

Introduced: 6/11/81  
Referred: Transportation and  
Judiciary

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 594

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to administrative procedure; and  
7 providing for an effective date."

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

9 \* Section 1. AS 44.62 is amended by adding a new section to read:

10 Sec. 44.62.012. APPLICABILITY AND EFFECTIVE DATE. This chapter  
11 applies to all agencies and proceedings not expressly exempted by  
12 statute.

13 \* Sec. 2. AS 44.62.040(a) is amended to read:

14 (a) Every state agency which by statute possesses regulation-  
15 making authority shall submit to the lieutenant governor for filing a  
16 certified original and one duplicate copy of every regulation or order  
17 of repeal adopted by it [, EXCEPT ONE WHICH

18 (1) ESTABLISHES OR FIXES RATES, PRICES OR TARIFFS;

19 (2) RELATES TO THE USE OF PUBLIC WORKS, INCLUDING STREETS  
20 AND HIGHWAYS, UNDER THE JURISDICTION OF A STATE AGENCY IF THE EFFECT OF  
21 THE ORDER IS INDICATED TO THE PUBLIC BY MEANS OF SIGNS OR SIGNALS; OR

22 (3) IS DIRECTED TO A SPECIFICALLY NAMED PERSON OR TO A GROUP  
23 OF PERSONS AND DOES NOT APPLY GENERALLY THROUGHOUT THE STATE].

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

25 Sec. 44.62.045. MANDATORY REGULATIONS. A state agency shall  
26 adopt a regulation containing a description of the organization of the  
27 agency including a statement of the general course and method of its  
28 operations and how and where the public may obtain information about  
29 the agency or make submissions or requests to the agency.

1 \* Sec. 4. AS 44.62.050 is amended to read:

2 Sec. 44.62.050. STYLE AND FORMS. The Legislative Affairs Agency  
3 [DEPARTMENT OF LAW] shall prepare and shall revise when necessary a  
4 drafting manual for administrative regulations which prescribes the  
5 style and forms for submitting regulations under AS 44.62.040.

6 \* Sec. 5. AS 44.62.060(a) is amended to read:

7 (a) Every state agency which by statute possesses regulation-  
8 making authority shall work with the Department of Law, under AS 44.62.-  
9 125, in the preparation and revision of its regulations and shall  
10 adhere to the drafting manual for administrative regulations prepared  
11 [BY THE DEPARTMENT OF LAW] under AS 44.62.050.

12 \* Sec. 6. AS 44.62.060 is amended by adding a new subsection to read:

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

18 \* Sec. 7. AS 44.62.125(b)(4) is amended to read:

19 (4) work with all administrative agencies possessing  
20 regulation-making power in drafting all new regulations, advising the  
21 agencies of legal problems encountered and ensuring compliance with the  
22 drafting manual for administrative regulations prepared [BY THE DEPART-  
23 MENT OF LAW] under AS 44.62.050;

24 \* Sec. 8. AS 44.62 is amended by adding a new section to read:

25 Sec. 44.62.135. ADMINISTRATIVE BULLETIN. The lieutenant governor  
26 shall publish an administrative bulletin in pamphlet form once each  
27 month. The administrative bulletin shall contain

28 (1) notices of proposed action on regulations setting out  
29 the text of an existing regulation proposed to be changed and the text

1 of the proposed change;

2 (2) newly filed adopted regulations setting out the text of  
3 any existing regulation being changed and the text of the change being  
4 made;

5 (3) other notices and materials designated by the lieutenant  
6 governor for publication; and

7 (4) a subject index.

8 \* Sec. 9. AS 44.62.140 is amended to read:

9 Sec. 44.62.140. DISTRIBUTION OF ADMINISTRATIVE PUBLICATIONS [CODE  
10 AND REGISTER]. The lieutenant governor shall supply a complete set of  
11 the Alaska Administrative Code, [AND OF] the Alaska Administrative  
12 Register, the administrative bulletins, and supplements [OF EACH SUPPLE-  
13 MENT] to the code or register to the clerk of each local government  
14 unit, or if the authority to accept filings on his behalf is delegated,  
15 to the person to whom this authority is delegated.

16 \* Sec. 10. AS 44.62.190(a)(1) is amended to read:

17 (1) published in the administrative bulletin under AS 44.62-  
18 135 [NEWSPAPER OF GENERAL CIRCULATION, OR TRADE OR INDUSTRY PUBLICATION,  
19 WHICH THE STATE AGENCY PRESCRIBES];

20 \* Sec. 11. AS 44.62 is amended by adding a new section to article 4 to  
21 read:

22 Sec. 44.62.192. REGULATION DOCKET. (a) A state agency shall  
23 maintain a current public regulation docket.

24 (b) A regulation docket shall contain a listing of the specific  
25 subject matter of a regulation being considered for proposal in the  
26 state agency, the name and address of agency personnel with whom persons  
27 may communicate about the regulation, and the present status of the  
28 regulation.

29 (c) The regulation docket shall contain a listing of each pending

1 regulation. A regulation is pending from the time it is proposed by  
2 publication of a notice under AS 44.62.190 to the time it is terminated  
3 by publication of a notice of termination, or the time it becomes effec-  
4 tive. For each pending regulation the docket shall indicate

5 (1) the subject matter of the proposed regulation;

6 (2) a citation to all published notices relating to the  
7 proceedings;

8 (3) the time during which written submissions may be made;

9 (4) where written submissions may be inspected;

10 (5) the names of persons who have made written requests for  
11 an opportunity to make oral presentations, where those requests may be  
12 inspected, and the time and location set for oral presentations;

13 (6) the current status of the proposed regulation;

14 (7) times set for agency decisions or other action in the  
15 proceeding;

16 (8) the date of adoption of the regulation;

17 (9) the date of the filing, indexing, and publication of the  
18 regulation;

19 (10) the effective date of the regulation.

