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COMMITTEE REPORT

HOUSE

4/12/82

(5)

FURTHER:

Date: 4/20/82

Mr. Speaker: HEALTH, EDUCATION AND  
The Committee on SOCIAL SERVICES has had CS SSB 178(SA) and

"An Act relating to vocational rehabilitation programs providing for the operation of vending facilities on public property.

under consideration and reports it back as follows:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for CS SSB 178(SA)  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

Alaska House of Representatives  
MEMO



Phone: 465-3725  
Room: 214 Capitol

From the desk of CHIEF CLERK

TO: Edith

DATE: \_\_\_\_\_

There was no fiscal  
note back of bill  
but Rep. Berman  
gave me one (zero)  
all is OK.

ER

SB 778 - Blind Vendors

**Sec. 44.62.320. Legislative annulment of regulations and review.** (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman and all members of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460 together with the fiscal information required to be prepared under AS 44.62.195, (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1976; am § 3 ch 16 SLA 1980)

**Effect of amendments.** — The 1978 amendment substituted "At the same time" for "Within 45 days after" at the beginning of subsection (b).

The 1980 amendment inserted "and all members" following "chairman" near the middle of subsection (b), and added "together with the fiscal information required to be prepared under AS 44.62.195" at the end of subsection (b).

**Constitutionality of legislative veto.** — The legislative veto contained in subsection (a), which provides that the "legislature, by a concurrent resolution adopted by a vote of both houses, may

annul a regulation of an agency or department," violates art II of the state constitution. *State v. ALIVE Voluntary*, Sup Ct Op No 2022 (File No 2070), 606 P 2d 700 (1980). See also Alaska Const., art II, § 22, which was proposed by the 11th legislature's Legislative Resolve No. 5 and will be voted on at the next general election in November, 1980.

No implied general power to veto agency regulations by informal legislative action exists. *State v. ALIVE Voluntary*, Sup Ct Op No 2022 (File No 2070), 606 P 2d 700 (1980).

**Article 5. Administrative Adjudication.**

Section	Section
320 Application of AS 44.62.320 — 44.62.630	490 Amendment of accusation after submission
340 Delegation of power by agencies	500 Decision in a contested case
350 Appointment of hearing officers	510 Form and effect of decision
360 Accusation	520 Effective date of decision
370 Statement of issues	530 Default
380 Service of accusation	540 Reconsideration
390 Notice of defense	550 Petition for reconsideration or reduction of penalty
400 Amended or supplemental accusation	560 Judicial review
410 Time and place of hearing	570 Scope of review
420 Form of notice of hearing	580 Continuances
430 Subpoena	590 Contempt
440 Depositions	600 Mail vote
450 Hearings	610 Charge
460 Evidence rules	620 Power to administer oaths
470 Evidence by affidavit	630 Impartiality
480 Official notice	

**Sec. 44.62.330. Application of AS 44.62.320 — 44.62.630.** (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.320 — 44.62.630. This

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procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 — 44.62.630 is limited to named functions of the agency.

- (1) Repealed by § 5 ch 159 SLA 1980.
- (2) Board of Chiropractic Examiners
- (3) Board of Dental Examiners
- (4) State Board of Registration for Architects, Engineers and Land Surveyors
- (5) Repealed by § 13 ch 218 SLA 1976
- (6) Board of Examiners in Optometry
- (7) Repealed by § 5 ch 159 SLA 1980
- (8) State Medical Board
- (9) Division of Lands under Alaska Land Act where applicable
- (10) Board of Nursing
- (11) Board of Pharmacy
- (12) Board of Public Accountancy
- (13) Department of Labor as to functions relating to employment security only as provided in (c) of this section
- (14) Real Estate Commission
- (15) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act
- (16) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications
- (17) Repealed by § 12 ch 131 SLA 1980
- (18) Repealed by § 49 ch 94 SLA 1980
- (19) Repealed by § 54 ch 169 SLA 1978
- (20) Department of Revenue, under Cigarette Tax Act
- (21) Repealed by § 54 ch 169 SLA 1978
- (22) Repealed by § 11 ch 181 SLA 1976
- (23) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 — 18.65.490
- (24) Department of Health and Social Services, under AS 47.35.010 — 47.35.080, relating to boarding and foster homes for children
- (25) Deleted by § 60 ch 98 SLA 1966
- (26) Repealed by § 4 ch 120 SLA 1971
- (27) Department of Health and Social Services under Alaska Food, Drug, and Cosmetic Act (AS 17.20), and in connection with the licensing of embalmers under AS 08.44.010

(28) Department of Health and Social Services and the Hospital Advisory Council, under AS 18.20.010 — 18.20.130

(29) Repealed by § 4 ch 120 SLA 1971.

(30) Department of Health and Social Services, under AS 18.20.010 — 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels

(31) Repealed by § 40 ch 206 SLA 1975.

(32) Repealed by § 4 ch 106 SLA 1970.

(33) Board of Marine Pilots

(34) Alaska Police Standards Council

(35) Guide Licensing and Control Board

(36) Board of Dispensing Opticians

(37) Alaska Pipeline Commission as to functions relating to common purchasers under AS 31.15

(38) Expired.

(39) Alaska Public Offices Commission

(40) Board of Fisheries

(41) Board of Game

(42) the Department of Education and the Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 — 14.20.040 and AS 14.20.470(a)(4)

(43) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits

(44) Department of Environmental Conservation, except to the extent that AS 44.62.360 — 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03

(45) University of Alaska, except to the extent that its inclusion is inconsistent with the provisions of AS 14.40

(46) Department of Commerce and Economic Development concerning the fisheries enhancement loan program (AS 16.10.500 — 16.10.620)

(47) Board of Psychologist and Psychological Associate Examiners (AS 08.86.010)

(48) the Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.870

(49) Board of Veterinary Examiners (AS 08.98.010)

(50) Board of Nursing Home Administrators (AS 08.70.010)

(51) Board of Barbers and Hairdressers (AS 08.13.010).

(b) The procedure of an agency not listed in (a) of this section shall be conducted under AS 44.62.330 — 44.62.630 only as to those functions to which AS 44.62.330 — 44.62.630 are made applicable by the statutes relating to that agency.

(c) Judicial of the comm security shall to the contra other proced security shall and the regu

(d) Except provisions of

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(§ 2 (ch 2) ch SLA 1966; an

ch 143 SLA 1 am §§ 3, 4 ch

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SLA 1975; an ch 181 SLA 19

1976; am § 9 SLA 1978; an

ch 84 SLA 19 1980; am § 1;

5 ch 159 SLA

Effect of am: 1976 amendment subsection (a).

The second 19 "as to suspensi security guard" 18.65.400 — 18.6 (23) of subsection 1977 amendment

The third 197 paragraph (22) of

"The fourth 197 per graph (b) of a "Department of C Development" Commerce" in p (38) of subsection the end of paragr (06.05)" to the end

(c) Judicial review and scope of judicial review of all final decisions of the commissioner of labor on an appeal relating to employment security shall be in accord with this chapter notwithstanding anything to the contrary in the Alaska Employment Security Act (AS 23.20). All other procedures of the Department of Labor relating to employment security shall be as provided in the Alaska Employment Security Act and the regulations under the Alaska Employment Security Act.

(d) Except in a case of reinstatement or reduction of penalty, the provisions of this chapter do not affect statutory provisions concerning

(1) civil or criminal penalties;

(2) additional relief by injunction or restraining order;

(3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters which in their context do not relate to procedure. (§ 2 (ch 2) ch 143 SLA 1959; am § 14 ch 2 SLA 1964; am § 60 ch 98 SLA 1966; am § 2 ch 120 SLA 1966; am § 1 ch 58 SLA 1967; am § 18 ch 143 SLA 1968; am § 2 ch 83 SLA 1969; am § 2 ch 118 SLA 1969; am §§ 3, 4 ch 106 SLA 1970; am § 6 ch 104 SLA 1971; am § 4 ch 120 SLA 1971; am § 2 ch 178 SLA 1972; am § 5 ch 179 SLA 1972; am § 2 ch 17 SLA 1973; am § 3 ch 45 SLA 1973; am § 2 ch 82 SLA 1973; am § 2 ch 7 FSSLA 1973; am § 5 ch 76 SLA 1974; am § 2 ch 128 SLA 1974; am § 6 ch 9 SLA 1975; am § 25 ch 25 SLA 1975; am §§ 39, 40 ch 206 SLA 1975; am § 4 ch 25 SLA 1976; am § 2 ch 59 SLA 1976; am § 11 ch 181 SLA 1976; am §§ 13, 106 ch 218 SLA 1976; am § 18 ch 220 SLA 1976; am § 9 ch 46 SLA 1977; am § 3 ch 140 SLA 1977; am § 54 ch 169 SLA 1978; am § 10 ch 59 SLA 1979; am § 23 ch 58 SLA 1980; am § 3 ch 84 SLA 1980; am §§ 49, 60 ch 94 SLA 1980; am § 15 ch 130 SLA 1980; am § 12 ch 131 SLA 1980; am § 15 ch 141 SLA 1980; am §§ 4, 5 ch 169 SLA 1980)

**Effect of amendments.** — The first 1976 amendment added paragraph (43) of subsection (a).

The second 1976 amendment inserted "as to suspension or revocation of a security guard's license under AS 18.65.400 — 18.65.490, and" in paragraph (23) of subsection (a) as it read prior to the 1977 amendment.

The third 1976 amendment repealed paragraph (22) of subsection (a).

The fourth 1976 amendment repealed paragraph (5) of subsection (a), substituted "Department of Commerce and Economic Development" for "Department of Commerce" in paragraphs (19), (21) and (38) of subsection (a), added "AS 06.20" to the end of paragraph (19), and added "AS 06.05" to the end of paragraph (21).

The fifth 1976 amendment added paragraph (44).

The first 1977 amendment added paragraph (45) to subsection (a).

The second 1977 amendment rewrote paragraph (23) in subsection (a).

The 1978 amendment, in subsection (a), repealed paragraphs (19) and (21), which read "Department of Commerce and Economic Development, under Alaska Small Loans Act (AS 06.20)" and "Department of Commerce and Economic Development, as to functions under Alaska Banking Code (AS 06.05)," respectively.

The 1979 amendment added paragraph (46) to subsection (a).

The first 1980 amendment repealed paragraph (17) of subsection (a).

The second 1980 amendment substituted "workers' compensation" for "workmen's compensation" in paragraph (a)(15).

The third 1980 amendment repealed paragraph (18) of subsection (a).

The fourth 1980 amendment added paragraph (47) of subsection (a).

The fifth 1980 amendment added paragraph (48) of subsection (a).

The sixth 1980 amendment added paragraph (49) of subsection (a).

The seventh 1980 amendment added paragraph (50) of subsection (a).

The eighth 1980 amendment added paragraph (51) of subsection (a), and repealed paragraphs (1) and (7) of subsection (a).

**Editor's note.** — AS 08.44.010, referred to in paragraph (27) of subsection (a), was repealed by § 4, ch. 197, SLA 1976. For present provisions concerning morticians, see AS 08.42.

**Legislative history reports.** — For legislative history report on ch. 58, SLA 1967 (SB 181), see House Journal (1967), pp. 537-538. For legislative history report on ch. 143, SLA 1968 (HB 707), see House Journal (1968), p. 836. For a report on ch. 46, SLA 1977 (HCSSB 261), see 1977 House Journal, p. 1019.

The list of boards and agencies set out in this section incorporates all changes to date, 1962 Op. Att'y Gen., No. 8.

A guide to a workable procedure for license revocation is found in the Alaska Administrative Act, ch. 143, SLA 1959 1960 Op. Att'y Gen., No. 27.

The legislature has expressly included the Board of Governors of the Alaska Bar Association as an agency subject to the adjudicative procedures of the Administrative Procedure Act (AS 44.62) in re Application of Peterson, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

**Administrative responsibility of Alaska Bar.** — While the supreme court ultimately reserves the authority to determine whether or not an applicant should be admitted to the bar, considerable administrative responsibility has been delegated to the Alaska Bar Association. In re Application of Peterson, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

**Chapter applies to judicial review and its scope under Workers' Compensation Act.** — Not all of this chapter, as it relates to workers'

compensation proceedings, has been repealed by implication. For example, the Alaska Workmen's [now Workers'] Compensation Act is silent as to judicial review and the scope of judicial review. This chapter therefore applies, since there is nothing in the Alaska Workmen's Compensation Act which covers the same ground or which is inconsistent with provisions in this chapter relating to judicial review and the scope of such review, 1959 Op. Att'y Gen., No. 24.

The legislature intended to substitute, upon the effective date of the Administrative Procedure Act, the judicial scope of review as provided therein for the judicial scope of review as provided in the Workmen's [now Workers'] Compensation Act. Manthey v. Collier, Sup. Ct. Op. No. 55 (File No. 94), 367 P.2d 884 (1962).

One supreme court case and two superior court cases indicate that the superior court is controlled by the Administrative Procedure Act in proceedings, or in a review of proceedings from the Alaska Workmen's [now Workers'] Compensation Board. See Manthey v. Collier, Sup. Ct. Op. No. 55 (File No. 94), 367 P.2d 884 (1962); Alaska Dep't of Health & Welfare v. Burdick, Superior Court First District, Juneau, Civil Action No. 8192-A, Op. dated April 18, 1960; Moore v. Jefferson, Superior Court Third District, Anchorage, Civil Action No. 60-934, Op. dated May 4, 1961.

But see Aleutian Homes v. Fischer, Sup. Ct. Op. No. 365 (File No. 668), 418 P.2d 769 (1966).

The Administrative Procedure Act (AS 44.62) is applicable to Workmen's [now Workers'] Compensation Board hearings except where otherwise expressly provided in the Workmen's [now Workers'] Compensation Act. Employers Com. Union Ins. Group v. Schuen, Sup. Ct. Op. No. 1008 (File No. 1884, 1895), 519 P.2d 819 (1974).

But this section and AS 44.62.450 were superseded with respect to workmen's compensation hearings by AS 23.30.115 and 23.30.135 of the Alaska Workmen's [now Workers'] Compensation Act 1959 Op. Att'y Gen., No. 24.

**Chapter governs all functions of Alcoholic Beverage Control Board.** — Since subsection (a) of this section does not limit the application of this chapter to "named functions" of the Alcoholic Beverage Control Board, as it does with several other agencies, it is clear that this chapter is intended to govern all functions of the board. Ketchikan Retail Liquor

Dealers Ass'n v. S. Op. No. 1963 (File (1979)).

An authorizer Alcoholic Beverage Board, in order to issue a license, a public hearing on such, was subject to this chapter. Ketchikan Retail Liquor Dealers Ass'n v. S. Op. No. 1963 (File (1979)).

Act applies to division of land. Administrative Procedure Act applies to actions. Lands, Shell Oil Petroleum Corp., 230 (Nov., 1967).

Such as least judicial review. Administrative Procedure Act, Division of Land, Act. Alyeska Service, Sup. Ct. Op. No. P.2d 1006 (1967).

But not to leases. — The Alaska Administrative Procedure Act does not apply to leases by the State. McCarey v. C. Resources, Sup. Ct. Op. No. 2075), 526 P.2d

Nor to promote AS 55.05.180, applicable to the and gas land under AS 38.05 Alaska L.J. No.

