

SENATE BILL NO. 110

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/6/95

Referred: STA, JUD

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative adjudication under the Administrative Procedure
2 Act."

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

4 * Section 1. AS 44.62.370(c) is amended to read:

5 (c) The statement of issues, together with the form for notice of defense and
6 other information described in AS 44.62.380, shall be delivered to [SERVED IN]
7 the respondent or sent by certified mail to the latest address on file with the
8 agency [SAME MANNER AS AN ACCUSATION], except that if a [THE] hearing
9 has already been requested by [IS HELD AT THE REQUEST OF] the respondent

10 (1) AS 44.62.380 and 44.62.390 do not apply; and

11 (2) the statement of issues together with the notice of hearing shall be
12 delivered or mailed to the parties as provided in AS 44.62.420.

13 * Sec. 2. AS 44.62.380(c) is amended to read:

14 (c) The accusation and all accompanying information may be sent to the

1 respondent by any means selected by the agency. However, **the agency may not make**
2 an order adversely affecting the rights of the respondent [MAY NOT BE MADE BY
3 THE AGENCY] unless the respondent is served personally or by **certified**
4 [REGISTERED] mail, files a notice of defense, or otherwise appears. Service may be
5 proved in the manner authorized in civil actions. Service by **certified** [REGISTERED]
6 mail is effective if a statute or agency regulation requires the respondent to file an
7 address with the agency and to notify the agency of a change, and if a **certified**
8 [REGISTERED] letter containing the accusation and accompanying material is mailed,
9 addressed to respondent at the latest address on file with the agency.

10 * **Sec. 3.** AS 44.62.410(a) is amended to read:

11 (a) The agency shall determine the time and place of hearing. The hearing
12 shall be held in Juneau or Ketchikan, whichever is closer to the place where the
13 transaction occurred or where the respondent resides, if the transaction occurred in or
14 the respondent resides in the **First Judicial** [SOUTHEASTERN SENATE] District;
15 in Anchorage if the transaction occurred or the respondent resides within the **Third**
16 **Judicial** [SOUTH CENTRAL SENATE] District; in Fairbanks or Nome, whichever
17 is closer to the place where the transaction occurred or where the respondent resides,
18 if the transaction occurred in or the respondent resides in the **Second or Fourth**
19 **Judicial District** [CENTRAL OR NORTHWESTERN SENATE DISTRICTS]. The
20 agency may, if the transaction occurred in a **judicial** [SENATE] district other than that
21 of respondent's residence, select **an appropriate** [THE] place of hearing **in**
22 [APPROPRIATE FOR] either district. The agency may select a different place nearer
23 the place where the transaction occurred or where the respondent resides, or the parties
24 by agreement may select any place in the state.

25 * **Sec. 4.** AS 44.62.410(b) is repealed and reenacted to read:

26 (b) A party may request that the party or a witness participate by telephone
27 in a hearing. The requesting party shall pay the costs of the telephonic participation.
28 Unless a finding is made that the telephonic participation would substantially prejudice
29 the rights of an opposing party, the agency shall grant the request for that party or
30 witness to participate telephonically if

31 (1) no party objects;

- 1 (2) the witness lives more than 30 miles one way from the hearing site;
2 (3) the party lives more than 100 miles one way from the hearing site;
3 or
4 (4) other good cause is shown to the satisfaction of the agency.

5 * **Sec. 5.** AS 44.62.430(c) is amended to read:

6 (c) A witness who is not a party and who appears under a subpoena is entitled
7 to receive

8 (1) fees **as prescribed for a witness in court actions, unless the** [,
9 EXCEPT A] witness [WHO] is an officer or employee of the state or a political
10 subdivision of the state;

11 (2) **reimbursement of transportation expenses in accordance with**
12 **standards established by the Department of Administration under AS 39.20.160,**
13 **for required travel in excess of 30 miles round trip from the witness's residence**
14 [MILEAGE IN THE SAME AMOUNT AND UNDER THE SAME
15 CIRCUMSTANCES AS PRESCRIBED BY LAW FOR A WITNESS IN A CIVIL
16 ACTION IN A SUPERIOR COURT]; **and**

17 (3) **reimbursement of subsistence expenses in accordance with**
18 **standards established by the Department of Administration under AS 39.20.160**
19 [AN ADDITIONAL FEE AND MILEAGE TO A PER DIEM COMPENSATION OF
20 \$15] for each day of actual attendance and for each day **of reasonable and necessary**
21 **travel** [NECESSARILY OCCUPIED IN TRAVELING] to and from **the place of** the
22 hearing[,] if the witness attends a hearing **or deposition** at a point so **distant** [FAR
23 REMOVED] from the residence of the witness **that a** [AS TO PROHIBIT] return to
24 the residence from day to day **is not practicable.**

25 * **Sec. 6.** AS 44.62.430(d) is amended to read:

26 (d) Fees, **transportation expenses** [MILEAGE], and expenses of subsistence
27 shall be paid by the party at whose request the witness is subpoenaed.

28 * **Sec. 7.** AS 44.62.440(a) is repealed and reenacted to read:

29 (a) Upon a motion with good cause shown or upon stipulation of the parties,
30 an agency may order discovery, including a deposition to perpetuate testimony, by any
31 reasonable method including those methods prescribed by law in civil actions.

1 * **Sec. 8.** AS 44.62.460(e) is repealed and reenacted to read:

2 (e) Unless a different standard of proof is stated in applicable law,

3 (1) the petitioner has the burden of proof by a preponderance of the
4 evidence if an accusation has been filed under AS 44.62.360 or if the renewal of a
5 right, authority, license, or privilege has been denied;

6 (2) the respondent has the burden of proof by a preponderance of the
7 evidence if a right, authority, license, or privilege has been initially denied or not
8 issued.

9 * **Sec. 9.** AS 44.62.510(a) is amended to read:

10 (a) A decision shall be written and must contain findings of fact, a
11 determination of the issues presented, and the penalty, if any. The findings may be
12 stated in the language of the pleadings or by reference to them. Copies of the decision
13 shall be delivered to the parties personally or sent to them by **certified**
14 [REGISTERED] mail.

15 * **Sec. 10.** AS 44.62.540(a) is amended to read:

16 (a) The agency may order a reconsideration of all or part of the case on its
17 own motion or on petition of a party. **To be considered by the agency, a petition**
18 **for reconsideration must be filed with the agency within 15 days after delivery or**
19 **mailing of the decision.** The power to order a reconsideration expires 30 days after
20 the delivery or mailing of a decision to the respondent. If no action is taken on a
21 petition within the time allowed for ordering reconsideration, the petition is considered
22 denied.

23 * **Sec. 11.** APPLICABILITY. This Act applies to an accusation under AS 44.62.360 and
24 a statement of issues under AS 44.62.370, filed on or after the effective date of this Act.