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ALASKA ADMINISTRATIVE PROCEDURE ACT

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II. THE HOUSE

BY MR. HELLENTHAL AND MR. TAYLOR

HOUSE BILL NO. 13

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIRST LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing administrative procedures for executive, quasi-judicial and quasi-legislative agencies of the State; providing standard procedures for the adoption, promulgation after notice and public hearing, and judicial review of rules and regulations adopted by the State agencies; providing for due process and standard procedural methods in connection with administrative adjudication and quasi-judicial hearings conducted by specified State agencies; providing for judicial review of administrative rules and regulations and of administrative adjudications; providing for legislative review of rules and regulations; requiring that all agency meetings be public; and repealing or amending all laws inconsistent herewith."

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

CHAPTER 1. RULES AND REGULATIONS

ARTICLE I

GENERAL

Section 1. SHORT TITLE. This Act constitutes and may be cited as the Administrative Procedure Act.



1 (4) Rule making powers conferred by the State Organiza-  
2 tion Act of 1959 shall be subject to this Act.

3 Sec. 3. SECRETARY OF STATE. "Secretary of State" as used in  
4 this chapter means the office of the Secretary of State in the ex-  
5 ecutive branch of the State Government, or such other agency as  
6 shall be designated by executive order pursuant to the Constitution.

7 Sec. 4. PROVISIO. Except for the authority conferred upon  
8 the Secretary of State in Article III hereof, nothing in this  
9 chapter confers authority upon or augments the authority of any  
10 State agency to adopt, administer, or enforce any regulation.  
11 Each regulation adopted, to be effective, must be within the  
12 scope of authority conferred and in accordance with standards  
13 prescribed by other provisions of law.

14 Sec. 5. LIMITATION. Whenever by the express or implied terms  
15 of any statute a State agency has authority to adopt regulations to  
16 implement, interpret, make specific or otherwise carry out the pro-  
17 visions of the statute, no regulation adopted is valid or effective  
18 unless consistent and not in conflict with the statute and reason-  
19 ably necessary to effectuate the purpose of the statute.

20 Any existing rules or regulations conflicting with this  
21 section are hereby repealed.

## 22 ARTICLE II

### 23 FILING AND PUBLICATION

24 Section 1. FILING PRESENT AND FUTURE REGULATIONS. Every  
25 State agency shall:

- 26 (1) Transmit for filing to the Secretary of State a  
27 certified copy of every regulation adopted by it except one which:  
28 (a) Establishes or fixes rates, prices or tariffs,  
29 (b) Relates to the use of public works, including

1 streets and highways, under the jurisdiction of any State  
2 agency when the effect of such order is indicated to the  
3 public by means of signs or signals.

4 (c) Is directed to a specifically named person or  
5 to a group of persons and does not apply generally through-  
6 out the State.

7 (2) File with the Secretary of State on a date designat-  
8 ed by him a certified copy of every existing rule and regulation  
9 adopted by it and in effect on the effective date hereof, and  
10 upon which the agency intends to rely as being effective.

11 (3) Transmit to the Secretary of State for filing a  
12 certified copy of every order of repeal of a regulation required  
13 to be filed under subdivision (1) of this section.

14 (4) Deliver to the Secretary of State at the time of  
15 filing two duplicate copies of the regulation or order of repeal  
16 together with a citation of the authority pursuant to which it or  
17 any part thereof was adopted.

18 Sec. 2. STYLE AND FORM OF FILING. The Secretary of State  
19 shall prescribe the style in which regulations shall be prepared  
20 and a standard size form to be used in filing regulations pur-  
21 suant to the preceding section, which form shall be effective  
22 within fifteen days after the effective date hereof, and he shall  
23 notify all agencies subject to the provisions of this article of  
24 the date when the form so prescribed by him becomes effective.

25 Sec. 3. APPROVAL AND FILING. The Secretary of State shall  
26 examine each regulation or order of repeal transmitted to him  
27 for filing and determine whether it complies with the form and  
28 style prescribed.

29 Sec. 4. FEES. No fee shall be charged by any State officer

1 or public official for the performance of any official act in  
2 connection with the certification or filing of regulations  
3 pursuant to this article.

4 Sec. 5. ENDORSEMENT BY SECRETARY OF STATE. The Secretary  
5 of State shall endorse on the certified copy of each regulation  
6 or order of repeal filed with him, the time and date of filing  
7 and shall maintain a permanent file of the certified copies of  
8 regulations and orders of repeal for public inspection.

9 Sec. 6. FILING WITH LOCAL GOVERNMENT UNIT CLERKS. The  
10 Secretary of State shall file one copy of each issue of the  
11 Alaska Administrative Code and of the Alaska Administrative  
12 Register in the office of the clerk of each local government unit  
13 in the State, or if the authority to accept filings on his behalf  
14 has been delegated, to the person to whom such authority has  
15 been delegated.

16 Sec. 7. PRESUMPTIONS FROM FILING. The filing of a certi-  
17 fied copy of a regulation or an order of repeal with the Secre-  
18 tary of State raises the rebuttable presumption that:

19 (1) It was duly adopted.

20 (2) It was duly filed and made available for public  
21 inspection at the day and hour endorsed on it.