Nor to state personnel rules provisions of the Administrative Procedure Act Department of L.J. No. 2, p. 40

Nor to Per adjudicative Administrative Board, which has of the list of agencies in accordance therewith. Administration of p. 497 (June, 11

Nor to local Administrative express terms of boards. Matan Lum. Sup. Ct. 2241, 2250), 53

**Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).**

An authorized proceeding of the Alcoholic Beverage Control Board to consider a license application constituted a public hearing on the application, and as such, was subject to the requirements of this chapter. *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).*

**Act applies to actions taken by division of lands. —** The Alaska Administrative Procedure Act (AS 44.62) applies to actions taken by the Division of Lands. *Shell Oil Co. v. Pan American Petroleum Corp., 5 Alaska L.J. No. 11, p. 230 (Nov., 1967).*

**Such as leasing procedures. —** The judicial review portions of the Administrative Procedure Act govern leasing procedures conducted by the Division of Lands under the Alaska Land Act. *Alaska Ski Corp. v. Holdsworth, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).*

**But not to termination of grazing leases. —** The adjudicatory provisions of the Alaska Administrative Procedure Act do not apply to the termination of grazing leases by the state Division of Lands. *McCarrey v. Commissioner of Natural Resources, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).*

**Nor to promulgation of order under AS 38.05.180. —** This article is not applicable to the promulgation of an oil and gas land classification order issued under AS 38.05.180. *Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).*

**Nor to state personnel rules. —** State personnel rules are not subject to the provisions of the Alaska Administrative Procedure Act (AS 44.62). *Canoose v. Department of Administration, 6 Alaska L.J. No. 2, p. 40 (Feb., 1968).*

**Nor to Personnel Board. —** The adjudicatory provisions of the Alaska Administrative Procedure Act (AS 44.62) are not applicable to the state Personnel Board, which has been specifically left out of the list of agencies required to act in accordance therewith. *Canoose v. Department of Administration, 7 Alaska L.J. No. 6, p. 497 (June, 1969).*

**Nor to local school boards. —** The Administrative Procedure Act by its express terms does not apply to local school boards. *Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File No. 2241, 2250), 538 P.2d 994 (1975).*

**Nor to boards of adjustment. —** Boards of adjustment are not included on the list in subsection (a) of agencies, boards and administrative bodies specifically subject to this chapter. *Galt v. Stanton, Sup. Ct. Op. No. 1805 (File No. 3520), 591 P.2d 960 (1979).*

**The purpose of the adjudication procedure is to prescribe a fair procedure for determinations of fact; this is indicated by subsection (d)(4), which excepts from the adjudication procedure "related matters which in their context do not relate to procedure." 1963 Op. Att'y Gen., No. 10.**

**The policy of subsection (d) of this section is to limit the adjudication procedure set forth in the Administrative Procedure Act to procedural matters, and matters regarding which the agency must make substantial determinations of fact. 1963 Op. Att'y Gen., No. 10.**

**The words of subsection (d), "in a case of reinstatement or reduction of penalty," refer to AS 44.62.550, which provides that a person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of denial of the similar petition. 1963 Op. Att'y Gen., No. 10.**

**The accusation and hearing procedure set forth in the Administrative Procedure Act is not applicable to the suspension or revocation of liquor licenses by the Alcoholic Beverage Control Board after a conviction of a licensee of certain offenses as set forth in AS 04.15.100(h). 1963 Op. Att'y Gen., No. 10.**

**A liquor licensee is not entitled to a formal accusation and hearing by the board before his license can be suspended or revoked under AS 04.15.100 on the ground that "a case of reinstatement or reduction of penalty" is involved under subsection (d) of this section. 1963 Op. Att'y Gen., No. 10.**

**The suspension and revocation of liquor licenses by the Alcoholic Beverage Control Board under AS 04.15.100 is clearly exempted by subsection (d) of this section from a requirement of filing a formal accusation followed by a formal hearing. 1963 Op. Att'y Gen., No. 10.**

**The provisions of AS 04.15.100, authorizing the suspension or revocation of the liquor license upon conviction by a licensee of certain offenses, fall clearly within the scope of subsection (d)(3) as a statutory penalty provision relating to the**

suspension and revocation of licenses. 1963 Op. Att'y Gen., No. 10.

Under subsection (d), a hearing is not required before an alcoholic beverage dispensary license is suspended, although it would be permissible if the Alcoholic Beverage Control Board chose to grant it. *Frontier Saloon, Inc. v. Alcoholic Beverage Control Bd.*, Sup. Ct. Op. No. 1062 (File No. 1984), 524 P.2d 657 (1974).

The exceptions set forth in subsection (d) refer to situations in which there is no need for the agency to make a determination of fact since such facts have been determined by the courts. 1963 Op. Att'y Gen., No. 10.

Where the power to suspend or revoke a license is implied by the statutory authority to issue a license, it is clear that suspension or revocation may be ordered only after formal accusation and hearing as required by the Administrative Procedure Act, 1963 Op. Att'y Gen., No. 10.

**Burden of proof.** — While the Alaska Administrative Procedure Act, which, pursuant to subsection (a) of this section, applies to proceedings before the Alcoholic Liquor Control Board, does not specifically state who has the burden of proof in administrative adjudications, it does provide in AS 44.62.460(e) that "Nothing herein shall be construed to alter the ordinary rules of burden of proof of judicial proceedings in Alaska." The foregoing provision coupled with the fact that under the Administrative Procedure Act a hearing to determine whether a license should be granted, issued or renewed shall be initiated by filing a "statement of issues" which must be served upon the per-

**Sec. 44.62.340. Delegation of power by agencies.** (a) An agency listed in AS 44.62.330 may delegate the power to act, to hear and to decide, unless expressly prohibited by law.

(b) In a law enacted after April 29, 1959, where the word "agency" alone is used, the power to act may be delegated by the agency, and where the words "agency itself" are used, the power to act may not be delegated unless a statute relating to that agency authorizes the delegation of its power to hear and decide. (§ 1(1) (ch 2) ch 143 SLA 1959)

**Alaska Transportation Commission exempted.** — Alaska Statute 42.07.151(a) specifically exempts the Alaska Transportation Commission from the requirements of both this section, forbidding the delegation of the hearing power absent

express statutory authorization, and AS 44.62.500, requiring the hearing officer to prepare a proposed decision and forbidding members of the applicable government agency from voting on the decision if they have not heard the evidence. Alaska

son seeking the issuance or renewal of the license as the respondent (AS 44.62.370, AS 44.62.380), and against which the respondent may defend by filing a notice of defense (AS 44.62.390) impelled the supreme court to the conclusion that the burden of proof on the issue raised by the statement of issues was upon the state. *Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc.*, Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

Suspensions and revocations under AS 04.05.030(b) can be made only after full compliance with the adjudication procedure in this article, and the summary procedure set forth in AS 04.15.100(b) does not apply. 1963 Op. Att'y Gen., No. 19.

**Appeal procedure under Alaska Employment Security Act in relation to Administrative Procedure Act (AS 44.62).** — See *Employment Security Div. v. Coleman*, 6 Alaska L.J. No. 2, p. 46 (Feb. 1968).

Quoted in *Wilson v. Employment Security Comm'n*, 6 Alaska L.J. No. 3, p. 93 (March, 1968); *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969).

Stated in *Forth v. Northern Stevedoring & Handling Corp.*, Sup. Ct. Op. No. 169 (File No. 327), 385 P.2d 944 (1963); *Union Oil Co. v. State Dept of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Cited in *Mobil Oil Corp. v. Local Boundary Comm'n*, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Am. Jur. 2d reference. — 1 Am. Jur. 2d, Administrative Law, § 138 et seq.

express statutory authorization, and AS 44.62.500, requiring the hearing officer to prepare a proposed decision and forbidding members of the applicable government agency from voting on the decision if they have not heard the evidence. Alaska

*Transp. Comm'n v. No. 1964 (File No. 1979).*

Cited in *In re A*

**Sec. 44.62.350. governor shall officer, with e hearings under duties in conn laws.**

(b) An agen as hearing of particular ag additional qu

(c) A heari hearings und have been ad before his ap 1966)

Stated in *A Control Bd. v. I No. 208 (File 1964).*

Cited in *In Sup. Ct. Op. N P 2d 304 (1972*

**Sec. 44.62.350. right, auth limited or tion shall and concis is charge specify th violated, guage of public of agency may be**

Section nations tion re contemp agency 1963 O And enterr

Transp. Comm'n v. Gandia, Sup. Ct. Op. No. 1964 (File No. 3469), 602 P.2d 402 (1979).

Cited in In re Application of Peterson,

Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

Am. Jur. 2d reference. — Am. Jur. 2d, Administrative Law, ¶ 21-226.

**Sec. 44.62.350. Appointment of hearing officers.** (a) The governor shall assign a qualified, unbiased, and impartial hearing officer, with experience in the general practice of law, to conduct hearings under this chapter. The hearing officer may perform other duties in connection with the administration of this chapter and other laws.

(b) An agency with hearing officers may continue their employment as hearing officers on an unbiased and impartial basis within the particular agency and may hire additional officers and prescribe additional qualifications.

(c) A hearing officer hired after April 29, 1959, except to conduct hearings under the Alaska Employment Security Act (AS 23.20), shall have been admitted to practice law for at least two years immediately before his appointment. ( § 3 (ch 2) ch 143 SLA 1959; am § 7 ch 5 SLA 1966)

Stated in Alaska Alcoholic Beverage Control Bd v Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

Cited in In re Application of Peterson, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972); Ketchikan Retail Liquor

Dealers Ass'n v State, ABC Bd, Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, ¶¶ 407, 409, 434-440.

**Sec. 44.62.360. Accusation.** A hearing to determine whether a right, authority, license or privilege should be revoked, suspended, limited or conditioned is initiated by filing an accusation. The accusation shall (1) be a written statement of charges setting out in ordinary and concise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare his defense; (2) specify the statute and rule which the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and rule; and (3) be verified, unless made by a public officer acting in his official capacity or by an employee of the agency on whose behalf the proceeding is to be held, the verification may be on information and belief. ( § 4 (ch 2) ch 143 SLA 1959)

Section contemplates determinations of fact by agency. — This section regarding a formal accusation, contemplates the proceeding in which the agency must make determinations of fact 1963 Op. Att'y Gen., No. 10

And is inapplicable where court has entered judgment. — The accusation

provision is obviously inapplicable in a case in which a court of competent jurisdiction has entered a judgment regarding the acts or omissions for which a penalty may be inflicted. 1961 Op. Att'y Gen., No. 10

Sec. 44.62.370. Statement of issues. (a) A hearing to determine whether a right, authority, license or privilege should be granted, issued or renewed is initiated by filing a statement of issues. The statement of issues is a written statement specifying (1) the statute and rule with which the respondent must show compliance by producing proof at the hearing, and (2) particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought.

(b) The statement of issues shall be verified unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held. The verification may be on information and belief.

(c) The statement of issues shall be served in the same manner as an accusation, except that if the hearing is held at the request of the respondent (1) AS 44.62.380 and 44.62.390 do not apply, and (2) the statement of issues together with the notice of hearing shall be delivered or mailed to the parties as provided in § 420 of this chapter. (§ 5 (ch 2) ch 143 SLA 1959)

When requirement of written statement inapplicable. — The requirement of the written statement of issues is inapplicable to a case in which the court has already found that the party involved has not complied with the statute or rule. 1963 Op. Att'y Gen. 10.

Quoted in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, §§ 417, 715, 717, 727.

Sec. 44.62.380. Service of accusation. (a) Upon filing the accusation, the agency

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

(2) shall include with the accusation a post card or other form entitled "Notice of Defense" which, when signed by or on behalf of the respondent and returned to the agency, acknowledges service of the accusation and constitutes a notice of defense under AS 44.62.390;

(3) shall include in or with the copy of the accusation a statement that respondent may request a hearing by filing a notice of defense as provided in AS 44.62.390 within 15 days after the accusation is served on him and that failure to do so constitutes a waiver of his right to a hearing;

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

(b) The statement to respondent shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, there insert name of

agency) request enclosed a notice and add (c) Th the resp order ad the ager mail, fil proved i mail is i file his i and if a materia with th

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agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense," or by delivering or mailing a notice of defense as provided by AS 44.62.390 to: (here insert name and address of agency).

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. However, no order adversely affecting the rights of the respondent may be made by the agency unless the respondent is served personally or by registered mail, files a notice of defense, or otherwise appears. Service may be proved in the manner authorized in civil actions. Service by registered mail is effective if a statute or agency rule requires the respondent to file his address with the agency and to notify the agency of a change, and if a registered letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency. (§ 6 (ch 2) ch 143 SLA 1959)

Am. Jur. 2d reference. — 2 Am. Jur.  
2d, Administrative Law, § 359-364

**Sec. 44.62.390. Notice of defense.** (a) Within 15 days after service upon him of the accusation, the respondent may file with the agency a notice of defense. In the notice he may

- (1) request a hearing;
- (2) object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed;
- (3) object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense;
- (4) admit the accusation in whole or in part;
- (5) present new matter by way of defense.

(b) Within the time specified the respondent may file one or more notices of defense upon any or all of the grounds set out in (a) of this section but all of the notices shall be filed within that period unless the agency in its discretion authorizes the filing of a later notice.

(c) The respondent is entitled to a hearing on the merits if he files a notice of defense, and the notice of defense is considered a specific denial of all parts of the accusation not expressly admitted. Failure to file the notice constitutes a waiver of the respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Unless objection is taken as provided in (a) (3) of this section, all objections to the form of the accusation are waived.

(d) The notice of defense shall be in writing, signed by or on behalf of the respondent, and shall state his mailing address. It need not be verified or follow a particular form. (§ 7 (ch 2) ch 143 SLA 1959)

Cited in Ketchikan Retail Liquor Dealers Ass'n v. State ABC Bd., Sup. Ct. Op. No. 1963 (File No. J697), 602 P.2d 434 (1979).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, § 417.

Sec. 44.62.400. Amended or supplemental accusation. At any time before the matter is submitted for decision the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified of the filing. If the amended or supplemental accusation presents new charges the agency shall give the respondent a reasonable opportunity to prepare his defense to it, but he is not entitled to file a further pleading unless the agency in its discretion so orders. New charges are considered controverted. Objections to the amended or supplemental accusation may be made orally and shall be noted in the record. (§ 8 (ch 2) ch 143 SLA 1959)

Sec. 44.62.410. Time and place of hearing. The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Southeastern Senate District; in Anchorage if the transaction occurred or the respondent resides within the South Central Senate District; in Fairbanks or Nome, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Central or Northwestern Senate Districts. The agency may, if the transaction occurred in a senate district other than that of respondent's residence, select the place of hearing appropriate for either district. The agency may select a different place nearer the place where the transaction occurred or where the respondent resides, or the parties by agreement may select any place in the state. (§ 9 (ch 2) ch 143 SLA 1959)

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, § 405

Sec. 44.62.420. Form of notice of hearing. (a) The agency shall deliver or mail a notice of hearing to all parties at least 10 days before the hearing. The hearing shall not be held before the expiration of the time within which the respondent is entitled to file a notice of defense.

(b) The notice to respondent shall be substantially in the following form but may include other information:

You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the . . . . . day of . . . . ., 19 . . . . , at the hour of . . . . ., upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity

to cross-examine subpoenaed production insert appropriate

Sec. 44.62.420. Agency request of the hearing sitting at

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to cross-examine all witnesses testifying against you' You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office or agency). (§ 10 (ch 2) ch 143 SLA 1959)

**Sec. 44.62.430. Subpoena.** (a) Before the hearing begins the agency shall issue subpoenas and subpoenas duces tecum at the request of a party in accordance with the rules of civil procedure. After the hearing begins the agency hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. No witness is obliged to attend at a place out of the election district in which he resides unless the distance is less than 100 miles from his place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

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

(1) fees, except a witness who is an officer or employee of the state or a political subdivision of the state;

(2) mileage in the same amount and under the same circumstances as prescribed by law for a witness in a civil action in a superior court;

(3) an additional fee and mileage to a per diem compensation of \$15 for expenses of subsistence for each day of actual attendance and for each day necessarily occupied in traveling to and from the hearing, if the witness attends a hearing at a point so far removed from his residence as to prohibit return to his residence from day to day.

(d) Fees, mileage, and expenses of subsistence shall be paid by the party at whose request the witness is subpoenaed. (§ 11 (ch 2) ch 143 SLA 1959)

AS 44.62.430, 44.62.440 and 44.62.460 inapplicable to workers' compensation hearings. — AS 23.30.115 and 23.30.135 cover much the same ground as AS 44.62.430, 44.62.440 and AS 44.62.460 of the earlier Administrative Procedure Act. This would have been unnecessary if the intent had been that the Administrative Procedure Act should

govern the procedure for hearings in workers' compensation hearings 1959 Op. Att'y Gen., No. 24

Applied in *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1978).

Am. Jur. 2d reference. — 1 and 2 Am. Jur. 2d, Administrative Law, §§ 89-91, 263-272

**Sec. 44.62.440. Depositions.** (a) On verified petition of a party, an agency may order that the testimony of a material witness residing inside or outside the state be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set out (1) the nature of the pending proceeding; (2) the name and address of the witness whose testimony is desired; (3) a showing of the

materiality of his testimony; (4) a showing that the witness will be unable or cannot be compelled to attend; and (5) a request for an order requiring the witness to appear and testify before an officer named in the petition for that purpose.

(b) If the witness resides outside the state and if the agency orders the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition for the taking of the deposition in the superior court nearest to the principal office of the agency. The proceedings on this order shall be in accordance with provisions governing the taking of depositions in the superior court in a civil action. (§ 12 (ch 2) ch 143 SLA 1959)

AS 44.62.430, 44.62.440 and 44.62.460 — See same catchline in note to AS 44.62.430.

**Sec. 44.62.450. Hearings.** (a) A hearing in a contested case shall be presided over by a hearing officer. The agency itself shall determine whether the hearing officer hears the case alone or whether the agency hears the case with the hearing officer.

(b) If the agency hears the case the hearing officer shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the agency on matters of law. The agency shall exercise all other powers relating to the conduct of the hearing, but may delegate any or all of these other powers to the hearing officer. If the hearing officer hears a case alone, he shall exercise all powers relating to the conduct of the hearing.

(c) A hearing officer or agency member shall voluntarily disqualify himself and withdraw from a case in which he cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an agency member the issue shall be determined by the other members of the agency. If the request concerns the hearing officer, the issue shall be determined by the agency when the agency hears the case with the hearing officer, and by the hearing officer when he hears the case alone. No agency member may withdraw voluntarily or be disqualified if his disqualification would prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter or recorder, or other adequate means of assuring an accurate record. (§ 13 (ch 2) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.210. — See 1960 Op. Att'y Gen., No. 7. And distinction between "adjudicative facts" and "legislative facts". — See 1960 Op. Att'y Gen., No. 7.

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This section and AS 44.62.330 were superseded with respect to workers' compensation hearings by the Alaska Workmen's [now Workers'] Compensation Act. 1959 Op. Att'y Gen., No. 24.

This article was intended to be applicable to quasi-judicial proceedings. 1960 Op. Att'y Gen., No. 7.

