

Introduced: 4/19/69
Referred: State Affairs
and Judiciary

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 398

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to administrative adjudication hearings
7 under the Administrative Procedure Act."

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

9 * Section 1. AS 44.62.360 is amended to read:

10 Sec. 44.62.360. ACCUSATION. A hearing to determine whether a
11 right, authority, license or privilege should be granted, issued,
12 renewed, revoked, suspended, limited or conditioned is initiated by a
13 third party by filing an accusation with the agency concerned. The
14 accusation shall (1) be a written statement of charges setting out in
15 ordinary and concise language the acts or omissions with which the
16 respondent is charged, so that he [THE RESPONDENT] is able to prepare
17 his defense; (2) specify the statute and regulation [RULE] which the
18 respondent is alleged to have violated or failed to satisfy, but may
19 not consist merely of charges phrased in the language of the statute and
20 regulation [RULE]; and (3) be verified, unless made by a public officer
21 acting in his official capacity or by an employee of the agency by which
22 [ON WHOSE BEHALF] the proceeding is to be held; the verification may be
23 on information and belief.

24 * Sec. 2. AS 44.62.370 is repealed and re-enacted to read:

25 Sec. 44.62.370. STATEMENT OF ISSUES. (a) A hearing to determine
26 whether a right, authority, license or privilege should be granted, is-
27 sued, renewed, revoked, suspended, limited or conditioned by an agency
28 is initiated by the agency by serving a statement of issues upon the
29 respondent. The statement of issues is a written statement specifying

1 (1) the statute and regulation with which the respondent must show
2 compliance by producing proof at the hearing, and (2) particular
3 matters which have come to the attention of the agency and which would
4 authorize a denial or modification of the agency action sought.

5 (b) The statement of issues shall be served in the same manner as
6 an accusation.

7 * Sec. 3. AS 44.62 is amended by adding a new section to read:

8 Sec. 44.62.375. HEARING REQUESTED BY APPLICANT. (a) Within 15
9 days after a person receives notice that his application for the grant-
10 ing, issuance or renewal of a right, authority, privilege or license
11 is denied, limited or conditioned, or that an existing right, authority,
12 privilege or license is being revoked, suspended, limited or conditioned
13 he may request a hearing on the merits of his case, appealing the
14 agency's initial decision. In his request for the hearing he shall
15 state the specific basis of his appeal. The agency shall hold the
16 hearing no later than 30 days, and no sooner than 15 days (unless re-
17 quested by the applicant), after receipt of the request.

18 (b) If a hearing is held under (a) of this section, (1) secs.
19 380 and 390 of this chapter do not apply, and (2) the agency shall
20 deliver or mail to the parties a statement of the specific reasons for
21 the agency action taken, together with the notice of hearing as provided
22 in sec. 420 of this chapter.

23 * Sec. 4. AS 44.62.380 is amended to read:

24 Sec. 44.62.380. SERVICE OF ACCUSATION. (a) Upon the filing of an
25 [THE] accusation, the agency

26 (1) shall serve a copy of the accusation on the respondent
27 as provided in (c) of this section;

28 (2) shall include with the accusation a post card or other
29 form entitled "Notice of Defense" which, when signed by or on behalf

1 of the respondent and returned to the agency, acknowledges service of
2 the accusation and constitutes a notice of defense under sec. 390 of
3 this chapter;

4 (3) shall include in or with the copy of the accusation a
5 statement that respondent may request a hearing by filing a notice of
6 defense as provided in sec. 390 of this chapter within 15 days after
7 the accusation is served on him and that failure to do so constitutes
8 a waiver of his right to a hearing;

9 (4) may include with the accusation any information which it
10 considers appropriate.

11 (b) The statement to respondent, referred to in (a)(3) of this
12 section, shall be substantially as follows [IN THE FOLLOWING FORM]:

13 Unless a notice of defense, requesting a hearing, is signed by
14 you or on your behalf and [WRITTEN REQUEST FOR A HEARING SIGNED BY OR
15 ON BEHALF OF THE PERSON NAMED AS RESPONDENT IN THE ACCOMPANYING ACCUSA-
16 TION] is delivered or mailed to this [THE] agency within 15 days after
17 the accusation (or statement of issues, as appropriate) was personally
18 served on you or mailed to you, (here insert name of agency) may proceed
19 upon the accusation (or statement of issues, as appropriate) without
20 a hearing. The request for a hearing may be made by delivering or
21 mailing the enclosed form entitled "Notice of Defense," or by delivering
22 or mailing a notice of defense as provided by AS 44.62.390 to: (here
23 insert name and address of agency).