22 (3) All requirements of this chapter and the regula-  
23 tions relative to such regulation have been complied with.

24 (4) The text of the certified copy of a regulation  
25 or order of repeal is the text of the regulation or order of  
26 repeal as adopted.

27 The courts shall take judicial notice of the contents of  
28 the certified copy of each regulation and of each order of repeal  
29 duly filed.







1 section.

2 (2) If in any particular case the State agency makes a  
3 finding, including a statement of facts constituting the emergency  
4 in writing that the adoption of a regulation or order of repeal  
5 is necessary for the immediate preservation of the public peace,  
6 health and safety or general welfare, the regulation or order  
7 of repeal may be adopted as an emergency regulation or order of  
8 repeal. It is the State policy that emergencies be held to a  
9 minimum and rarely be found to exist.

10 Sec. 3. EFFECTIVE DATE. A regulation or an order of repeal  
11 required to be filed with the Secretary of State shall become  
12 effective on the thirtieth day after the date of filing  
13 unless:

14 (1) Otherwise specifically provided by the statute  
15 pursuant to which the regulation or order of repeal was adopted,  
16 in which event it becomes effective on the day prescribed by such  
17 statute.

18 (2) It is a regulation prescribing an agency's organi-  
19 zation or procedure, in which event it shall become effective upon  
20 filing or upon any later date specified by the State agency in  
21 a written instrument filed with, or as part of, the regulation or  
22 order of repeal.

23 (3) It is an emergency regulation or order of repeal  
24 adopted pursuant to subdivision (2) of Section 2 of this article,  
25 in which case the finding and the statement of the facts consti-  
26 tuting the emergency shall be filed with the Secretary of State,  
27 together with the emergency regulation or order of repeal, which  
28 shall, in that event only, become effective upon filing or upon  
29 any later date specified by the State agency in a written

1 instrument filed with, or as part of, the regulation or order of  
2 repeal.

3 (4) A later date is prescribed by the State agency in  
4 a written instrument filed with, or as part of, the regulation or  
5 order of repeal.

6 Sec. 4. EMERGENCY: LIMITATION ON EFFECTIVE PERIOD. No  
7 regulation adopted as an emergency shall remain in effect more  
8 than ninety days unless the adopting agency has complied with  
9 Sections 5, 6, and 7 of this article prior to the adoption of the  
10 emergency regulation, or has, within said ninety-day period, given  
11 notice of the adoption of the emergency regulation in a manner  
12 substantially similar to that required for the proposed adoption  
13 of a regulation and has afforded interested persons the opportunity  
14 to present statements, arguments, or contentions in a manner  
15 substantially similar to that required by Section 7 of this article.  
16 The agency shall, prior to the expiration of the ninety-day period,  
17 transmit to the Secretary of State for filing a certification  
18 that either Sections 5, 6, and 7 of this article were complied  
19 with prior to adoption, or that compliance was had with this  
20 section within the said period. Failure to so certify shall  
21 constitute a repeal of the emergency regulation.

22 Sec. 5. NOTICE OF PROPOSED ACTION. At least thirty days  
23 prior to the adoption, amendment, or repeal of a regulation,  
24 notice of the proposed action shall be:

25 (1) Published in such newspaper of general circulation,  
26 trade or industry publication, as the State agency shall prescribe.

27 (2) Mailed to every person who has filed a request for  
28 notice thereof with the State agency.

29 (3) In cases in which the State agency is within a

1 State department, mailed or delivered to the director of such  
2 department.

3 (4) When appropriate in the judgment of the State  
4 agency, (a) mailed to any person or group of persons whom the  
5 agency believes to be interested in the proposed action and, (b)  
6 published in such additional form and manner as the State agency  
7 shall prescribe.

8 Where the form or manner of notice is prescribed by statute  
9 in any particular case, in addition to filing and mailing notice  
10 as required herein, the notice shall be published, posted, mailed,  
11 filed or otherwise publicized as prescribed by that statute.

12 The failure to mail notice to any person as provided in this  
13 section shall not invalidate any action taken by a State agency  
14 pursuant to this article.

15 Sec. 6. CONTENTS OF NOTICE. The notice of proposed adoption,  
16 amendment, or repeal of a regulation shall include:

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

19 (2) Reference to the authority under which the regula-  
20 tion is proposed and a reference to the particular code sections  
21 or other provisions of law which are being implemented, inter-  
22 preted, or made specific;

23 (3) Either the express terms or an informative summary  
24 of the proposed action;

25 (4) Such other matters as are prescribed by statute  
26 applicable to the specific State agency or to any specific  
27 regulation or class of regulations.

28 Sec. 7. PUBLIC PROCEEDINGS. On the date and at the time  
29 and place designated in the notice the State agency shall afford

1 any interested person or his duly authorized representative, or  
2 both, the opportunity to present statements, arguments, or  
3 contentions in writing, with or without opportunity to present  
4 the same orally. The State agency shall consider all relevant  
5 matter presented to it before adopting, amending or repealing any  
6 regulation.

7 In any hearing under this section the State agency or its  
8 duly authorized representative shall have authority to administer  
9 oaths or affirmations, and may continue or postpone such hearing  
10 from time to time to such time and at such place as it shall  
11 determine.