Such as a dispute as to adjudicative fact under Banking Code. — If there is a dispute as to an adjudicative fact under the Alaska Banking Code, a hearing would be required under this chapter. 1960 Op. Att'y Gen., No. 7.

And not to quasi-legislative proceedings. — See 1960 Op. Att'y Gen., No. 7.

Which are governed by article 4. — Article 4 of this chapter sets forth the procedure which must be followed when an

agency exercises its quasi-legislative power. 1960 Op. Att'y Gen., No. 7.

Hearing equivalent to trial. — This article provides for adjudication and the kind of hearing which would be designated a trial. 1960 Op. Att'y Gen., No. 7.

Quoted in Alaska Redi-Mix, Inc. v. Alaska Workmen's Compensation Bd., Sup. Ct. Op. No. 359 (File No. 692), 417 P.2d 595 (1966).

Stated in Alaska Alcoholic Beverage Control Bd. v. Malcolm, Inc., Sup. Ct. Op. No. 208 (File No. 363), 391 P.2d 441 (1964).

Cited in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, § 397-426.

**Sec. 44.62.460. Evidence rules.** (a) Oral evidence may be taken only on oath or affirmation.

(b) Each party may (1) call and examine witnesses; (2) introduce exhibits; (3) cross-examine opposing witnesses on matter relevant to the issues, even though that matter was not covered in the direct examination; (4) impeach a witness regardless of which party first called the witness to testify; and (5) rebut the evidence against himself.

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

(d) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule which makes improper the admission of the evidence over objection in a civil action. Hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded.

(e) Nothing in this chapter may be construed to alter the ordinary rules of burden of proof of judicial proceedings in the state. (§ 14 (ch 2) ch 143 SLA 1959; am § 8 ch 5 SLA 1966)

Cross reference. — As to procedure before the Alaska Workmen's [now Workers'] Compensation Board, see AS 23.30.135.

AS 44.62.430, 44.62.440 and 44.62.460 inapplicable to workers' compensation hearings. — See same catchline in note to AS 44.62.430.

The Administrative Procedure Act (AS 44.62) is applicable to Workmen's [now Workers'] Compensation Board hearings except where otherwise expressly provided in the Workmen's [now Workers'] Compensation Act. Employers Com Union Ins Group v. Schoen, Sup Ct Op No 1008 (File Nos 1884, 1895), 519 P 2d 819 (1974)

Alaska's Administrative Procedure Act is applicable to Workmen's [now Workers'] Compensation Board hearings. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Subsection (d) applies to compensation proceedings. *Cook v. Alaska Workmen's Compensation Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970).

And it specifically allows for the consideration of hearsay evidence. *Cook v. Alaska Workmen's Compensation Bd.*, Sup. Ct. Op. No. 644 (File No. 1168), 476 P.2d 29 (1970).

But it does not abrogate right to cross-examination. — Subsection (d) of this section and AS 23.30.135(a), statutes permitting informal administrative proceedings, were never intended to, and could not, abrogate the right to cross-examination in an adjudicatory proceeding. *Employers Com Union Ins Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974); *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Such right is absolute. — The statutory right to cross-examination is absolute and applicable to the Alaska Workmen's [now Workers'] Compensation Board. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

When right to cross-examine not waived. — A party does not waive his right of cross-examination when to exercise that right would have required that party to bear the initial cost of producing the witness at the hearing. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Given the absence of any Workmen's [now Workers'] Compensation Board rule pertaining to medical reports which parallels its affidavit rule, and in light of

the absence of a system requiring notice of intention to cross-examine to be filed before hearing when medical reports are served upon opposing parties pursuant to the Board's current medical report rules, the superior court erred in its conclusion that appellants had waived their right to cross-examine the doctors who had authored the reports. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Failing to engage in discovery is not a waiver of the right to challenge the evidence which is adduced at a Workmen's [now Workers'] Compensation Board hearing. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Eight AAC § 45.120(c) parallels subsection (b) of this section. *Employers Com Union Ins Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

The supreme court must interpret subsection (b) and 8 AAC § 45.120(c) identically. *Employers Com Union Ins Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

Burden of proof. — See same catchline in note to AS 44.62.330.

Applied in *Employers Com Union Ins Cos. v. Schoen*, Sup. Ct. Op. No. 1325 (File No. 2616), 554 P.2d 1146 (1976).

Quoted in *Brown v. Northwest Airlines, Inc.*, Sup. Ct. Op. No. 495 (File No. 901), 444 P.2d 529 (1968).

Cited in *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Am. Jur. 2d and ALR references. — 2 Am. Jur. 2d Administrative Law, §§ 376-396.

Comment Note on hearsay evidence in proceedings before state administrative agencies. 36 ALR3d 12.

**Sec. 44.62.470. Evidence by affidavit.** (a) At any time 10 or more days before a hearing or a continued hearing, a party may mail or deliver to the opposing party a copy of an affidavit which he proposes to introduce in evidence, together with a notice as provided in (b) of this section. Unless the opposing party, within seven days after that mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine the affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to

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cross-examine an affiant is not given after request for it is made, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in (a) of this section shall be substantially in the following form:

The accompanying affidavit of (here insert name of affiant) will be introduced as evidence at the hearing in (here insert title of proceeding). (Here insert name of affiant) will not be called to testify orally and you may not question him unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective your request must be mailed or delivered to (here insert name of proponent or his attorney) before (here insert a date eight days after the date of mailing or delivering the affidavit to the opposing party). (§ 15 (ch 2) ch 143 SLA 1959)

Cited in *Employers Com. Union Ins.* (File Nos. 1884, 1895), 519 P.2d 819 Group v. Schoen, Sup. Ct. Op. No. 1008 (1974).

**Sec. 44.62.480. Official notice.** In reaching a decision official notice may be taken, either before or after submission of the case for decision, of a generally accepted technical or scientific matter within the agency's special field, and of a fact which is judicially noticed by the courts of the state. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to in the record, or appended to it. A party present at the hearing shall, upon request, be given a reasonable opportunity to refute the officially noticed matters by evidence or by written or oral presentation of authority. The agency shall determine the manner of this refutation. (§ 16 (ch 2) ch 143 SLA 1959)

Am. Jur. 2d reference. — 2 Am. Jur. 2d, *Administrative Law*, §§ 384, 385

**Sec. 44.62.490. Amendment of accusation after submission.** The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced by it unless the case is reopened to permit the introduction of additional evidence in his behalf. If prejudice is shown, the agency shall reopen the case to permit the introduction of additional evidence. (§ 17 (ch 2) ch 143 SLA 1959)

**Sec. 44.62.500. Decision in a contested case.** (a) If a contested case is heard before an agency (1) the hearing officer who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency; and (2) a member of the agency who has not heard the evidence may not vote on the decision.

(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in a form which may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record with the lieutenant governor and a copy of the proposed decision shall be served by the agency on each party in the case and his attorney. The agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in (b) of this section the agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in (b) of this section upon the additional evidence and the transcript and other papers which are part of the record of the earlier hearing. A copy of the proposed decision shall be furnished to each party and his attorney as prescribed by (b) of this section. The agency may not decide a case provided for in this subsection without giving the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, no agency member may vote unless he has heard the additional oral evidence. (18 (ch 2) ch 143 SLA 1959)

Alaska Transportation Commission exempted. — AS 42.07.151(a) specifically exempts the Alaska Transportation Commission from the requirements of both AS 44.62.340 forbidding the delegation of the hearing power absent express statutory authorization, and this section requiring the hearing officer to prepare a proposed decision and forbidding members of the applicable government agency from

voting on the decision if they have not heard the evidence. Alaska Transp Comm'n v. Gonda, Sup Ct Op No 1964 File No 3409, 602 P 2d 602 (1979).

Cited in In re Application of Peterson, Sup Ct Op No 813 File No 1966, 199 P 2d 304 (1973).

Am. Jur 2d reference. — 3 Am Jur 2d Administrative Law 11 634-472

Sec. 44.62.510. Form and effect of decision. (a) A decision shall be written and shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference to them. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

(b) A decision in a primarily judicial proceeding has retroactive effect in the same manner as a decision of a state court. (18 (ch 2) ch 143 SLA 1959)

Decision must contain findings of fact. — Under the Administrative Procedure Act a decision of the Workmen's Compensation Board is required to contain findings of fact. *Newson v. Northwest Airlines Inc.*, Sup Ct Op No

495 (File No 80), 111 P 2d 529 (1966).

Findings must be made pursuant to this section and AS 44.62.570(b). — Findings of fact supporting compensation awards must be made pursuant to subsection (a) of this section and AS

44.62.570(b).  
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44.62.570(b). *Hewing v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

**Findings need not accompany acceptance of petition for borough incorporation.** — The supreme court found no statutory command that findings of fact accompany acceptance of a petition for borough incorporation. *Mobile Oil Corp. v. Local Boundary Comm'n.*, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Former AS 07.10.110, which permitted judicial review of the local boundary commission's acceptance of a petition to incorporate a proposed organized borough "in the manner and within the scope of review prescribed by the Administrative Procedure Act (AS 44.62)," when read together with this section, did not create an obligation on the part of the local boundary commission to make findings of fact. *Mobile Oil Corp. v. Local Boundary Comm'n.*, Sup. Ct. Op. No. 989 (File No. 194), 518 P.2d 92 (1974).

**Failure to follow section constitutes abuse of discretion.** — Where the

written decision of the Workmen's (now Workers') Compensation Board contained no such findings as required by this section, the board abused its discretion. *Manthey v. Collier*, Sup. Ct. Op. No. 55 (File No. 94), 367 P.2d 884 (1962).

**Disclosure of basis for determination of motions to dismiss.** — The Workmen's (now Workers') Compensation Board should either file a separate order or in its decision make findings which disclose the basis for its determination of motions to dismiss. *Morrison-Knudsen Co. v. Verveen*, Sup. Ct. Op. No. 345 (File No. 610), 414 P.2d 536 (1966); *Alaska Red-Mix, Inc. v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 359 (File No. 692), 417 P.2d 395 (1966).

Cited in *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 3897), 602 P.2d 434 (1979).

Am. Jur. — 3 reference. — 2 Am. Jur. 2d, *Administrative Law* §§ 460-462, 473-505.

**Sec. 44.62.520. Effective date of decision.** (a) A decision becomes effective 30 days after it is delivered or mailed to the respondent unless (1) a reconsideration is ordered within that time, (2) the agency itself orders that the decision become effective sooner, or (3) a stay of execution is granted for a particular purpose and not to postpone judicial review.

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

(c) If the respondent was required to register with a public officer, a notification of suspension or revocation shall be sent to that officer after the decision becomes effective. (b) 20 (ch 2) ch 143 SLA 1959)

Quoted in *Pac. American Petroleum Co. v. State Dept. of Natural Resources*, Sup. Ct. Op. No. 555 (File No. 918), 453 P.2d 12 (1969); *Union*, 2023- 326 P.2d 197 (1974).

**Sec. 44.62.530. Default.** If the respondent does not file a notice of defense or does not appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without notice to the respondent. If the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence. Nothing in this chapter may be construed to deprive the respondent of the right to make a showing by way of mitigation. (§ 21 (ch 2) ch 143 SLA 1969)

Am. Jur. 3d references. — 7 Am. Jur. 3d, Administrative Law, § 305, 306

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

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in AS 44.62.500. If oral evidence is introduced before the agency, no agency member may vote unless he has heard the evidence. (§ 22 (ch 2) ch 143 SLA 1969)

Subsection (a) applies only to reconsideration by the specific "agency" that actually made the decision, not the more comprehensive agency Union Oil Co v State Dept of Natural Resources, Sup Ct Op No 1087 (File No 2025), 526 P 2d 1267 (1974).

Intra-departmental review not precluded. — Subsection (a) does not preclude the kind of intra-departmental review provided where the commissioner of the Department of Natural Resources reverses the decision of the director of the division of lands, denying an application for discovery well certification, particularly where such review is authorized by statute Union Oil Co v State Dept of Natural Resources, Sup Ct Op No 1087 (File No 2025), 526 P 2d 1267 (1974).

Even though the administrative code provisions refer to the commissioner's action on petition for reconsideration, where the director of the division of lands has denied an application for discovery well certification, as "reconsideration," the

actual process is that of the "review" authorized by AS 20.05.020(b); Union Oil Co v State Dept of Natural Resources, Sup Ct Op No 1087 (File No 2025), 526 P 2d 1267 (1974).

"Review" and "reconsideration" compared. — Both "review" and "reconsideration" in a broad sense refer to a re-examination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, "review" implies a consideration of a case by one dealer than the entity which initially decides it, while "reconsideration" implies a re-examination, and possibly a different decision, of a case by the entity which initially decides it Union Oil Co v State Dept of Natural Resources, Sup Ct Op No 1087 (File No 2025), 526 P 2d 1267 (1974).

Time limitation on right to seek judicial review. — Subsection (a) and AS 44.62.560(a) seem to combine to allow only 30 days after delivery or mailing of a decision within which to seek review in the

court, when responded to within 30 days. Union Oil Co v State Dept of Natural Resources, No. 2025, 52. Quoted in Corp. v. Shell (File No 918)

**Sec. 44.62.550. Finality.** A party aggrieved by the effect of a decision shall be permitted to file a petition for review of the final decision. The provisions of this chapter shall not apply to a decision of a different agency. (§ 21 (ch 2) ch 143 SLA 1969)

The word "final" means "final as to the merits of the case," not "final as to the penalty." The provisions of this chapter shall not apply to a decision of a different agency.

**Sec. 44.62.560. Right of appeal.** A party aggrieved by a decision of an agency shall be permitted to file a petition for review of the final decision. The provisions of this chapter shall not apply to a decision of a different agency.

(c) The provisions of this chapter shall not apply to a decision of a different agency.

courts, where the agency has not responded to a petition for reconsideration within 30 days after delivery of its decision. *Peterson Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Quoted in *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 818), 455 P.2d 12 (1969).

Cited in *In re Application of Peterson*, Sup. Ct. Op. No. 813 (File No. 1086), 499 P.2d 304 (1972); *Jeff's v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Public Administrative Law, ¶ 520-528.

**Sec. 44.62.550. Petition for reinstatement or reduction of penalty.** A person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the attorney general of the filing of the petition, and the attorney general and the petitioner shall be given an opportunity to present either oral or written argument before the agency. The agency shall decide the petition, and the decision shall include the reasons for the decision. This section does not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty. (1) 23 (ch 2) ch 143 SLA 1959.

The words of AS 44.62.550(d), "in a case of reinstatement or reduction of penalty," refer to this section, which provides that a person whose license is revoked or suspended may petition the agency for reinstatement or reduction of penalty after one year from the effective date of the decision or from the date of denial of the similar petition. 1983 Op. Atty. Gen., No. 10.

Hearing necessary. — A hearing to determine whether a penalty should be reduced or reinstated is necessary under this section, but, use such a determination requires the agency to make findings of fact regarding conditions which have changed since the imposition of the penalty at least one year previous. 1983 Op. Atty. 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 references.** — As to applicability of this chapter to proceedings of the Department of Environmental Conservation under AS 30.25, see AS 30.25.320 and note thereto.

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 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 987 (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 987 (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 987 (File No. 1870), 516 P 2d 408 (1973)

**Applicable standard for review of agency determination.** — See *Mukluk Freight Lines v Nabors Alas Drilling,*

*Inc*, Sup Ct Op No 967 (File No. 1870), 516 P 2d 408 (1973)

The heading of article 8, "Administrative Adjudications," is not determinative of whether this section and AS 44.62.570 apply solely to adjudicatory proceedings, since such headings are not part of the law of Alaska. *Ketchikan Retail Liquor Dealers Ass'n v State, ABC Bd*, Sup Ct Op No 1963 (File No. 3697), 602 P 2d 434 (1979)

**Action of the Alcoholic Beverage Control Board** in considering and approving a license application was an administrative adjudication. *Ketchikan Retail Liquor Dealers Ass'n v State, ABC Bd*, Sup Ct Op No 1963 (File No. 3697), 602 P 2d 434 (1979)

**Who may appeal order.** — Although this section does not specify who may appeal the order, it is interpreted to create a right of appeal in the parties to an administrative hearing. *Ketchikan Retail Liquor Dealers Ass'n v State, ABC Bd*, Sup Ct Op No 1963 (File No. 3697), 602 P 2d 434 (1979)

**"Parties"** — Persons permitted to appear at a public hearing authorized by AS 04.05.030(c) were parties to that proceeding. *Ketchikan Retail Liquor Dealers Ass'n v State, ABC Bd*, Sup Ct Op No 1963 (File No. 3697), 602 P 2d 434 (1979)

**Necessary parties.** — It is too broad a reading of this section to conclude that the phraseology "final administrative order" manifests a legislative intent that the director of the division of lands, or the State of Alaska, are necessary parties to any appeal from the director's grant or rejection of an application for royalty allowance once the same has been contested. *Pan American Petroleum Corp v Shell Oil Co*, Sup Ct Op No 883 (File No. 918), 455 P 2d 12 (1969)

Time limits and subject and subsection combine to allow or mailin to seek review agency has n reconsideration of its decision. Dept of Nat No. 1087 (File 1974).