20 \* Sec. 12. AS 44.62.200(a) is amended by adding a new paragraph to read:

21 (6) a statement explaining the purpose of the proposed  
22 action and how a person may present his views on the proposed action.

23 \* Sec. 13. AS 44.62 is amended by adding a new section to read:

24 ARTICLE 5. REVIEW OF REGULATIONS.

25 Sec. 44.62.298. AGENCY REVIEW. (a) A state agency shall review  
26 its regulations at least twice a year to determine if any new regula-  
27 tion should be adopted. In the review process, a state agency shall  
28 prepare a written report summarizing its findings, reasoning, and  
29 proposed course of action.

1 (b) Once every six years a report shall be made on each regula-  
2 tion containing a concise statement of

3 (1) the effectiveness of the regulation in achieving its  
4 objectives, including a summary of available data supporting the con-  
5 clusions reached;

6 (2) criticisms of the regulation received during the previous  
7 six years, including a descriptive summary of petitions filed with the  
8 state agency requesting that the regulation be changed; and

9 (3) state agency solutions for criticism of a regulation,  
10 including a statement of reasons for the rejection of a solution or a  
11 description of changes made to a regulation in response to criticism.

12 (c) A copy of the report required by (a) of this section shall be  
13 sent to the lieutenant governor and to the Administrative Regulation  
14 Review Committee established by AS 24.20.400, and shall be available  
15 for public inspection.

16 \* Sec. 14. AS 44.62.330(a) is repealed and reenacted to read:

17 (a) The procedure of state boards, commissions, and officers  
18 shall be conducted under AS 44.62.330 - 44.62.630. This procedure,  
19 including, but not limited to, accusations and statements of issues,  
20 service, notice and time and place of hearing, subpoenas, depositions,  
21 matters concerning evidence and decisions, conduct of hearing, judicial  
22 review and scope of judicial review, continuances, reconsideration,  
23 reinstatement or reduction of penalty, contempt, mail vote, oaths,  
24 impartiality, and similar matters shall be governed by this chapter.

25 \* Sec. 15. AS 44.62 is amended by adding a new section to read:

26 Sec. 44.62.335. AGENCY ACTION ON APPLICATIONS, PETITIONS AND  
27 REQUESTS. (a) Within 60 days after receipt of an application for a  
28 license, benefit, contract, lease or other interest in property or rate  
29 making, the agency shall examine the application, notify the applicant

1 of any apparent errors or omissions, request any additional information  
2 that the agency is permitted by law to require, and notify the applicant  
3 of the name, official title, address, and telephone number of an agency  
4 member or employee who may be contacted regarding the application;

5 (b) Within 120 days after receipt of the application or of the  
6 response to a timely request made by the agency under (a) of this  
7 section, the agency shall

8 (1) approve or deny the application, in whole or in part, on  
9 the basis of pre-adjudicative processes, if disposition of the applica-  
10 tion by the use of these processes is not precluded by law; or

11 (2) commence an adjudicative proceeding in accordance with  
12 this chapter.

13 \* Sec. 16. AS 44.62.340 is amended to read:

14 Sec. 44.62.340. DELEGATION OF POWER BY AGENCIES. (a) An agency  
15 [LISTED IN AS 44.62.330] may delegate the power to act, to hear and to  
16 decide, unless expressly prohibited by law.

17 (b) Where [IN A LAW ENACTED AFTER APRIL 29, 1959, WHERE] the word  
18 "agency" alone is used, the power to act may be delegated by the agency,  
19 and where the words "agency itself" are used, the power to act may not  
20 be delegated unless a statute relating to that agency authorizes the  
21 delegation of its power to hear and decide.

22 \* Sec. 17. AS 44.62.350 is repealed and reenacted to read:

23 Sec. 44.62.350. HEARING OFFICERS. (a) The governor shall appoint  
24 a qualified, unbiased, and impartial hearing officer to conduct hearings  
25 under this chapter. Except when designated as a hearing officer under  
26 AS 44.62.404(b) and 44.62.406(f), a hearing officer shall have been  
27 licensed to practice law in the state for not less than two years  
28 immediately preceding his appointment.

29 (b) An agency with hearing officers may continue their employment

1 as hearing officers on an unbiased and impartial basis within the  
2 particular agency and may hire additional officers and prescribe addi-  
3 tional qualifications.

4 (c) A hearing officer may

- 5 (1) administer oaths and affirmations;
- 6 (2) issue subpoenas authorized by law;
- 7 (3) order discovery by the parties as provided in AS 44.62.-  
8 424 and issue protective orders;
- 9 (4) rule on offers of proof and receive relevant evidence;
- 10 (5) order the deposition of a person;
- 11 (6) preside over hearing proceedings;
- 12 (7) hold conferences for the settlement of cases or the  
13 simplification of the issues through agreement of the parties;
- 14 (8) rule on procedural requests or similar matters;
- 15 (9) advise the agency on matters of law; and
- 16 (10) exercise other powers necessary for the orderly conduct  
17 of a hearing not expressly prohibited by this chapter or reserved to  
18 the agency itself.

