

602 ARRC STATUTES RE: COMMITTEE DESCRIPTIVE MATERIAL

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

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

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

Article 2. Submission, Filing and Publication of Regulations.

Section

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 [Repealed]

Section

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

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

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

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

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

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

Regulations promulgated under AS 15.15.330, dealing with the early counting

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

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

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

See AS Supplement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department shall

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

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

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

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

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

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

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

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

Legislative Affairs Agency on that project."

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

Article 3. The Alaska Administrative Register and Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 4. Procedure for Adopting Regulations.

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).

*See AS * Supplement*

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

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

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

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

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

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

(6) furnished to all incumbent state legislators.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulations adopted by the Commissioner of Natural Resources are

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

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

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

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

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

(2) the reasons for the request;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 5. Judicial Review.

Section

300. Court review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section
310. Agency
312. State p

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

310. Agency meetings public

312. State policy regarding meetings

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

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

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

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

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

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

(d) This section does not apply to

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

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 7. Legislative Review of Rules.

Section 320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review.

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

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

chairman review 1959; am 1975)

Effect of amendment

Section

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

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

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

See AS * Supplement

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

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

Article 8. Administrative Adjudication.

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

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

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

FIRE
SEASON
REGS.

Alaska State Legislature

7

SENATOR

DON BENNETT

1 BOX 2801
FAIRBANKS, ALASKA 99707



Senate

LEGISLATIVE ADDRESS

POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

May 3, 1980

Ms. Loretta Nistler, Editor
The Delta Paper
P.O. Box 988
Delta Junction, Alaska 99737

Dear Ms. Nistler:

I am writing in response to your letter of April 28, to Senator Sackett, regarding the Department of Natural Resources' proposed fire season regulations.

Recently, I contacted Commissioner Le Resche's office with inquiry as to the status of these regulations. As of this date, the regulations are being held in abeyance, along with the Timber Practices regulations, until the Department has had a chance to meet with interested legislators sometime before the end of the legislative session.

As Chairman of the Administrative Regulation Review Committee, I am extremely concerned over the amount of unnecessary regulations being created and promulgated by the various departments of state and federal government. I am certainly in agreement with you that the new fire season regulations are again another example of the "over zealous" interference into our traditional Alaskan lifestyle, that has unfortunately become in many cases the rule, instead of the exception. Please be assured, that I plan to do everything I can to see that these, and other similar overbearing regulations are not adopted.

In closing, I appreciate the opportunity to respond to you, and hopefully will be able to assist you with this problem. I will keep Senator Sackett's office apprised of the status on this matter, as I work with the Department for an acceptable resolution. Please contact me if I can be of further assistance.

Sincerely,

Don Bennett

DB:sl
cc: Senator Sackett

January 28, 1980

The Honorable Robert LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner LeResche:

This is in regards to recent numerous complaints and apprehensions which I have received from many of my constituents regarding the new fire season regulations now being promulgated by the Department.

Much of the input I have received from the Interior Region of the State concerns the enactment of these regulations without adequate public hearing for those individuals who will directly be affected by these new restrictions. An additional concern lies with the feeling that the Administration is not adequately considering the Alaskan lifestyle by the adoption of these regulations.

My own feeling is that the new fire season regulations are perhaps an overzealous "knee-jerk" reaction to last summer's Delta fire situation. Hopefully your Department and the Governor are not inadvertently rejecting the long-standing traditions and practices of the Alaskan lifestyle by placing these somewhat overbearing restrictions on many Alaskan residents. Further, it would seem that the old regulations are adequate to control fire hazards related to factors outside natural causes. For speaking from my area of the State, in that many summer fires in the Interior are sparked by lightning, I can see no regulation of any kind that can prevent fires of this nature from occurring.

Please know that I feel there is a need for some regulation to control fire hazards, but to burden Alaskan residents with additional restrictions within their daily lives seems contrary to the lifestyle we have attempted to promote.

The Honorable Robert LeResche

-2-

January 28, 1980

In closing, I would appreciate receiving your comments and justifications regarding the new fire season regulations. Thank you for your assistance.

Sincerely,

Senator Don Bennett

cc: The Honorable Jay S. Hammond
Ted Smith, Director
Division of Forest, Land & Water
Management

January 29, 1980

Mr. and Mrs. Gordon Mereness
Box 1114
Delta Junction, Alaska 99737

Dear Mr. and Mrs. Mereness:

I am in receipt of your telegram of January 23, regarding your objection to the new fire regulations being imposed without public hearing by the Department of Natural Resources.

Please know that I share your concerns relating to these regulations with special interest as to how they will affect the Interior Region of our State.

