

Title 44. State Government

Chapter 62. Administrative Procedure Act [selected provisions, current 3/11/2016]

Article 1. Application and Effect

§ 44.62.010. Application to State Organization Act of 1959

Rule-making power conferred by ch 64 SLA 1959 is subject to this chapter.

§ 44.62.020. Authority to adopt, administer, or enforce regulations

Except for the authority conferred upon the lieutenant governor in AS 44.62.130 - 44.62.170, AS 44.62.010 - 44.62.320 do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

§ 44.62.030. Consistency between regulation and statute

If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

Article 2. Submission, Filing, and Publication of Regulations

§ 44.62.040. Submitting regulations

(a) Subject to (c) of this section, every state agency that by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one that

(1) establishes or fixes rates, prices, or tariffs;

(2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; 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, must follow the text of each regulation submitted under (a) of this section.

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

§ 44.62.050. Style and forms

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

§ 44.62.060. Preparation and filing

(a) Every state agency that by statute possesses regulation-making authority shall work with the Department of Law, under AS 44.62.125, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050.

(b) In the performance of duties under AS 44.62.125, the Department of Law shall advise the agencies on legal matters relevant to the adoption of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

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

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

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

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

(c) The lieutenant governor may not accept for filing a regulation, amendment, or order of repeal required by AS 44.62.040 unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment, or order of repeal.

§ 44.62.070. Fees

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

§ 44.62.080. Endorsement and filing

(a) The lieutenant governor shall

(1) endorse on the certified copy of each regulation or order of repeal filed, the time and date of filing; and

(2) maintain, for five years after filing, a permanent file of the certified copies of regulations and orders of repeal for public inspection; after the certified copies have been on file for five years, the lieutenant governor shall transfer the permanent file of the copies to the state archivist (AS 40.21.020) annually, on or before January 1 of each year.

(b) The state archivist shall have and maintain, for public inspection, the permanent file of the certified copies of regulations and orders of repeal transferred to the archivist by the lieutenant governor under (a)(2) of this section.

§ 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.

§ 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.

§ 44.62.120. Voluntary submitting and publication

With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by AS 44.62.040 to be submitted. If the lieutenant governor accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in AS 44.62.080, and may publish the regulation or order of repeal in the manner the lieutenant governor considers proper.

§ 44.62.125. Regulations attorney

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

(b) The department shall

- (1) advise all state administrative agencies of the nature and use of administrative regulations;
- (2) alert the agencies to statutes that need to be implemented, interpreted, or made clear by regulation;
- (3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts, and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be adopted by the agencies, correcting or removing the deficiencies, conflicts, and obsolete provisions;
- (4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered, and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under AS 44.62.050;
- (5) assist the agencies in holding public hearings under AS 44.62.210;
- (6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes under AS 01.05.031;
- (7) draft bills for consideration by the governor to transfer matter that should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed.

Article 3. The Alaska Administrative Register and Code

§ 44.62.130. Codification and publication

(a) The lieutenant governor shall provide for the continuing compilation, codification, and publication, with periodic supplements, of all regulations filed by the lieutenant governor's office, or of appropriate references to any regulations the printing of which the lieutenant governor finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register must contain appropriate annotations to judicial decisions and opinions of the attorney general.

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

§ 44.62.140. Distribution of code and register

(a) Except as provided in this section, the lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings is delegated, to the person to whom this authority is delegated. A local government unit may decide to be excluded from the distribution requirements of this subsection. After receiving notice from the local government unit of the unit's decision to be excluded, the lieutenant governor shall exclude that local government unit from the distribution requirements of this subsection.

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

§ 44.62.160. Date and content of register

(a) The Alaska Administrative Register shall be published quarterly on the first day of the month. All regulations required to be submitted under AS 44.62.040 that are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment, or order of repeal has been filed the regular quarterly register shall be published reflecting that fact.