19 \* Sec. 18. AS 44.62 is amended by adding new sections to read:

20 Sec. 44.62.352. DISQUALIFICATION. (a) A hearing officer or  
21 agency member shall voluntarily disqualify himself and withdraw from a  
22 case in which he cannot accord a fair and impartial hearing or con-  
23 sideration. A party may request the disqualification of a hearing  
24 officer or agency member by filing an affidavit, before the taking of  
25 evidence at a hearing, stating with particularity the grounds upon  
26 which it is claimed that a fair and impartial hearing cannot be  
27 accorded. If the request concerns an agency member, the issue shall be  
28 determined by the other members of the agency. If the request concerns  
29 the hearing officer, the issue shall be determined by the agency when

1 the agency hears the case with the hearing officer, and by the hearing  
2 officer when he hears the case alone.

3 (b) If a case cannot be heard because of a withdrawal or disquali-  
4 fication, a substitute shall be appointed

5 (1) by the governor, if the unavailable individual is an  
6 elected official; or

7 (2) by the appointing authority, if the unavailable indivi-  
8 dual is an appointed official.

9 (c) Any action taken by a properly appointed substitute for an  
10 unavailable individual is as effective as if the unavailable individual  
11 had taken the action.

12 Sec. 44.62.354. SEPARATION OF FUNCTIONS. (a) A person who  
13 serves as an investigator, a prosecutor, or an advocate in an adjudica-  
14 tive proceeding may not serve as a hearing officer or assist or advise  
15 a hearing officer in the same proceeding.

16 (b) A person who is subject to the authority or direction of an  
17 investigator, prosecutor, or advocate in an adjudicative proceeding may  
18 not serve as a hearing officer or assist or advise a hearing officer in  
19 the same proceeding.

20 (c) A person who has participated in a determination of probable  
21 cause or other equivalent preliminary determination in an adjudicative  
22 proceeding may serve as a hearing officer or assist or advise a hearing  
23 officer in the same adjudicative proceeding, unless he is disqualified  
24 under AS 44.62.352.

25 Sec. 44.62.356. EX PARTE COMMUNICATIONS. (a) A party in an  
26 adjudicative proceeding may not engage in ex parte communication with a  
27 hearing officer, head of the agency, or other person who has individual  
28 or joint authority to make a decision on the subject matter of the  
29 adjudication.

1 (b) If an ex parte communication occurs, in violation of (a) of  
2 this section, the parties to the communication shall immediately place  
3 a record of the communication in the public file of the proceeding and  
4 serve the record on all parties to that proceeding. If the ex parte  
5 communication is an oral conversation, the conversation shall be re-  
6 corded in writing and filed and served as provided in this subsection.

7 Sec. 44.62.358. AVAILABILITY OF ADJUDICATIVE PROCEEDINGS. (a)

8 An agency shall initiate an adjudicative proceeding if

9 (1) an adjudicative proceeding is required by law; if a law  
10 requires an adjudicative proceeding only upon the request of a party,  
11 this paragraph applies only upon the request of a party;

12 (2) a party who has exhausted or waived any available pre-  
13 adjudicative processes requests an adjudicative proceeding after the  
14 agency has

15 (A) issued a statement of issues, complaint, citation,  
16 response to an application or request, or other preliminary deter-  
17 mination; or

18 (B) taken or indicated its intent to take final action  
19 affecting the substantial interests of the party.

20 (b) An agency may start an adjudicative proceeding if

21 (1) a party fails to comply with the agency's complaint,  
22 citation, response to an application or request, or other preliminary  
23 determination;

24 (2) the agency determines that attempts to reach an informal  
25 settlement instead of conducting an adjudicative proceeding have failed  
26 or should not be initiated or pursued;

27 (3) the agency elects to initiate an adjudicative proceeding  
28 without first issuing a complaint, citation, response to an application  
29 or request, or other preliminary determination; or

1 (4) the agency determines that a pending matter requiring  
2 final agency action, other than rule making or a declaratory order  
3 proceeding, is a matter of public interest.

4 (c) An agency shall give prompt notice of the disposition in  
5 whole or in part of a written application for an adjudicative proceed-  
6 ing not governed by (b) of this section or of any written petition or  
7 request. The notice must include a brief statement in the form of a  
8 statement of issues of the reasons for a disposition that denies, in  
9 whole or in part, an application, petition or request for adjudication.

10 (d) When a timely and sufficient application has been made for  
11 renewal of a license for an activity that does not automatically expire  
12 by statute, the existing license does not expire until the agency has  
13 taken final action upon the application for renewal or, in case the  
14 agency's action is unfavorable, until the last day for seeking judicial  
15 review of the agency's action, or until a later date fixed by the  
16 reviewing court.

17 Sec. 44.62.359. AGENCY ACTION AGAINST LICENSEES. An agency may  
18 not revoke, suspend, modify, annul, withdraw, or amend a license unless  
19 the agency first gives notice and an opportunity for an appropriate  
20 adjudicative proceeding under this chapter. This section does not  
21 preclude an agency from taking immediate action to protect the public  
22 interest under AS 44.62.250, or from adopting regulations pertaining to  
23 a class of licensees.