I thank you for your comments and will contact both Governor Hammond and Commissioner LeResche in support of your objections.

Sincerely,

Don Bennett

TELEGRAM

ALASCOM, INC.
PHONE: 580-2442
JUNEAU, AK 99802

1980 JAN 23 PM 1 15

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PMS SENATOR DEON BENNETT

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GORDON AND LINDA MERENESS

BOX 1144 DELTA JCT 99737 -

January 29, 1980

Mr. and Mrs. Paul Nistler
P. O. Box 952
Delta Junction, Alaska 99737

Dear Mr. and Mrs. Nistler:

I am in receipt of your telegram of January 23, informing me of your objections regarding the new fire season regulations soon to be adopted by the Department of Natural Resources.

As a Senator from the Interior Region, I am especially concerned of how these regulations will affect our area of the State. Please know that I am in strong support of your position, and will be sure to communicate your interests to both the Governor and Commissioner LeResche.

Please contact me if I can be of further assistance to your with this matter.

Sincerely,

Don Bennett

Respond

TELEGRAM

ALASCOM, INC.
PHONE: 286-6442
UNALASKA, AK 99802

12038 IDFA POM FAIRBANKS ALASKA 15 01-23 1105A AST

PMS DON BENNETT

SENATOR 1028

JUN

STRONGLY OBJECT FIRE SEASON REGULATIONS BEING ADOPTED SOON.

NO NOTICE NO LOCAL HEARING. STOP LARESCHÉ

PAUL AND LORETTA NISTLER

PO BOX 952

DELTA JCT 99737

*support your position
contacting Governor on this
please contact Gov. Hammond
& Comm. LaResche w/ your concerns*

1980 JAN 23 PM 2 27

January 31, 1980

Mr. Donald J. May
4545 Wood River Drive
airbanks, Alaska 99701

Dear Mr. May:

Thank you for your letter and attached information of January 16, regarding the newly proposed mining regulations.

After reviewing your testimony which you presented at the Natural Resources Public hearing, I can certainly understand your concerns. As a person who has been involved in mining in the past, I share your dismay over the restrictions that these regulations would impose on the mining industry. Rest assured, that I will look into the regulations which you cited and see if something can be done to modify them.

Mr. May, I thank you for bringing this matter to my attention, and will do whatever I can to assist you. Please contact me if I can be of further assistance to you.

Sincerely,

Don Bennett

Polar Construction and Mining

4545 WOOD RIVER DRIVE
FAIRBANKS, ALASKA 99701

1/16/80
HON. STATE SENATOR DON BENNETT:
JUNEAU, ALASKA

DEAR SIR:

PLEASE TAKE A MINUTE,
CONSIDER THIS TESTIMONY GIVEN
TO MR. TED SMITH AT THE PUBUC
HEARING IN FAIRBANKS LAST NIGHT.

MIGHT YOUR TIME SERVING
US IN JUNEAU BE PROSPEROUS
AND PROGRESSIVE THIS YEAR.

THANK YOU VERY MUCH.
RESPECTIVELY YOURS.

Donald D. May



ALASKA MINERS ASSOCIATION, INC.

FAIRBANKS BRANCH

January 15, 1980

PRESIDENT
Dr. Richard Swainbank
Box 81315
Fairbanks, Alaska 99701

VICE PRESIDENT
Donald J. May
4545 Woodriver Dr.
Fairbanks, Alaska 99701

SECRETARY
Fred Heflinger
409 Clara St
Fairbanks, Alaska 99701

TREASURER
Donald R. Stein
105 Dunbar Av.
Fairbanks, Alaska

State of Alaska
Department of Natural Resources
Public Hearing
Fairbanks, Alaska
c/o Mr. Ted Smith, Director

Dear Mr. Smith:

As Vice Chairman of the Alaska Miners' Association, I have been asked to be a spokesman pertaining to the new proposed regulations which confront us tonight.

First: It's strange indeed that you choose to push regulations upon us with such short notice, in the middle of the winter, with less than a month's notice to defend our life's work and investments which can and could be wiped out with such broad and sweeping powers, that you now as our civil servants possess. Are you fearful to appear directly to the Miners' Association to reason why such changes are necessary? Not one of us on the executive board was informed of such changes pertaining to the mining industry which confront us tonight. These hearings were listed and broadcast this past week locally, for this one night here in Fairbanks under "Forest Resources and Practices" when actually by accident we found out that they were covering proposed mining and mineral resource recovery and development regulations. They deal directly with land use permits which are so restrictive that they even monitor the placement of mechanical equipment, as well as the use of explosives which are under your jurisdiction and authority. Are we



not free to choose what we should and need to use as we see fit without stopping the operation and coming to town?