24 (c) The accusation and all accompanying information may be sent
25 to the respondent by any means selected by the agency. However, no
26 order adversely affecting the rights of the respondent may be made by
27 the agency unless the respondent is served personally or by registered
28 mail, files a notice of defense, or otherwise appears. Service may be
29 proved in the manner authorized in civil actions. Service by

1 registered mail is effective if a statute or agency regulation [RULE]
2 requires the respondent to file his address with the agency and to
3 notify the agency of a change, and if a registered letter containing
4 the accusation and accompanying material is mailed, addressed to re-
5 spondent at the latest address on file with the agency.

6 * Sec. 5. AS 44.62 is amended by adding a new section to read:

7 Sec. 44.62.385. ACTION PENDING HEARING. No right, authority,
8 license or privilege may be revoked or suspended pending a hearing and,
9 when sought, judicial review unless, in the determination of the
10 agency, a person's continued activity under the right, authority,
11 license or privilege would pose a substantial danger to the public
12 welfare.

13 * Sec. 6. AS 44.62.390 is amended to read:

14 Sec. 44.62.390. NOTICE OF DEFENSE. (a) Within 15 days after
15 service upon him of an [THE] accusation or statement of issues, the
16 respondent may file with the agency a notice of defense. In the notice
17 he may

18 (1) request a hearing;

19 (2) object to the accusation or statement of issues upon the
20 ground that it does not state acts or omissions upon which the agency
21 may proceed;

22 (3) object to the [FORM OF THE] accusation or statement of
23 issues on the ground that it is so indefinite or uncertain that he
24 cannot identify the issue or transaction or prepare his defense;

25 (4) admit the accusation in whole or in part;

26 (5) present new matter by way of defense.

27 (b) Within the time specified the respondent may file one or more
28 notices of defense upon any or all of the grounds set out in (a) of
29 this section but all of the notices shall be filed within that period

1 unless the agency in its discretion authorizes the filing of a later
2 notice.

3 (c) The respondent is entitled to a hearing on the merits if he
4 files a notice of defense, and the notice of defense is considered a
5 specific denial of all parts of the accusation or statement of issues
6 not expressly admitted. Failure to file the notice constitutes a
7 waiver of the respondent's right to a hearing, but the agency in its
8 discretion may nevertheless grant a hearing. Unless objection is
9 taken as provided in (a)(2) or (3) of this section, all objections to
10 [THE FORM OF] the accusation are waived.

11 (d) The notice of defense shall be in writing, signed by or on
12 behalf of the respondent, and shall state his mailing address. It need
13 not be verified or follow a particular form.

14 * Sec. 7. AS 44.62.400 is amended to read:

15 Sec. 44.62.400. AMENDED OR SUPPLEMENTAL DOCUMENTS [ACCUSATION].
16 At any time before the matter is submitted for decision the agency may
17 file or permit the filing of an amended or supplemental document
18 [ACCUSATION]. All parties shall be notified of the filing. If an [THE]
19 amended or supplemental document [ACCUSATION] presents a new charge
20 [CHARGES] the agency shall give the respondent a reasonable opportunity
21 to prepare his defense to it [, BUT HE IS NOT ENTITLED TO FILE A
22 FURTHER PLEADING UNLESS THE AGENCY IN ITS DISCRETION SO ORDERS]. New
23 charges are considered controverted. Objections to an [THE] amended or
24 supplemental document [ACCUSATION] may be made orally and shall be
25 noted in the record.

26 * Sec. 8. AS 44.62.410 is amended to read:

27 Sec. 44.62.410. TIME AND PLACE OF HEARING. The agency shall
28 determine the time and place of hearing. The hearing shall be held in
29 Juneau or Ketchikan, whichever is closer to the place where the

1 transaction occurred or where the respondent or applicant resides,
2 if the transaction occurred in or the respondent or applicant resides
3 in a [THE] Southeastern Senate District; in Anchorage if the transac-
4 tion occurred or the respondent or applicant resides within a [THE]
5 South Central Senate District; in Fairbanks or Nome, whichever is
6 closer to the place where the transaction occurred or where the
7 respondent or applicant resides, if the transaction occurred in or the
8 respondent or applicant resides in a [THE] Central or Northwestern
9 Senate District [DISTRICTS]. The agency may, if the transaction
10 occurred in a senate district other than that of the respondent's
11 or applicant's residence, select the place of hearing appropriate for
12 either district. The agency may select a different place nearer the
13 place where the transaction occurred or where the respondent or
14 applicant resides, or the parties by agreement may select any place in
15 the state.