12 Sec. 8. RIGHT TO PETITION. Except where the right to  
13 petition for adoption of a regulation is restricted by statute  
14 to a designated group or where the form of procedure for such  
15 a petition is otherwise prescribed by statute, any interested  
16 person may petition a State agency requesting the adoption or  
17 repeal of a regulation as provided in this article. Such  
18 petition shall state clearly and concisely:

19 (1) The substance or nature of the regulation, amend-  
20 ment, or repeal requested;

21 (2) The reasons for the request;

22 (3) Reference to the authority of the State agency to  
23 take the action requested.

24 Sec. 9. PROCEDURE ON PETITION. Upon receipt of a petition  
25 requesting the adoption, amendment or repeal of a regulation  
26 pursuant to this article, a State agency shall within 30 days  
27 deny the petition in writing or schedule the matter for public  
28 hearing pursuant to Sections 5, 6, and 7 of this article.

29 Sec. 10. RETROACTIVE ACTION: LIMITATION. All regulations

HB #13 as amended  
Engrossed as amended in the -12-  
Senate

1 promulgated by an agency subject to this Act which are primarily  
2 legislative in nature shall have prospective effect only. Any  
3 regulation adopted pursuant hereto which is primarily an "inter-  
4 pretative regulation" shall have retroactive effect only if the  
5 agency adopting it has adopted no prior inconsistent regulation  
6 or has followed no prior course of conduct inconsistent with  
7 said regulation. Silence or failure to pursue any course of  
8 conduct shall be deemed prior inconsistent conduct.

9 ARTICLE V

10 JUDICIAL REVIEW

11 Section 1. COURT REVIEW. Any interested person may obtain  
12 a judicial declaration as to the validity of any regulation by  
13 bringing an action for declaratory relief in the superior court  
14 in accordance with the provisions of the Code of Civil Procedure  
15 and in addition to any other ground which may exist, such regula-  
16 tion may be declared to be invalid for a substantial failure to  
17 comply with the provisions of this chapter or, in the case of an  
18 emergency regulation or order of repeal, upon the ground that the  
19 facts recited in the statement do not constitute an emergency  
20 within the provisions of Section 2 (2) of Article 4.

21 ARTICLE VI

22 AGENCY MEETING PUBLIC

23 Section 1. AGENCY MEETINGS PUBLIC. All meetings of governing  
24 bodies of all State and local government agencies, including  
25 municipalities, boroughs, school boards and all other boards,  
26 agencies, assemblies, councils, departments, divisions, bureaus,  
27 commissions or organizations (advisory or otherwise) of the State  
28 or local government, supported in whole or in part by public funds  
29 or entrusted with the expending of public funds, except juries

1 and such other agencies as shall be expressly exempt by the  
2 Legislature, shall be public meetings, but the public may be ex-  
3 cluded only from such portions thereof as deal with matters, the  
4 immediate knowledge of which would deleteriously affect the  
5 finances of the government unit, or that deal with subjects that  
6 tend to prejudice the reputation and character of persons. When  
7 meetings are held at which such excepted subjects are to be dis-  
8 cussed, the meeting must first be convened as a public meeting,  
9 and the question of holding an executive session to discuss matters  
10 that come within the two exceptions shall be determined by a  
11 majority vote of the agency, and no subjects can be considered  
12 at such executive session except those as are mentioned in the  
13 motion calling for the executive session, and no action shall be  
14 taken at said executive session.

## 15 ARTICLE VII

### 16 LEGISLATIVE REVIEW OF RULES

17 Section 1. The Legislature, by resolution adopted by vote  
18 of both houses shall have the power to annul any agency or depart-  
19 ment rule or regulation. The Legislative Council shall annually  
20 review all agency regulations to determine if the legislative in-  
21 tent is being correctly followed. A comprehensive report of said  
22 annual review with recommendations shall be submitted to the  
23 members of the legislature fifteen days prior to the start of its  
24 regular session each January.

### 25 CHAPTER 2. ADMINISTRATIVE ADJUDICATION

26 Section 1. DEFINITIONS. In this chapter, unless the context  
27 or subject matter otherwise requires:

28 (1) "Agency" includes the State boards, commissions  
29 and officers enumerated in Section 2 and those to which this

1 chapter is made applicable by law or executive order involving  
2 reorganization under the Constitution. All of the agencies listed  
3 in Section 2 may delegate the power to act and to hear and to de-  
4 cide, unless expressly prohibited by law; in future laws, wherever  
5 the word "agency" alone is used, the power to act may be delegated  
6 by the agency, and wherever the words "agency itself" are used,  
7 the power to act shall not be delegated unless the statutes re-  
8 lating to the particular agency authorize the delegation of the  
9 agency's power to hear and decide.

10 (2) "Party" includes the agency, the respondent, and  
11 any person, other than an officer or an employee of the agency  
12 in his official capacity, who has been allowed to appear in the  
13 proceeding.

14 (3) "Respondent" means any person against whom an  
15 accusation is filed pursuant to Section 4 or against whom a state-  
16 ment of issues is filed pursuant to Section 5.

17 (4) "Hearing officer" means a hearing officer qualified  
18 under Section 3.

19 (5) "Agency member" means any person who is a member  
20 of any agency to which this chapter is applicable, and includes any  
21 person who himself constitutes an agency.

