of the Code Review Commission and discussed these certain amendments to the various codes; and

WHEREAS, the City Council now desires to accept the recommendations of the Code Review Commission,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That the Fairbanks General Code of Ordinances Chapter 9, as established by Ordinance No. 3844, be amended by adding the following provisions.

ARTICLE I. UNIFORM ADMINISTRATIVE CODE, 1979 EDITION.

Section 9.101. Uniform Administrative Code - Adoption.
The Uniform Administrative Code, 1979 Edition, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.101.1 Uniform Administrative Code, 1979 Edition - Amendments.
The Uniform Administrative Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 304(d)(2) Investigation Fee. An investigation fee, in addition to the permit fee, [SHALL] may be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Tables Nos. 3-A through 3-F. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of either this code or the technical codes nor from any penalty prescribed by law.

2. Reinspection fee assessed under provisions of Section 305(h).....(\$15.00) \$30.00 each
3. Inspections for which no fee is specifically indicated.....(\$15.00) \$30.00 per hour (minimum charge - one-half hour)
4. Additional plan review required by changes, additions or revisions to approved plans.....(\$15.00) \$30.00 per hour (minimum charge - one-half hour)

Table 3-E - Grading Permit Fees. Other Inspections and Fees:

1. Inspections outside of normal business hours.....(\$15.00) \$45.00 per hour (minimum charge - two hours)
2. Reinspection fee assessed under provisions of Section 305(h).....(\$15.00) \$30.00 each
3. Inspections for which no fee is specifically indicated.....(\$15.00) \$30.00 per hour (minimum charge - one-half hour)

Table 3-F - Grading Plan Review Fees. Other Inspections and Fees:

- Additional plan review required by changes, additions or revisions to approved plans.....(\$15.00) \$30.00 per hour (minimum charge - one-half hour)

ARTICLE II. UNIFORM BUILDING CODE, 1979 EDITION.

Section 9.201. Uniform Building Code - Adoption.

The Uniform Building Code, 1979 Edition, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.201.1. Uniform Building Code, 1979 Edition Amendments.

The Uniform Building Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 705. Light, Ventilation and Sanitation:

Amend the fourth paragraph as follows:

Every building or portion thereof where persons are employed shall be provided with at least one water closet. Separate facilities shall be provided for each sex when the number of employees exceeds four and both sexes are employed. Such toilet facilities shall be located either in such building or conveniently in a building adjacent thereto on the same property. Drinking and dining establish-

Section 9.401.1. Uniform Plumbing Code, 1979 Edition - Amendments.

The Uniform Plumbing Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Part I. Administration. DELETE Part I in its entirety.

Section 315(f). Protection of Piping. No water, soil or waste pipe shall be installed or permitted outside of a building or in an exterior wall, unless where necessary, adequate provision is made to protect such pipe from freezing. Unless insulated to the satisfaction of the Administrative Authority, adequate provision is hereby determined to be a minimum of five (5) feet of earch cover.

Section 318(2)(f). Water Piping. Upon completion of a section or the entire hot and cold water supply system, it shall be tested and proved tight under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A [FIFTY (50)] one hundred (100) pounds per square inch (344.5 kPa) air pressure test may be substituted for the water test. In either method of test, the piping shall withstand the test without leaking for a period of not less than fifteen (15) minutes.

Section 1002(d). Unlawful Connections. No water piping supplied by any private water supply system shall be connected to any other source of supply without the approval of the Administrative Authority, Health Department or other department having jurisdiction. Every abandoned private water supply system shall be plugged or capped in an approved manner.

Section 1004(a). Materials. Water pipe and fittings shall be of brass, copper, cast iron, galvanized steel, lead or other approved materials. (ASBESTOS CEMENT, PE, OR PVC WATER PIPE MANUFACTURED TO RECOGNIZED STANDARDS MAY BE USED FOR COLD WATER DISTRIBUTION SYSTEMS OUTSIDE A BUILDING.) All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

Section 1007(e). Pressure Relief Valves. Relief valves located inside a building shall be provided with a full size drain of galvanized steel or hard-drawn copper piping and fittings and shall extend from the valve to the [OUTSIDE] inside of the building with the end of the pipe not more than two (2) feet (.6m) nor less than six (6) inches

Section 9.501.1. Uniform Housing Code, 1979 Edition - Amendments. (Reserved).

ARTICLE VI. UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS,
1979 EDITION.

Section 9.601. Uniform Code for the Abatement of Dangerous Buildings - Adoption. The Uniform Code for the Abatement of Dangerous Buildings, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.601.1. Uniform Code for the Abatement of Dangerous Buildings - Amendments. The Uniform Code for the Abatement of Dangerous Buildings, 1979 Edition, is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 301. For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the

Building Code or the Housing Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. "Webster's Third New International Dictionary of the English Language, Unabridged", copyright 1961, shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING CODE is The Uniform Building Code promulgated by the International Conference of Building Officials.

DANGEROUS BUILDING is any building or structure deemed to be dangerous under the provisions of Section 302 of this code.

HOUSING CODE is the Uniform Housing Code promulgated by the International Conference of Building Officials.

DIRECTOR OF PUBLIC WORKS is the Superintendent of Public Works wherever used in this code.

COUNTY is the Fairbanks North Star Borough wherever used in this Code.

Section 801(b). Costs. The Costs of such work shall be paid from the [REPAIR AND DEMOLITION] General Fund, and may be made a special assessment against the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine appropriate.

Section 802. Repair and Demolition Fund. DELETE Section 802 in its entirety.


Section 908(b). Interest. All such assessments remaining unpaid after 30 days

The Uniform Solar Code, 1979 Edition, as published by the International Association of Plumbing and Mechanical Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.1101.1. Uniform Solar Code, 1979 Edition - Amendments. (Reserved).

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

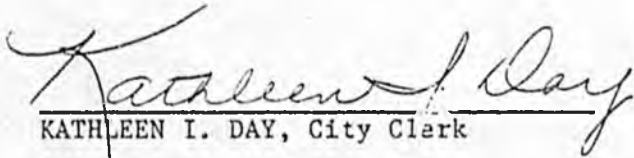
Section 3. That the effective date of this Ordinance shall be the 29th day of December, 1979.