24 \* Sec. 19. AS 44.62.360 is amended to read:

25 Sec. 44.62.360. ACCUSATION. A hearing to determine whether a  
26 right, authority, license or privilege should be revoked, suspended,  
27 limited or conditioned is initiated by filing an accusation. The  
28 accusation shall (1) be a written statement of charges setting out in  
29 ordinary and concise language the acts or omissions with which the

1 respondent is charged, so that the respondent is able to prepare his  
2 defense; and (2) specify the statute and regulation [RULE] which the  
3 respondent is alleged to have violated, but may not consist merely of  
4 charges phrased in the language of the statute and regulation [RULE;  
5 AND (3) BE VERIFIED, UNLESS MADE BY A PUBLIC OFFICER ACTING IN HIS  
6 OFFICIAL CAPACITY OR BY AN EMPLOYEE OF THE AGENCY ON WHOSE BEHALF THE  
7 PROCEEDING IS TO BE HELD; THE VERIFICATION MAY BE ON INFORMATION AND  
8 BELIEF].

9 \* Sec. 20. AS 44.62.370(c) is amended to read:

10 (c) The statement of issues shall be served in the same manner as  
11 an accusation [, EXCEPT THAT IF THE HEARING IS HELD AT THE REQUEST OF  
12 THE RESPONDENT (1) AS 44.62.380 AND 44.62.390 DO NOT APPLY, AND (2) THE  
13 STATEMENT OF ISSUES TOGETHER WITH THE NOTICE OF HEARING SHALL BE  
14 DELIVERED OR MAILED TO THE PARTIES AS PROVIDED IN SEC. 420 OF THIS  
15 CHAPTER].

16 \* Sec. 21. AS 44.62 is amended by adding a new section to read:

17 Sec. 44.62.375. LIMITATION ON INITIATION OF PROCEEDINGS. Only a  
18 public officer acting in his official capacity or an employee of the  
19 agency on whose behalf the proceeding is to be held may file an accusa-  
20 tion or statement of issues unless the statute or regulation governing  
21 the respondent or his activities expressly establishes the right to  
22 initiate an administrative proceeding in another person. An accusation  
23 or statement of issues filed by a person other than a public officer  
24 acting in his official capacity or an employee of the agency on whose  
25 behalf the proceeding is to be held must be verified. The verification  
26 may be on information and belief.

27 \* Sec. 22. AS 44.62 is amended by adding new sections to read:

28 Sec. 44.62.392. REPRESENTATION. (a) A party may participate in  
29 the hearing in person or by an authorized representative.

1 (b) A party may be advised and represented at his own expense by  
2 counsel or, unless prohibited by law, another representative.

3 Sec. 44.62.394. INTERVENTION. (a) The hearing officer shall  
4 grant a petition for intervention if

5 (1) the petition is submitted in writing to the hearing  
6 officer, with copies mailed to all parties named in the notice of the  
7 hearing, at least 10 days before the hearing;

8 (2) the petition states facts demonstrating that the peti-  
9 tioner's rights, duties, privileges, immunities, or other substantial  
10 interests may be affected by the proceeding or that the petitioner  
11 qualifies as an intervenor under any provision of law; and

12 (3) the hearing officer determines that the interests of  
13 justice and the orderly and prompt conduct of the proceedings would not  
14 be impaired by allowing the intervention.

15 (b) The hearing officer may grant a petition for intervention at  
16 any time, upon determining that the intervention would be in the inter-  
17 ests of justice and would not impair the orderly and prompt conduct of  
18 the proceedings.

19 (c) If a petition for intervention is granted, the hearing  
20 officer may impose conditions upon the intervenor's participation in  
21 the proceedings, either at the time that intervention is granted or at  
22 any subsequent time. These conditions may include

23 (1) limitation of the intervenor's participation to desig-  
24 nated issues in which the intervenor has a particular interest;

25 (2) limitation of the intervenor's use of discovery, cross-  
26 examination, and other procedures; and

27 (3) a requirement that two or more intervenors combine their  
28 presentations of evidence and argument, cross-examination, discovery,  
29 or other participation in the proceedings.

1 (d) The hearing officer shall issue an order granting or denying  
2 each petition for intervention, specifying any conditions, and briefly  
3 stating the reasons for the order. The hearing officer may modify the  
4 order at any time, stating the reasons for the modification.

5 \* Sec. 23. AS 44.62 is amended by adding new sections to read:

6 Sec. 44.62.402. INFORMAL DISPOSITION. Unless precluded by law,  
7 informal disposition may be made of a contested case by stipulation,  
8 agreed settlement, consent order, default, or other form of disposition.

9 Sec. 44.62.404. SUMMARY PROCEEDINGS. (a) Summary proceedings  
10 may be used in adjudication if the use of these proceedings does not  
11 violate a provision of law, and if the matter is entirely within one or  
12 more of the following categories:

13 (1) a matter that can be expressed solely in monetary terms  
14 and that involves an amount of not more than \$100;

15 (2) a reprimand, warning, disciplinary report, or a verbal  
16 sanction without continuing impact against a prisoner, student, public  
17 employee, or licensee;

18 (3) the denial of an application after the applicant has  
19 abandoned the application;

20 (4) the denial of an application for admission to an educa-  
21 tional institution or for employment by an agency;

22 (5) a matter that can be resolved on the sole basis of  
23 inspections, examinations, or tests; or

24 (6) a matter with trivial potential impact upon the affected  
25 parties.

26 (b) The head of the agency, one or more members of the agency, or  
27 one or more other persons designated by the head of the agency may be  
28 the hearing officer in a summary proceeding.

29 (c) If the summary proceeding involves a monetary matter or a

1 reprimand, warning, disciplinary report, or other sanction,

2 (1) the hearing officer shall, before taking summary action,  
3 give each party an opportunity to know the view of the agency on the  
4 matter and to explain the view of the party on the matter; and

5 (2) the hearing officer shall give each party a brief state-  
6 ment of conclusions of law, policy reasons for the action, and findings  
7 of fact justifying the action, and a notice of available administrative  
8 review.