§ 44.62.175. Alaska Online Public Notice System

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

- (1) notices of proposed actions given under AS 44.62.190(a);
- (2) notices of state agency meetings required under AS 44.62.310(e), even if the meeting has been held;
- (3) notices of solicitations to bid issued under AS 36.30.130;
- (4) notices of state agency requests for proposals issued under AS 18.55.255, 18.55.320; AS 36.30.210; AS 37.05.316; AS 38.05.120; and AS 43.40.010;
- (5) executive orders and administrative orders issued by the governor;
- (6) written delegations of authority made by the governor or the head of a principal department under AS 44.17.010;
- (7) the text or a summary of the text of a regulation or order of repeal of a regulation for which notice is given under AS 44.62.190(a), including an emergency regulation or repeal regardless of whether it has taken effect;
- (8) notices required by AS 44.62.245(b) regarding an amended version of a document or other material incorporated by reference in a regulation;
- (9) a summary of the text of recently issued published opinions of the attorney general;
- (10) a list of vacancies on boards, commissions, and other bodies whose members are appointed by the governor;
- (11) in accordance with AS 39.52.240(h), advisory opinions of the attorney general; and
- (12) notices required by AS 26.30.010(d) and (e) regarding applications for military facility zones.

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

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

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

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

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

Article 4. Procedure for Adopting Regulations

§ 44.62.180. Effective date

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

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

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

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

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

§ 44.62.190. Notice of proposed action

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

(1) published in the newspaper of general circulation or trade or industry publication that the state agency prescribes and posted on the Alaska Online Public Notice System; in the discretion of the state agency giving the notice, the requirement of publication in a newspaper or trade or industry publication may be satisfied by using a combination of publication and broadcasting; when broadcasting the notice, an agency may use an abbreviated form of the notice if the broadcast provides the name and date of the newspaper or trade or industry journal and the Internet address of the Alaska Online Public Notice System where the full text of the notice can be found;

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

(3) if the agency is within a department, furnished to the commissioner of the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) municipalities to comply with the proposed action;

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

(5) the origin of the proposed action.

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

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

(g) Along with a notice furnished under (a)(2), (4)(A), or (6) of this section, the Regulatory Commission of Alaska, the Board of Fisheries, the Board of Game, and the Alaska Oil and Gas Conservation Commission shall include the reason for the proposed action, the initial cost of implementation to the state agency, the estimated annual costs of implementation to the state agency, the name of a contact person, and the origin of the proposed action.

§ 44.62.195. Fiscal notes on regulations

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

§ 44.62.200. Contents of notice

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

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

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

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

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

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

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

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

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

§ 44.62.210. Public proceedings

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

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines.

§ 44.62.213. Agency contact with the public

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

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

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

§ 44.62.215. Record of public comment

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

§ 44.62.220. Right to petition

Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in AS 44.62.180 - 44.62.290. The petition must state clearly and concisely

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

(2) the reasons for the request;

(3) reference to the authority of the agency to take the action requested.

§ 44.62.230. Procedure on petition

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

§ 44.62.240. Limitation on retroactive action

If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter that is primarily an “interpretative regulation” has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct.

§ 44.62.245. Material incorporated by reference

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

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

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

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

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

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

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

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

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

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

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

§ 44.62.250. Emergency regulations

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

§ 44.62.260. Limitation on effective period of emergency regulations

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

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

§ 44.62.270. State policy

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

§ 44.62.280. Purpose of AS 44.62.180 - 44.62.290

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

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

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

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

Article 5. Judicial Review

§ 44.62.300. Judicial review of validity

(a) An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid

(1) for a substantial failure to comply with AS 44.62.010 - 44.62.320; or

(2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under AS 44.62.250.

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

(1) insufficiency or inaccuracy of the information provided under AS 44.62.190(d) or (g);

(2) failure of the subject line of electronic mail or the title of a written publication to meet the requirements of AS 44.62.190(f);

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

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

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

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

§ 44.62.305. Judicial relief in administrative matters

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) In this section,

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

(2) “administrative proceeding” means

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

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

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

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

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

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

Article 6. Open Meetings of Governmental Bodies

§ 44.62.310. Government meetings public

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

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

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

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

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

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

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

(d) This section does not apply to

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

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) In this section,

(1) “governmental body” means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; “governmental body” includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

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

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

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

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

§ 44.62.312. State policy regarding meetings

(a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

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

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

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

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

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

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

§ 44.62.319. Short title

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

Article 7. Legislative Review of Rules

§ 44.62.320. Submittal for legislative review

(a) Repealed by SLA 2004, ch. 164, § 7, eff. Oct. 23, 2004.