22 Sec. 2. APPLICATION OF CHAPTER. (1) The procedure of the  
23 following enumerated State boards, commissions, and officers or  
24 of their successors under the State Organization Act of 1959 or  
25 under reorganization pursuant to the Constitution shall be con-  
26 ducted pursuant to the provisions of this chapter; and said pro-  
27 cedure, including, but not limited to, accusations and statements  
28 of issues, service, notice and time and place of hearing, subpoenas,  
29 depositions, matters concerning evidence and decisions, conduct of

1 hearing, judicial review and scope of judicial review, continuances,  
2 reconsideration, reinstatement or reduction of penalty, contempt,  
3 mail vote, oaths, impartiality and other similar matters, shall be  
4 governed by this Act despite similar provisions in the statutes  
5 dealing with the following enumerated State boards, commissions,  
6 and officers. Statutory provisions concerning penalties, criminal  
7 or civil; concerning additional relief by injunction or restrain-  
8 ing order; concerning penalty provisions relating to suspension,  
9 revocation, reissuance, and other similar matters, of licenses,  
10 permits, leases, concessions, and other similar matters; and re-  
11 lated matters which in their context do not relate to procedure,  
12 shall not be affected by the provisions of this Act except in cases  
13 of reinstatement or reduction of penalty. In certain instances,  
14 where indicated, the procedure that shall be conducted pursuant to  
15 this chapter is limited to certain functions of the agency.

16 Board of Barber Examiners

17 Board of Chiropractic Examiners

18 Board of Dental Examiners

19 Board of Engineers and Architects Examiners

20 Board of Examiners in Basic Sciences

21 Board of Examiners in Optometry

22 Board of Hairdressing and Beauty Culture Examiners

23 Territorial Medical Board

24 Land Board under Land Act where applicable

25 Board of Nursing

26 Board of Pharmacy

27 Board of Public Accountancy

28 Alaska Employment Security Commission, only as provided

29 in subparagraph (3) of this section.

HB #13 as amended -16-  
Engrossed as amended in the Senate

1 Alaska Real Estate Commission  
2 Alaska Industrial Board  
3 Alaska Aeronautics and Communications Commission  
4 Board of Liquor Control  
5 Oil and Gas Conservation Commission  
6 Director of Finance, pursuant to Alaska Small Loans Act of  
7 1955  
8 Tax Commissioner, under Cigarette Tax Act of 1955  
9 Banking Board of the Territory of Alaska  
10 Board of Governors of the Alaska Bar  
11 Alaska Highway & Public Works Board, as to suspension etc.  
12 of drivers' licenses  
13 Department of Public Welfare, under Boarding and Foster  
14 Homes for Children Act of 1951 (Chap. 17, SLA 1951)  
15 Territorial Board of Education, as to Discharge of Teachers  
16 (Chap. 71, SLA 1957)  
17 Alaska Department of Health, under "Radiation Protection  
18 Act" of 1957 (Chap. 66, SLA 1957)  
19 Commissioner of Health, under "Alaska Food, Drug & Cosmetic  
20 Act" of 1949 (Chap. 129, SLA 1949 as amended) and in  
21 connection with the licensing of embalmers per Sec. 11,  
22 Chap. 119, SLA 1949.  
23 Department of Health and its "Advisory Hospital Council"  
24 under Hospital Act of 1947 (40-6-1 et seq as amended)  
25 Water Pollution Control Board, under Alaska Water Pollution  
26 Control Act of 1949 (Chap. 117, SLA 1949)  
27 Board of Health, under Act of 1955 Regulating Tourist and  
28 Trailer Camps, Motor Courts and Motels (Chap. 100, SLA  
29 1955)

1 Alaska Insurance Commission except as to procedure in respect  
2 to the filing of rates, and the approval or disapproval and admin-  
3 istrative and judicial review of the same, as provided in Sections  
4 42-4-4, 42-4-5(a), (b), (c), (e) and (f), 42-4-7, and 42-4-17  
5 ACLA 1949.

6 Commissioner of Labor, as to Employment Agencies (Chap. 94,  
7 SLA 1953 as amended)

8 (2) The procedure of any other agency shall be con-  
9 ducted pursuant to the provisions of this Chapter only as to  
10 those functions to which this chapter is made applicable by the  
11 statutes relating to the particular agency.

12 (3) Judicial review and scope of judicial review of all  
13 final decisions of the Employment Security Commission or its  
14 Appeal Tribunal shall be in accord with this Act notwithstanding  
15 anything to the contrary appearing in the Employment Security Act,  
16 but all other procedures of that Agency shall be as provided in the  
17 Employment Security Act and rules and regulations thereunder.

18 Sec. 3. APPOINTMENT OF HEARING OFFICERS. The Governor shall  
19 assign a qualified unbiased and impartial hearing officer, with  
20 experience in the general practice of law, to conduct hearings  
21 pursuant to this Act; said hearing officer may perform other duties  
22 in connection with the administration hereof and of other laws.  
23 Agencies with hearing officers may be permitted to continue their  
24 employment as such on an unbiased and impartial basis within the  
25 particular agency and may hire additional officers and prescribe  
26 additional qualifications but all such officers hired after the  
27 effective date hereof except by the Employment Security Agency  
28 shall have been admitted to practice law for at least two (2) years  
29 immediately preceding their appointment.