9 (d) An order issued in a proceeding that involves a monetary  
10 matter must be in writing. An order in another summary proceeding may  
11 be oral or written, unless otherwise prescribed by law.

12 (e) If a review is available within the agency, the hearing  
13 officer for the review shall give a party an opportunity to explain the  
14 party's view of the matter unless the view of the party is apparent  
15 from the written materials in the file submitted to the hearing officer.  
16 Action on a review must be in writing, including a brief statement of  
17 conclusions of law, policy reasons for the action, and findings of fact  
18 justifying the action, and a notice of further available administrative  
19 review.

20 (f) The record consists of any documents regarding the matter  
21 that were considered or prepared by the hearing officer for the summary  
22 proceeding or for review.

23 Sec. 44.62.406. EMERGENCY ADJUDICATION. (a) Emergency adjudica-  
24 tion may be used in situations in which an immediate danger to the  
25 public health, safety, or welfare requires that agency action be taken  
26 before other adjudicative proceedings that would otherwise be avail-  
27 able.

28 (b) The agency may only take emergency action necessary to  
29 prevent or to avoid the immediate danger to the public health, safety,

1 or welfare that is the basis for emergency adjudication.

2 (c) In an emergency adjudication the agency shall issue an order  
3 including findings of fact and conclusions of law which justify the  
4 determination of an immediate danger and the specific action taken by  
5 the agency. The order is effective when issued.

6 (d) The agency shall give whatever notice is practical to a  
7 person required to comply with the order.

8 (e) After issuing an order under this section, the agency shall  
9 proceed as soon as possible to initiate proceedings that would have  
10 been required if the matter did not involve an immediate danger.

11 (f) In an emergency adjudication the head of the agency, one or  
12 more members of the agency, or one or more other persons designated by  
13 the head of the agency may be the hearing officer.

14 (g) The agency may modify or rescind an order issued under this  
15 section if the danger lessens or terminates.

16 Sec. 44.62.408. AVAILABILITY OF A PRE-HEARING CONFERENCE. (a)  
17 The hearing officer may determine the necessity for a pre-hearing  
18 conference.

19 (b) If a pre-hearing conference is conducted, the hearing officer  
20 shall set the time and place for the conference and shall give reason-  
21 able written notice to all parties of record and to all persons who  
22 have filed written petitions to intervene in the matter. The agency  
23 shall promptly give notice to other persons to whom notice is required  
24 by law.

25 (c) The notice must include

26 (1) the names and addresses of all parties and other persons  
27 to whom notice is being given by the hearing officer;

28 (2) the name, official title, mailing address, and telephone  
29 number of any counsel or agency employee who has been designated to

1 appear for the agency;

2 (3) the official file or other reference number of the  
3 proceeding, the name of the proceeding, and a general description of  
4 the subject matter of the proceeding;

5 (4) a statement of the time and place set for the pre-hearing  
6 conference;

7 (5) the name, official title, mailing address, and telephone  
8 number of the hearing officer for the pre-hearing conference;

9 (6) a short and plain statement that at the pre-hearing  
10 conference the proceeding may, without further notice, be converted  
11 into a conference hearing or summary proceeding for disposition of the  
12 matter as provided by this chapter; and

13 (7) other matters that the hearing officer determines should  
14 be included.

15 Sec. 44.62.409. PRE-HEARING CONFERENCE PROCEDURE. (a) At the  
16 discretion of the hearing officer, all or part of the pre-hearing  
17 conference may be conducted by telephone, television, or other elec-  
18 tronic means, if each participant in the pre-hearing conference has an  
19 opportunity to participate in and to hear the entire proceeding while  
20 it is taking place.

21 (b) At the pre-hearing conference the hearing officer may discuss

22 (1) conversion of the proceeding to an informal proceeding  
23 under AS 44.62.402, a summary proceeding under AS 44.62.404, or an  
24 emergency adjudication under AS 44.62.406;

25 (2) settlement possibilities;

26 (3) preparation of stipulations;

27 (4) simplification of issues;

28 (5) rulings on identity;

29 (6) limitation of the number of witnesses;

1 who have filed written petitions to intervene in the matter.

2 (b) The notice shall include a copy of any pre-hearing order  
3 rendered in the matter.

4 (c) If not included in the accompanying pre-hearing order, the  
5 notice shall include

6 (1) the names and addresses of all parties and other persons  
7 to whom notice is being given by the hearing officer;

8 (2) the name, official title, mailing address, and telephone  
9 number of any counsel or agency employee who has been designated to  
10 appear for the agency;

11 (3) the official file or other reference number of the  
12 proceeding, the name of the proceeding, and a general description of  
13 the subject matter of the proceeding;

14 (4) a statement of the time and place set for the hearing;

15 (5) a statement of the legal authority and jurisdiction  
16 under which the hearing is to be held;

17 (6) the name, official title, mailing address, and telephone  
18 number of the hearing officer; and

19 (7) a short and plain statement of the issues involved and,  
20 to the extent known to the hearing officer, the positions taken by the  
21 parties;

22 (8) other matters that the hearing officer determines should  
23 be included.