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"Review" and "reconsideration" compared. — Both "review" and "reconsideration" in a broad sense refer to a re-examination of acts or a course of proceedings. But as normally used in the context of administrative adjudication, "review" implies a consideration of a case by one other than the entity which initially decides it, while "reconsideration" implies a re-examination, and possibly a different decision, of a case by the entity which initially decides it. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Judicial review without exhaustion of remedies. — *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969), establishes the propriety of seeking judicial review of a division of lands decision without exhausting further remedies within the Department of Natural Resources. But it does not prohibit the pursuit of further remedies within the department, where those remedies exist pursuant to statutory authority and promulgated regulations, such as AS 38.05.020 and 11 AAC 516.32. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

There are situations in which one may possess the alternatives of either seeking judicial review directly from a decision of the division of lands or seeking review by the commissioner and then invoking judicial review. *Union Oil Co. v. State Dep't of Natural Resources*, Sup. Ct. Op. No. 1087 (File No. 2025), 526 P.2d 1357 (1974).

Failure to file an appeal within strict time limitations does not create a jurisdictional defect. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Extension of time limitations for filing appeal is procedural. — The superior court's decision in extending the time

limitations for filing an appeal only involved a procedural matter and was entirely proper since, in analogous procedural matters, Alaska Civ. R. 94 permits a superior court to relax the filing deadlines provided in the civil rules. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

No abuse of discretion in relaxing 30-day requirement. — Due to the confusion concerning the time limitations for appealing administrative decisions, the trial court did not abuse its discretion in relaxing the 30-day requirement of this section. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

For express authority to the superior court to relax the time limitation for appeals from administrative boards, see Alaska App. R. 45(i). *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

Initiation of review of order of Workers' Compensation Board. — Where a party to a proceeding before the Alaska Workmen's (now Workers') Compensation Board seeks review in superior court of a board order, such review must be initiated by the injunction procedures made obligatory by AS 23.30.125(c). *Aleutian Homes v. Fischer*, Sup. Ct. Op. No. 365 (File No. 668), 418 P.2d 789 (1966).

Complaint for injunctive relief is distinct from an appeal of an administrative order. *United States v. RCA Alas. Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1978).

Factors required for issuance of preliminary injunction. — The coexistence of three factors is required in order to justify the issuance of a preliminary injunction: (1) The plaintiff must be faced with irreparable harm, (2) the opposing party must be adequately protected, and (3) the plaintiff must raise "serious" and "substantial" questions going to the merits of the case, that is, the issues raised cannot be "frivolous or obviously without merit." *Keystone Servs., Inc. v. Alaska Transp. Comm'n.*, Sup. Ct. Op. No. 1465 (File No. 3151), 566 P.2d 952 (1977).

Article governs leasing procedures under Alaska Land Act. — The judicial review portions of the Administrative Procedure Act govern leasing procedures conducted by the Division of Lands under the Alaska Land Act. *Alyeska Shs. Corp. v.*

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.

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Extension filing appeal court's

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**Failure to file an appeal within strict time limitations does not create a jurisdictional defect.** *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

**Extension of time limitations for filing appeal is procedural.** — The superior court's decision in extending the time

limitations for filing an appeal only involved a procedural matter and was entirely proper since in analogous procedural matters, Alaska Civ. R. 94 permits a superior court to relax the filing deadlines provided in the civil rules. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

**No abuse of discretion in relaxing 30-day requirement.** — Due to the confusion concerning the time limitations for appealing administrative decisions, the trial court did not abuse its discretion in relaxing the 30-day requirement of this section. *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

**For express authority to the superior court to relax the time limitation for appeals from administrative boards.** see Alaska App. R. 45(i). *McCarrey v. Commissioner of Natural Resources*, Sup. Ct. Op. No. 1088 (File No. 2075), 526 P.2d 1353 (1974).

**Initiation of review of order of Workers' Compensation Board.** — Where a party to a proceeding before the Alaska Workmen's (now Workers') Compensation Board seeks review in superior court of a board order, such review must be initiated by the injunction procedures made obligatory by AS 23.30.125(c). *Aleutian Homes v. Fischer*, Sup. Ct. Op. No. 365 (File No. 668), 418 P.2d 769 (1966).

**Complaint for injunctive relief is distinct from an appeal of an administrative order.** *United States v. RCA Alas Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1978).

**Factors required for issuance of preliminary injunction.** — The coexistence of three factors is required in order to justify the issuance of a preliminary injunction: (1) The plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise "serious" and "substantial" questions going to the merits of the case, that is, the issues raised cannot be "frivolous or obviously without merit." *Keystone Serv. Inc. v. Alaska Transp. Comm'n*, Sup. Ct. Op. No. 1485 (File No. 3151), 568 P.2d 952 (1977).

**Article governs leasing procedures under Alaska Land Act.** — The judicial review portions of the Administrative Procedure Act govern leasing procedures conducted by the Division of Lands under the Alaska Land Act. *Alyaska Ski Corp. v.*

Holdsworth, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

**Preliminary relief where permanent rate established.** — Subsection (e) allows 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), overruled on other grounds, *City of Juneau v. Thibodeau*, 595 P.2d 626 (1979).

**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*

**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

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. 1264 (File Nos. 2551, 2587), 553 P.2d 8 (1976); *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978); *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alaska, 1978); *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Quoted in *Jerrel v. Kenai Peninsula Borough School Dist.*, Sup. Ct. Op. No. 1458 (File No. 2901), 567 P.2d 760 (1977).

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 *Laege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963); *R.C.A. Serv. Co. v. Liggott*, 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 549 (1975).

Am. Jur. 2d reference. — 2 Am. Jur. 2d, Administrative Law, § 550.

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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)

**Cross reference.** — As to applicability of this chapter to proceedings of the Department of Environmental Conservation under AS 30.25, see AS 30.25.320 and note thereto.

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).

The heading of article 8, "Administrative Adjudications," is not determinative of whether AS 44.62.560 and this section apply solely to adjudicatory proceedings, since such headings are not part of the law of Alaska. *Kotchikan Retail Liquor Dealers Ass'n v. State ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 3897), 602 P.2d 434 (1979).

**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 give 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 interpretations 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 judicial 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. 2067), 537 P.2d 1100 (1975).

The reasonable basis test is as follows: In cases where a decision involves administrative expertise as to either complex subject matter or fundamental policy formulations, deference should be given to an administrative determination if it has a reasonable basis in law and fact. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978).

**Use of rational basis test.** — 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).

**Delineation of electrical service areas.** — Where the delineation of electrical service areas involved complex financial and engineering determinations and required considerable expertise in these areas, and, in addition, fundamental policy formulations were involved in the Public Utilities Commission's task of eliminating undesirable competition and duplication of facilities under AS 42.05.221(d), the reasonable basis test was appropriate. *Alaska Pub. Utils. Comm'n v. Chugach Elec. Ass'n*, Sup. Ct. Op. No. 1636 (File Nos. 2969, 2993), 580 P.2d 687 (1978).

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).

Under the "reasonable and not arbitrary" standard for review of administrative regulations, the supreme court upheld the standard employed by the Public Utilities Commission in determining whether to initiate a thorough rate investigation, i.e., whether public interest would be served by such investigation. *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

**Findings of fact supporting compensation awards** must be made pursuant to subsection (b) of this section and AS 44.62.51(a). *Hewing v. Alaska Workmen's Comp. Bd.*, Sup. Ct. Op. No. 916 (File No. 1625), 512 P.2d 896 (1973).

**Findings must be supported by substantial evidence.** — The test to be applied under this section is whether the findings of the board which have been challenged are supported by substantial evidence in the light of the whole record. *Forth v. Northern Stevedoring & Handling Corp.*, Sup. Ct. Op. No. 169 (File No. 327), 385 P.2d 944 (1963).

An administrative board's findings should not be reversed if in the light of the whole record they are supported by substantial evidence. *Keiner v. Anchorage*, Sup. Ct. Op. No. 126 (File No. 240), 378 P.2d 406 (1963); *Forth v. Northern Stevedoring & Handling Corp.*, Sup. Ct. Op. No. 169 (File No. 327), 385 P.2d 944 (1963).

In order to prevent dislocations of the respective functions of administrative agencies and the courts, the supreme court has consistently adhered to the substantial evidence test as the appropriate scope of review with regard to appeals from administrative agencies. *In re Application of Peterson*, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

The supreme court has long recognized the reviewing court's power to measure a decision by the test of whether "substantial evidence on the whole record" supports it. *Swindel v. Kelly*, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Abuse of discretion by agencies is established on review if the agency's findings are not supported by "substantial evidence in the light of the whole record." *In re Application of Peterson*, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

The substance has been adopted review in administrative court. *Pan Am Shell Oil Co.*, No. 918, 459.

It is well settled order of the Compensation in accordance with substantial evidence. *Rodgers*, Sup. 1918), 522 P.

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The substance employed as the Alaska Workmen's Board decision in order to the reviewing administrative court into Sup. Ct. Op. No. 164 (1974).

"Substantial evidence reasonable to support Anchorage

The substantial evidence criterion has been adopted as the appropriate scope of review in regard to appeals from administrative agencies to the superior court. *Pan American Petroleum Corp. v. Shell Oil Co.*, Sup. Ct. Op. No. 553 (File No. 918), 456 P.2d 12 (1969).

It is well settled in Alaska that an initial order of the Workmen's [now Workers'] Compensation Board should be reviewed in accordance with the principle of substantial evidence. *Interior Paint Co. v. Rodgers*, Sup. Ct. Op. No. 1039 (File No. 1918), 522 P.2d 164 (1974).

The substantial evidence standard restricts the court on review to considering only whether the administrative findings of fact are supported by substantial evidence, and whether the award is contrary to law. *Interior Paint Co. v. Rodgers*, Sup. Ct. Op. No. 1039 (File No. 1918), 522 P.2d 164 (1974).

The standard of review of agency findings of fact that is they will be set aside if they are not supported by substantial evidence on the whole record. Inherent in this standard is a requirement, in part statutory, that the facts found be based on evidence in the record. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), P.2d (1980).

The requirement that the facts found be based on evidence in the record serves three purposes: First, it helps to ensure that the agency does not make decisions that have no adequate basis in fact, second, it gives opposing parties the opportunity to challenge the agency's reasoning process and the correctness of the decision, and third, it affords reviewing courts the opportunity to evaluate the decision. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), P.2d (1980).

The substantial evidence standard is employed by the superior court as well as the supreme court in reviewing Workmen's [now Workers'] Compensation Board decisions. This standard is applied in order to avoid a possible duplication of the respective functions of the administrative agency and the superior court. *Interior Paint Co. v. Rodgers*, Sup. Ct. Op. No. 1039 (File No. 1918), 522 P.2d 164 (1974).

"Substantial evidence". — Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Keiner v. Anchorage*, Sup. Ct. Op. No. 126 (File No.

240), 378 P.2d 406 (1963); *Forth v. Northern Stevedoring & Handling Corp.*, Sup. Ct. Op. No. 169 (File No. 327), 385 P.2d 944 (1963); *Interior Paint Co. v. Rodgers*, Sup. Ct. Op. No. 1039 (File No. 1918), 522 P.2d 164 (1974); *State Dep't of Labor v. Boucher*, Sup. Ct. Op. No. 1669 (File No. 3329), 581 P.2d 660 (1978).

Court may not reweigh evidence. — The Workmen's [now Workers'] Compensation Board's decision need not be the only possible solution to the problem, for it is not the function of the court to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists. *Interior Paint Co. v. Rodgers*, Sup. Ct. Op. No. 1039 (File No. 1918), 522 P.2d 164 (1974).

Under the substantial evidence standard, it is not the function of the reviewing court to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists. *State Dep't of Labor v. Boucher*, Sup. Ct. Op. No. 1669 (File No. 3329), 581 P.2d 660 (1978).

The procedure allowing discretion of the superior court in the granting of trial de novo simplifies and expedites the handling of appeals, and at the same time, it affords sufficient flexibility so that if the agency record is not sufficient to determine the issue on appeal, or if the record discloses that justice requires evidence to be taken de novo, the superior court has the discretion to do what is necessary by granting a new trial on hearing, either in whole or in part. *Keiner v. Anchorage*, Sup. Ct. Op. No. 126 (File No. 240), 378 P.2d 406 (1963).

Conditions for granting stay. — A stay may be granted only when the following conditions are met: (a) When the petitioner is likely to prevail on the merits of the appeal, (b) where the petitioner has shown that without a stay it will suffer irreparable injury, (c) where there is no substantial harm to other interested persons, and (d) where the public interest will not be harmed. *Alaska Coastal Airlines v. S & M Flight Training*, 6 Alaska L.J. No. 4, p. 103 (April, 1968).

The court's authority to remand is limited by the provisions of subsection (d)(1). *Fischback & Moore of Alas. Inc. v. Lynn*, Sup. Ct. Op. No. 304 (File No. 543), 407 P.2d 174 (1965).

When subsection (d) authorizes remand. — Subsection (d) authorizes remand if the court finds that there is relevant evidence (1) which in the exercise of reasonable diligence could not have

been produced or (2) which was improperly excluded at the hearing. *Employers Com. Union Ins. Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

A remand is appropriate when the superior court determines that vital evidence has been erroneously excluded before the Alaska Workmen's [now Workers'] Compensation Board. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Denial of cross-examination resulting in the improper exclusion of relevant evidence justifies a remand under the second standard enunciated in subsection (d). *Employers Com. Union Ins. Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

Remand held proper. — Where the causal relationship between employment and disability is disputable and the sufficiency of evidence question is close, it was appropriate for the superior court to remand such a case after determining that vital evidence had erroneously been excluded. *Employers Com. Union Ins. Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

Absence of ground for remand. — Where the statutory ground for remand relied upon by the court was not present, the court erred in declining to decide the question presented on the appeal. *Fischback & Moore of Alaska Inc. v. Lynn*, Sup. Ct. Op. No. 304 (File No. 543), 407 P.2d 174 (1965).

The superior court's action in remanding a pending case, appealing the Workmen's [now Workers'] Compensation Board's finding of no permanent partial disability, to the board on the basis of an ex parte order requiring the employer to provide for a medical examination of the employee, was a mistake. *Fischback & Moore of Alaska, Inc. v. Lynn*, Sup. Ct. Op. No. 304 (File No. 543), 407 P.2d 174 (1965).

Initial examination of sufficiency of evidence to be made in superior court. — In the circumstances of a remand the supreme court is not inclined to deviate from its previous procedure of requiring the initial examination of the sufficiency of evidence to be made in the superior court rather than undertaking itself a review of the record for the first time. *Commercial Union Cos. v. Smallwood*, Sup. Ct. Op. No. 1246 (File No. 2443), 550 P.2d 1261 (1976).

Augmenting an administrative record is a discretionary device available to the superior court. *Employers Com. Union Ins. Group v. Schoen*, Sup. Ct. Op. No. 1008 (File Nos. 1884, 1895), 519 P.2d 819 (1974).

That it is proper for the court to augment the record is made clear in subsection (d). *Jager v. State*, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Complaint for injunctive relief is distinct from an appeal of an administrative order. *United States v. RCA Alaska Communications, Inc.*, Sup. Ct. Op. No. 1647 (File No. 3772), 597 P.2d 489 (1978).

Factors required for issuance of preliminary injunction. — The coexistence of three factors is required in order to justify the issuance of a preliminary injunction: (1) The plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected, and (3) the plaintiff must raise "serious" and "substantial" questions going to the merits of the case, that is, the issues raised cannot be "frivolous or obviously without merit." *Keystone Servs., Inc. v. Alaska Transp. Comm'n*, Sup. Ct. Op. No. 1485 (File No. 3151), 568 P.2d 950 (1977).

Article governs leasing procedures under Alaska Land Act. — The judicial review portions of the Administrative Procedure Act (AS 44.62) govern leasing procedures conducted by the Division of Lands under the Alaska Land Act. *Alyeska Ski Corp. v. Holdsworth*, Sup. Ct. Op. No. 406 (File No. 620), 426 P.2d 1006 (1967).

Handling of information by Public Utilities Commission unconstitutional. — Where both the city of Fairbanks and a corporation sought a certificate of public convenience and necessity to provide telephone service, at the hearing to decide the matter the Alaska Public Utilities Commission staff requested two years' annual balance sheets and income statements from the corporation, the corporation agreed to supply them to the staff, but requested that they not be divulged to Fairbanks or become part of the record, claiming that they were proprietary and that revealing them could place the corporation at a competitive disadvantage in its telecommunications contracting business. Fairbanks objected and suggested as an alternative that the income statements and balance sheets could be revealed to certain representatives of Fairbanks under an

order of confidentiality ruled that the information and should be kept confidential and allow any representative to see it; a commission reviewed the income sheets and testified that the city's financial condition was not financially fit; and which this determination never placed in the commission's hand relating to the city's fitness violated public City of Fairbanks Comm'n & Wire Sup. Ct. Op. No. 2 P.2d (1980).

Action of the Control Board approving a license administrative & Retail Liquor Dealer, Sup. Ct. Op. No. 602 P.2d 434 (1977).

