SB
428

NOTIFICATION

BILL	LETTER/PHONE	INFORMED	HEARING DATE
SB 428am	3/3/78	Sen. Poland	3/7/78
	3/4	Sen. Huber	"
	3/3	Commercial Fisheries Entry Comm.	"
	"	Dept. of Fish and Game	"
	3/4	United Fishermen of Alaska	"
	"	Peter Froehlich, Asst. A.General	"
	"	Keith Specking	"

AGO 122871

WORK
Session Allen advocate
meeting(?) Monk(?)
CS

Bring up
Tomorrow —

Hold
for CS

Hold
[illegible]/78 4/17/78

H R

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K – STATE CAPITOL
JUNEAU 99811

March 7, 1978

The Honorable Alvin Osterback
Chairman, House Resources Committee
Alaska State House of Representatives
Capitol Building, Room 118
Juneau, Alaska 99801

Re: Comments on Senate floor amendment to SB 428 am (Page 3, lines 14-16)

Dear Representative Osterback:

The Commercial Fisheries Entry Commission has asked me to attend the House Resources Committee hearing this afternoon to offer testimony on a provision added to SB 428 am on the floor of the Senate. Unfortunately, an unexpected conflict in my schedule will prevent my attendance at the hearing today, so I am writing to briefly summarize my comments on the floor amendment. These comments were, for the most part, offered to the Senate Resc s Committee at a hearing on this bill on February 6, 1978 d discussed at some length before the committee declined to amend the bill along the lines of the floor amendment which narrowly passed.

The floor amendment at issue is Part II of Amendment 3 offered by Senator Huber, which substituted new language for AS 16.43.355(h) as follows:

> (h) The permit holder may appeal to the superior court for, and is entitled to, trial de novo of the board's action. Either party to the appeal may demand a jury trial. SB 428 am, Page 3, Lines 14-16; Senate Journal on page 241. (Emphasis added).

There are three problems with this amendment, in my view, and they are underlined above. First, it states that a permit holder, aggrieved by the administrative revocation of his permit because he supplied false information to the commission, is entitled to trial de novo on appeal. In many

appeals to court of administrative decisions, trial de novo is unnecessary, redundant, and wasteful of the time and resources of the court and both parties. A record containing all the evidence considered by the agency is before the court and, therefore, there is usually no reason to develop the evidence over again. AS 44.62.570(d) governs all appeals from administrative decisions not specifically the subject of a particular statute to the contrary. It gives the court discretion to augment the administrative record or hold a hearing (not "trial") de novo, if appropriate; i.e., if there is new relevant evidence that could not have been offered to the agency, or if relevant evidence was improperly excluded by the agency. This approach is much more efficient and flexible than that embodied in the above quoted floor amendment, which would allow permit holders to drag out appeals to the detriment and expense of all involved.

The second problem with the amendment is that it refers to "the board's action" (Page 3, Line 15) when the decision involved is that of the commission; i.e., the Commercial Fisheries Entry Commission.

The third problem is that the amendment states that either party to an appeal "may demand a jury trial" (Page 3, Line 16). This is a novel and inappropriate approach to appeals of administrative decisions. The only questions involved in such an appeal are legal issues (See AS 44.62.570(a) and (b)), whereas juries are only capable of considering factual issues. Nonetheless, the implication of the objectionable language of the floor amendment is that, if a party demands a jury trial, the court has no discretion and must grant one. This incongruity would render such appeals unworkable, if not impossible to conduct in practice.

In conclusion, I strongly suggest that the original language of AS 16.43.355(h) be reinstated in place of the Senate floor amendment at Page 3, Lines 14-16 of the bill. This would insure that appeals of permit revocation decisions would be conducted in the same time-tested manner as nearly all other appeals from administrative decisions, and in accord with AS 44.62.560 and .570 of the Administrative Procedure Act. It would be the most equitable and efficient means to provide for judicial review.

Alternatively, the following language would give an aggrieved permit holder a right to request a hearing de novo before a judge, even if there is no new or improperly excluded evidence, while foreclosing the totally inappropriate possibility of "jury trial."