1 selected by the agency. But no order adversely affecting the  
2 rights of the respondent shall be made by the agency in any case  
3 unless the respondent shall have been served personally or by  
4 registered mail as provided herein, or shall have filed a notice  
5 of defense or otherwise appeared. Service may be proved in the  
6 manner authorized in civil actions. Service by registered mail  
7 shall be effective if a statute or agency rule requires respondent  
8 to file his address with the agency and to notify the agency  
9 of any change, and if a registered letter containing the accusa-  
10 tion and accompanying material is mailed, addressed to respondent  
11 at the latest address on file with the agency.

12       Sec. 7. NOTICE OF DEFENSE. (1) Within 15 days after  
13 service upon him of the accusation, the respondent may file with  
14 the agency a notice of defense in which he may:

15               (a) Request a hearing;

16               (b) Object to the accusation upon the ground that  
17 it does not state acts or omissions upon which the agency may  
18 proceed;

19               (c) Object to the form of the accusation on the  
20 ground that it is so indefinite or uncertain that he cannot  
21 identify the transaction or prepare his defense;

22               (d) Admit the accusation in whole or in part;

23               (e) Present new matter by way of defense.

24       Within the time specified respondent may file one or more  
25 notices of defense upon any or all of these grounds but all such  
26 notices shall be filed within that period unless the agency in  
27 its discretion authorizes the filing of a later notice.

28       (2) The respondent shall be entitled to a hearing on  
29 the merits if he files a notice of defense, and any such notice

1 shall be deemed a specific denial of all parts of the accusation  
2 not expressly admitted. Failure to file such notice shall con-  
3 stitute a waiver of respondent's right to a hearing, but the  
4 agency in its discretion may nevertheless grant a hearing. Unless  
5 objection is taken as provided in subdivision (1) (c), all  
6 objections to the form of the accusation shall be deemed waived.

7 (3) The notice of defense shall be in writing signed  
8 by or on behalf of the respondent and shall state his mailing  
9 address. It need not be verified or follow any particular form.

10 Sec. 8. AMENDED OR SUPPLEMENTAL ACCUSATION. At any time  
11 before the matter is submitted for decision the agency may file  
12 or permit the filing of an amended or supplemental accusation.  
13 All parties shall be notified thereof. If the amended or supple-  
14 mental accusation presents new charges the agency shall afford  
15 respondent a reasonable opportunity to prepare his defense  
16 thereto, but he shall not be entitled to file a further pleading  
17 unless the agency in its discretion so orders. Any new charges  
18 shall be deemed controverted, and any objections to the amended  
19 or supplemental accusation may be made orally and shall be noted  
20 in the record.

21 Sec. 9. TIME AND PLACE OF HEARING. The agency shall  
22 determine the time and place of hearing. The hearing shall be  
23 held in Juneau or Ketchikan, whichever is closer to the place  
24 where the transaction occurred or where the respondent resides, if  
25 the transaction occurred or the respondent resides within the  
26 Southeastern Senatorial District; in Anchorage if the transaction  
27 occurred or the respondent resides within the South Central  
28 Senatorial District; in Fairbanks or Nome, whichever is closer,  
29 to the place where the transaction occurred or where the

1 respondent resides if the transaction occurred or the respondent  
2 resides within the Central or Northwestern Senatorial Districts.  
3 The agency may, if the transaction occurred in a senatorial  
4 district other than that of respondent's residence, select the  
5 place of hearing appropriate for either district; the agency may  
6 select a different place nearer the place where the transaction  
7 occurred or the respondent resides; or the parties by agreement  
8 may select any place within the State.

9       Sec. 10. FORM OF NOTICE OF HEARING. The agency shall deliver  
10 or mail a notice of hearing to all parties at least 10 days prior  
11 to the hearing. The hearing shall not be prior to the expiration  
12 of the time within which the respondent is entitled to file a  
13 notice of defense.

14       The notice to respondent shall be substantially in the  
15 following form but may include other information:

16       You are hereby notified that a hearing will be held before  
17 (here insert name of agency) at (here insert place of hearing)  
18 upon the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_,  
19 upon the charges made in the accusation served upon you. You  
20 may be present at the hearing, may be but need not be represented  
21 by counsel, may present any relevant evidence, and will be given  
22 full opportunity to cross-examine all witnesses testifying  
23 against you. You are entitled to the issuance of subpoenas to  
24 compel the attendance of witnesses and the production of books,  
25 documents or other things by applying to (here insert appropriate  
26 office of agency).

27       Sec. 11. (1) SUBPENAS. Before the hearing has commenced  
28 the agency shall issue subpoenas and subpoenas duces tecum at the  
29 request of any party in accordance with the applicable provisions

1 of Rule 45 of the Federal Rules of Civil Procedure or such rules  
2 as may be prescribed by the Supreme Court of the State of Alaska.  
3 After the hearing has commenced the agency itself hearing a case  
4 or a hearing officer sitting alone may issue subpoenas and subpoenas  
5 duces tecum.