24 (d) The agency shall promptly give notice to persons to whom  
25 notice is required by law but which has not been given by the hearing  
26 officer. Notice under this subsection may include the information  
27 provided in (b) and (c) of this section or may consist of a brief  
28 statement indicating the subject matter, parties, time, place, and  
29 nature of the hearing, the manner in which copies of the notice to the

- 1 (7) objections to offers of evidence;
- 2 (8) the extent to which direct evidence, rebuttal evidence,  
3 or cross-examination will be presented in written form;
- 4 (9) the extent to which telephone, television, or other  
5 electronic means will be used as a substitute for proceedings in person;
- 6 (10) the order of presentation of evidence and cross-examina-  
7 tion;
- 8 (11) issuance of subpoenas, discovery orders, and protective  
9 orders; and
- 10 (12) other matters to promote the orderly conduct of the  
11 hearing.

12 (c) The hearing officer shall issue a pre-hearing order incor-  
13 porating decisions made at the pre-hearing conference.

14 (d) If a pre-hearing conference is not held, a pre-hearing order  
15 may be issued, based on the pleadings.

16 \* Sec. 24. AS 44.62.410 is repealed and reenacted to read:

17 Sec. 44.62.410. TIME AND PLACE OF HEARING. (a) The hearing  
18 shall be held in the closest community to the residence of the respon-  
19 dent which has a district or superior court.

20 (b) The agency may select a place for a hearing different from  
21 that prescribed in (a) of this section to promote the convenience of  
22 witnesses and the ends of justice or to prevent unnecessary incon-  
23 venience on the part of the respondent.

24 (c) Notwithstanding (a) or (b) of this section, the parties, by  
25 agreement, may select any location in the state for a hearing.

26 \* Sec. 25. AS 44.62.420 is repealed and reenacted to read:

27 Sec. 44.62.420. NOTICE OF HEARING. (a) The hearing officer for  
28 the hearing shall set the time and place of the hearing and shall give  
29 reasonable written notice to all parties of record and to all persons

1 parties may be inspected and copied, and the name and telephone number  
2 of the hearing officer.

3 \* Sec. 26. AS 44.62 is amended by adding new sections to read:

4 Sec. 44.62.422. PLEADINGS, BRIEFS, MOTIONS, SERVICE. (a) The  
5 hearing officer shall give the parties full opportunity, at appropriate  
6 stages of the proceedings, to file motions, objections, offers of  
7 settlement, and other pleadings.

8 (b) The hearing officer may give all parties an opportunity, at  
9 appropriate stages of the proceedings, to file briefs, proposed findings  
10 of fact and conclusions of law, and proposed orders.

11 (c) A party who files a pleading under this section shall serve a  
12 copy on all parties at the time the pleadings are filed.

13 Sec. 44.63.424. DISCOVERY RIGHTS AND PROCEDURE. (a) After  
14 initiation of a proceeding in which a hearing on the merits may occur,  
15 a party, upon written request made to another party before the hearing  
16 and no more than 30 days after service by the agency of the initial  
17 pleading, or no more than 15 days after service of an additional plead-  
18 ing, may

19 (1) obtain the names and addresses of the witnesses of  
20 another party to the extent known to the other party, including but not  
21 limited to those expected to be called to testify at the hearing; and

22 (2) inspect and make a copy of any of the following items  
23 which are in the possession or custody or under the control of another  
24 party:

25 (A) a statement of a person, other than the respondent  
26 named in the initial administrative pleading or in any additional  
27 pleading, when it is claimed that the act or omission of the  
28 respondent as to that person is the basis for the administrative  
29 proceeding;

1 (B) a statement pertaining to the subject matter of the  
2 proceeding made by a party to another person;

3 (C) statements of witnesses proposed to be called by a  
4 party and statements of other persons having personal knowledge of  
5 the acts, omissions, or events which are the basis for the proceed-  
6 ing, which are not included under (A) or (B) of this paragraph;

7 (D) writings, including but not limited to reports of  
8 mental, physical, and blood examinations and things which a party  
9 proposes to offer in evidence;

10 (E) any other writing or thing which is relevant and  
11 which would be admissible in evidence;

12 (F) investigative reports made by or on behalf of the  
13 agency or another party pertaining to the subject matter of the  
14 proceeding, to the extent that the reports

15 (i) contain the names and addresses of witnesses  
16 or other persons having personal knowledge of the acts,  
17 omissions, or events which are the basis for the proceeding;

18 (ii) reflect matters noted by an investigator in  
19 the course of an investigation; or

20 (iii) contain or include by attachment any statement  
21 or writing described in (A) - (E) of this paragraph.

22 (b) In this section, "statement" includes written statements by a  
23 person, signed or otherwise authenticated by him, stenographic, mechan-  
24 ical, electrical or other records or transcripts of oral statements by  
25 a person, and written reports or summaries of those oral statements.

26 (c) Nothing in this section authorizes the inspection or copying  
27 of any writing or thing which is privileged from disclosure by statute  
28 or court rule, or made confidential or protected as the work product of  
29 an attorney.

1 (d) A hearing officer may order additional discovery, including  
2 but not limited to,

- 3 (1) interrogatories;  
4 (2) requests for admissions; and  
5 (3) depositions.

6 \* Sec. 27. AS 44.62.430 is repealed and reenacted to read:

7 Sec. 44.62.430. SUBPOENA. (a) At the request of a party, a  
8 subpoena may be issued by

9 (1) the agency before whom a hearing is held, or its  
10 designee; or

11 (2) a hearing officer before whom a hearing is held.

12 (b) A subpoena issued under (a) of this section extends to all  
13 parts of the state and shall be served by the party or his designee in  
14 accordance with the rules of civil procedure. A witness is not obliged  
15 to travel in response to a subpoena to a place which is out of the  
16 election district in which he resides if the place is more than 100  
17 miles from his residence, except that the agency, upon affidavit of a  
18 party showing that the testimony of a witness is material and necessary,  
19 may endorse an order on the subpoena requiring the attendance of the  
20 witness.