I.

(h) A permit holder may appeal the commission's decision to a superior court. At the request of either party to an appeal, the court, in its discretion, may hold a hearing de novo.

I hope these comments are of some assistance in your consideration of this bill.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter Froehlich
Peter B. Froehlich
Assistant Attorney General

PBF:bvd

cc: House Resources Committee Members
Art Peterson, Assistant Attorney General
Commercial Fisheries Entry Commission

H 1Cs

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB
JUNEAU, ALASKA 99811

March 6, 1978

The Honorable Alvin Osterback
Chairman, House Resources Committee
Alaska State House of Representatives
Capitol Bldg. - Room 118
Juneau, Alaska 99801

Dear Representative Osterback:

You have requested the comments of the Commercial Fisheries Entry Commission SB 428 am, which is currently before the House Resources Committee.

Upon second reading in the Senate, SB 428 was amended by several floor motions, about which we would submit the following for your committee's consideration:

The first amendment offered appears at page 2, line 5, beginning with the words "The hearing place..." (Senate Journal page 241). The purpose of this amendment is to provide that the revocation hearing take place at or near the place of residence of the permit holder. The Commission anticipates few revocation hearings and therefore it does not feel that these provisions are unduly oppressive. However, it may well be that the permit holder would desire to have a hearing at a place other than the Judicial District in which he resides. Inasmuch as the referenced section of SB 428 mandates a hearing within the permit holder's Judicial District, the Commission would suggest that the language of that section be amended to allow the permit holder to waive the mandatory requirements appearing on page 2, line 5-7. In this regard, the following language is offered:

> "Unless waived in writing, the hearing place shall be held within the Judicial District in which the permit holder resides for those residing in the State of Alaska. The hearing place shall be at the discretion of the Commission for those permit holders residing outside the State of Alaska;"

While this amendment will undoubtedly have some impact on the Commission's budget because of the added requirement for Commission and staff travel, possible transportation of records, etc., the exact magnitude cannot be determined at this time. The Commission would expect revocation hearings to be rare, and if that is the case attendant costs could probably be absorbed without a specific budgetary increase. Consequently, we recommend no change in the fiscal note accompanying this bill.

The second amendment offered is of two parts (Senate Journal pp. 241-2). Part I appears at page 1, line 21 of SB 428. That amendment added the word "materially" after the word "correct" appearing at line 21. The Senate Resource Committee version of SB 428 did not contain the word "materially." Inasmuch as the word "knowingly" appears in the language of section 16.43.355(a), it is felt by the Commission, that if a person intentionally submitted false information knowing of the falsehood, the use of the modifier "materially" served a superfluous purpose. In effect, what Part I of the amendment accomplishes is to attach culpability to big lies while protecting those lies which are small. A problem also exists in defining the term "materially" as it is necessarily vague. The Commission feels that where proscribed action can result in the revocation of a person's entry permit, the statute should be drawn without words of vagueness. In light of the gravity of permit revocation, it is only fair that a person be specifically apprised of the prohibited conduct.

The second portion of this floor amendment appears at page 3, line 14-16 of SB 428. SB 428 as passed by the Senate Resources Committee provided for an appeal of a Commission permit revocation decision pursuant to the Administrative Procedure Act. A discussion of the scope of that appeal process appears in the House Resource Committee file on SB 428. The floor amendment offered provides that all appeals of a Commission decision to revoke a permit shall be in the scope of a trial de novo. In reference to section (h) appearing at page 3, lines 14-16, Peter Froehlich of the Department of Law will attend the Tuesday committee meeting and offer testimony on those provisions.

While this amendment does not directly affect the Commission's function, it does place what may be excessive burdens upon the permit holder. A full trial over matters previously presented at an administrative hearing will result in added and repetitive costs to the permit holder due to the formal and extended nature of court trials. A

full trial, as opposed to oral arguments, would be more difficult to accommodate on the court calendar due to the amount of time a trial requires. This could result in delays of the resolution of the permit holder's case. It should also be noted that the appeal is from the "Commission's" decision rather than the "board's" decision.