6 (2) WITNESSES FROM MORE THAN 100 MILES. The process  
7 issued pursuant to subdivision (1) shall extend to all parts of  
8 the State and shall be served in accordance with the provisions  
9 of Rule 45 (c) of the Federal Rules of Civil Procedure, except the  
10 words "State of Alaska" shall be substituted in the third sentence  
11 for the words "United States", or such rules as may be prescribed  
12 by the Supreme Court of the State of Alaska. No witness shall  
13 be obliged to attend at a place out of the election district  
14 in which he resides unless the distance be less than 100 miles  
15 from his place of residence, except that the agency, upon  
16 affidavit of any party showing that the testimony of such witness  
17 is material and necessary, may endorse on the subpoena an order  
18 requiring the attendance of such witness.

19 (3) WITNESS FEES AND EXPENSES. All witnesses appearing  
20 pursuant to subpoena, other than the parties or officers or  
21 employees of the State or any political subdivision thereof,  
22 shall receive fees, and all witnesses appearing pursuant to  
23 subpoena, except the parties, shall receive mileage in the same  
24 amount and under the same circumstances as prescribed by law for  
25 witnesses in civil actions in a superior court. Witnesses  
26 appearing pursuant to subpoena, except the parties, who attend  
27 hearings at points so far removed from their residences as to  
28 prohibit return thereto from day to day shall be entitled in  
29 addition to fees and mileage to a per diem compensation of \$15.00

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1 hears the case the hearing officer shall preside at the hearing,  
2 rule on the admission and exclusion of evidence, and advise the  
3 agency on matters of law; the agency itself shall exercise all  
4 other powers relating to the conduct of the hearing, but may  
5 delegate any or all of them to the hearing officer. When the  
6 hearing officer alone hears a case, he shall exercise all powers  
7 relating to the conduct of the hearing.

8 (3) DISQUALIFICATION OF HEARING OFFICER AND AGENCY  
9 MEMBERS. A hearing officer or agency member shall voluntarily  
10 disqualify himself and withdraw from any case in which he cannot  
11 accord a fair and impartial hearing or consideration. Any party  
12 may request the disqualification of any hearing officer or agency  
13 member by filing an affidavit, prior to the taking of evidence  
14 at a hearing, stating with particularity the grounds upon which  
15 it is claimed that a fair and impartial hearing cannot be accorded.  
16 Where the request concerns an agency member the issue shall be  
17 determined by the other members of the agency. Where the request  
18 concerns the hearing officer, the issue shall be determined by  
19 the agency itself if the agency itself hears the case with the  
20 hearing officer, otherwise the issue shall be determined by the  
21 hearing officer. No agency member shall withdraw voluntarily  
22 or be subject to disqualification if his disqualification would  
23 prevent the existence of a quorum qualified to act in the  
24 particular case.

25 (4) REPORTER. The proceedings at the hearing shall  
26 be reported by a phonographic reporter or recorder, or other  
27 adequate means of assuring an accurate record.

28 Sec. 14. EVIDENCE RULES. (1) Oral evidence shall be taken  
29 only on oath or affirmation.



1 notice as provided in subdivision (2). Unless the opposing party,  
2 within seven days after such mailing or delivery, mails or  
3 delivers to the proponent a request to cross-examine an affiant,  
4 his right to cross-examine such affiant is waived and the  
5 affidavit, if introduced in evidence, shall be given the same  
6 effect as if the affiant had testified orally. If an opportunity  
7 to cross-examine an affiant is not afforded after request therefor  
8 is made as herein provided, the affidavit may be introduced in  
9 evidence, but shall be given only the same effect as other  
10 hearsay evidence.

11 (2) The notice referred to in subdivision (1) shall  
12 be substantially in the following form:

13 The accompanying affidavit of (here insert name of affiant)  
14 will be introduced as evidence at the hearing in (here insert  
15 title of proceeding). (Here insert name of affiant) will not  
16 be called to testify orally and you will not be entitled to  
17 question him unless you notify (here insert name of proponent  
18 or his attorney) at (here insert address) that you wish to  
19 cross-examine him. To be effective your request must be mailed  
20 or delivered to (here insert name of proponent or his attorney)  
21 on or before (here insert a date seven days after the date of  
22 mailing or delivering the affidavit to the opposing party).

23 Sec. 16. OFFICIAL NOTICE. In reaching a decision official  
24 notice may be taken, either before or after submission of the  
25 case for decision, of any generally accepted technical or  
26 scientific matter within the agency's special field, and of any  
27 fact which may be judicially noticed by the courts of this State.  
28 Parties present at the hearing shall be informed of the matters  
29 to be noticed, and those matters shall be noted in the record,

1 referred to therein, or appended thereto. Any such party shall  
2 be given a reasonable opportunity on request to refute the  
3 officially noticed matters by evidence or by written or oral  
4 presentation of authority, the manner of such refutation to be  
5 determined by the agency.

6       Sec. 17. AMENDMENT OF ACCUSATION AFTER SUBMISSION. The  
7 agency may order amendment of the accusation after submission of  
8 the case for decision. Each party shall be given notice of the  
9 intended amendment and opportunity to show that he will be  
10 prejudiced thereby unless the case is reopened to permit the  
11 introduction of additional evidence in his behalf. If such  
12 prejudice is shown the agency shall reopen the case to permit the  
13 introduction of additional evidence.