16 * Sec. 9. AS 44.62.420 is amended to read:

17 Sec. 44.62.420. [FORM OF] NOTICE OF HEARING. (a) The agency
18 shall deliver or mail a notice of hearing to all parties at least 10
19 days before the hearing. When the interests of unknown persons may be
20 affected by agency action, notice of the hearing shall be given by
21 at least two publications during at least two consecutive calendar
22 weeks, once each week, in a newspaper of general circulation in the
23 judicial district in which the hearing is to be held, with the second
24 notice being at least 10 days before the hearing. Notice by publica-
25 tion and notice to all parties other than the respondent or applicant
26 shall specify the time, place and nature of the hearing. The hearing
27 may [SHALL] not be held before the expiration of the time within which
28 the respondent is entitled to file a notice of defense.

29 (b) The notice to the respondent or applicant shall be

1 substantially in the following form but may include other information:

2 You are notified that a hearing will be held before (here insert
3 name of agency) at (here insert place of hearing) upon the
4 day of, 19. ., at the hour of, upon the charges
5 made in the accusation (or upon matters set out in the statement of
6 issues) served upon you (or upon matters set out in your request for a
7 hearing). You may be present at the hearing, may be but need not be
8 represented by counsel, may present any relevant evidence, and will be
9 given full opportunity to cross-examine all witnesses testifying
10 against you. You may have subpoenas issued to compel the attendance of
11 witnesses and the production of books, documents or other things by
12 applying to (here insert appropriate office or agency).

13 * Sec. 10. AS 44.62.460(c) is amended to read:

14 (c) If the respondent or applicant does not testify in his own
15 behalf he may be called and examined as if under cross-examination.

16 * Sec. 11. AS 44.62.490 is amended to read:

17 Sec. 44.62.490. AMENDMENT OF DOCUMENT [ACCUSATION] AFTER SUBMIS-
18 SION. The agency may order amendment of a document [THE ACCUSATION]
19 after submission of the case for decision. Each party shall be given
20 notice of the intended amendment and opportunity to show that he will
21 be prejudiced by it unless the case is reopened to permit the introduc-
22 tion of additional evidence in his behalf. If prejudice is shown, the
23 agency shall reopen the case to permit the introduction of additional
24 evidence.

25 * Sec. 12. AS 44.62.520 is amended to read:

26 Sec. 44.62.520. EFFECTIVE DATE OF DECISION. (a) A decision
27 becomes effective 30 days after it is delivered or mailed to the
28 respondent or applicant unless (1) a reconsideration is ordered within
29 that time, (2) the agency itself orders that the decision become

1 effective sooner, or (3) a stay of execution is granted for a parti-
2 cular purpose and not to postpone judicial review.

3 (b) A stay of execution may be included in the decision or, if
4 not included in it, may be granted by the agency at any time before
5 the decision becomes effective. The stay of execution may be accompanie
6 by an express condition that the respondent or applicant comply with
7 specified terms of probation. The terms of probation shall be just and
8 reasonable in the light of the findings and decision.

9 (c) If the respondent or applicant was required to register with
10 a public officer, a notification of suspension or revocation shall be
11 sent to that officer after the decision becomes effective.

12 * Sec. 13. AS 44.62.540 is amended to read:

13 Sec. 44.62.540. RECONSIDERATION. (a) The agency may order a
14 reconsideration of all or part of the case on its own motion or on
15 petition of a party. The power to order a reconsideration expires
16 30 days after the delivery or mailing of a decision to the respondent
17 or applicant. If no action is taken on a petition within the time
18 allowed for ordering reconsideration, the petition is considered
19 denied.

20 (b) The case may be reconsidered by the agency on all the perti-
21 nent parts of the record and the additional evidence and argument
22 that are permitted, or may be assigned to a hearing officer. A re-
23 consideration assigned to a hearing officer is subject to the procedure
24 provided in sec. 500 of this chapter. If oral evidence is introduced
25 before the agency, no agency member may vote unless he has heard the
26 evidence.

27 * Sec. 14. AS 44.62.640(b)(5) is amended to read:

28 (5) "respondent" means a person who holds or is applying
29 for a right, authority, license or privilege and against whom an

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accusation is filed under sec. 360 of this chapter or who is served with [AGAINST WHOM] a statement of issues [IS FILED] under sec. 370 of this chapter; [.]

* Sec. 15. AS 44.62.640(b) is amended by adding a new paragraph to read:

(6) "applicant" means a person applying to an agency for the granting, issuance or renewal of a right, authority, license or privilege, or requesting a hearing under sec. 375 of this chapter.