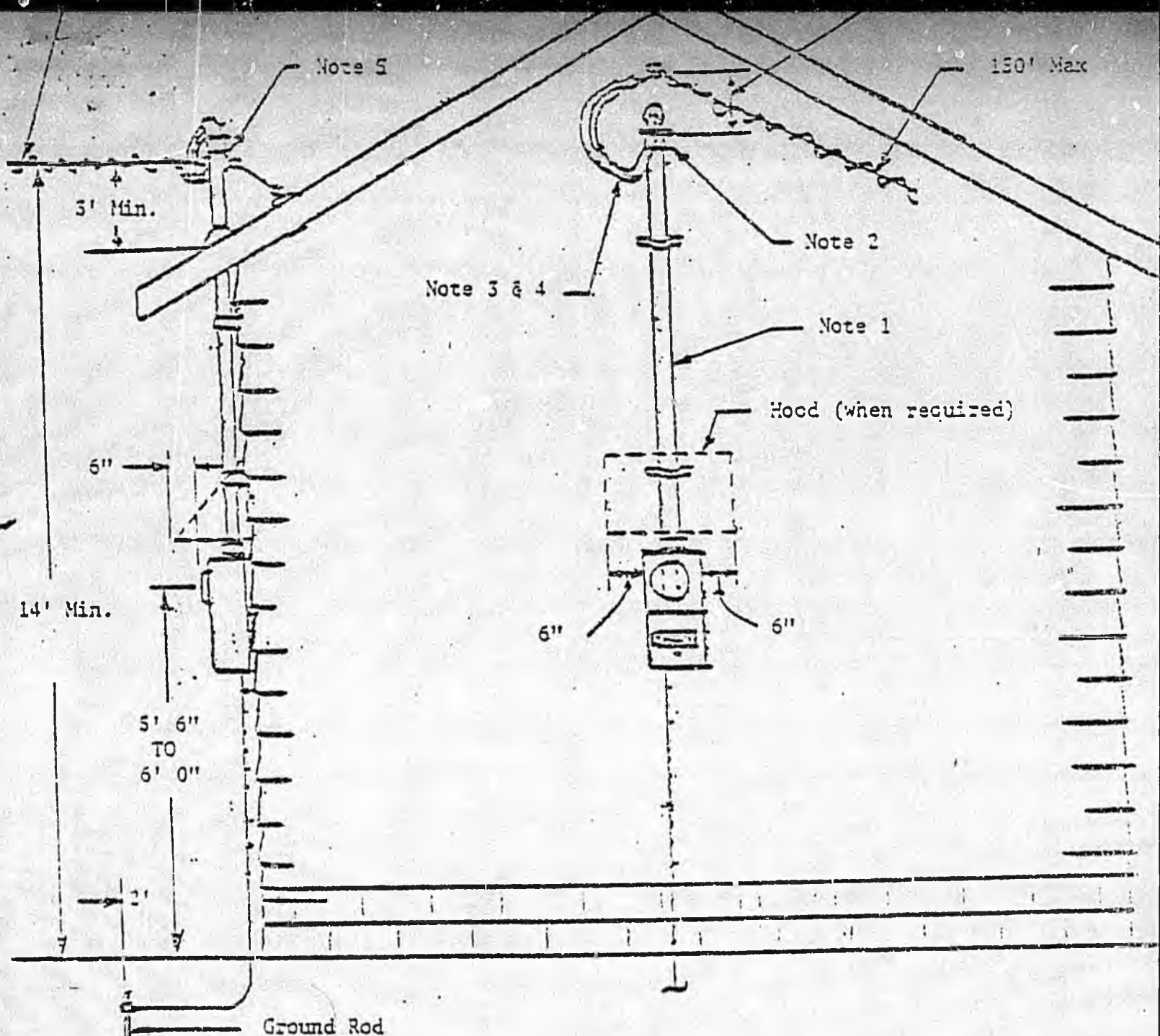
WILLIAM R. WOOD, Mayor

ADOPTED: December 26, 1979

ATTEST:

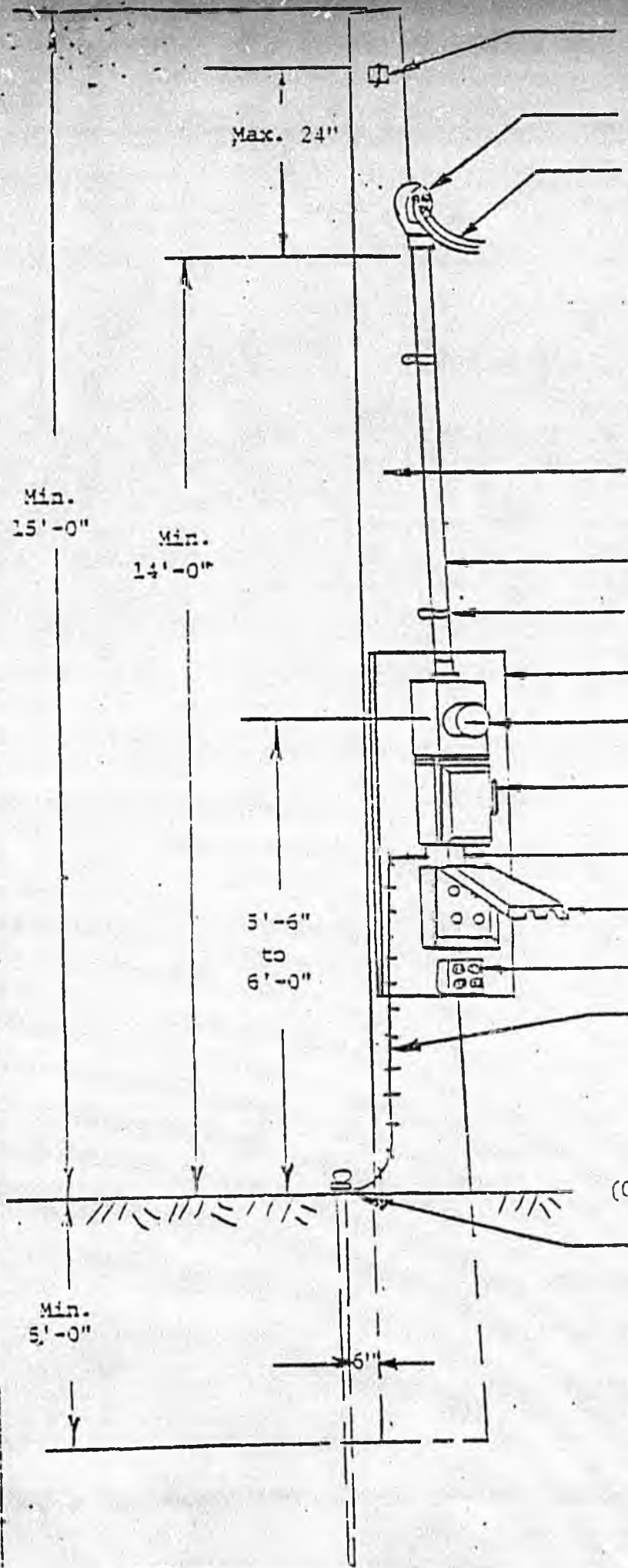


KATHLEEN I. DAY, City Clerk



NOTES

1. NEC 230-23 (a) Service entrance. Masts that extend above the roof line shall be minimum 2" rigid steel conduit, and shall be guyed using minimum 1/8" air craft cable, approved clamps and nutted 1/2" closed eye bolt.
2. NEC 230-24 (c) Conductors shall be above or at least 36" from any building opening. Building openings shall include vents.
3. NEC 230-40 (b) Individual service entrance conductors shall be insulated with vulcanizable material, TH & THW are not acceptable.
4. NEC 230-54 (h) Connections at service head, for 100 AMP service leave 18" tails, for 200 AMP service leave 24" tails, and strip neutral tails to the weatherhead.
5. NEC 230-23 (a) Communication lines shall not be connected to unguyed electrical masts, or other electrical service entrance equipment.
6. NEC 210-25 (e) Receptacles in dwellin units. Every dwelling unit in a structure shall have at least one exterior type receptacle, on an individual branch circuit, on the outside of the exterior wall near the driveway or parking area.
7. NEC 210-25 (f) Car heater outlets. Meters & receptacles installed for car heater outlets shall be protected from vehicle damage, by elevation to 3 1/2" above grade or other approved means.
8. NEC 230-26 (a) Exterior electrical services shall be placed on the gable end of structure where possible. When services are installed on the eaves side of building the mast shall extend above the roof. In the event the eave is not 24" in length the meter and disconnect shall be protected by an 18 gauge galvanized hood. The hood shall extend at least 6" past the meter face and 6" on each side of service equipment.
9. NEC 110-13 (c) The main service disconnect and meter shall be located on the exterior of all dwellings and structures containing not more than four dwelling units.
10. When there is more than one meter on any single service they shall be permanently identified by numbers at least one inch in height on the meter base or by other approved means.