In many cases this would involve traveling many hundreds of miles to obtain a restrictive permit. This is neither prudent nor progressive, but rather it could be labeled authoritarianism, socialism, or the opposite of free enterprise.

Without getting too involved in all these proposed draft regulations, I would like to consider page 2, Section 11 AAC 65.030. I ask you in all honesty, how can a miner not "cause disturbance or harm to the land or related natural resources"?

Who is to say? What one director says can be ignored by a successor, or made more harsh by another. Mining must disturb the land to be effective. This is only common sense. Now if we had the time, we could go further and elaborate on "occupying a cabin, moving or operating equipment, bonding, reporting requirements," or Section 11 AAC 65,210 regarding "Duration," which is so broad and elusive that a director could interpret it to mean a miner or mining company has only 10 years to work a claim. In actuality, most large mining companies require at least 10 years from discovery to full production. Who is going to fool with such a requirement that limits permit life? Industry just goes elsewhere, and so do the jobs that might be generated. Without the development of our resources, this town

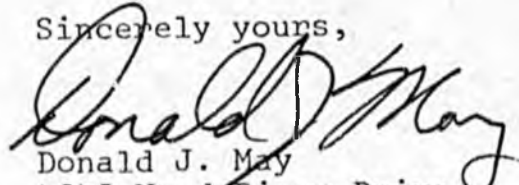
would pass through severe economic reverses. I hope you are aware of the number of foreclosures that are and will continue in the near future in Fairbanks. During the past 12 months there are 5 to 6 thousand fewer people living in the Fairbanks North Star Borough, and that doesn't sound like "sensible, sustained growth" to me as the campaign slogans stated, and it's been over 2 years since the pipeline was completed.

Please allow me to pass on my own forecast for this area, based on 30 years' residency (if that adds any authority to what I say). Fairbanks and Interior Alaska will continue to decline over the next few years, due to the lack of a stable economic base. The bureaucrats will increase from a fat state treasury until the day comes that they have eaten themselves out of these fat jobs. In other words, Prudhoe Bay is forecasted to decline to a third of what it is producing today, and so will state oil revenues by 1985.

If we look to the future with a desire to help this area with a stable economic base, we must rejuvenate mining, the deep hard rock mining holds great potential throughout the interior. These proposed draft regulations will only stall or further hinder this basic industry. The Alaska Miners' Association goes on record as completely being in disagreement and in opposition to these oppressive rules which are only the desire of a small percentage of the populace, and if enacted will curtail the small miner businessman now, and stall the large potential mines later.

I hope you gentlemen who have the present, yet temporary position of mandating regulations realize that when the pendulum swings back to a more informed and knowledgeable electorate than appears to be the case here tonight because of some unknown haste, I dare say this electorate will register complete contempt at the polls for such stifling treatment as the proposed regulations.

Sincerely yours,


Donald J. May
4545 Wood River Drive
Fairbanks, Alaska 99701

xc: Honorable Governor Jay Hammond
Honorable Lt. Governor Terry Miller
State Senators and State Representatives
Fairbanks Daily News-Miner
All Alaska Weekly

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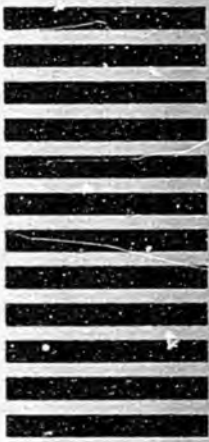
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Alaska State Legislature
Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Nerland Building, Suite 219
545 Third Avenue
Fairbanks, Alaska 99701



**If you're
seeing red
over
red tape . . .**



**we'd like to
hear from you.**

Dear Alaskan,

You can do something besides rage about excessive state regulations. You can rage at us. Use this short survey card (postage paid) to tell us about outdated, unnecessary rules and regulations that are shortening your temper, life or efficiency. We are the Alaska State Legislature's Administrative Regulation Review Committee. We're waiting to hear from you.

Committee members are Sen. Don Bennett (Chairman), Fairbanks; Rep. Oral E. Freeman (Vice Chairman), Ketchikan; Sen. M. "Ed" Dankworth, Anchorage; Rep. M.F. "Mike" Beirne, Anchorage; Sen. George Hohman, Bethel; and Rep. Charlie Parr, Fairbanks. Our job is to find out if the bureaucracy is hindering instead of helping you. We can help...if you help us by filling out the short card and dropping it in the mail.

Sincerely,

Your Administrative Regulation
Review Committee Members

Area of residence _____

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

If you would like to hear back from us about the problem, please print your name and address here.

Detach here! 

Drop in the mail!

Thanks For Helping!