Review of an appeal pursuant to established in section Ketchikan Ass'n v. State, Al

Sec. 44.62. continuances. continuance (ch 2) ch 143

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order of confidentiality; the commission ruled that the information was proprietary and should be kept confidential and did not allow any representative of Fairbanks to see it; a commission staff member reviewed the income statements and balance sheets and based on that review testified that the corporation could meet its financial commitments and was financially fit; and the information upon which this determination was based was never placed in the record. The commission's handling of the information relating to the corporation's financial fitness violated procedural due process. *City of Fairbanks v. Alaska Pub. Utils. Comm'n & Wire Communications, Inc.*, Sup. Ct. Op. No. 2079 (File No. 3977), P.2d (1980).

Action of the Alcoholic Beverage Control Board in considering and approving a license application was an administrative adjudication. *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 3697), 602 P.2d 434 (1979).

Review of an administrative decision pursuant to an Appellate Rule 45 appeal is governed by the broad standards established in subsection (b) of this section. *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No.

1963 (File No. 3697), 602 P.2d 434 (1979).

Applied in *Manthey v. Collier*, Sup. Ct. Op. No. 55 (File No. 94), 367 P.2d 884 (1962); *Cordova Fish & Cold Storage Co. v. Estes*, Sup. Ct. Op. No. 59 (File No. 126), 370 P.2d 180 (1962); *Morrison-Knudsen Co. v. Vereen*, Sup. Ct. Op. No. 345 (File No. 610), 414 P.2d 536 (1966); *Chevron U.S.A., Inc. v. Hammond* (A77-195 Civil), F. Supp. (D. Alas. 1978); *State v. Smith*, Sup. Ct. Op. No. 1838 (File Nos. 3797, 3893), 593 P.2d 625 (1979); *Jeffries v. Glacier State Tel. Co.*, Sup. Ct. Op. No. 1985 (File No. 4298), 604 P.2d 4 (1979).

Quoted in *Leege v. Martin*, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963); *Watts v. Seward School Bd.*, Sup. Ct. Op. No. 380 (File No. 427), 421 P.2d 586 (1966); *Employers' Liab. Assurance Corp. v. Bradshaw*, Sup. Ct. Op. No. 360 (File No. 691), 417 P.2d 600 (1966); *Alaska Red-Mix, Inc. v. Alaska Workmen's Comp Bd.*, Sup. Ct. Op. No. 359 (File No. 692), 417 P.2d 595 (1966).

Cited in *R.C.A. Serv. Co. v. Liggett*, 2 Alaska L.J. No. 1, p. 7 (Jan., 1964); *City of Juneau v. Cropley*, Sup. Ct. Op. No. 415 (File No. 752), 429 P.2d 21 (1967); *Arndt v. State, Dep't of Labor*, Sup. Ct. Op. No. 1729 (File No. 3578), 583 P.2d 799 (1978).

**Sec. 44.62.580. Continuances.** The agency may grant continuances. If a hearing officer is assigned to a hearing, no continuance may be granted except by him for good cause shown. (5 26 (ch 2) ch 143 SLA 1959)

Am. Jur. 2d reference. — 7 Am Jur 2d, Administrative Law, § 420

**Sec. 44.62.590. Contempt.** (a) In a proceeding before an agency, the agency shall certify the facts to the superior court in the judicial district where the proceeding is held if a person in the proceeding

- (1) disobeys or resists a lawful order;
- (2) refuses to respond to a subpoena;
- (3) refuses to take oath or affirmation as a witness;
- (4) refuses to be examined; or
- (5) is guilty of misconduct at a hearing or so near the hearing as to obstruct the proceeding.

(b) Upon certification under (a) of this section, the court shall issue an order directing the person to appear before the court and show cause why he should not be punished for contempt. The order and a copy of the certified statement shall be served on the person.

(c) After service under (b) of this section, the court has jurisdiction of the matter.

(d) The law applicable to contempt committed by a person in the trial of a civil action before the superior court applies to contempt under this section as to

- (1) the proceeding taken;
- (2) the penalties imposed; and
- (3) the way the person charged may purge himself of the contempt. (§ 27 (ch 2) ch 143 SLA 1959)

**Sec. 44.62.600. Mail vote.** A member of an agency qualified to vote on a question may vote by mail. (§ 28 (ch 2) ch 143 SLA 1959)

Quoted in *In re Application of Peterson*,  
Sup Ct. Op. No. 813 (File No. 1066), 499  
P.2d 304 (1972).

Cited in *In re Application of Peterson*,  
Sup Ct. Op. No. 813 (File No. 1066), 499  
P.2d 304 (1972).

**Sec. 44.62.610. Charge.** A sum authorized to be spent under AS 44.62.330 — 44.62.630 by an agency is a legal charge against the appropriations of the agency. (§ 29 (ch 2) ch 143 SLA 1959)

**Sec. 44.62.620. Power to administer oaths.** In a proceeding under AS 44.62.330 — 44.62.630 an agency, agency member, secretary of an agency or hearing officer may administer oaths and affirmations and certify official acts. (§ 30 (ch 2) ch 143 SLA 1959)

**Sec. 44.62.630. Impartiality.** The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, shall not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties. (§ 31 (ch 2) ch 143 SLA 1959)

Combination of functions of the state bar attorney, prosecutor and adjudicator did not violate this section or due process. *In re Conduct of Cornelius*, Sup Ct. Op. No. 1019 (File No. 1964), 520 P.2d 76, 521 P.2d 497 (1974).

The combination of investigative and judicial functions within an agency does not violate due process, a board may make preliminary factual inquiry on its own in order to determine if charges should be

filed. And minimum requirements of procedural due process are not offended by the attorney for the agency acting as advisor on procedural matters. *In re Conduct of Cornelius*, Sup Ct. Op. No. 1019 (File No. 1964), 520 P.2d 76, 521 P.2d 497 (1974).

*Am. Jur. 2d* reference — 1 *and* *Am. Jur. 2d*, Public Administrative Law, § 63, 410-413.

Section  
640. Definitions  
650. Short title

**Sec. 44.62.640**  
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## Article 9. General Provisions.

## Section

640. Definitions

650. Short title

**Sec. 44.62.640. Definitions.** (a) In AS 44.62.010 — 44.62.320, unless the context otherwise requires,

(1) "order of repeal" means a resolution, order or other official act of a state agency which expressly repeals a regulation in whole or in part;

(2) "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement or revision of a rule, regulation, order or standard adopted by a state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one which relates only to the internal management of a state agency; "regulation" does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; "regulation" includes "manuals," "policies," "instructions," "guides to enforcement," "interpretative bulletins," "interpretations," and the like, which have the effect of rules, orders, regulations or standards of general application, and this and similar phraseology shall not be used to avoid or circumvent this chapter; whether a regulation, regardless of name, is covered by this chapter depends in part on whether it affects the public or is used by the agency in dealing with the public;

(3) "lieutenant governor" means the office of the lieutenant governor in the executive branch of the state government, or another agency designated by executive order under the constitution;

(4) "state agency" means a department, office, agency, or other organizational unit of the executive branch, except one expressly excluded by law, but does not include an agency in the judicial or legislative branches of the state government.

(b) In AS 44.62.330 — 44.62.630, unless the context otherwise requires,

(1) "agency" includes the state boards, commissions and officers listed in AS 44.62.330 and those to which this chapter is made applicable by law or executive order involving reorganization under the constitution;

(2) "agency member" means a person who is a member of an agency to which AS 44.62.330 — 44.62.630 apply, and includes a person who himself is an agency;

(3) "hearing officer" means a hearing officer qualified under AS 44.62.350;

(4) "party" includes the agency, the respondent, and a person, other than an officer or an employee of the agency in his official capacity who has been allowed to appear in the proceeding.

(5) "respondent" means a person against whom an accusation is filed under AS 44.62.360 or against whom a statement of issues is filed under AS 44.62.370. (§§ 2, 3 art I (ch 1) ch 143 SLA 1959; § 1 (ch 2) ch 143 SLA 1959; am § 78 ch 69 SLA 1970)

"Regulation". — The use of the terms "rules and regulations" found in AS 38.06.020(b)(1) is synonymous with the term "regulation" found in this section. *Bradley v. State*, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Verbal additions to regulations involving requirements of substance are unauthorized and unenforceable. *State v. Tanana Valley Sportsmen's Ass'n*, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

The issuance of permits for the killing of caribou in certain specified areas of the state based on verbal instructions to the permit agents as to the need of individual applicants does not conform to requirements of this chapter. *State v. Tanana Valley Sportsmen's Ass'n*, Sup. Ct. Op. No. 1716 (File No. 3433), 583 P.2d 854 (1978).

An investigation is not a regulation. *Allstate Ins. Co. v. Municipality of Anchorage*, Sup. Ct. Op. No. 1913 (File No. 3892), 599 P.2d 140 (1979).

The legislature has expressly included the Board of Governors of the Alaska Bar Association as an agency subject to the adjudicative procedures of the Administrative Procedure Act (AS 44.62). In re Application of Peterson, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

Administrative responsibility of Alaska Bar — While the supreme court ultimately reserves the authority to determine whether or not an applicant should be admitted to the bar, considerable administrative responsibility has been delegated to the Alaska Bar Association. In re Application of Peterson, Sup. Ct. Op. No. 813 (File No. 1066), 499 P.2d 304 (1972).

Nothing of substance hinges in choice of name for administrative agency — An administrative agency may be called a commission, board, authority, bureau, office, officer, administrator, department, corporation, administration, division, or agency. Nothing of substance hinges in the choice of name. *Alaska State Housing Authority v. Dixon*, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

The Alaska State Housing Authority is an instrumentality of the state within the Department of Commerce (now Department of Commerce and Economic Development). *Alaska State Housing Authority v. Dixon*, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Within the meaning of "state agency". — As an instrumentality of the state within the Department of Commerce (now Department of Commerce and Economic Development), the Alaska State Housing Authority comes within the meaning of "state agency" as that term is used and defined in the Alaska Administrative Procedure Act (AS 44.62). *Alaska State Housing Authority v. Dixon*, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

"Internal management of a state agency" construed. — The supreme court has declined to construe the phrase "internal management of a state agency" to encompass all individuals and activities affected by regulations promulgated by the lieutenant governor during a statewide election. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

"Party". — Persons permitted to appear at a public hearing authorized by AS 04.05.030(c) were parties to that proceeding. *Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd.*, Sup. Ct. Op. No. 1963 (File No. 3607), 602 P.2d 434 (1979).

Election regulations under AS 15.15.330 not exempt from chapter. — Regulations promulgated under AS 15.15.330 dealing with early counting of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of AS 44.62.040 and this section. *Coghill v. Boucher*, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Alaska Trail must adopt rule. — It is in Transportation for the transfer the requirements of the Administrative Procedure Act (Lines v. Nabor Ct. Op. No. 96 408 (1973)).

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supplying substantial evidence in support of its action in reallocation of income of operators of vending stands at District of Columbia hospital, principal task of hearing officer would be to make accurate determination of amount by which operators were underpaid. *Ferry v. District of Columbia Dept. of Human Resources*, D.C.App.1974, 279 A.2d 248.

Procedure followed in connection with 1974 decision to reallocate vending stand operator income from vending machines at District of Columbia hospital under vending stand program for the blind was defective in that an opportunity for a hearing was afforded and aggrieved operators were not even informed of the change. *Id.*

#### 6b. Notice

Operator of vending stand at District of Columbia hospital under vending stand program for the blind was entitled to notice of an important matter as method by which his income was determined. *Ferry v. District of Columbia Dept. of Human Resources*, D.C.App.1974, 279 A.2d 248.

§ 107a. Surveys by Secretary of Health, Education, and Welfare; designating State Licensing agencies; qualifications for licensees; preferences; selection of locations

(a) The Secretary of Health, Education, and Welfare shall—

(1) Insure that the Rehabilitation Services Administration is the principal agency for carrying out this chapter; and the Commissioner shall, within one hundred and eighty days after enactment of the Randolph-Sheppard Act Amendments of 1974, establish requirements for the uniform application of this chapter by each State agency designated under paragraph (2) of this subsection, including appropriate accounting procedures, policies on the selection and establishment of new vending facilities, distribution of income to blind vendors, and the use and control of set-aside funds under section 107b (2) of this title;

(2) Through the Commissioner, make annual surveys of commercial vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service;

(3) Make surveys throughout the United States of industries with a view to obtaining information that will assist blind persons to obtain employment;

(4) Make available to the public, and especially to persons and organizations engaged to work for the blind, information obtained as a result of such surveys;

(5) Designate as provided in section 107b of this title the State agency for the blind in each State, or, in any State in which there is no such agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities on Federal and other property in such State for the vending of newspapers, periodicals, medicines, tobacco products, food, beverages, and other articles or persons dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency, and benefit of the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State; and

(6) Through the Commissioner, (A) conduct periodic evaluations of the program authorized by this chapter, with a view toward making

trading agency failed to distribute to blind funds properly his, might have burden of proof, where two of the three certifying operators of vending stands at District of Columbia hospital were not notified of change in allocation of income until some two years after it occurred and subsequently their request for hearing was not honored for some two and one-half years, elementary fairness required that at the further hearing below the affirmative action taken by Department of Human Resources in reallocation vending machine income be regarded as the error under consideration, thus placing burden of proof upon Department to supply substantial evidence in support of its action. *Ferry v. District of Columbia Dept. of Human Resources*, D.C.App.1974, 279 A.2d 248.

#### 1b. Surrogate Immunity

Assisting the blind through federally sponsored and state-subsidized vending program was not merely function of government and state's role was governmental within doctrine of governmental immunity. *Marion v. State*, 506 S.W.2d 311, 36 Misc.App. 438.

the issuance of such rules and regulations, as may be necessary or desirable in carrying out the provisions of this chapter.

(b) The State Licensing agency shall, in issuing each such license for the operation of a vending facility, give preference to blind persons who are in need of employment. Each such license shall be issued for an indefinite period but may be terminated by the State Licensing agency if it is satisfied that the facility is not being operated in accordance with the rules and regulations prescribed by such Licensing agency. Such licenses shall be issued only to applicants who are blind within the meaning of section 107c of this title.

(c) The State Licensing agency designated by the Secretary is authorized, with the approval of the head of the department or agency in control of the maintenance, operation, and protection of the Federal property on which the facility is to be located but subject to regulations prescribed pursuant to section 107 of this title, to select a location for such facility and the type of facility to be provided.

(d)(1) After January 1, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, lease, or to otherwise occupy, in whole or in part, any building unless, after consultation with the head of such department, agency, or instrumentality and the State Licensing agency, it is determined by the Secretary that (A) such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind person, or (B) if a building is to be constructed, substantially altered, or renovated, or in the case of a building that is already occupied on such date by such department, agency, or instrumentality, is to be substantially altered or renovated for use by such department, agency, or instrumentality, the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind person. Each such department, agency, or instrumentality shall provide notice to the appropriate State Licensing agency of its plans for occupation, acquisition, renovation, or relocation of a building adequate to permit such State agency to determine whether such building includes a satisfactory site or sites for a vending facility.

(2) The provisions of paragraph (1) shall not apply (A) when the Secretary and the State Licensing agency determine that the number of people using a property is or will be insufficient to support a vending facility, or (B) to any privately owned building, any part of which is leased by any department, agency, or instrumentality of the United States and in which, (i) prior to the execution of such lease, the lessee or any of his tenants had in operation a restaurant or other food facility in a part of the building not included in such lease, and (ii) the operation of such a vending facility by a blind person would be in greatest and substantial direct competition with such restaurant or other food facility except that such department, agency, and instrumentality shall make every effort to lease property in privately owned buildings capable of accommodating a vending facility.

(3) For the purposes of this subsection, the term "satisfactory site" means an area determined by the Secretary to have sufficient space, electrical and plumbing facilities, and such other facilities as the Secretary may by regulation prescribe, for the location and operation of a vending facility by a blind person.

(4) In any State having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act or the Rehabilitation Act

References in Text. For the date of the enactment of the Randolph-Sheppard Act Amendments of 1974, referred to in subsection (a)(1), see the Codification note under this section.

The Vocational Rehabilitation Act, referred to in subsection (a), refers to Act June 3, 1920, c. 319, 41 Stat. 725, as amended, which was classified to section 21 et seq. of Title 20, Labor, and was repealed by section 501(a) of Pub.L. 93-112. See section 701 et seq. of Title 20.

The Rehabilitation Act of 1973, referred to in subsection (a), refers to Pub.L. 93-112, which is classified to section 701 et seq. of Title 29.

Codification. The content of Pub.L. 93-514, including provisions of section 204 thereof which amended this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was carried over during the 21-day inter-session adjournment of the 93rd Congress for the Congressional elections in November, 1974. See 1974 Amendment note under this section.

Referred to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 512 F.Supp. 205) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-514. The law, for purposes of codification, this section should be deemed to have been enacted by Pub.L. 93-514, Title II, § 204, Nov. 21, 1974, 89 Stat. 1-8, 1-9, in exactly the same manner as if it was enacted by Pub.L. 93-514, Dec. 7, 1974, 89 Stat. 1823.