Galvanized eyebolt with nut, Minimum 1/2" Diameter, (see not #1)

Weatherhead

Insulation shall be vulcanizable material. TH & THW not acceptable. Leave 18" tails and strip neutral tail to the weatherhead.

Service pole or construction grade 6" X 5" timber. Minimum 20' depending on clearance requirements.

Conduit

Conduit straps with lag screws.

Minimum 3/4" Plywood mounting boards.

Minimum 60AMP Raintight service entrance.

Disconnect Switch.

Conduit Nipple.

Raintight fuse or circuit breaker panel.

Weatherproof receptacles with GFI.

Tie #4 CU ground wire to neutral buss bar, lug to box, and continue to ground rod with staples every 6".

(Grade-Line)

Minimum 5/8" X 8' ground rod with approved connector, must be visible for inspection. A minimum of 6" from pole.

NOTES

1. If service drop exceeds 50', pole must be guyed, weather head shall be 18' above grade.
- * 2. Refer to the Electrical Code when using aluminum wire.

NOT TO BE USED FOR ENERGIZING PERMANENT WIRING SYSTEMS, CONSTRUCTION SERVICE APPROVED FOR CONSTRUCTION POWER ONLY. PERMIT EXPIRES 12 MONTHS AFTER DATE OF ISSUE. SERVICE SUBJECT TO DISCONNECT WHEN PERMIT EXPIRES, OR IF PERMANENT WIRING IS ENERGIZED.

OTHER METHODS ARE OPTIONAL UPON APPROVAL PRIOR TO INSTALLATION		
SERVICE SIZE (MIN.)	MIN. WIRE SIZE	CONDUIT SIZE
60 AMP	6 CU*	1" Minimum
100 AMP	2 CU*	1 1/4" Minimum

MINIMUM CONSTRUCTION SERVICE

CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701



PIONEER PROGRESS



TO: State of Alaska , Department of Safety
FROM: R. H. Hardin, Building Official, City of Fairbanks
FOR: Code Review Commission

Date: 3/6/80

SUBJECT: Proposed Changes to Uniform Building & Related Codes.

DATE: Proposed Changes to Uniform Building & Related Codes.

The members of the Code Review Commission of the City of Fairbanks, individually and as a body, object to this type of intrusion into the Code adoption and enforcement rights of the City of Fairbanks.

The Code Review Commission is a duly appointed body deriving its powers and duties from the Fairbanks Code of Ordinances. It is a highly professional body of seven (7) members, six (6) of whom are required to be licensed architects or engineers. The other member is a licensed Contractor of long standing in the community. All reside in the City of Fairbanks or the immediate area, all have maintained said residences for many years, and all freely donate their time to the furtherance of realistic codes and code enforcement. The attached Ordinances, Number 3844 and Number 3852, as amended, which adopt and amend the 1979 Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code and the 1978 National Electrical Code, as well as other supportive administrative and technical codes, will better testify to the thorough and mature approach that the City of Fairbanks takes to this subject.

It is a policy of long standing that no proposed code amendment is presented to the City Council without prior review by the Code Review Commission. Also, it has been a long standing policy that the national codes will not be subjected to local amendment unless there is a definite need, i.e. conditions unique to this area. An attempt similar to this proposal was made by the Department of Safety approximately one (1) year ago and was eventually withdrawn after numerous people in Fairbanks, Anchorage, and possibly other cities, objected strenuously to the extent of the proposed changes and the lack of sufficient time for review. At that time the Building Department of the City of Fairbanks did, by letter of April 9, 1979, file a request for placement on the mailing list(s) so that we might receive as much advance notice as possible in the event of further efforts of this nature. Despite the above, it was necessary for the Building

"The Golden Heart City"



Department and later the Code Review Commission to learn of this latest attempt on February 29, 1980, from sources other than the Department of Safety. Obviously, there remained a ridiculously brief amount of time for the Code Review Commission members to review and comment.

For the moment, please be advised that the Code Review Commission of the City of Fairbanks stands ready to review any legitimate code proposal that is properly submitted, including documentation supporting the need.

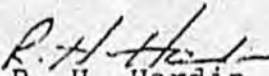
Further, the Commission feels that any State imposed bureaucratic system that ignores or circumvents the City's proven policy will be unprofessional and that continued attempts to exert unsolicited and unneeded influence will result in poor codes likely to be repetitive, arbitrary, unnecessarily restrictive, and costly.

It is respectfully requested:

1. That the State agencies respect the rights of the City in this matter.
2. That any Municipality currently enforcing a recognized code that is periodically updated through a proper procedure including amendments submitted by a qualified body be encouraged in their efforts to evaluate and adjust to their local needs.
3. That any thought of applying any one set of Codes and Amendment to any part of this vast and very diversified State be recognized as unrealistic and rather foolish.

We request that this proposal, so far as it affects the City of Fairbanks, be withdrawn and that its proponents properly submit their opinions and recommendations to the Code Review Commission if they still feel their opinions and recommendations have sufficient merit.

Sincerely,


R. H. Hardin
Building Official

City of Fairbanks

410 CUSHMAN STREET
FAIRBANKS, ALASKA
99701

TO: All Members of the Code Review Commission
FROM: R. H. Hardin, Building Official
SUBJECT: State of Alaska Department of Public Safety proposed code changes
DATE: March 3, 1980

This was handed to me late Friday, February 29, 1980; approximately 8:30 a.m. this date I received a phone call advising me of a meeting on March 6, 1980, at the Travelers Inn, at which this is to be discussed.

I do not know the origin of the marginal notes, therefore they should be ignored for the moment.

You will recall a similar attempt approximately one year ago by the State Fire Marshal to make similar changes through the Administrative Procedures Act with little effort to solicit opinions from the cities. In response to objections from Anchorage and here, the attempt was withdrawn and it was my understanding that the adoption of the new codes would largely preclude the need for this type of action. In the event future changes were desired, we were to be notified by mail with enough lead time to permit proper review by the City Departments and the Code Review Commission. If the State Fire Marshal, or anyone else, wants all these changes in the codes governing Fairbanks, let him feel free to submit them to the Code Review Commission for review. Otherwise he usurps the powers granted to the Code Review Commission by the Fairbanks General Code of Ordinances.