14       Sec. 18. (1) DECISION. If a contested case is heard before  
15 an agency itself the hearing officer who presided at the hearing  
16 shall be present during the consideration of the case and if  
17 requested, shall assist and advise the agency. Where a contested  
18 case is heard before an agency itself, no member thereof who did  
19 not hear the evidence shall vote on the decision.

20       (2) ADOPTION OF PROPOSED DECISION OF HEARING OFFICER.  
21 If a contested case is heard by a hearing officer alone, he shall  
22 prepare a proposed decision in such form that it may be adopted  
23 as the decision in the case. A copy of the proposed decision  
24 shall be filed by the agency as a public record with the Secretary  
25 of State and a copy of the proposed decision shall be served by  
26 the agency on each party in the case and his attorney. The agency  
27 itself may adopt the proposed decision in its entirety, or may  
28 reduce the proposed penalty and adopt the balance of the proposed  
29 decision.

1 (3) PROCEDURE UPON FAILURE TO ADOPT PROPOSED DECISION.

2 If the proposed decision is not adopted as provided in subdivision  
3 (2) the agency itself may decide the case upon the record,  
4 including the transcript, with or without taking additional  
5 evidence, or may refer the case to the same or another hearing  
6 officer to take additional evidence. If the case is so assigned  
7 to a hearing officer he shall prepare a proposed decision as  
8 provided in subdivision (2) upon the additional evidence and the  
9 transcript and other papers which are part of the record of the  
10 prior hearing. A copy of such proposed decision shall be furnished  
11 to each party and his attorney as prescribed by subdivision (2).  
12 The agency itself shall decide no case provided for in this sub-  
13 division without affording the parties the opportunity to present  
14 either oral or written argument before the agency itself. If  
15 additional oral evidence is introduced before the agency itself  
16 no agency member may vote unless he heard the additional oral  
17 evidence.

18 Sec. 19. FORM OF DECISION: RETROACTIVE EFFECT. The  
19 decision shall be in writing and shall contain findings of fact,  
20 a determination of the issues presented and the penalty, if  
21 any. The findings may be stated in the language of the pleadings  
22 or by reference thereto. Copies of the decision shall be  
23 delivered to the parties personally or sent to them by registered  
24 mail. The decision in a primarily judicial proceeding shall have  
25 retroactive effect in the same manner as a decision of the courts  
26 of Alaska.

27 Sec. 20. EFFECTIVE DATE OF DECISION. (1) The decision  
28 shall become effective 30 days after it is delivered or mailed  
29 to respondent unless: A reconsideration is ordered within that

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1 time, or the agency itself orders that the decision shall become  
2 effective sooner, or a stay of execution is granted for a  
3 particular purpose and not to postpone judicial review.

4 (2) A stay of execution may be included in the decision  
5 or if not included therein may be granted by the agency at any  
6 time before the decision becomes effective. The stay of execution  
7 provided herein may be accompanied by an express condition that  
8 respondent comply with specified terms of probation; provided,  
9 however, that the terms of probation shall be just and reasonable  
10 in the light of the findings and decision.

11 (3) If respondent was required to register with any  
12 public officer, a notification of any suspension or revocation  
13 shall be sent to such officer after the decision has become  
14 effective.

15 Sec. 21. DEFAULTS. If the respondent fails to file a notice  
16 of defense or to appear at the hearing, the agency itself may take  
17 action based upon the respondent's express admissions or upon  
18 other evidence, and affidavits may be used as evidence without any  
19 notice to respondent; and where the burden of proof is on the  
20 respondent to establish that he is entitled to the agency action  
21 sought, the agency may act without taking evidence. Nothing  
22 herein shall be construed to deprive the respondent of the right  
23 to make any showing by way of mitigation.

24 Sec. 22. RECONSIDERATION (1) The agency itself may order  
25 a reconsideration of all or part of the case on its own motion  
26 or on petition of any party. The power to order a reconsideration  
27 shall expire 30 days after the delivery or mailing of a decision  
28 to respondent. If no action is taken on a petition within the  
29 time allowed for ordering reconsideration, the petition shall be

1 deemed denied.

2 (2) The case may be reconsidered by the agency itself  
3 on all the pertinent parts of the record and such additional  
4 evidence and argument as may be permitted, or may be assigned  
5 to a hearing officer. A reconsideration assigned to a hearing  
6 officer shall be subject to the procedure provided in Section 18.  
7 If oral evidence is introduced before the agency itself, no  
8 agency member may vote unless he heard the evidence.

9 Sec. 23. PETITION FOR REINSTATEMENT OR REDUCTION OF PENALTY.

10 A person whose license has been revoked or suspended may petition  
11 the agency for reinstatement or reduction of penalty after a  
12 period of not less than one year has elapsed from the effective  
13 date of the decision or from the date of the denial of a similar  
14 petition. The agency shall give notice to the Attorney General  
15 of the filing of the petition, and the Attorney General and the  
16 petitioner shall be afforded an opportunity to present either  
17 oral or written argument before the agency itself. The agency  
18 itself shall decide the petition, and the decision shall include  
19 the reasons therefor. This section shall not apply if the  
20 statutes dealing with the particular agency contain different  
21 provisions for reinstatement or reduction of penalty.