1974 Amendment. Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), added section 10(1)(2). Former section 10(1) redesignated section 10(2). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1) and in section 10(2) as an redesignated, substituted. Through the Commission, was annual surveys of community vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service; (B) "Make surveys of community-based opportunities for blind persons on Federal and other property in the United States". Former section 10(1)(2) redesignated section 10(2). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1). Former section 10(2) redesignated section 10(1). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1). Former section 10(2) redesignated section 10(1). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1). Former section 10(2) redesignated section 10(1). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

agency, some other public agency to issue licenses to blind persons who are citizens of the United States for the operating of vending facilities" for "State commission for the blind in each State, or, in any State in which there is no such commission, some other public agency to issue licenses to blind persons who are citizens of the United States and at least twenty-two years of age for the operating of vending stands", and "foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, as determined by the State licensing agency, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of a State" for "articles dispensed automatically or in containers or wrapping in which they are placed before receipt by the vending stand, and such other articles as may be approved for each property by the department or agency in control of the maintenance, operation, and protection thereof and the State licensing agency in accordance with the regulations prescribed pursuant to section 107 of this title", and struck out the proviso that effective four years after the enactment of the Vocational Rehabilitation Amendments of 1964, in states having an approved plan for vocational rehabilitation pursuant to the Vocational Rehabilitation Act, the licensing agency to be designated hereunder shall be the state agency designated pursuant to section 104(a)(1) of Title 20 as the sole agency with respect to vocational rehabilitation of the blind, and that prior to such time, no license shall be granted except upon certification by a vocational rehabilitation agency that the individual is qualified to operate a vending stand. An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1), and in section 10(2) as an redesignated, substituted. Through the Commission, was annual surveys of community vending opportunities for blind persons on Federal and other property in the United States, particularly with respect to Federal property under the control of the General Services Administration, the Department of Defense, and the United States Postal Service; (B) "Make surveys of community-based opportunities for blind persons on Federal and other property in the United States". Former section 10(1)(2) redesignated section 10(2). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1). Former section 10(2) redesignated section 10(1). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

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Section 10(1)(2), Pub.L. 93-514, § 204(a)(1), redesignated former section 10(1) as section 10(1). Former section 10(2) redesignated section 10(1). An identical amendment was made by Pub.L. 93-514. See Codification note hereunder.

any or after Oct. 1, 1976, as prescribed and published, with specified exceptions, see section 3441 of this title.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-514, see 1974 U.S.

legislative history and purposes of Pub.L. 93-514, see 1974 U.S. Code Cong. and Adm. News, p. 6172.

§ 107b. Application for designation as State licensing agency; cooperation with Secretary; furnishing initial stock

A State agency for the blind or other State agency desiring to be designated as the licensing agency shall, with the approval of the chief executive of the State, make application to the Secretary and agree—

- (1) to cooperate with the Secretary in carrying out the purpose of this chapter;
- (2) to provide for each licensed blind person with vending facility equipment, and adequate initial stock of suitable articles to be vended therefrom, as may be necessary: Provided, however, That such equipment and stock may be owned by the licensing agency for use of the blind, or by the blind individual to whom the license is issued: And provided further, That if ownership of such equipment is vested in the blind licensee, (A) the State licensing agency shall retain a first option to repurchase such equipment and (B) in the event such individual dies or for any other reason ceases to be a licensee or transfers to another vending facility, ownership of such equipment shall become vested in the State licensing agency (for transfer to a successor licensee) subject to an obligation on the part of the State licensing agency to pay to such individual (or to his estate) the fair value of his interest therein as later determined in accordance with regulations of the State licensing agency and after opportunity for a fair hearing;

(3) that if any funds are set aside, or caused to be set aside, from the net proceeds of the operation of the vending facilities such funds shall be set aside, or caused to be set aside, only to the extent necessary for and may be used only for the purposes of (A) maintenance and replacement of equipment; (B) the purchase of new equipment; (C) management services; (D) ensuring a fair minimum return to operators of vending facilities; and (E) retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is determined by a majority vote of blind licensees licensed by such State agency, after such agency provides to each such licensee full information on all matters relevant to such proposed program, that funds under this paragraph shall be set aside for such purposes: Provided, however, That in no event shall the amount of such funds to be set aside from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary.

[See note without for text of (4) and (5)]

(4) to provide to any blind licensee disadvantaged with any action arising from the operation or administration of the vending facility program an opportunity for a fair hearing, and to agree to submit the grievance of any blind licensee not otherwise provided by such hearing to arbitration as provided in section 107d-1 of this title.

As amended Nov. 21, 1974, Pub.L. 93-514, Title II, § 204, 89 Stat. 1-10; Dec. 7, 1974, Pub.L. 93-514, Title II, § 204, 89 Stat. 1823.

Codification. The content of Pub.L. 93-514, including provisions of section 107b thereof which amended this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was carried over during the 21-day inter-session adjournment of the 93rd Congress for the Congressional elections in November, 1974. See 1974 Amendment note under this section.

Therefore, for purposes of codification, this section should be deemed to have been amended by Pub.L. 93-451, Title II, § 209, Nov. 21, 1974, 89 Stat. 2-10, in exactly the same manner as it was amended by Pub.L. 93-518.

1974 Amendment. Pub.L. 93-518, § 204(a)(1), substituted "A State agency" for "A State commission" in provisions preceding par. (1). An identical amendment was made by Pub.L. 93-451. See Codification note hereinafter.

Par. (2). Pub.L. 93-518, § 204(a)(2), substituted "vending facility" for "vending stand" in two places. An identical amendment was made by Pub.L. 93-451. See Codification note hereinafter.

Par. (3). Pub.L. 93-518, § 204(a)(3), (b), (c), in provisions preceding subpar. (A), substituted "the net proceeds of the operation of the vending facilities" for "the proceeds of the operation of the vending stands", in subpar. (D), substituted "vending facilities" for "vending stands", and "the net proceeds of any vending facility" for "the proceeds of any vending stand", and added subpar. (K). An identical amendment was made by Pub.L. 93-451. See Codification note hereinafter.

#### § 107b-1. Access to information with State licensing agencies; election and responsibilities of Committee of Blind Vendors

In addition to other requirements imposed in this title and in this chapter upon State licensing agencies, such agencies shall—

(1) provide to each blind licensee access to all relevant financial data, including quarterly and annual financial reports, on the operation of the State vending facility program;

(2) conduct the biennial election of a Committee of Blind Vendors who shall be fully representative of all blind licensees in the State program, and

(3) insure that such committee's responsibilities include (A) participation, with the State agency, in major administrative decisions and policy and program development, (B) receiving grievances of blind licensees and serving as advocates for such licensees, (C) participation, with the State agency, in the development and administration of a transfer and promotion system for blind licensees, (D) participation, with the State agency, in developing training and retraining programs, and (E) sponsorship, with the assistance of the State agency, of meetings and instructional conferences for blind licensees.

Pub.L. 93-451, Title II, § 209, Nov. 21, 1974, 89 Stat. 2-10; Pub.L. 93-518, Title II, § 209, Dec. 7, 1974, 89 Stat. 1620.

References in Text. This title, referred to in text, is Title II of Pub.L. 93-518, commonly known as "Handicapped-Vocational Act Amendments of 1974". For its distribution in the Code, see Short Title of 1974 Amendment note under section 101 of this title.

Codification. The content of Pub.L. 93-518, including amendments of section 107b-1(a) which enacted this section, were originally enacted in H.R. 10700, 93rd Congress, 1st Session, which was pocket-revised during the 93rd Congress and adjournment of the 93rd Congress for the Congressional session in December, 1974.

Enacted by an order of the Committee on Education and the Labor Committee (Hearings & News, H.C.P.C. 1974, 511 F.Supp. 823) H.R. 10700 was

such hearing was otherwise resolved by section 107d of this title" for "vending stand program an opportunity for a fair hearing". An identical amendment was made by Pub.L. 93-451. See Codification note hereinafter.

Transfer of Functions. All the functions with respect to or being administered by the Secretary of Health, Education, and Welfare through the Commissioner of Rehabilitation Services under this chapter were transferred to the Secretary of Education, effective according to section 801 of Pub.L. 93-501, Title VI, Oct. 17, 1975, 89 Stat. 866, set out as a note under section 3401 of this title, 100 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1975, as prescribed and published, with specified exceptions, in section 244 of this title.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-501, see 1975 Code Cong. and Adm. News, Vol. 1, page 92 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-518, see 1974 U.S. Code Cong. and Adm. News, p. 5274.

An affidavit submitted by plaintiffs in action against the Commissioner of the Massachusetts Commission for the Blind to enforce right of blind vendors to participate in major administrative decisions affecting vending facilities programs did not indicate that plaintiffs stood to suffer harm of sufficient gravity or irreparability to justify disrupting activities of Commission pending decision of case on merits and hence, did not justify issuance of preliminary injunction to prevent use of current nomination process, to restore administrative authority of a particular member of Commission's staff, to require Commissioner to meet monthly with plaintiffs' committee, to prevent agency decisions without committee's participation, and to require disclosure of information to committee. Massachusetts Elected Committee of Blind Vendors v. Matava, D.C. Mass. 1990, 482 F. Supp. 1180.

#### § 107b-C. Standards, studies, and reports

(a) The Secretary, through the Commissioner, after a period of study not to exceed six months following the date of enactment of this title, and after full consultation with, and full consideration of the views of, blind vendors and State licensing agencies, shall promulgate national standards for funds set aside pursuant to section 107b(3) of this title which include maximum and minimum amounts for such funds, and appropriate contributions, if any, to such funds by blind vendors.

(b)(1) The Secretary shall study the feasibility and desirability of establishing a nationally administered retirement, pension, and health insurance system for blind licensees, and such study shall include, but not be limited to, consideration of eligibility standards, amounts and sources of contributions, number of potential participants, total costs, and alternative forms of administration, including trust funds and revolving funds.

(2) The Secretary shall, within one year following the date of enactment of this title, complete the study required by paragraph (1) of this subsection and report his findings, together with any recommendations, to the President and the Congress.

(c) The Secretary shall, not later than September 30, 1975, complete an evaluation of the method of assigning vending machine income under section 107d-3(b)(1) of this title, including its effect on the growth of the program authorized by this chapter, and on the operation of nonappropriated fund activities, and within thirty days thereafter he shall report his findings, together with any recommendations, to the appropriate committees of the Congress.

(d) Each State licensing agency shall, within one year following the date of enactment of this title, submit to the Secretary a report, with appropriate supporting documentation, which shows the actions taken by such agency to meet the requirements of section 107a(a)(1) of this title. Pub.L. 93-451, Title II, § 210, Nov. 21, 1974, 89 Stat. 2-15; Pub.L. 93-518, Title II, § 210, Dec. 7, 1974, 89 Stat. 1620.

References in Text. For the "date of enactment of this title", referred to in sections 101, 101(c), and 101, and the Codification note under this section.

Codification. Section was not enacted as part of the Handicapped-Vocational Vending Stand Act, which comprises this chapter.

The content of Pub.L. 93-518, including provisions of section 107b-1(c) which enacted this section, were originally contained in H.R. 10700, 93rd Congress, 1st Session, which was pocket-revised during the 93rd Congress and adjournment of the 93rd Congress for the Congressional session in December, 1974.

Enacted by an order of the United States District Court for the District of Columbia (Hearings & News, H.C.P.C.

Massachusetts Elected Committee of Blind Vendors v. Matava, D.C. Mass. 1990, 482 F. Supp. 1180.

Proceedings on complaint wherein plaintiff sought to enforce right of blind vendors to participate in major administrative decisions affecting vending facilities programs operated by the Massachusetts Commission for the Blind were subject to being stayed pending exhaustion of administrative remedies inasmuch as alleged failure of state agency to allow plaintiffs' committee to exercise its statutorily mandated right to participate in major administrative decisions was fairly encompassed by broad language of this chapter allowing any blind vendor disaffected with any action arising from operation or administration of vending facility program to seek administrative review. Id.

1974, 511 F.Supp. 823) H.R. 10700 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-518. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub.L. 93-451, Title II, § 210, Nov. 21, 1974, 89 Stat. 2-15, in exactly the same manner as it was enacted by Pub.L. 93-518.

Transfer of Functions. All the functions with respect to or being administered by the Secretary of Health, Education, and Welfare through the Commissioner of Rehabilitation Services under this chapter were transferred to the Secretary of Education, effective according to section 801 of Pub.L. 93-501, Title VI, Oct. 17, 1975, 89 Stat. 866, and

prescribed and published, with specified exceptions, see section 311 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

### § 107b-3. Audit of nonappropriated fund activities

The Comptroller General is authorized to conduct regular and periodic audits of all nonappropriated fund activities which receive income from vending machines on Federal property, under such rules and regulations as he may prescribe. In the conduct of such audits he and his duly authorized representatives shall have access to any relevant books, documents, papers, accounts, and records of such activities as he deems necessary.

Pub.L. 93-651, Title II, § 211, Nov. 21, 1974, 89 Stat. 2-15; Pub.L. 93-516, Title II, § 211, Dec. 7, 1974, 88 Stat. 1630.

Codification. Section was not enacted as part of the Randolph Sheppard Vending Blind Act, which comprises this chapter.

The content of Pub.L. 93-516, including provisions of section 211 thereof which enacted this section, were originally contained in H.R. 14223, 93rd Congress, Second Session, which was pocket-vetted during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 263) H.R. 14223 was deemed to have become law without the

approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-516. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub.L. 93-516, Title II, § 211, Nov. 21, 1974, 89 Stat. 2-15, in exactly the same manner as it was enacted by Pub.L. 93-516.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

### § 107c. Repealed, Pub.L. 93-516, Title II, § 205, Dec. 7, 1974, 88 Stat. 1636

Section, Act June 20, 1956, c. 636, § 4, 70 Stat. 1560; 1946 Houg. Plan No. 2, § 6, off. July 16, 1946, 11 P.R. 7822, 40 Stat. 1060; 1953 Houg. Plan No. 1, § 5, 8, off. Apr. 11, 1953, 16 P.R. 2053, 67 Stat. 621. Related to provisions authorizing the Secretary to cooperate with State boards for rehabilitation of handicapped persons, established by the several States pursuant to sections 31 to 42 of Title 26, as amended and supplemented, in carrying out the provisions of this chapter.

The content of Pub.L. 93-516, including provisions of section 205 thereof which repealed this section, were originally contained in H.R. 14223, 93rd Congress, Second Session, which was pocket-vetted

during the 31-day intrasession adjournment of the 93rd Congress for the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 263) H.R. 14223 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-516. Therefore, for purposes of codification, this section should be deemed to have been repealed by Pub.L. 93-516, Title II, § 205, Nov. 21, 1974, 89 Stat. 2-11, in exactly the same manner as it was repealed by Pub.L. 93-516.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 263) H.R. 14223 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-516. Therefore, for purposes of codification, this section should be deemed to have been repealed by Pub.L. 93-516, Title II, § 205, Nov. 21, 1974, 89 Stat. 2-11, in exactly the same manner as it was repealed by Pub.L. 93-516.

### § 107d. Expenditures for personal services, rent, printing, etc.; preference to blind persons

(a) The Secretary is authorized to make such expenditures out of any money appropriated therefor (including expenditures for personal services and rent at the cost of government and elsewhere, books of reference and periodicals, for printing and binding, and for traveling expenses) as he may deem necessary to carry out the provisions of this chapter.

(b) The Secretary shall, in employing such additional personnel as may be necessary, give preference to blind persons who are capable of discharging the required duties.

June 20, 1956, c. 636, § 4, formerly § 5, 70 Stat. 1560, amended 1946 Houg. Plan No. 2, § 6, off. July 16, 1946, 11 P.R. 7873, 40 Stat. 1060; 1953 Houg. Plan No. 1, § 5, 8, off. Apr. 11, 1953, 16 P.R. 2063, 67 Stat. 631; Nov. 21, 1974, Pub.L. 93-651, Title II, § 206, 206(d), 89 Stat. 2-11; renumbered and amended Dec. 7, 1974, Pub.L. 93-516, Title II, § 206, 206(d), 88 Stat. 1636, 1639.

by Pub.L. 93-651, Title II, § 206, 206(d), Nov. 21, 1974, 89 Stat. 2-11, 2-14, in exactly the same manner as it was amended and renumbered by Pub.L. 93-516.

1974 Amendment. Subsec. (b), Pub.L. 93-516 struck out requirement that at least 50 per cent of the additional personnel be blind persons. An identical amendment was made by Pub.L. 93-651. See Codification note hereinafter.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

### § 107d- Grievances of blind licensees; hearing and arbitration; non-compliance by federal departments and agencies; complaints by state licensing agencies; arbitration

(a) Any blind licensee who is dissatisfied with any action arising from the operation or administration of the vending facility program may submit to a State licensing agency a request for a full evidentiary hearing, which shall be provided by such agency in accordance with section 107b (6) of this title. If such blind licensee is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d-2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

(b) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States that has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of this chapter or any regulations issued thereunder (including a limitation on the placement or operation of a vending facility as described in section 107(b) of this title and the Secretary's determination thereon) such licensing agency may file a complaint with the Secretary who shall convene a panel to arbitrate the dispute pursuant to section 107d-2 of this title, and the decision of such panel shall be final and binding on the parties except as otherwise provided in this chapter.