Sincerely,


R. H. Hardin
Building Official

RHH:nld



PIONEER ♦ PROGRESS

CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701



April 9, 1979

Commissioner
Alaska State Department of Public Safety
Pouch "N"
Juneau, Alaska 99811



Dear Commissioner:

We understand that your agency has been empowered to adopt legislation and changes to the Alaska Administrative Code.



We also understand that each department keeps a mailing list so that they make interested parties aware of all proposed changes.



We therefore request that the Building Department of the City of Fairbanks be placed on the mailing list of all divisions within your department so that we will receive copies of any changes proposed.

Thank you for your cooperation and we will look forward to hearing from you.



Sincerely,

R. H. Hardin
Building Official

RHH:nld



"The Golden Heart City"

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
LEGIBLY BECAUSE OF POOR QUALITY OF THE
ORIGINAL.

PROPOSED CHANGES TO
TITLE 13. PUBLIC SAFETY
PART 2. FIRE PREVENTION

Chapter

- 50. Codes and Standards
- 51. Fireworks
- 52. Fire Service Operations
- 53. General Provisions

CHAPTER 50. CODES AND STANDARDS

Section

- 10. Occupancy Classifications
- 20. Building Codes
- 25. Fire Codes
- 30. Fire Detection and Control
- 40. (Repealed)
- 50. (Repealed)
- 60. Occupancy Standards
- 70. Inspections, Orders and Appeals
- 75. Referring to Local Authorities
- 80. (Repealed)

13 AAC 50.010. OCCUPANCY CLASSIFICATIONS. All buildings or areas of a building are classified as to their occupancy according to the occupancy classifications defined in the Uniform Building Code (U.B.C.). (In effect before 7/23/59; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 13.70.380

13 AAC 50.020. ~~BUILDING CODES.~~ (a) The provisions of the U.B.C. chs. 1, 4 through 10, 12, 17 through 28, 30, 32 through 34, 36 through 40, 42, 43, 47, 48, 50 through 52, 54, appearing chapters 35, 45 and 55 and the U.B.C. Standards chs. 4, 6, 9, 17, 18, 24, 25, 27, 32, 30, 32, 33, 37, 38, 42, 43, 47, 48, 52, 54 and 55, are adopted to regulate all occupancies and buildings, except as provided below:

- (1) sanitation and water closet requirements contained in the U.B.C. chs. 5, 6, 7, 8, 9, 10 and 13 are deleted;
- (2) section 508 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input."
Deleted Exception
- (3) section 708 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input."
Deleted Exception
- (4) section 808 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input."
Deleted Exception

Deleted Exception
Deleted Exception
Deleted Exception

(5) section 1403 of the U.B.C. is revised by the ~~deletion of~~ addition of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input.";

} more stringent than city

(6) section 1204 of the U.B.C. is revised only to the extent that where windows are provided as a means of egress or rescue they shall have a finished sill height not more than 45 inches above the floor;

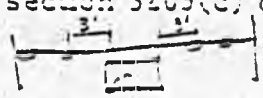
(7) section 1215 of the U.B.C. is ~~deleted~~ R 1 3 stories retrofit

(8) section 1711 of the U.B.C. is ~~deleted~~ Toilets

(9) section 1712 of the U.B.C. is ~~deleted~~ Water fountains

(10) section 1807(b) of the U.B.C. is ~~deleted~~ 32 R 1 75' 1/2 - or - Compartmentation

(11) section 3205(c) of the U.B.C. is revised by the ~~deletion~~ addition of paragraph 2;



(12) section 3317(b) of the U.B.C. is revised by the ~~deletion~~ addition of paragraph 2 and 3 to read: "Every room in a Group E, Division 1 Occupancy used by students shall have direct exit to the exterior of the building or to an exterior exit balcony. In lieu of the above the building shall be equipped throughout with an approved automatic sprinkler system; the sprinkler system must be electronically interconnected with the school fire alarm system.

} more stringent than city

Classrooms having openable windows usable for emergency escape purposes, and with a sill height of the openable section not more than 36 inches above the floor and not more than 6 feet above the adjacent grade level need not have direct exits to the exterior nor need they be equipped with an automatic sprinkler system, unless such system is required by other provisions of this chapter";

(13) section 3320(a) of the U.B.C. is revised to ~~delete~~ the requirement of a six inch noncombustible sill (dike) for oil-fired boilers.

} less stringent than city

(b) The provisions of the Uniform Mechanical Code (U.M.C.) chs. 1, 4 through 20 and appendix chs. 21 and 22, are adopted except as provided below:

(1) section 106 of the U.M.C. is ~~deleted~~ ✓

(2) section 1404(5) of the U.M.C. is revised by the ~~deletion~~ addition of exception "1. Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu/h input.";

} more stringent than city

(3) section 1520 of the U.M.C. is revised to the extent that every test required by section 1520 will not be required to be conducted in the presence of the building official.

(c) The electrical systems of all occupancies must meet the standards of the National Electrical Code (N.E.C.).

(d) All new buildings which are classified as Group A, Division 1, 2, 2.1, or 3; Group B, Division 2; Group E, Division 1, 2, or 3; or Group R, Division 1, occupancies which have floors used for human occupancy ~~shall~~ shall be equipped throughout the building with an automatic sprinkler system approved by the state fire marshal.

} more stringent than city

(e) Group E, Division 1 and 2 occupancies constructed in rural areas may not exceed 50 percent of the area allowed by U.B.C. section 505, 506, 302(a), Table No. 5-C and 5-D, unless equipped throughout the building with an automatic fire-extinguishing system approved by the state fire marshal. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.080

Editors Notes: (1) Copies of the N.E.C. may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(2) Copies of the U.B.C. and U.B.C. Standards may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(3) Copies of the U.M.C. may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.025 FIRE CODES. (a) The provisions of the Uniform Fire Code (U.F.C.) articles 1, 2, 9, 10, 11, 12, 13, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 45, 47, 48, 49, 50, 61, 62, 63, 74, 75, 76, 79, 80, 81, 82, 83, 84, appendices F, H and I, and the U.F.C. Standards articles 10, 24, 62, 75, 79, 81 and 82, are adopted for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from other conditions hazardous to life and property, except as provided below:

(1) article 1 of the U.F.C. is revised by the ~~deletion of~~ section 1.102(b); 13 AAC 50.025 FIRE CODES (a)

[Page 5 of these changes]

(2) article 2 of the U.F.C. is revised by the ~~deletion of~~ OK division 1, "Organization and Authority";

(3) article 2 of the U.F.C. is revised by the ~~deletion of~~ OK division 2, "Duties and Procedures";

(4) article 2, division 3 of the U.F.C. is revised by the OK ~~deletion of~~ section 2.301(a);

(5) article 2, division 3 of the U.F.C. is revised by the OK ~~deletion of~~ section 2.302;

(6) article 2, division 3 of the U.F.C. is revised by the OK ~~deletion of~~ section 2.303(b);