21 (c) A witness who is not a party and who appears under a subpoena  
22 may receive fees and mileage in the same amount and under the same  
23 circumstances as prescribed by court rule for a witness in a civil  
24 action in a superior court.

25 (d) Fees, mileage, and expenses of subsistence shall be paid by  
26 the party at whose request the witness is subpoenaed.

27 (e) A person served with a subpoena shall comply with the terms  
28 of the subpoena unless the subpoena is quashed after a motion to quash  
29 is heard by the agency or the hearing officer. A person who refuses to

1 respond to a subpoena may be found in contempt in accordance with  
2 AS 44.62.590.

3 \* Sec. 28. AS 44.62.440 is amended to read:

4 Sec. 44.62.440. DEPOSITIONS. (a) On [VERIFIED] petition of a  
5 party, an agency may order that the testimony of a material witness  
6 residing inside or outside the state be taken by deposition in the  
7 manner prescribed by law for depositions in civil actions. The petition  
8 shall set out (1) the nature of the pending proceeding; (2) the name  
9 and address of the witness whose testimony is desired; (3) a showing of  
10 the materiality of his testimony; and [(4) A SHOWING THAT THE WITNESS  
11 WILL BE UNABLE OR CANNOT BE COMPELLED TO ATTEND; AND] (5) a request for  
12 an order requiring the witness to appear and testify before an officer  
13 named in the petition for that purpose.

14 (b) If the witness resides outside the state and if the agency  
15 orders the taking of his testimony by deposition, the party requesting  
16 the deposition [AGENCY] shall obtain an order of court to that effect  
17 by filing a petition for the taking of the deposition in the superior  
18 court [NEAREST TO THE PRINCIPAL OFFICE OF THE AGENCY]. The proceedings  
19 on this order shall be in accordance with provisions governing the  
20 taking of depositions in the superior court in a civil action.

21 \* Sec. 29. AS 44.62 is amended by adding a new section to read:

22 Sec. 44.62.455. CONDUCT OF THE HEARING. (a) At the discretion  
23 of the hearing officer, all or part of the hearing may be conducted by  
24 telephone, television, or other electronic means, if each participant  
25 in the hearing has an opportunity to participate in and to hear the  
26 entire proceeding while it is taking place.

27 (b) The hearing shall be recorded by tape recording or steno-  
28 graphic notes or symbols at the expense of the agency. The agency is  
29 not required, at its expense, to prepare a transcript, unless the

1 requirement is imposed by law. A party may, at his own expense, cause  
2 a transcript to be prepared by a reporter approved by the agency from  
3 the agency's tape recording or stenographic notes or symbols, or make  
4 additional recordings during the hearing, if the making of the record-  
5 ings does not disrupt the hearing.

6 (c) The hearing is open to the public, except for the parts that  
7 the hearing officer closes under a statute expressly authorizing clo-  
8 sure. To the extent that a hearing is conducted by telephone, tele-  
9 vision, or other electronic means, members of the public shall be given  
10 an opportunity to hear the tape recordings and inspect transcripts  
11 prepared from the recordings, except for portions of the hearing closed  
12 by the hearing officer under this subsection.

13 \* Sec. 30. AS 44.62.460 is amended by adding new subsections to read:

14 (f) Documentary evidence may be received in the form of copies or  
15 excerpts if the original is not readily available. Upon request, the  
16 parties shall be given an opportunity to compare the copy with the  
17 original.

18 (g) The hearing officer may allow a person who is not a party the  
19 opportunity to present an oral or written statement. If the hearing  
20 officer allows a statement under this subsection, a party may challenge  
21 or rebut the statement. On motion of a party the presiding officer  
22 shall require the oral or written statement of a person who is not a  
23 party to be given under oath or affirmation.

24 (h) In a proceeding initiated under AS 44.62.370, the respondent  
25 must establish by a preponderance of the evidence that he is entitled  
26 to the agency action which he seeks. In a proceeding initiated under  
27 AS 44.62.360, the agency must establish by a preponderance of the  
28 evidence that it is entitled to the action it seeks.

29 \* Sec. 31. AS 44.62.540 is amended to read:

1           Sec. 44.62.540. RECONSIDERATION. (a) The agency may order a re-  
2       consideration of all or part of the case on its own motion or on peti-  
3       tion of a party. A petition for reconsideration must be filed with  
4       the agency within 10 days after the decision and shall state specific  
5       grounds upon which relief is requested. The power to order a reconsid-  
6       eration expires 30 days after issuance of the decision [THE DELIVERY OR  
7       MAILING OF A DECISION TO THE RESPONDENT]. If no action is taken on a  
8       petition within the time allowed for ordering reconsideration, the  
9       petition is considered denied.

10           (b) The case shall [MAY] be reconsidered by the agency on all  
11       [THE] pertinent parts of the record and the additional evidence and  
12       argument that are permitted, or may be assigned to a hearing officer.  
13       A reconsideration assigned to a hearing officer is subject to the  
14       procedure provided in AS 44.62.500. An agency member may not take part  
15       in the final decision after reconsideration [IF ORAL EVIDENCE IS IN-  
16       TRODUCED BEFORE THE AGENCY, NO AGENCY MEMBER MAY VOTE] unless he has  
17       participated in the original decision and he has heard the evidence.

