

CS FOR SENATE BILL NO. 110(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE STATE AFFAIRS COMMITTEE

Offered: 3/30/95
Referred: Judiciary

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the adoption, amendment, and repeal of regulations and to
2 administrative adjudication under the Administrative Procedure Act."

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

4 * **Section 1.** AS 44.62.200(b) is amended to read:

5 (b) A regulation that is adopted, amended, or repealed may vary in content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

11 * **Sec. 2.** AS 44.62 is amended by adding a new section to read:

12 Sec. 44.62.215. SUPPLEMENTAL NOTICE AND PUBLIC PROCEEDINGS.
13 (a) Notwithstanding AS 44.62.200(b), if a state agency rewrites a proposed regulation,
14 amendment of a regulation, or order of repeal after the agency has complied with

1 AS 44.62.190, 44.62.200, and 44.62.210, and if the rewriting is a significant change
2 in the substance of the regulation, amendment, or order, before adoption the agency
3 shall provide notice and opportunity for public comment under AS 44.62.190,
4 44.62.200, and 44.62.210 for the rewritten regulation, amendment, or order of repeal.

5 (b) If a state agency does not provide the notice and opportunity for public
6 comment under (a) of this section for a rewritten proposed regulation, amendment, or
7 order of repeal, the agency shall prepare a written explanation of the reasons why the
8 requirement of (a) of this section does not apply. When the adopted regulation,
9 amendment, or order of repeal is published in the Alaska Administrative Journal, the
10 lieutenant governor shall include the agency explanation with the text or a summary
11 of the text of the regulation, amendment, or order of repeal.

12 (c) Notwithstanding AS 44.62.300, if a court determines that notice and an
13 opportunity for public comment was required under (a) of this section for the rewriting
14 of a proposed regulation, amendment, or order of repeal, and if the state agency did
15 not provide the notice and opportunity for public comment, the court may order the
16 relief, other than monetary damages, that is appropriate under the circumstances,
17 including the invalidation of part or all of the regulation, amendment, or order of
18 repeal.

19 (d) This section does not apply to regulations

20 (1) adopted by the Board of Fisheries, the Board of Game, or the
21 Alaska Commercial Fisheries Entry Commission;

22 (2) adopted under AS 44.62.260 to make emergency regulations
23 permanent; or

24 (3) that are necessary to meet federal requirements.

25 * **Sec. 3.** AS 44.62.370(c) is amended to read:

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

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

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

3 * **Sec. 4.** AS 44.62.380(c) is amended to read:

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

14 * **Sec. 5.** AS 44.62.410(a) is amended to read:

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

29 * **Sec. 6.** AS 44.62.410(b) is repealed and reenacted to read:

30 (b) A party may request that the party or a witness participate by telephone
31 in a hearing. The requesting party shall pay the costs of the telephonic participation.

1 Unless a finding is made that the telephonic participation would substantially prejudice
2 the rights of an opposing party, the agency shall grant the request for that party or
3 witness to participate telephonically if

4 (1) no party objects;

5 (2) the witness lives more than 30 miles one way from the hearing site;

6 (3) the party lives more than 100 miles one way from the hearing site;

7 or

8 (4) other good cause is shown to the satisfaction of the agency.

9 * **Sec. 7.** AS 44.62.430(c) is amended to read:

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

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

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

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

30 * **Sec. 8.** AS 44.62.430(d) is amended to read:

31 (d) Fees, **transportation expenses** [MILEAGE], and **food and lodging**

1 expenses [OF SUBSISTENCE] shall be paid by the party at whose request the witness
2 is subpoenaed.

3 * **Sec. 9.** AS 44.62.440(a) is repealed and reenacted to read:

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

7 * **Sec. 10.** AS 44.62.460(e) is repealed and reenacted to read:

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

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

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

15 * **Sec. 11.** AS 44.62.510(a) is amended to read:

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

21 * **Sec. 12.** AS 44.62.540(a) is amended to read:

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

29 * **Sec. 13.** APPLICABILITY. AS 44.62.200(b), amended by sec. 1 of this Act, and
30 AS 44.62.215, enacted by sec. 2 of this Act, apply to the adoption, amendment, or repeal of
31 a regulation if the initial notice under AS 44.62.190 of the adoption, amendment, or repeal is

1 given on or after the effective date of this Act. The other provisions of this Act do not apply
2 to an accusation under AS 44.62.360 or a statement of issues under AS 44.62.370, unless the
3 accusation or statement of issues is filed on or after the effective date of this Act.