(7) permit requirements under the U.F.C. are ~~revised~~ OK

(8) article 10 of the U.F.C. is revised by the ~~deletion of~~ OK division 1, "Operations At Fires Or Other Emergencies";

(9) article 10, division 2 of the U.F.C. is revised by the OK ~~deletion of~~ section 10.205;

(10) article 10, division 2 of the U.F.C. is revised by the OK ~~deletion of~~ section 10.207;

(11) article 10, division 2 of the U.F.C. is revised by the OK ~~deletion of~~ section 10.208;

(12) article 10, division 3, section 10.301(c) of the U.F.C. is revised only to the extent that all hydrants shall be accessible to the fire department apparatus and the reference to roadways meeting the requirements of section 10.203 is deleted; OK

(13) article 10, division 3 of the U.F.C. is revised by the ~~deletion~~ OK of section 10.303;

(14) article 10, division 3 of the U.F.C. is revised by the ~~deletion~~ OK of section 10.304;

(15) article 10, division 3 of the U.F.C. is revised by the ~~deletion~~ OK of section 10.305;

(16) article 10, division 3 of the U.F.C. is revised by the ~~deletion~~ OK of section 10.306;

(17) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.101(d);

(18) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.105(e);

(19) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.106;

(20) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.107;

(21) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.108;

(22) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.110;

(23) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.111;

(24) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.112;

(25) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.113;

(26) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.114;

(27) article 11, division 1 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.115;

(28) article 11, division 2 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.201(c);

(29) article 11, division 3 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.302;

(30) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.401;

(31) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.403;

(32) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ OK of section 11.405;

(33) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ of section 11.411; *OK*

(34) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ of section 11.412; *OK*

(35) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ of section 11.413; *OK*

(36) article 11, division 4 of the U.F.C. is revised by the ~~deletion~~ of section 11.414; *OK*

(37) article 12, section 12.101 of the U.F.C. is revised by ~~the deletion~~ of paragraph 2; *OK*

(38) article 13 of the U.F.C. is revised by the ~~deletion~~ of section 13.102; *OK*

(39) article 25, division 1 of the U.F.C. is revised by the ~~deletion~~ of section 25.114; *OK*

(40) article 25, division 1 of the U.F.C. is revised by the ~~deletion~~ of section 25.115; *OK*

(41) article 25, division 1 of the U.F.C. is revised by the ~~deletion~~ of section 25.117; *OK*

(42) article 32 of the U.F.C. is revised by the ~~deletion~~ of section 32.110; *OK*

(43) article 47 of the U.F.C. is revised by the ~~deletion~~ of section 47.104; *OK*

(44) article 79, division 4 of the U.F.C. is revised by the ~~deletion~~ of section 79.402(b)(1); *OK*

(45) article 79, division 7 of the U.F.C. is revised by the ~~deletion~~ of section 79.710(d)(5); *OK*

(46) article 79, division 7 of the U.F.C. is revised by the ~~deletion~~ of section 79.710(e)(3); *OK*

(47) article 79 of the U.F.C. is revised by the ~~deletion~~ of division 10; *OK*

(48) article 79 of the U.F.C. is revised by the ~~deletion~~ of division 12; *OK*

(49) article 32 of the U.F.C. is revised by the ~~deletion~~ of section 32.103; *OK*

(b) Where no specific standards or requirements are set forth in the U.F.C. or in this chapter, compliance with the standards of the National Fire Protection Association (N.F.P.A.) or other nationally recognized fire safety standards approved by the state fire marshal will be considered compliance with requirements of this chapter. (Eff. / / , Reg.) *1.10 206*

Authority: AS 13.70.030

Editors Notes: (1) Copies of the N.F.P.A. Standards may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(2) Copies of the U.F.C. and U.F.C. Standards may be obtained from the Western Fire Chiefs Association, 3360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.030. FIRE DETECTION AND CONTROL. (a) Fire-extinguishing systems including automatic sprinkler systems must be installed as required by the U.B.C., U.F.C. and sec. 20 of this chapter and must meet the requirements of the U.B.C. Standards 38-1, 38-2, 38-3; U.F.C. Standard 10-3; N.F.P.A. Volume 1, Standards 11, 11A, 11B, 12, 12A, 12B, 13; and N.F.P.A. Volume 2, Standards 15 through 18, 20, 22, and 24.

(b) Fire detection systems must be installed as required by the U.B.C., U.F.C., AS 13.70.032, and Table No. 1 in (e) of this section, and must meet the requirements of the standards of the U.B.C. Standard 13-1; U.F.C. Standard 10-2; and N.F.P.A. Volume 7, Standards 71, 72A, 72B, 72C, 72D and 72E.

(c) Single station smoke detection devices must be installed as required by AS 13.70.095 and Table No. 1 in (e) of this section.

(d) Smoke detection devices required by AS 13.70.095 must meet the standards of N.F.P.A. Standard 74.

(e) Fire alarm systems must be installed as required by the U.B.C., U.F.C. and Table No. 1 of this subsection and must meet the requirements of the U.B.C. Standard 13-1; U.F.C. Standard 10-2; and N.F.P.A. Standards 71, 72A, 72B, 72C, 72D and 74.

TABLE NO. 1
REQUIREMENTS FOR THE INSTALLATION OF SMOKE DETECTORS
AND FIRE DETECTION AND ALARM SYSTEMS

OCCUPANCY GROUPS	Type System				
	Manual Fire Alarm System	Supervised Smoke Detection System		Single Station Smoke Detectors	Heat Detectors
		Corridors & Stairways	Sleeping area(s)	Dwelling unit(s) Living Unit(s) Sleeping area(s)	Other areas
Group A-1, 2, 2.1, 3	X				
Group B-2 Office Buildings (see note 3)					
Group B-2 used for educational purposes beyond the 12th grade with more than 50 persons	X				
Group B-1, 2, 3 <i>509</i>	(1)				
Group H-1 <i>50.113(a)</i>	(2)				
Group I-1 hospitals, sanitariums, nursing homes and similar buildings <i>1009</i>	(3)	X	X		
Group I-2 nursing homes, homes for children	(3)	X	X		
Group I-3 mental hospitals, mental sanitariums, jails, prisons, reformatories and similar bldgs	(3)	X	X		
Group R-1 apartments and hotels (see note 3) <i>1210(b)</i>	(4)	X		(5) (7) AS ¹⁵	
Group R-1 nonconforming apartments and hotels more than two stories in height	X	X		X (7) AS ¹⁵	
Group R-1 remote housing facilities	X	X(6) ¹⁷	X(6) ¹⁷	X(6) AS ¹⁵	
Group R-3 dwellings and lodging houses				(2) (3) (7) AS ¹⁵	

X = exceeds USC requirements

- NOTES:
- (1) See U.B.C. section 809.
 - (2) See U.F.C. section 50.113(a).
 - (3) See U.B.C. section 1009.
 - (4) See U.B.C. section 1202(b) and U.F.C. section 10.307(a).
 - (5) See U.B.C. section 1210(a).
 - (6) AS 18.70.082 requires automatic fire detection in that portion of the building used for living or sleeping purposes.
 - (7) AS 18.70.095 requires smoke detection devices to be installed in all living units built, manufactured or sold in the state on or after January 1, 1976.
 - (8) See U.B.C. sections 1307 and 1307 for special provisions for Group B, Division 2 office buildings and Group R, Division 1 occupancies.