In light of the foregoing, it is respectfully submitted that the interest of the fisherman would be furthered by reinstatement of the language originally appearing in the bill as passed out by the Senate Resource Committee:

h. "Judicial review of a commission determination under this section may be had in accordance with AS 44.62.560-44.62.570." (SB 428 as passed by the Senate Resources Committee page 3, lines 10-12.)

This would provide the fisherman with the option of an appeal to the courts at a lower cost and consuming less time than a full scale trial de novo, with or without a jury.

A third floor amendment was offered as section 5 of SB 428 and relates to the transfer of a permit after court ordered suspension of use privileges thereunder (Senate Journal pp. 242-3). The Commission supports this amendment.

The Commission concurs with the remainder of SB 428 am in the form in which it is now before you.

Thank you for the opportunity to comment on this bill. A member of the Commercial Fisheries Commission will be present when SB 428 am comes before the House Resources Committee, Tuesday March 7, 1978 at 1:30 p.m. to answer any questions.

Sincerely,

Allan Adasiak
Chairman

01-A6LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB – JUNEAU 99811

February 3, 1978

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Re: SB 428

Regarding Senator Tillion's question regarding the term "willfully" as it appears in Sec. 3 of SB 428 at page 3 line 13 and page 4 line 2, we have contacted Dan Hickey at the Department of Law. Mr. Hickey indicated that the term "willfully" appearing at page 3 line 13 should be omitted. The term "willfully" as used at page 4 lines 2 and 6 should be deleted and the word "knowingly" substituted in its place. A letter from Ann Carpinetti of Mr. Hickey's office confirming the above-mentioned amendments should be received by your committee shortly, if it has not been received already.

The propriety of the term "other unavoidable hardship" appearing at page 1 line 12 has been addressed by Pete Froehlich, the Commission's Assistant Attorney General. His statements regarding this wording should have been received by you by now. If not, his letter will be forthcoming shortly.

The Commission will be happy to send a representative to the Monday, February 6, Committee meeting to answer any questions. The Commission has also requested that Pete Froehlich attend the meeting to answer any legal questions the Committee may wish to advance.

If there are any further questions or other service you may require, please feel free to contact me at the Commission. Your assistance in this matter is greatly appreciated. The Commissioners are presently out of town holding previously scheduled public hearings or I'm sure one of them would have

responded personally to the Committee's inquiries.

Respectfully,

David V. George
Legal Advisor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

February 1, 1978

The Honorable Kay Poland
Chairman, Senate Resources
Committee
Alaska State Legislature
Pouch V, Capitol Building
Juneau, Alaska 99811

Re: SB 428, relating to commercial fishing permits

Dear Senator Poland:

It has come to my attention that a question arose at the January 31, 1978 hearing on this bill before your committee concerning the words "other unavoidable hardship" as used on page 1, line 12 of the bill. I am writing to share with you and the committee my thoughts on this language.

In my opinion, it is possible for the Commercial Fisheries Entry Commission to administer this criteria for temporary emergency transfer of permits both fairly and restrictively. The entire sentence containing the language at issue reads:

> The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim use permits when illness, disability, death, or other unavoidable hardship prevents the permit holder from participating in the fisher." (Emphasis added).

In accordance with the well-established principle of statutory construction of ejusdem generis, where general words follow a listing of specific words, the general words are construed to embrace only circumstances similar in nature to those emumerated by the previous specific words. (See 2A Sands, Sutherland Statutory Construction, § 47.17, 4th Ed. 1973). Thus, "other unavoidable hardship" includes only circumstances similar in nature and gravity to illness, disability and death.

The phrase "unavoidable circumstances" is used in the Commission's regulations at 20 AAC 05.630(a)(5). In that context, the Commission has interpreted the phrase to mean circumstances (1) beyond one's control which prevent his participation in a fishery, (2) in frustration of his specific definite intent to do so, (3) despite all reasonably possible efforts. Applying the same meaning to "unavoidable hardship," along with the principle of ejusdem generis, results in the interpretation that only serious hardship beyond one's control which frustrates his specific and definite intent to participate in a fishery despite all reasonably possible efforts would be included within the scope of those words.