June 20, 1956, c. 636, § 6, as added Dec. 7, 1974, Pub.L. 93-516, Title II, § 206, 88 Stat. 1636, and amended Nov. 21, 1974, Pub.L. 93-651, Title II, § 206, 89 Stat. 2-11.

Codification. The content of Pub.L. 93-516, including provisions of section 206 thereof which enacted this section, were originally contained in H.R. 14223, 93rd Congress, Second Session, which was pocket-vetted during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 263) H.R. 14223 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-516. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub.L. 93-516, Title II, § 206, Nov. 21, 1974, 89 Stat. 2-11, in exactly the same manner as it was enacted by Pub.L. 93-516.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 6373.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

### Index to Notes

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, page 60 Stat. 1.

and that plaintiffs had failed to... and had no private right of... under this chapter, should have... proceedings until plaintiffs had... opportunity to exhaust their administra... and arbitration remedies under fed... law. *Phillinger v. Cleveland Soc. for the Blind*, C.A. Ohio 1978, 587 F.2d 335, rehearing denied 591 F.2d 378.

### § 107d—2. Arbitration—Notice and hearing

(a) Upon receipt of a complaint filed under section 107d—1 of this title, the Secretary shall convene an ad hoc arbitration panel as provided in subsection (b) of this section. Such panel shall, in accordance with the provisions of subchapter II of chapter 5 of Title 5, give notice, conduct a hearing, and render its decision which shall be subject to appeal and review as a final agency action for purposes of chapter 7 of such Title 5.

#### Composition of panel; designation of chairman; termination of violations

(b) (1) The arbitration panel convened by the Secretary to hear grievances of blind licensees shall be composed of three members appointed as follows:

- (A) one individual designated by the State licensing agency;
- (B) one individual designated by the blind licensee; and
- (C) one individual, not employed by the State licensing agency or, where appropriate, its parent agency, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (1)(A), (B), or (C), the Secretary shall designate such member on behalf of such party.

(2) The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

- (A) one individual, designated by the State licensing agency;
- (B) one individual, designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and
- (C) one individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall serve as chairman, jointly designated by the members appointed under subparagraphs (A) and (B).

If any party fails to designate a member under subparagraph (2)(A), (B), or (C), the Secretary shall designate such member on behalf of such party. If the panel appointed pursuant to paragraph (2) finds that the acts or practices of any such department, agency, or instrumentality are in violation of this chapter, or any regulation issued thereunder, the head of any such department, agency, or instrumentality shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

#### Publication of decisions in Federal Register

(c) The decisions of a panel convened by the Secretary pursuant to this section shall be matters of public record and shall be published in the Federal Register.

#### Payment of costs by the Secretary

(d) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses he shall publish in the Federal Register.

June 26, 1936, c. 428, § 5, as added Dec. 7, 1974, Pub.L. 93-516, Title II, § 104, 88 Stat. 1626, and amended Nov. 21, 1974, Pub.L. 93-551, Title II, § 104, 89 Stat. 2-11.

including provisions of section 208 there of which enacted this section, were originally contained in H.R. 14225, 93rd Congress, Second Session, which was pocket-voted during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (*Kennedy v. Jones*, D.C.D.C. 1976, 412 F.Supp. 353) H.R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-651. Therefore, for purposes of codification, this section should be deemed to have been enacted by Pub.L. 93-651, Title II, § 208, Nov. 21, 1974, 89 Stat. 2-1, in exactly the same manner as it was enacted by Pub.L. 93-618.

Prior Provisions. A prior section 8 of Act June 20, 1936, which was classified to section 167e of this title, was renumbered section 9 by Pub.L. 93-618.

Transfer of Functions. All the functions with respect to or being administered by the Secretary of Health, Education, and Welfare through the Commissioner of Rehabilitation Services under this chapter were transferred to the Secretary of Education, effective according to section 601 of Pub.L. 96-88, Title VI, Oct. 17, 1979, 93 Stat. 686, set out as a note under section 3001 of this title, 180 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1979, as prescribed and published, with specified exceptions, see section 3-41 of this title.

U.S. Code Cong. and Adm. News. For the text of Pub.L. 93-651, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, prec. 80 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-618, see 1974 U.S. Code Cong. and Adm. News, p. 6212.

### Administrative proceeding 1 Class action 1 Review 3

1. Administrative proceeding  
1974 amendments to this chapter did not prevent society for blind and state rehabilitation services commission from raising in administrative proceedings issues of whether blind vendors were barred from seeking relief against society and commission on ground of laches and estoppel. *Phillinger v. Cleveland Soc. for Blind*, C.A. Ohio 1979, 591 F.2d 378.

2. Class action  
Whether this chapter contemplated class action remedy was question best suited for initial determination by administrative body and arbitration panel charged with primary responsibility for construction of this chapter. *Phillinger v. Cleveland Soc. for Blind*, C.A. Ohio 1979, 591 F.2d 378.

3. Review  
Provisions of 1974 amendments to this chapter which provided for judicial review of "final agency action" did not divest district court of jurisdiction to consider suit by blind vendors against society for blind and state rehabilitation services commission, which suit had been filed before passage of amendments, nor prevent district court from retaining jurisdiction while plaintiffs pursued administrative and arbitration remedies. *Phillinger v. Cleveland Soc. for Blind*, C.A. Ohio 1979, 591 F.2d 378.

Whether blind vendors lacked standing to sue under this chapter because they did not operate vendor facilities within purview of this chapter was question to be determined in administrative and arbitration proceedings, and final agency ruling on such issue would be reviewable in district court. 14.

### § 107d—3. Vending machine income—Accrual to blind licensee and alternatively to state agency; capping on amount for individual licensee

(a) In accordance with the provisions of subsection (b) of this section, vending machine income obtained from the operation of vending machines on Federal property shall accrue (1) to the blind licensee operating a vending facility on such property, or (2) in the event there is no blind licensee operating such facility on such property, to the State agency in whose State the Federal property is located, for the uses designated in subsection (c) of this section, except that with respect to income which accrues under clause (1) of this subsection, the Commissioner may prescribe regulations imposing a ceiling on income from such vending machines for an individual blind licensee. In the event such a ceiling is imposed, no blind licensee shall receive less vending machine income under such ceiling than he was receiving on January 1, 1974. No limitation shall be imposed on income from vending machines, combined to create a vending facility, which are maintained, serviced, or operated by a blind licensee. Any amounts received by a blind licensee that are in excess of the amount permitted to accrue to him under any ceiling imposed by the Commissioner shall be disbursed to the appropriate State agency under clause (2) of this subsection and shall be used by such agency in accordance with subsection (c) of this section.

#### Direct competition between vending machines and vending facilities; operation of capped income from such vending machines for individual licensee

(b) (1) After January 1, 1974, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a blind vending facility shall accrue as specified in sub-

operated on the  
as a blind vending facility except that vending machines  
operated in areas serving employees the majority of whom  
do not have direct access to the blind vending facility shall not  
be considered in direct competition with the blind vending facility. After  
July 1, 1975, 50 per centum of all vending machine income from ven-  
ding machines on Federal property which are not in direct competition with  
the blind vending facility shall accrue as specified in subsection (a) of this  
section, except that with respect to Federal property at which at least 50  
per centum of the total hours worked on the premises occurs during pe-  
riods other than normal working hours, 30 per centum of such income  
shall so accrue.

(2) The head of each department, agency, and instrumentality of the  
United States shall insure compliance with this section with respect to  
buildings, installations, and facilities under his control, and shall be re-  
sponsible for collection of, and accounting for, such vending machine in-  
come.

#### Disposal of accrued vending machine income by state licensing agency

(a) All vending machine income which accrues to a State licensing  
agency pursuant to subsection (a) of this section shall be used to estab-  
lish retirement or pension plans, for health insurance contributions, and for  
provision of paid sick leave and vacation time for blind licensees in such  
State, subject to a vote of blind licensees as provided under section 107b  
(3)(B) of this title. Any vending machine income remaining after appli-  
cation of the first sentence of this subsection shall be used for the pur-  
poses specified in sections 107b(3)(A), (B), (C), and (D) of this title,  
and any assessment charged to blind licensees by a State licensing agency  
shall be reduced pro rata in an amount equal to the total of such remain-  
ing vending machine income.

#### Income from vending machines in certain locations exempted

(d) Subsections (a) and (b)(1) of this section shall not apply in in-  
come from vending machines within retail sales outlets under the control  
of exchange or ship's stores systems authorized by Title 10, or to income  
from vending machines operated by the Veterans Canines Service, or to  
income from vending machines not in direct competition with a blind  
vending facility at individual installations, installations, or facilities on Federal  
property the total of which at each individual location, installation,  
or facilities does not exceed \$3,000 annually.

#### Regulations establishing priority for operation of cafeterias

(e) The Secretary, through the Commissioner, shall prescribe regula-  
tions to establish a priority for the operation of cafeterias on Federal  
property by blind licensees when he determines, on an individual basis  
and after consultation with the head of the appropriate installation, that  
such operation can be provided at a reasonable cost with food of a high  
quality comparable to that currently provided to employees, whether by  
contract or otherwise.

#### Noting arrangements more favorable to blind licensees unaffected

(f) This section shall not operate to preclude providing or future ar-  
rangements, or regulations of departments, agencies, or instrumentalities  
of the United States, under which blind licensees (1) receive a greater  
percentage or amount of vending machine income than that specified in  
subsection (b)(1) of this section, or (2) receive vending machine in-  
come from individual locations, installations, or facilities on Federal  
property the total of which at each individual location, installation, or  
facilities does not exceed \$3,000 annually.

#### Regulations for compliance

(g) The Secretary shall take such action and promulgate such regula-  
tions as he deems necessary to assure compliance with this section.

June 20, 1936, c. 638, § 7, as added Dec. 7, 1974, Pub.L. 93-516, Title  
II, § 206, 88 Stat. 1627, and amended Nov. 21, 1974, Pub.L. 93-651,  
Title II, § 206, 89 Stat. 2-12.

**Redesignation.** The content of Pub.L.  
93-516, including provisions of section 206  
thereof which enacted this section, were  
originally contained in H.R. 14225, 93rd  
Congress, Second Session, which was  
pocket-voted during the 31-day intra-  
session adjournment of the 93rd Congress  
for the Congressional elections in Novem-  
ber, 1974.

Pursuant to an order of the United  
States District Court for the District of  
Columbia (*Kennedy v. Jones*, D.C.D.C.  
1974, 412 P.Supp. 553) H.R. 14225 was  
deemed to have become law without the  
approval of the President on Nov. 21,  
1974, and was given the designation Pub.  
L. 93-651. Therefore, for purposes of  
redesignation, this section should be  
deemed to have been enacted by Pub.L.  
93-651, Title II, § 206, Nov. 21, 1974, 89  
Stat. 2-12, in exactly the same manner as  
it was enacted by Pub.L. 93-516.

**Prior Provisions.** A prior section 7 of  
Act June 20, 1936, which was classified to

section 107e-1 of this title, was repealed  
by Pub.L. 93-516.

**Transfer of Functions.** All the func-  
tions with respect to or being admin-  
istered by the Secretary of Health, Edu-  
cation, and Welfare through the Commis-  
sioner of Rehabilitation Services under  
this chapter were transferred to the Sec-  
retary of Education, effective according  
to section 601 of Pub.L. 93-501, Title VI,  
Oct. 17, 1975, 89 Stat. 696, set out as a note  
under section 3101 of this title, 180 days  
after the first Secretary of Education  
takes office, or on any earlier date on or  
after Oct. 1, 1975, as prescribed and pub-  
lished, with qualified acceptances, see sec-  
tion 3101 of this title.

**U.S. Code Cong. and Adm. News.** For  
the text of Pub.L. 93-651, see 1975 U.S.  
Code Cong. and Adm. News, Vol. 1, page  
66 Stat. 1.

**Legislative History.** For legislative  
history and purpose of Pub.L. 93-651, see  
1974 U.S. Code Cong. and Adm. News, p.  
6272.

#### § 107d-4. Training programs for maximum vocational potential for blind

The Commissioner shall insure, through promulgation of appropriate  
regulations, that uniform and effective training programs, including on-  
the-job training, are provided for blind individuals, through services un-  
der the Rehabilitation Act of 1973. He shall further insure that State  
agencies provide programs for upward mobility (including further edu-  
cation and additional training or retraining for improved work oppor-  
tunities) for all trainees under this chapter, and that follow-along serv-  
ices are provided to such trainees to assure that their maximum vocational  
potential is achieved.

June 20, 1936, c. 638, § 8, as added Dec. 7, 1974, Pub.L. 93-516, Title II,  
§ 206, 88 Stat. 1628, and amended Nov. 21, 1974, Pub.L. 93-651, Title  
II, § 206, 89 Stat. 2-11.

**Reference to Text.** The Rehabilitation  
Act of 1973, referred to in text, is classi-  
fied to section 101 of title 29, U.S. Code.

**Redesignation.** The content of Pub.L.  
93-516, including provisions of section 206  
thereof which enacted this section, were  
originally contained in H.R. 14225, 93rd  
Congress, Second Session, which was  
pocket-voted during the 31-day intra-  
session adjournment of the 93rd Congress  
for the Congressional elections in Novem-  
ber, 1974.

Pursuant to an order of the United  
States District Court for the District of  
Columbia (*Kennedy v. Jones*, D.C.D.C.  
1974, 412 P.Supp. 553) H.R. 14225 was  
deemed to have become law without the  
approval of the President on Nov. 21,  
1974, and was given the designation Pub.  
L. 93-651. Therefore, for purposes of  
redesignation, this section should be  
deemed to have been enacted by Pub.L.  
93-651, Title II, § 206, Nov. 21, 1974, 89  
Stat. 2-11, in exactly the same manner as  
it was enacted by Pub.L. 93-516.

**Prior Provisions.** A prior section 8 of  
Act June 20, 1936, which was classified to  
section 107f of this title, was renumbered  
section 10 by Pub.L. 93-516.

**Transfer of Functions.** All the func-  
tions with respect to or being admin-  
istered by the Secretary of Health, Edu-  
cation, and Welfare through the Com-  
missioner of Rehabilitation Services un-  
der this chapter were transferred to the  
Secretary of Education, effective accord-  
ing to section 601 of Pub.L. 93-501, Title  
VI, Oct. 17, 1975, 89 Stat. 696, set out as  
a note under section 3101 of this title, 180  
days after the first Secretary of Educa-  
tion takes office, or on any earlier date  
on or after Oct. 1, 1975, as prescribed and  
published with qualified acceptances, see  
section 3101 of this title.

**U.S. Code Cong. and Adm. News.** For  
the text of Pub.L. 93-651, see 1975 U.S.  
Code Cong. and Adm. News, Vol. 1, page  
66 Stat. 1.

**Legislative History.** For legislative  
history and purpose of Pub.L. 93-651, see  
1974 U.S. Code Cong. and Adm. News, p.  
6272.

... means a person whose central visual acuity not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select;

(2) "Commissioner" means the Commissioner of the Rehabilitation Services Administration;

(3) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency, or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia or any territory or possession of the United States;

(4) "Secretary" means the Secretary of Health, Education, and Welfare;

(5) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia;

(6) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia;

(7) "vending facility" means automatic vending machines, cafeterias, snack bars, cart services, shelves, counters, and such other appropriate auxiliary equipment as the Secretary may by regulation prescribe as being necessary for the sale of the articles or services described in section 107a(a)(5) of this title and which may be operated by blind licensees; and

(8) "vending machine income" means receipts (other than those of a blind licensee) from vending machine operations on Federal property, after cost of goods sold (including reasonable service and maintenance costs), where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind licensee) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

June 20, 1936, c. 438, § 9, formerly § 6, 49 Stat. 1660, amended Aug. 3, 1954, c. 655, § 4(f), 68 Stat. 564; Nov. 21, 1974, Pub.L. 93-651, Title II, §§ 206, 207, 88 Stat. 2-11, 2-12; renumbered and amended Dec. 7, 1974, Pub.L. 93-516, Title II, §§ 206, 207, 88 Stat. 1024, 1025.

Amendment. The content of Pub.L. 93-516, including provisions of sections 206 and 207 thereof which amended and renumbered this section, were originally contained in H.R. 10225, 93rd Congress, Second Session, which was passed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 282) 11 R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-651. Therefore, for purposes of codification, this section should be deemed to have been renumbered by Pub.L. 93-651, Title II, § 206, Nov. 21, 1974, 88 Stat. 2-11, to exactly the same manner as it was amended by Pub.L. 93-516, Title II, § 206, Nov. 21, 1974, 88 Stat. 1024.

... diameter subtends an angle of no greater than twenty degrees, and that in determining whether a person is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual shall select, for provisions that such person mean a person having not more than 10 per centum visual acuity in the better eye with correction and that such blindness shall be certified by a duly licensed ophthalmologist. In the definition of "United States" added reference to Puerto Rico, in the definition of "State" added reference to Puerto Rico, and in the definition of "Federal property" added reference to Department of Defense and United States Postal Service. An identical amendment was made by Pub.L. 93-651. See Codification note hereinabove.

§ 107c—J. Repealed. Pub.L. 93-516, Title II, § 206, Dec. 7, 1974, 88 Stat. 1024.

Section, Act June 20, 1936, c. 438, § 7, as added Aug. 3, 1954, c. 655, § 4(g), 68 Stat. 564, related to designation and status of states acting as licensing agents before July 1, 1954.