(f) Portable and manual fire control equipment must be installed and maintained as required in sec. 25 of this chapter and must meet the requirements of U.B.C. Standard 38-3; U.F.C. Standard 10-1; N.F.P.A. Volume 1, Standard 10, Volume 2, Standards 14, 194 and 196, and Volume 12, Standard 198. *ok*

(g) Automatic fire-extinguishing systems must be maintained as required in sec. 25 of this chapter and must meet the requirements of U.B.C. Standards 38-1, 38-2; U.F.C. Standards 10-3, 79-1 and 79-2; N.F.P.A. Volume 1, Standards 11, 11A, 11B, 12, 12A, 12B and 13, Volume 2, Standards 15 through 18, 20, 22 and 24, and Volume 12, Standard 26. *ok*

(h) A permit must be obtained from the state fire marshal by a person commercially servicing, repairing, filling, or installing portable fire extinguishers; applications for the permit must be made in the manner required by the state fire marshal. *ok*

(i) No person or firm, directly or through an agent may sell or offer for sale in the state a fire extinguisher or extinguishing system, either new or used, unless it has been tested, approved, and labeled by the Factory Mutual Laboratories, Underwriters Laboratories, Inc., or other testing laboratory approved by the state fire marshal. *ok*

(j) No portable fire extinguisher or fixed fire-extinguishing system may be sold, leased, or installed in the state which uses as an extinguishing agent carbon tetrachloride, methyl bromide, or other halogenated hydrocarbon, toxic or poisonous liquid, or other agent which has not been accepted by an approved laboratory as specified in (i) of this section; a halon extinguishing system must be approved by the state fire marshal before installation. ?

(k) No individual, firm or corporation may sell or offer for sale any compound, powder, or liquid used as a fire retardant, or for flameproofing or for fire extinguisher refilling purposes unless the product has been approved by the Underwriters Laboratories, Inc., Factory Mutual Laboratories or other testing laboratory approved by the state fire marshal. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.) *ok*

Authority: AS 18.70.010
 AS 18.70.030
 AS 18.70.082
 AS 18.70.095

13 AAC 50.060. OCCUPANCY STANDARDS. (a) Fire retardant paints or solutions, where required in any occupancy, must be renewed as often as necessary to maintain the required flame retardant properties.

(b) Emergency evacuation drills must be conducted in the following occupancies; and a record of each drill must be kept and the person in charge of the occupancy shall make these records available for inspection by the state fire marshal or his or her authorized representative:

(1) in educational (Group E of the U.B.C.) and institutional occupancies, emergency evacuation drills must be conducted on a monthly, except as provided in (2) and (3) of this subsection; *ok*

(2) in educational (Group B, Division 2 of the U.B.C.) occupancies, emergency evacuation drills must be conducted quarterly; *UNIVERSITY TVCC ok*

(3) in hospital and nursing home occupancies, emergency evacuation drills must be conducted quarterly on each shift to familiarize employees with signals and emergency action required under varied conditions; the movement of infirm or bed-ridden patients to safe areas or to the exterior of the building is not required; *ok*

(4) emergency evacuation drills in (1), (2), and (3) of this subsection may be postponed during severe weather. *ok*

(c) Furnishings and decorations in assembly, educational, and institutional occupancies must be flame retardant; and must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films. *ok*

(d) In institutional occupancies, window draperies and curtains for decorative and acoustical purposes must be flame retardant; and cubicle curtains must be noncombustible or flame retardant. Window draperies, curtains, and cubicle curtains must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films. *ok*

(e) Wastebaskets and other waste containers in educational and institutional occupancies must be of noncombustible material or approved for intended use by Underwriters Laboratories, Inc., Factory Mutual Laboratories or other testing laboratory approved by the state fire marshal. *ok*

(f) Acrylonitrile Butadiene-Styrene (ABS) or Polyvinyl Chloride (PVC) piping installations in building drainage systems shall be limited to residential construction, not more than 2 stories in height. *U.P.C. ok*

(g) Equipment, boiler, mechanical and electrical panel rooms in any occupancy shall not be used for the storage of combustible merchandise, material or equipment. (In effect before 7/23/59; am 6/25/69, Reg. 38; am 2/21/71, Reg. 37; am / / , Reg.) *ok*

Authority: AS 13.70.010
AS 13.70.030

13 AAC 50.070. INSPECTIONS, ORDERS AND APPEALS. (a) When an officer of the division of fire prevention finds a building or premises in which the following dangerous conditions or materials exist, he or she shall order the conditions or materials to be remedied or removed in such manner as may be prescribed by the state fire marshal:

(d) When buildings or other premises are owned by one person and occupied by another under lease or similar agreement, orders issued under (a) of this section apply to the occupant except where the rule or order requires additions or changes in the premises which would become the real property of the owner of the premises. In these cases, the rule or order must be sent to the owner.

(c) The service of an order for the correction of a violation of (a) of this section must be made upon the owner, occupant, or other persons responsible for the condition, either by delivering a copy to the person by affixing a copy in a conspicuous place on the door to the entrance of the premises, or by mailing a copy of the report to the responsible person by certified mail at his or her last known address.

(b) If an order is issued to eliminate a dangerous or hazardous condition described in (a) of this section and the condition is not corrected within the time specified in the order, the state marshal, in his or her discretion, post at the entrance to the building or premises a notice to read, "DANGER, UNSAFE TO OCCUPY, DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION". The notice must remain posted until the required repair, demolition or removal is completed, and may not be removed without written permission of the state marshal. No person may enter a posted building except for the purpose of making required repairs, demolition or removal.

(2) any other condition which violates this chapter, and which the state marshal finds to be hazardous.

(3) a building or structure which, due to lack of repairs, adequate exit facilities, automatic or other fire apparatus or fire-extinguishing equipment, or any other cause including age creates a hazardous condition;

(7) any chimney, smokestack, stove, oven, incinerator, furnace or other heating device, or electric fixture found to be defective or unsafe so as to create a fire danger;

(8) ineffective fire assembly, exit door, aisle separation, area separation, fire separation, or occupancy separation;

(9) violations of or on the stairs, eaves, passageways, doors, or windows, which interfere with operations of the fire department or egress of occupants in case of fire or explosion;

(4) accumulations of dust or waste materials in air conditioning or ventilating systems or of grease in kitchen or other exhaust ducts;

(3) dangerous accumulations of rubbish, wastepaper, boxes, shavings, or combustible or flammable liquids or materials;

(2) hazardous conditions existing from defective or improperly installed equipment for handling or using combustible, flammable, explosive, or otherwise hazardous materials;

(1) dangerous amounts of combustible, explosive, or otherwise hazardous materials;

(e) When an order is made by the state fire marshal or his or her authorized representative, the owner or occupant may, within seven days after receipt of the order, file a written appeal to the state fire marshal who shall, within 10 days after receipt of the appeal, review the order and file his or her written decision. The order remains in force and must be complied with within the time specified unless by the authority of the state fire marshal the order is revoked. The state fire marshal's decision on an appeal under this subsection constitutes a final order of the Department of Public Safety for purposes of AS 18.70.100. (In effect before 7/28/59; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.070
AS 18.70.080
AS 18.70.090

13 AAC 50.075. DEFERRING TO LOCAL AUTHORITIES. (a) If, in the opinion of the state fire marshal, a city or borough of any class in the state has the expertise to conduct fire safety inspections and to enforce state fire safety regulations, the state fire marshal may defer to the local authorities for fire safety inspection and enforcement activities; the deferral being effective upon acceptance by the city or borough.