This seems to be a sufficiently narrow criteria for emergency transfers, while at the same time allowing for the myriad of possible types of unavoidable hardship which may properly justify such a transfer

I hope this letter is of some help in your further consideration of this bill. Please contact me if any questions on this matter remain.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter B. Froehlich
Assistant Attorney General

PBF:bvd

cc: Allan Adasiak

SB428 am

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

February 6, 1978

The Honorable Kay Poland
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: SB 428

Dear Senator Poland:

It is my understanding, after discussing Senate Bill 428 with a representative from the Commercial Entries Fisheries Commission, that your committee desired some comment from the Criminal Division of the Department of Law regarding the level of culpability under proposed amendments which would be required to be proven for conviction of certain prohibited acts under AS 16.43, which regulates entry into Alaska commercial fisheries.

Section 3 of Senate Bill 428 amends AS 16.43.360(a) in part by adding the requirement that a person be proved to have acted wilfully before he may be convicted of a statutory or regulatory violation of the chapter. (p.3, line 13). Presently no proof of the violator's state of mind is necessary under the language of the statute to establish a violation under AS 16.43.360(a). I would recommend deleting this portion of the amendment from the bill. It is difficult to establish a wilfull state of mind in prosecuting violations of regulatory provisions, and generally no conscious state of mind is constitutionally required for regulatory violations. Unless there is some other purpose for the amendment, I see no reason to make enforcement of AS 16.43 more difficult for the state.

Section 4 of the bill amends AS 16.43.360(b), which prohibits making a false statement of fact in an application

03-C7LH

for renewal of an interim use or entry permit. The proposed amendment in part adds the requirement that a person be proved to have acted wilfully (p. 4, lines 2 and 6) before he may be convicted of violating the subsection. Apparently the purpose of this amendment is to avoid the prosecution under the sub-section of persons who mistakenly mistate facts on an application or renewal form. I would recommend substituting "knowingly" for "wilfully" on page 11, lines 2 and 6. While both terms are similar and indicate a state of mind where the offender is aware that he or she is making a false statement, the use of "knowingly" is suggested because it is more precise and additionally, complies with the efforts by the Criminal Code Revision Subcommission to clarify and limit the terms used to define culpable mental states for criminal offenses. The proposed criminal code employs four mental states: intentional, knowing, reckless, and criminal negligence. If criminal prohibitions in other titles of the Alaska Statutes also use these states of mind, our statutes will be easier for people to understand and for the courts to interpret.

Thank you for the opportunity to comment on Senate Bill 428.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEL
CHIEF PROSECUTOR

By: Anne Carpeneti
Anne Carpeneti
Assistant Attorney General

AC:lw

cc: Art Peterson
Assistant Attorney General

STATE of ALASKA

MEMORANDUM

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate

DATE : February 3, 1978

FROM: David V. George
Commission Legal Advisor
Commercial Fisheries Entry Commission

SUBJECT: Letter of Explanation of SB 428 re cost of proceeding under proposed section relating to administrative revocation of permit

Senator Huber has raised the question of whether judicial review under the Administrative Procedure Act (APA) as provided in Section 2 of SB 428, would act as a defacto financial prohibition to the permit holder's judicial review of the administrative agency's action. The sections of the APA brought into issue are AS 44.62.560 and 570. Copies of these sections are appended to this reply.

SB 428 Section 2 of the Administrative Level:

Due process requires that the proposed revocation of a permit be preceded by notice of the proposed action, and that the permit holder be afforded an opportunity to be heard prior to a resolution of the issues.

SB 428 Section 2 proposes a mechanism for administrative revocation of a permit by the Commercial Fisheries Entry Commission. This power does not presently exist. SB 428 could have stopped there and left the Commission with the obligation to adopt regulations regarding the procedure to be employed which were consistent with due process. However, because of the gravity of the potential consequences of permit revocation, the Commission felt it was appropriate for the Legislature to provide for an administrative revocation procedure which ensured the respect of the permit holder's due process rights. This legislative statement in effect says: "If you cheat you'll be punished, but we are going to make sure that the State plays by the rules so that it doesn't cheat you."