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

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

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

Article 8. Administrative Adjudication

§ 44.62.330. Application of AS 44.62.330 - 44.62.630

(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 AS 44.62.330--44.62.630. This procedure, including 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 AS 44.62.330--44.62.630 is limited to named functions of the agency.

(1) Board of Chiropractic Examiners;

(2) Board of Dental Examiners;

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

(4) Board of Examiners in Optometry;

(5) State Medical Board;

(6) Division of Lands under Alaska Land Act where applicable;

(7) Board of Nursing functions, except those related to findings of abuse, neglect, or misappropriation of property contained in the registry of certified nurse aides under AS 08.68.333;

(8) Board of Pharmacy;

(9) Board of Public Accountancy;

(10) Department of Labor and Workforce Development as to functions relating to employment security only as provided in (c) of this section;

(11) Real Estate Commission;

(12) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act;

(13) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications;

(14) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400--18.65.490;

(15) Department of Health and Social Services and Department of Environmental Conservation under AS 17.20 (Alaska Food, Drug, and Cosmetic Act), and Department of Commerce, Community, and Economic Development in connection with the licensing of embalmers and funeral directors under AS 08.42;

(16) Department of Environmental Conservation, under AS 18.35.010--18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels;

(17) Board of Marine Pilots;

(18) Alaska Police Standards Council;

(19) Big Game Commercial Services Board;

(20) Alaska Public Offices Commission;

(21) Board of Fisheries;

(22) Board of Game;

(23) Department of Education and Early Development and Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030--14.20.040 and AS 14.20.470(a)(4);

(24) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits;

(25) Department of Environmental Conservation, except to the extent that AS 44.62.360--44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03 and AS 46.14;

- (26) Board of Psychologist and Psychological Associate Examiners;
- (27) Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.871;
- (28) Board of Veterinary Examiners;
- (29) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of nursing home administrators;
- (30) Board of Barbers and Hairdressers;
- (31) Department of Natural Resources concerning the Alaska grain reserve program under former AS 03.12;
- (32) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of audiologists and speech-language pathologists under AS 08.11;
- (33) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of hearing aid dealers under AS 08.55;
- (34) Board of Certified Real Estate Appraisers;
- (35) Department of Labor and Workforce Development as to functions related to employment rights of the organized militia under AS 26.05.075;
- (36) Board of Certified Direct-Entry Midwives;
- (37) Board of Marital and Family Therapy;
- (38) Department of Revenue for administrative review of actions taken under AS 43.50 relating to a tobacco product manufacturer's compliance with statutory requirements regarding cigarette sales;
- (39) Department of Commerce, Community, and Economic Development as to the licensing and regulation of private professional guardians and conservators under AS 08.26;
- (40) Department of Commerce, Community, and Economic Development relating to the licensing and regulation of persons making deferred deposit advances under AS 06.50;
- (41) Department of Health and Social Services relating to the centralized registry under AS 47.05.330--47.05.390;
- (42) State Commission for Human Rights, where procedures are not otherwise expressly provided in AS 18.80;

(43) Alaska Retirement Management Board for administration of pension forfeitures under AS 37.10.310;

(44) Department of Commerce, Community, and Economic Development relating to mortgage lending under AS 06.60;

(45) Board of Massage Therapists;

(46) Marijuana Control Board.

(b) The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330 - 44.62.630 only as to those functions to which AS 44.62.330 - 44.62.630 are made applicable by the statutes relating to that agency.

(c) Judicial review and scope of judicial review of all final decisions of the commissioner of labor and workforce development on an appeal relating to employment security shall be in accord with this chapter notwithstanding anything to the contrary in AS 23.20 (Alaska Employment Security Act). All other procedures of the Department of Labor and Workforce Development relating to employment security shall be as provided in AS 23.20 and the regulations under AS 23.20.

(d) Except in a case of reinstatement or reduction of penalty, the provisions of this chapter do not affect statutory provisions concerning

(1) civil or criminal penalties;

(2) additional relief by injunction or restraining order;

(3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters that in their context do not relate to procedure.