(b) The state fire marshal may cancel a deferral following 30 days written notice if he or she finds the city or borough fire safety inspection and enforcement activities do not adequately enforce state statutory and regulatory provisions. (Eff. / / , Reg.)

Authority: AS 18.70.090

13 AAC 50.080. DEFINITIONS. Repealed / / .

CHAPTER 51. FIREWORKS

Section

10. Use of Dangerous Fireworks
20. Permits for the Sale of Salable Fireworks
30. Storage of Dangerous and Salable Fireworks by a Wholesaler
40. Discharge of Fireworks
50. Revocation of Licenses and Permits
60. Seizure

13 AAC 51.010. USE OF DANGEROUS FIREWORKS. (a) A permit is required for the use of dangerous fireworks under AS 18.72.010(b) and will be granted upon verified application to the state fire marshal on forms provided by him or her.

(b) There must be attached to the application for a permit under this section a policy or certified true copy of a policy of public liability insurance coverage and products liability insurance coverage, including both accident and occurrence insurance in the amount of no less than \$500,000 for bodily injury and death and no less than \$300,000 for property damage. The insurance must be provided by the applicant or his or her employer.

(c) Every use or display shall be handled by a competent operator. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 18.72.010

13 AAC 51.020. PERMITS FOR THE SALE OF SALABLE FIREWORKS. (a) A permit is required for the sale of salable fireworks under AS 13.72.020(a) and will be granted upon verified application to the state fire marshal on forms provided by him or her.

(b) No permit will be granted to a person who plans to sell fireworks at retail within 250 feet of any place of habitation or public assembly. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 13.70.010
AS 13.72.020
AS 13.72.030

13 AAC 51.030. STORAGE OF DANGEROUS AND SALABLE FIREWORKS BY A WHOLESALER. (a) N.F.P.A. Standard 44A, chapters 3 and 4, is adopted for regulating the storage of dangerous and salable fireworks by a wholesaler.

(b) The license of a wholesaler of dangerous and salable fireworks who fails to comply with this section is subject to revocation under sec. 50 of this chapter. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 13.70.010
AS 13.72.010
AS 13.72.030

13 AAC 51.040. DISCHARGE OF FIREWORKS. (a) No fireworks of any kind may be discharged in the state within 250 feet of an establishment that sells fireworks at retail or wholesale.

(b) The discharge of dangerous fireworks in the state, except for those purposes for which a permit is issued under AS 13.72.010 and this chapter, is prohibited. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 13.70.050
AS 13.72.010

13 AAC 51.050. REVOCATION OF LICENSES AND PERMITS. The state fire marshal may revoke a permit or license where the permittee or licensee fails to comply with the requirements of this chapter or with the provisions of AS 13.72, or where the permittee or licensee conducts his or her business in a manner which constitutes a hazard to life and property. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 13.70.090

13 AAC 51.060. SEIZURE. The state fire marshal shall seize or remove, at the owner's expense, all dangerous or salable fireworks from persons who do not have a valid permit or license under AS 13.72 or this chapter. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 13.70.070

CHAPTER 52. FIRE SERVICE OPERATIONS

Section

30. Standards of Organization and Services of Fire Departments

13 AAC 52.030. STANDARDS OF ORGANIZATION AND SERVICES OF A FIRE DEPARTMENT. (1) The state fire marshal will recognize a fire depart-

ment empowered to perform its duties by municipal ordinance. The state fire marshal may also recognize a volunteer fire department outside a municipality.

(b) A fire department must have operating regulations which:

- (1) define the boundaries of the area served;
- (2) provide for the appointment of chiefs of the department;
- (3) provide for programs of inspection, training and fire prevention;
- (4) provide for the investigation and determination of the cause of each fire occurring within its boundaries and the reporting of each fire to the state fire marshal;
- (5) provide for a liaison with a water authority on matters of importance to the fire department;
- (6) provide for regular meetings of fire department personnel for both business and training purposes. (E.E. 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 43.13.010(a)(2)

CHAPTER 55. GENERAL PROVISIONS

Section

- 20. (Repealed)
- 130. Modifications and Waivers
- 150. Definitions

13 AAC 55.020. PRIMA FACIE EVIDENCE. Repealed / / .

13 AAC 55.130. MODIFICATIONS AND WAIVERS. The state fire marshal has the authority to modify or waive any provision of chs. 50-55 of this title when there are practical difficulties which make strict compliance with these requirements very difficult; provided however, that modifications or waivers will be granted only when the intent as provided in sec. 10 of this chapter is met and public safety is secured. Applications for modifications or waivers shall be made in writing and include particulars as to why the regulatory provisions cannot be followed including the applicants reasons why any proposed alternative method meets the intent of chs. 50-55 of this title as provided in sec. 10 of this chapter. All requests will be answered in writing and a record maintained in the fire marshal's office. (In effect: before 7/28/59; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.030

13 AAC 55.150. ~~DEFINITIONS~~ (a) In chs. 50-55 of this title, unless the context indicates otherwise:

- (1) ~~UBC~~ means the Uniform Building Code and Uniform Building Code Standards published by the International Conference of Building Officials, 1979 Edition;
- (2) ~~UMC~~ means the Uniform Mechanical Code and Uniform Mechanical Code Standards published by the International Conference of Building Officials, 1979 Edition;

(3) "U.F.C." means the Uniform Fire Code and Uniform Fire Code Standards published by the International Conference of Building Officials and Western Fire Chiefs Association, 1977 Edition;

(4) "N.E.C." means the National Electrical Code, 1976 Edition, published by the National Fire Protection Association and approved by the American Standards Association;

(5) "I.C.B.O." means the International Conference of Building Officials;

(6) "N.F.P.A." means the National Fire Protection Association, National Fire Codes, Volumes 1 through 10, 1977 Edition;

(7) "I.S.O." means the Insurance Services Office, Sprinklered Risk Section, 465 California Street, San Francisco, California 94104;

(8) "ABS" means acrylonitrile butadiene - styrene pipe;

(9) "approved by the state fire marshal" means approval after investigation or testing conducted by the state fire marshal;

(10) "bureau of fire prevention" means the state division of fire prevention or the fire prevention division of an organized municipal fire department;