Before any administrative hearing then, the State must give notice of the proposed action. The permit holder is given the opportunity to appear at the hearing, with or without counsel, and give his side of the story. The responsibility of the permit holder at the hearing is no greater than that required at any administrative hearing--he may, if he wishes, show up and contest the proposed action.

Section 2(b)(2) imposes a greater burden on the State, however. Section 2(b)(2) requires that before the Commission acts it must have received an affidavit setting forth facts warranting permit revocation. The notice requirements of Section 2(b)(2-6) were drafted requiring specificity on everything reasonably necessary to apprise the permit holder of the potential loss involved and the basis of the proposed action. This specificity will help guarantee a meaningful hearing.

Under SB 428, the State is also required, when holding the hearing, to provide a hearing officer who will act as the presiding officer of the hearing. The hearing officer is at the expense of the State, but will employ his legal background to aid both the permit holder and the Commission in the presentation of necessary facts. It is believed that use of a hearing officer will help insure greater impartiality as well as a more concise record.

In review, the formal hearing procedures required by SB 428 at the administrative level impose additional burdens only upon the State and not upon the party against whom the action is proposed.

SB 428 Section 2 and the Judicial Level:

Senator Huber has expressed concern that affording judicial review of the Commission's decision pursuant to AS 44.62.560-570 might be financially unfeasible for the permit holder to pursue. It was apparently Senator Huber's concern that a "de novo" judicial review might lower the cost of this review were a less formal administrative hearing held at the outset.

Due process requires the right of judicial review of the Commission's decision, whether the administrative hearing is formal or informal. The nature of the review would ultimately dictate the amount of expense to the permit holder. The proper forum for review is the Superior Court. [AS 22.10.020, 22.15.050, 44.62.560]

Were the Superior Court to hold a "trial de novo", cost to the litigant would be greatly increased. Evidence submitted at the administrative hearing, whether it was formal or informal, would have to be reintroduced at a "trial de novo" subject to all appropriate objections and cross-examination rights of the State. Witnesses would have to appear, perhaps for the second time, and the litigant himself would be making a second appearance thus increasing travel expenses.

Pre-trial discovery may be in order requiring additional costs. Since a trial of three or four days is much more difficult to schedule on the court calendar than a half-day argument (as would be the case were there not a "trial de novo"), greater delay could be anticipated than if the case were one of simple appellate review. All told, an informal administrative hearing followed by a trial "de novo" at the judicial level would substantially increase, rather than decrease, the direct cost to the permit holder.

Review under AS 44.62.560 generally amounts to a review of the record of the administrative hearing to determine the propriety of the administrative action taken. An appellant is required to transmit the record of the administrative agency hearing to the Superior Court at his own cost and provide a cost bond on appeal. In the Commission's experience, for cases involving permit decisions, this is usually no more than $350.00. The Superior Court may, in its discretion, order additional evidence or require a hearing "de novo." [570(d)] Therefore, Sections 560 and 570 of AS 44.62 do provide for the possibility of a "de novo" hearing where justice requires.

Conclusion

Section 2 of SB 428 as proposed will increase the responsiveness of State government at the administrative level, while imposing no greater burden upon the permit holder than would a less formal administrative hearing procedure.

Judicial review of an administrative determination under AS 44.62.560 and 570 provides a much less costly avenue of review than would a mandatory trial "de novo." Notwithstanding, Sections 560 and 570 do allow sufficient discretion whereby the Superior Court may order a trial "de novo" where justice dictates.

It would therefore appear that SB 428 provides a fair method of civil revocation of an entry permit, which is also the least costly alternative available.

DVG:eb

requires the agency to make findings of fact regarding conditions which have changed since the imposition of the penalty at least one year previous. 1963 Ops. Att'y Gen., No. 10.

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or the parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in the superior court within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate surety bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court may compel the agency to initiate action. (§ 24 (ch 2) ch 143 SLA 1959)

Cross reference. — See note to AS 44.62.570.