22 Sec. 24. JUDICIAL REVIEW. (1) Judicial review by the  
23 Superior Court of any final administrative order may be had by  
24 filing a notice of appeal in accordance with applicable rules  
25 of court governing appeals in civil matters. Except as otherwise  
26 provided in this section, any such notice shall be filed within  
27 30 days after the last day on which reconsideration can be  
28 ordered, and served on each party to the proceeding. The right  
29 to appeal shall not be affected by the failure to seek reconsid-

1 eration before the agency. The complete record of the proceedings,  
2 or such parts thereof as are designated by the appellant, shall  
3 be prepared by the agency; a copy shall be delivered to all parties  
4 participating in the appeal, and the original filed in Superior  
5 Court within 30 days after designation of the record, and payment  
6 by appellant of the estimated cost of preparation of the complete  
7 or designated record, or filing a corporate surety bond equal to  
8 said estimated cost. The complete record includes the pleadings,  
9 all notices and orders issued by the agency, any proposed decision  
10 by a hearing officer, the final decision, a transcript of all  
11 testimony and proceedings, the exhibits admitted or rejected, the  
12 written evidence, and all other documents in the case. Upon order  
13 of the Superior Court, appeals may be taken on the original record  
14 or parts thereof; the record may be typewritten or duplicated by  
15 any standard process. Analogous rules of court governing appeals  
16 in civil matters shall be followed where this Act is silent, and  
17 when not in conflict herewith.

18 (2) Superior Courts are empowered to enjoin at any  
19 stage of an agency proceeding agency action in excess of consti-  
20 tutional or statutory authority; if agency action is unlawfully  
21 withheld or unreasonably withheld, the Superior Court shall have  
22 jurisdiction to compel the agency to initiate action.

23 Sec. 25. SCOPE OF REVIEW. (1) All appeals shall be heard  
24 by the Superior Court sitting without a jury:

25 (2) The inquiry in such a case shall extend to the  
26 questions whether the agency has proceeded without, or in excess  
27 of jurisdiction; whether there was a fair hearing; and whether  
28 there was any prejudicial abuse of discretion. Abuse of dis-  
29 cretion is established if the agency has not proceeded in the

1 manner required by law, the order or decision is not supported by  
2 the findings, or the findings are not supported by the evidence.

3 (3) The Court is authorized and empowered to exercise  
4 its independent judgment on the evidence and where it is claimed  
5 that the findings are not supported by the evidence, abuse of  
6 discretion is established if the court determines that the  
7 findings are not supported by the weight of the evidence; or not  
8 supported by substantial evidence in the light of the whole  
9 record.

10 (4) Where the court finds that there is relevant  
11 evidence which, in the exercise of reasonable diligence, could  
12 not have been produced or which was improperly excluded at the  
13 hearing, it may enter judgment as provided in subdivision (5)  
14 of this section remanding the case to be reconsidered in the  
15 light of such evidence; or, the court may admit such evidence at  
16 the appellate hearing without remanding the case. Superior Courts  
17 shall on appeal have the right to augment the agency record in  
18 whole or in part, even to the extent of holding a hearing de novo.

19 (5) The court shall enter judgment either setting  
20 aside, modifying, remanding, or affirming the order or decision,  
21 without limiting or controlling in any way the discretion legally  
22 vested in the agency.

23 (6) The Superior Court in which proceedings under this  
24 section are instituted may stay the operation of the administra-  
25 tive order or decision pending the judgment of the court, or  
26 until the filing of a notice of further appeal from the judgment,  
27 or until the expiration of the time for filing such notice;  
28 provided that no such stay shall be imposed or continued if the  
29 court is satisfied that it is against the public interest. If



1 vote on any question may vote by mail.

2 Sec. 29. CHARGE. Any sums authorized to be expended under  
3 this chapter by any agency shall be a legal charge against the  
4 appropriations of the agency.

5 Sec. 30. POWER TO ADMINISTER OATHS. In any proceedings  
6 under this chapter any agency, agency member, secretary of an  
7 agency or hearing officer has power to administer oaths and  
8 affirmations and to certify to official acts.

9 Sec. 31. IMPARTIALITY. The functions of hearing officers,  
10 as well as those officers participating in decisions, shall be  
11 conducted in an impartial manner with due regard for the rights  
12 of all parties as well as the facts and the law, and consistent  
13 with the orderly and prompt dispatch of proceedings. Such  
14 officers, except to the extent required for the disposition of  
15 ex parte matters authorized by law, shall not engage in interviews  
16 with, or receive evidence or argument from, any party directly  
17 or indirectly, except upon opportunity for all other parties to  
18 be present. Copies of all communications with such officers  
19 shall be served upon all parties.

20 Sec. 32. REPEALER. All laws inconsistent or in conflict  
21 with this Act shall be deemed repealed or amended in accordance  
22 with the provisions herein.

23 Sec. 33. TERM "SUPERIOR COURT" INCLUDES DISTRICT COURTS.  
24 Wherever herein the term "Superior Court" is used it also  
25 refers to the District Court of Alaska and its divisions for so  
26 long as the latter court has jurisdiction.  
27  
28  
29