(11) "chief", "chief of the fire department", "fire chief", "chief engineer" or "chief of the fire prevention bureau" means the state fire marshal or the chief of an organized municipal fire department;

(12) "drainage system" means all the piping within public or private premises which conveys sewage, rainwater or other liquid wastes to a point of disposal. It does not include the mains of public sewer system or private or public sewage-treatment or disposal plant;

(13) "dwelling unit" and "living unit" mean one or more habitable rooms which are occupied or which are intended or designed to be occupied by one family, with facilities for living, sleeping, cooking, and eating;

(14) "living area" means one or more habitable rooms which are occupied or intended or designed to be occupied for sleeping, cooking, eating or recreation purposes;

(15) "local political subdivision" means a borough or city of any class;

(16) "manual fire alarm system" means a local manual alarm system installed in conformance with U.B.C. Standard 13-1; U.F.C. Standard 10-2; N.F.P.A. Standard 72A; and approved by the state fire marshal;

(17) "occupancy" means the purpose for which a building or part of a building is used or intended to be used, and also includes the building or room housing the use; "change of occupancy" does not include change of tenants or proprietors;

(18) "organized fire department" means a fire department or fire protection group that has filed a certificate of existence with the state fire marshal and has received official recognition;

(19) "PVC" means polyvinyl chloride pipe;

(20) "Rural or rural areas" means areas where there is no organized fire department with a recognized water system;

(21) "sleeping area" means one or more habitable rooms including guest rooms and bedrooms which are occupied or intended to be occupied for sleeping purposes.

(b) In chs. 50-55 of this title the definitions in the U.B.C., U.F.C., and the N.F.P.A. standards are adopted, except as they are modified in (a) of this section. (In effect before 7/23/59: am 5/25/59, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 13.70.050

Editors Note: Copies of the codes adopted in chs. 50-55 of this title may be examined in the offices of the State Fire Marshal in Juneau, Anchorage, and Fairbanks. Copies of 13 AAC chs. 50-55 may be obtained in these offices.

STATUTES

RE:

Comm.



Alaska State Legislature

JUNEAU ALASKA

MEMORANDUM

To: Senator Hohman

From: Rob

Re: Administrative Regulation Review Committee

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

STATUS: Permanent Interim Committee of the legislature.

PURPOSE: Need for prompt legislative review of administrative regulations.

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

TERM OF MEMBERSHIP: Two years.

VACANCIES: Filled by appointment by Speaker or president.

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

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

POWERS OF SUSPENSION:
(continued)

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

STAFF:

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

POWERS; GENERAL:

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

NOTE: Special charge to the committee

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

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

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

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

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

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

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

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

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

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

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

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

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



Alaska State Legislature

JUNEAU ALASKA

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POWERS OF SUSPENSION:
(continued)

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

STAFF:

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

POWERS; GENERAL:

1. to organize and adopt rules for the conduct of its business;
2. to hold public hearings;
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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 13, 1979

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

TO: Senator Don Bennett

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

STRUCTURE

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

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

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

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

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

FUNCTIONS

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

Senator Don Bennett
Page 2
February 14, 1979

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

POWERS

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

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

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

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

* Hold public hearings, (24.20 460).

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

JAG:nem

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
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LEGISLATIVE AFFAIRS AGENCY

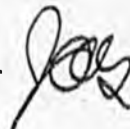
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JAG:nem

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

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

Article 4. General Provisions.

Section 220. Definitions

Sec. 44.61.220. Definitions. In this chapter

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

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

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

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

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

Part 5. Administrative Procedure.

Chapter 62. Administrative Procedure Act.

Article 1. Application and Effect.

Sec. 44.62.030. Consistency between regulation and statute.

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

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

Article 2. Submission, Filing and Publication of Regulations.

Section 50. Style and forms 60. Preparation and filing

Section 125. Regulations attorney

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Sec. 44.62.040. Submitting regulations.

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

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

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

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

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

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

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

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

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

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

Sec. 44.62.080. Endorsement and file.

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

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

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

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

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

(b) The department shall

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

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

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

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

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

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

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

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

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Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

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Article 4. Procedure for Adopting Regulations.

Section

190. Notice of proposed action

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

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

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

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

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

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

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

(am § 4 ch 64 SLA 1978)

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

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

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

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

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

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

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

Sec. 44.62.210. Public proceedings.

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Article 5. Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

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

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

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

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

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

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Chapter 62. Administrative Procedure Act.

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Article 2. Submission, Filing and Publication of Regulations.

Section 50. Style and forms 60. Preparation and filing

Section 125. Regulations attorney

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

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

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

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

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

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

Sec. 44.62.080. Endorsement and file.

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

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

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

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

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

(b) The department shall

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

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

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

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

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

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

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

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

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Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

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

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

Article 4. Procedure for Adopting Regulations.

Section

190. Notice of proposed action

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

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

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

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

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

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

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

(am § 4 ch 64 SLA 1978)

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

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

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

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

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

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

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

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

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

Sec. 44.62.210. Public proceedings.

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

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

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Article 5 Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

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

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

"Reasonable basis" standard of review.

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

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

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

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

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

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review.

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

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

Effect of amendment.

The 1978 amendment substituted "At the

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

Article 8. Administrative Adjudication.

Section

330. Application of §§ 330 — 630

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

(1) Board of Barber Examiners

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

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

(5) Repealed by § 13 ch 218 SLA 1976.

(6) Board of Examiners in Optometry

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

Article 3. Administrative Regulation Review Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Legislative Board of Retirement Benefits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Section

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Effect of amendment.

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

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330. Application of §§ 330 — 630

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Article 3. Administrative Regulation Review Committee.

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

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

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

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Article 4. Legislative Board of Retirement Benefits.

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

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- (5) a public member not employed by the state who possesses a background in economics or public finance;
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- (7) a retired member from the teachers' retirement system. (§ 1 ch 130 SLA 1977; am § 1 ch 121 SLA 1978)

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 5. Administrative Procedure.

Chapter

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

Chapter 62. Administrative Procedure Act.

Article

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

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

Article 1. Application and Effect.

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

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

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

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

And — The Alaska Administrative Procedure Act does not apply to the Alaska State Housing Authority. Alaska Ct. Op. (1972). Not

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

Not every administrative determi-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 2. Submission, Filing and Publication of Regulations.

Section

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

Section

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

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

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

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

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

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

Regulations promulgated under AS 15.15.330, dealing with the early counting

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 44.62.090. Filing with local government unit clerks.

Repealed by § 2 ch 57 SLA 1969.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

(b) The department shall

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

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

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

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

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

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

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

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

Legislative Affairs Agency on that project."

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

Article 3. The Alaska Administrative Register and Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Procedure for Adopting Regulations.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulations adopted by the Commissioner of Natural Resources are

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 5. Judicial Review.

Section

300. Court review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 5. Administrative Procedure.

Chapter

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

Chapter 62. Administrative Procedure Act.

Article

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

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

Article 1. Application and Effect.

Section

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

Section

30. Consistency between regulation and statute

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

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

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

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

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

Not every administrative determi-

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

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

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

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

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

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

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

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

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

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

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