This section and AS 44.62.570 prescribe the manner and scope of judicial review. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

But they do not address the form of an agency's determinations. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

When review is proper. — Review is proper where postponement of appellate review until a final judgment is entered by the superior court may result in injustice because of impairment of a legal right and where the order sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

When order is final. — An order by the trial court as a general rule is said to be final if it completely and finally disposes of the contested claims on their merits. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

The term "finality" is subject to several definitions. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

the superior court to assert jurisdiction and grant preliminary relief in a case where an agency has established a permanent rate. A.J. Industries, Inc. v. Alaska Pub. Serv. Comm'n, Sup. Ct. Op. No. 622 (File No. 1173), 470 P.2d 537 (1970), rev'd on other grounds on rehearing, 483 P.2d 198 (1971).

Appeal to court to obtain review and return to court to continue litigation are separate processes. — Appealing to a court for the purpose of obtaining review of an inferior tribunal's order and returning to a court with retained jurisdiction for the purpose of continuing litigation are separate and distinct legal processes. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

Court apprising parties of right to seek review did not retain jurisdiction. — A lower court which merely apprised the parties of their rights to seek judicial review of an administrative adjudication under this chapter did not retain jurisdiction. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

Applied in Wilson v. Employment Security Comm'n, 6 Alaska L.J. No. 3, p. 93 (March, 1968); Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975); Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Stated in Alaska Transp. Comm'n v. Alaska Airlines, Inc., Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967); Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Cited in Læge v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963); R.C.A. Serv. Co. v. Liggett, 2 Alaska L.J. No. 1, p. 7 (Jan., 1964); King v. Alaska State Housing Auth., Sup. Ct. Op. No. 917 (File No. 1613), 512 P.2d 887 (1973); Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 349 (1975).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 185.

Sec. 44.62.570. Scope of review. (a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without, or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may (1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence; or (2) admit the evidence at the appellate hearing without remanding the case.

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

(f) The court in which proceedings under this section are started may stay the operation of the administrative order or decision until (1) the

court enters judgment, (2) a notice of further appeal from the judgment is filed, or (3) the time for filing the notice of appeal expires.

(g) No stay may be imposed or continued if the court is satisfied that it is against the public interest.

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court judgment or agency order.

(i) If a final administrative order or decision is the subject of a proceeding under this section, and the appeal is filed while the penalty imposed is in effect, finishing or complying with the penalty imposed by the administrative agency during the pendency of the proceeding does not make the determination moot. (§ 25 (ch 2) ch 143 SLA 1959)

This section and AS 44.62.560 prescribe the manner and scope of judicial review. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

But they do not address the form of an agency's determinations. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Questions for review. — One type of administrative decision on questions of law involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Leasing decisions of the division of lands and Department of Natural Resources are subject to judicial review. Such judicial review would be governed by the relevant provisions of the Administrative Procedure Act (AS 44.62). Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Four principal standards of review. — In interpreting this section the supreme court has recognized at least four principal standards of review of administrative decisions. These are the "substantial evidence test" for questions of fact; the "reasonable basis test" for questions of law involving agency expertise; the "substitution of judgment test" for questions of law where no expertise is involved; and the "reasonable and not arbitrary test" for review of administrative regulations. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity, where the decision under review clearly has nothing to do with the agency's rule making function. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

This section is made applicable to review of final orders of the Public Utilities Commission by AS 42.05.551. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Whether proposed utility rates were designed to and could meet competition, shift sales of gas from winter to summer, and achieve interruptibility, are all questions of fact of the type traditionally reviewed under a substantial evidence standard. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Public Utilities Commission's decision whether to conduct a rate investigation is similar to the type of decision involving agency expertise in a mixed law and fact setting subject to the "reasonable basis" standard of review. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

LETTER OF INTENT

The Honorable Hugh Malone
Speaker of the House

Dear Mr. Speaker:

In passing out the Committee Substitute for SB 428 am the Committee hereby recommends that the Judiciary Committee review the new language in the bill.

Sincerely,

Alvin Osterback

Alvin Osterback, Chairman
House Resources Committee