18 \* Sec. 32. AS 44.62.560 is repealed and reenacted to read:

19           Sec. 44.62.560. JUDICIAL REVIEW. A final administrative order  
20       may be reviewed by a superior court if a notice of appeal is filed in  
21       accordance with applicable Rules of Court governing appeals in civil  
22       matters.

23 \* Sec. 33. AS 44.62 is amended by adding a new section to article 8 to  
24 read:

25           Sec. 44.62.632. PUBLIC INSPECTION, INDEXING, AND USE OF AGENCY  
26       ORDERS. (a) An agency shall make available for public inspection and  
27       copying, and shall index by name and subject, all written final orders  
28       from adjudicative proceedings concerning that agency.

29           (b) A written final order may not be used as a precedent by an

1 agency to the detriment of a person until it has been made available  
2 for public inspection and indexed in accordance with (a) of this sec-  
3 tion. This subsection does not apply to a person who has actual knowl-  
4 edge of an order.

5 (c) The burden of proof that a person has actual knowledge of an  
6 order under (b) of this section is on the agency concerned with the  
7 order.

8 \* Sec. 34. AS 44.62 is amended by adding a new section to article 9 to  
9 read:

10 Sec. 44.62.635. SUSPENSION OF PROVISIONS OF CHAPTER. (a) To  
11 avoid denial of money or services by the federal government which would  
12 be available to the state except for the operation of this chapter, the  
13 governor may suspend, in whole or in part, a section of this chapter.  
14 The governor shall issue an order terminating suspension under this  
15 section when it is no longer necessary to prevent the denial of money  
16 or services from the federal government.

17 (b) A suspension order or an order terminating a suspension shall  
18 be dated, certified, and filed in the office of the lieutenant governor.

19 (c) The governor shall promptly report a suspension under this  
20 section to the legislature. The report shall include recommendations  
21 with respect to legislation that is necessary to conform this chapter  
22 with federal law.

23 \* Sec. 35. AS 44.62.640(b)(1) is repealed and reenacted to read:

24 (1) "agency" has the same meaning as "state agency" under  
25 AS 44.62.640(a)(4);

26 \* Sec. 36. AS 44.62.640(b)(2) is amended to read:

27 (2) "agency member" means a person who is a member of an  
28 agency [TO WHICH AS 44.62.330 - 44.62.630 APPLY], and includes a person  
29 who himself is an agency;

1 \* Sec. 37. AS 44.62.640(b) is amended by adding new paragraphs to read:

2 (6) "ex parte communication" means a written or oral  
3 communication between a party to an adjudicative proceeding and a  
4 person having decision making authority in the proceeding made outside  
5 the normal course of the proceeding, on the merits of the proceeding;

6 (7) "record" includes

7 (A) notices of all proceedings;

8 (B) the pre-hearing order;

9 (C) motions, pleadings, briefs, petitions, requests,  
10 and intermediate rulings;

11 (D) evidence received or considered;

12 (E) a statement of matters officially noticed;

13 (F) offers of proof and objections and rulings on them;

14 (G) proposed findings, requested orders and exceptions;

15 (H) a tape recording or stenographic notes or symbols  
16 prepared for a hearing officer at a hearing, together with any  
17 transcript of all or part of the hearing considered before final  
18 disposition of the proceeding;

19 (I) a final order, initial order, or order on reconsid-  
20 eration;

21 (J) matters placed on the record as the result of an ex  
22 parte communication.

23 \* Sec. 38. AS 16.43.355(h) is amended to read:

24 (h) Judicial review of commission determinations under this  
25 section is in accordance with AS 44.62.560 - 44.62.570 [; HOWEVER, IF A  
26 HEARING DE NOVO IS GRANTED UNDER AS 44.62.570(d), THE HEARING MAY, IN  
27 THE DISCRETION OF THE COURT, BE HAD WITH A JURY SITTING IF APPLICATION  
28 FOR THE JURY HEARING IS FILED WITH THE COURT NO LATER THAN 10 DAYS  
29 AFTER SERVICE OF THE NOTICE OF APPEAL].

1 \* Sec. 39. AS 46.35.090(e) is amended to read:

2 (e) The commissioner, after consultation with other state agencies  
3 and local governments, shall adopt regulations governing the conduct of  
4 adjudicatory hearings under this section. The commissioner may enter  
5 into cooperative agreements with local governments and federal agencies  
6 for the joint holding of adjudicatory hearings. To the extent feasible,  
7 regulations adopted under this section shall conform to adjudicatory  
8 hearing procedures for the review of permit decisions under AS 30.25  
9 and AS 46.03. Adjudicatory [NOTWITHSTANDING AS 44.62.330(a)(44),  
10 ADJUDICATORY] hearing procedures to review permit decisions under this  
11 chapter, or under AS 30.25 or AS 46.03, need not conform to the Adminis-  
12 trative Procedure Act (AS 44.62.330 et seq).

13 \* Sec. 40. The following laws are repealed: AS 44.62.010, 44.62.020,  
14 44.62.070, 44.62.120, 44.62.280, 44.62.290, 44.62.320, 44.62.330(b) and (c),  
15 44.62.370(b), 44.62.460(e), 44.62.470, 44.62.490, 44.62.570(d) - (1), 44.-  
16 62.580, 44.62.610, and 44.62.630.

17 \* Sec. 41. This Act does not apply to proceedings pending on January 1,  
18 1982. For the purpose of determining whether a proceeding is pending on  
19 January 1, 1982, a judicial review or civil enforcement proceeding shall be  
20 considered a separate proceeding from any agency proceeding on which it may  
21 be based.

22 \* Sec. 42. This Act takes effect January 1, 1982.  
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