The content of Pub.L. 93-516, including provisions of section 206 thereof which repealed this section, were originally contained in H.R. 10225, 93rd Congress, Second Session, which was passed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

§ 107f. Appropriations

Section 8 of Act June 20, 1936, c. 438, 49 Stat. 1560, was renumbered section 10 by Pub.L. 93-516, Title II, § 206, Dec. 7, 1974, 88 Stat. 1025.

The content of Pub.L. 93-651, including provisions of section 206 thereof which renumbered this section, were originally contained in H.R. 10225, 93rd Congress, Second Session, which was passed during the 31-day intrasession adjournment of the 93rd Congress for the Congressional elections in November, 1974.

Pursuant to an order of the United States District Court for the District of

Secretary of Health, Education, and Welfare through the Commissioner of Rehabilitation Services under this chapter were transferred to the Secretary of Education, effective according to section 201 of Pub.L. 93-58, Title VI, Oct. 17, 1973, 87 Stat. 656, set out as a note under section 3401 of this title, 150 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1973, as prescribed and published, with specified exceptions, see section 211 of this title.

U.S. Code Cong. and Adm. News, For the text of Pub.L. 93-651, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, part. 88 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-516, see 1974 U.S. Code Cong. and Adm. News, p. 5272.

Pursuant to an order of the United States District Court for the District of Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 282) 11 R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-651. Therefore, for purposes of codification, this section should be deemed to have been renumbered by Pub.L. 93-651, Title II, § 206, Nov. 21, 1974, 88 Stat. 2-11, to exactly the same manner as it was renumbered by Pub.L. 93-516.

Columbia (Kennedy v. Jones, D.C.D.C. 1974, 412 F.Supp. 282) 11 R. 14225 was deemed to have become law without the approval of the President on Nov. 21, 1974, and was given the designation Pub.L. 93-651. Therefore, for purposes of codification, this section should be deemed to have been renumbered by Pub.L. 93-651, Title II, § 206, Nov. 21, 1974, 88 Stat. 2-11, to exactly the same manner as it was amended by Pub.L. 93-516, Title II, § 206, Nov. 21, 1974, 88 Stat. 1025.

CHAPTER 5—HOWARD UNIVERSITY

Sec. 101. Functions through the General Executive Administration (Plan).

§ 101, 102

Transfer of Functions. All functions of the Secretary and the Department of Health, Education, and Welfare under laws relating to the relationship between Howard University and the Department, including any aspects vested in subsidiaries of the Secretary or components of the Department, and all functions of the Secretary, the Assistant Secretary for Education, or the Commissioner of Education with respect to the Education Division of the Department, the Office of the Assistant Secretary for Education, including the National Center for Education Statistics, and specified education advisory committees in the Department, were transferred to the Secretary of Edu-

cation, and specified offices in the Department of Health, Education, and Welfare, all offices in the Office of the Assistant Secretary for Education or the Education Division of the Department, and specified education advisory committees in the Department were transferred to the Department of Education, effective according to section 201 of Pub.L. 93-58, Title VI, Oct. 17, 1973, 87 Stat. 656, set out as a note under section 3401 of this title, 150 days after the first Secretary of Education takes office, or on any earlier date on or after Oct. 1, 1973, as prescribed and published, with specified exceptions, see sections 211 and 241 of this title.

of project that has been established and validated in terms of its potential impact on the rehabilitation service delivery system.

(g) Reference to State/Federal rehabilitation service program. (10 points)

(1) The Secretary reviews each application for information that shows the proposed project appropriately refers to the mission of the State/Federal rehabilitation service program.

(2) The Secretary looks for information that shows the proposed project relates to the mission of the State/Federal rehabilitation service program and can be expected to improve the skills and competence of personnel engaged in the administration or delivery of rehabilitation services, and persons with an interest in the delivery of rehabilitation services.

(h) Nature and scope of training program content. (15 points)

(1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary reviews each application for information that shows that--

(a) The educational objectives are clearly defined, measurable and desirable; and

(b) The proposed course content and methodology to develop and implement the training can be expected to carry the stated educational objectives.

**Subpart B--What Conditions Must Be Met by a Grantee?**

390.42 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Sections 1201 and 3041 of the Act, 29 U.S.C. 711(e) and 744(a))

390.43 Who are allowable costs?

In addition to those allowable costs established in EDOAR 1175.530-1402, the following items are allow-

able under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for handicapped trainees.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Sections 121(c) and 3041(a) of the Act, 29 U.S.C. 711(c) and 744(a))

**PART 395--VENDING FACILITY PROGRAM FOR THE BLIND ON FEDERAL AND OTHER PROPERTY**

**Subpart A--Definitions**

Sec.

395.1 Terms.

**Subpart B--The State Licensing Agency**

395.2 Application for designation as a State licensing agency, general.

395.3 Application for designation as State licensing agency, content.

395.4 State rules and regulations.

395.5 Approval of application for designation as State licensing agency.

395.6 Vendor ownership of vending facilities.

395.7 The issuance and conditions of licenses.

395.8 Distribution and use of income from vending machines on Federal property.

395.9 The setting aside of funds by the State licensing agency.

395.10 The maintenance and replacement of vending facility equipment.

395.11 Training program for blind individuals.

395.12 Access to program and financial information.

395.13 Evidentiary hearings and arbitration of vendor complaints.

395.14 The State Committee of Blind Vendors.

395.15 Use of nominee agreements.

395.16 Permit for the establishment of vending facilities.

395.17 Suspension of designation as State licensing agency.

Subpart C—Federal Property Management

- Sec.  
 395.30 The location and operation of vending facilities for blind vendors on Federal property.  
 395.31 Acquisition and occupation of Federal property.  
 395.32 Collection and distribution of vending machine income from vending machines on Federal property.  
 395.33 Operation of cafeterias by blind vendors.  
 395.34 Application for permits.  
 395.35 Terms for permit.  
 395.36 Enforcement procedures.  
 395.37 Arbitration of State licensing agency complaints.  
 395.38 Reports.

AUTHORITY: Sec. 2, 49 Stat. 1659, as amended; 20 U.S.C. 197a.

SOURCE: 42 FR 13403, Mar. 23, 1977, unless otherwise noted. Redesignated at 49 FR 77369, Nov. 21, 1980, and further redesignated at 49 FR 3417, Jan. 19, 1981.

Subpart A—Definitions

§ 395.1 Terms

Unless otherwise indicated in this part, the terms below are defined as follows:

- (a) "Act" means the Randolph-Sheppard Vending Stand Act (Pub. L. 74-732), as amended by Pub. L. 83-365 and Pub. L. 93-516, 20 U.S.C., ch. 6A, Sec. 107.  
 (b) "Blind licensee" means a blind person licensed by the State licensing agency to operate a vending facility on Federal or other property.  
 (c) "Blind person" means a person who, after examination by a physician skilled in diseases of the eye or by an optometrist, whichever such person shall select, has been determined to have:  
 (1) Not more than 20/200 central visual acuity in the better eye with correcting lenses, or  
 (2) An equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20°.  
 (d) "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where

the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria and table or booth seating facilities are always provided.

(e) "Secretary" means the Secretary of the Rehabilitation Services Administration.

(f) "Direct competition" means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor, except that vending machines or vending facilities operated in areas serving employees the majority of whom normally do not have direct access (in terms of uninterrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered to be in direct competition with the vending facility operated by a blind vendor.

(g) "Federal property" means any building, land, or other real property owned, leased, or occupied by any department, agency or instrumentality of the United States (including the Department of Defense and the United States Postal Service), or any other instrumentality wholly owned by the United States, or by any department or agency of the District of Columbia, or any territory or possession of the United States.

(h) "Individual location installation or facility" means a single building or a self-contained group of buildings. In order for two or more buildings to be considered to be a self-contained group of buildings, such buildings must be located in close proximity to each other, and a majority of the Federal employees housed in any such building must regularly move from one building to another in the course of official business during normal working days.

(i) "License" means a written instrument issued by the State licensing agency to a blind person authorizing such person to operate a vending facility on Federal or other property.

(j) "Management services" means supervision, inspection, quality control, consultation, accounting, regulation,

in-service training, and other related services provided on a systematic basis to support and improve vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) "Nominee" means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) "Normal working hours" means an eight hour work period between the approximate hours of 8:00 a.m., 8:00 p.m., Monday through Friday.

(n) "Other property" means property which is not Federal property and on which vending facilities are established or operated by the use of a funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) "Permit" means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) "Program" means all the activities of the licensing agency under part related to vending facilities on Federal and other property.

(q) "Satisfactory site" means a site fully accessible to vending facilities and having:

- (1) Effective on March 22, 1981, a minimum of 200 square feet area for the vending and storage of articles necessary for the operation of a vending facility; and

service training, and other related services provided on a systematic basis as support and imp. vending facilities operated by blind vendors. "Management services" does not include those services or costs which pertain to the on-going operation of an individual facility after the initial establishment period.

(k) "Net proceeds" means the amount remaining from the sale of articles or services of vending facilities, and any vending machine or other income accruing to blind vendors after deducting the cost of such sale and other expenses (excluding set-aside charges required to be paid by such blind vendors).

(l) "Nominee" means a nonprofit agency or organization designated by the State licensing agency through a written agreement to act as its agent in the provision of services to blind licensees under the State's vending facility program.

(m) "Normal working hours" means an eight hour work period between the approximate hours of 8:00 a.m. to 4:00 p.m., Monday through Friday.

(n) "Other property" means property which is not Federal property and on which vending facilities are established or operated by the use of any funds derived in whole or in part, directly or indirectly, from the operation of vending facilities on any Federal property.

(o) "Permit" means the official approval given a State licensing agency by a department, agency or instrumentality in control of the maintenance, operation, and protection of Federal property, or person in control of other property, whereby the State licensing agency is authorized to establish a vending facility.

(p) "Program" means all the activities of the licensing agency under this part related to vending facilities on Federal and other property.

(q) "Satisfactory site" means an area fully accessible to vending facility patrons and having:

(1) Effective on March 23, 1977 a minimum of 300 square feet available for the vending and storage of articles necessary for the operation of a vending facility; and

(2) Sufficient electrical plumbing, heating, and ventilation outlets for the location and operation of a vending facility, in accordance with applicable health laws and building codes.

(r) "Secretary" means the Secretary of Education.

(s) "Set-aside funds" means funds which accrue to a State licensing agency from an assessment against the net proceeds of each vending facility in the State's vending facility program and any income from vending machines on Federal property which accrues to the State licensing agency.

(t) "State" means a State, territory, possession, Puerto Rico, or the District of Columbia.

(u) "State vocational rehabilitation agency" means that agency in the State providing vocational rehabilitation services to the blind as the sole State agency under a State plan for vocational rehabilitation services approved pursuant to the provisions of the Rehabilitation Act of 1973 (29 U.S.C., ch. 16).

(v) "State licensing agency" means the State agency designated by the Secretary under this part to issue licenses to blind persons for the operation of vending facilities on Federal and other property.

(w) "United States" includes the several States, territories, and possessions of the United States, Puerto Rico, and the District of Columbia.

(x) "Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of change for any lottery authorized by State law and conducted by an agency of a State within such State.

(y) "Vending machine", for the purpose of assigning vending machine license under this part, means a coin or currency operated machine which dispenses articles or services, except

that those machines operated by the United States Postal Service for the sale of postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones shall not be considered to be vending machines.

(2) "Vending machine income" means receipts (other than those of a blind vendor) from vending machine operations on Federal property, after deducting the cost of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns, where the machines are operated, serviced, or maintained by, or with the approval of, a department, agency, or instrumentality of the United States, or commissions paid (other than to a blind vendor) by a commercial vending concern which operates, services, and maintains vending machines on Federal property for, or with the approval of, a department, agency, or instrumentality of the United States.

(aa) "Vendor" means a blind licensee who is operating a vending facility on Federal or other property.

(bb) "Vocational rehabilitation services" means those services as defined in § 1361.1(ee) (1) and (2) of this chapter.

**Subpart B—The State Licensing Agency**

**§ 395.3 Application for designation as a State licensing agency; general.**

(a) An application for designation as a State licensing agency may be submitted only by the State vocational rehabilitation agency providing vocational rehabilitation services to the blind under an approved State plan for vocational rehabilitation services under Part 1361 of this chapter.

(b) Such application shall be:

- (1) Submitted in writing to the Secretary;
- (2) Approved by the chief executive of the State; and
- (3) Transmitted over the signature of the administrator of the State agency making application.

**§ 395.3 Application for designation as a State licensing agency; content.**

(a) An application for designation as a State licensing agency under § 395.2 shall indicate:

(1) The State licensing agency's legal authority to administer the program, including its authority to promulgate rules and regulations to govern the program;

(2) The State licensing agency's organization for carrying out the program, including a description of the methods for coordinating the State's vending facility program and the State's vocational rehabilitation program, with special reference to the provision of such post-employment services necessary to assure that the maximum vocational potential of each blind vendor is achieved;

(3) The policies and standards to be employed in the selection of suitable locations for vending facilities;

(4) The methods to be used to ensure the continuing and active participation of the State Committee of Blind Vendors in matters affecting policy and program development and administration.

(5) The policies to be followed in making suitable vending facility equipment and adequate initial stock available to a vendor;

(6) The sources of funds for the administration of the program;

(7) The policies and standards governing the relationship of the State licensing agency to the vendors, including their selection, duties, supervision, transfer, promotion, financial participation, rights to a full evidentiary hearing concerning a State licensing agency action, and, where necessary, rights for the submission of complaints to an arbitration panel.

(8) The methods to be followed in providing suitable training, including on-the-job training and, where appropriate, upward mobility training, to blind vendors;

(9) The arrangements made or contemplated, if any, for the utilization of the services of any nominee under § 395.10, the agreements therefor, and the services to be provided, the procedures for the supervision and control of the services provided by such nominee and the methods used in evaluating services received, the basis for remuneration, and the fiscal control and accounting procedures;

nee and the methods used in evaluating services received, the basis for remuneration, and the fiscal control and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreement schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a licensee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination from the Secretary that the amount of funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, race, origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to ensure that each vendor understands the provisions of the permit and the agreement under which he operates as evidenced by his signed statement.

and the methods used in evaluating services received, the basis for re-generation, and the fiscal controls and accounting procedures;

(10) The arrangements made or contemplated, if any, for the vesting in accordance with the laws of the State, of the right, title to, and interest in vending facility equipment or stock (including vending machines), used in the program, in a nominee to hold such right, title to, and interest for program purposes; and

(11) The assurances of the State licensing agency that it will:

(i) Cooperate with the Secretary in applying the requirements of the Act in a uniform manner;

(ii) Take effective action, including the termination of licenses, to carry out full responsibility for the supervision and management of each vending facility in its program in accordance with its established rules and regulations, this part, and the terms and conditions governing the permit;

(iii) Submit promptly to the Secretary for approval a description of any changes in the legal authority of the State licensing agency, its rules and regulations, blind vendor agreements, schedules for the setting aside of funds, contractual arrangements for the furnishing of services by a nominee, arrangements for carrying general liability and product liability insurance, and any other matters which form a part of the application;

(iv) If it intends to set aside, or cause to be set aside, funds from the net proceeds of the operation of vending facilities, obtain a prior determination by the Secretary that the amount of such funds to be set aside is reasonable;

(v) Establish policies against discrimination of any blind vendor on the basis of sex, age, physical or mental impairment, creed, color, national origin, or political affiliation;

(vi) Furnish each vendor a copy of its rules and regulations and a description of the arrangements for providing services, and take adequate steps to assure that each vendor understands the provisions of the permit and any agreement under which he operates, as evidenced by his signed statement

(vii) Submit to an arbitration panel those grievances of any vendor unresolved after a full evidentiary hearing;

(viii) Adopt accounting procedures and maintain financial records in a manner necessary to provide for each vending facility and for the State's vending facility program a classification of financial transactions in such detail as is sufficient to enable evaluation of performance; and

(ix) Maintain records and make reports in such form and containing such information as the Secretary may require, make such records available for audit purposes, and comply with such provisions as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) An application submitted under § 395.3 shall be accompanied by a copy of State rules and regulations affecting the administration and operation of the State's vending facility program.

#### § 395.4 State rules and regulations.

(a) The State licensing agency shall promulgate rules and regulations which have been approved by the Secretary and which shall be adequate to assure the effective conduct of the State's vending facility program (including State licensing agency procedures covering the conduct of full evidentiary hearings) and the operation of each vending facility in accordance with this part and with the requirements and conditions of each department, agency, and instrumentality in control of the maintenance, operation, and protection of Federal property, including the conditions contained in permits, as well as in all applicable Federal and State laws, local ordinances and regulations.

(b) Such rules and regulations and amendments thereto shall be filed or published in accordance with State law.

(c) Such rules and regulations shall include provisions adequate to assure that the right, title to, and interest in each vending facility used in the program and the stock will be vested in accordance with the laws of the State in only the following:

(1) The State licensing agency; or  
 (2) Its nominee, subject to the conditions specified in § 305.15(b), or

(3) The vendor, in accordance with State determination.

(d) Notwithstanding the provisions of paragraph (c) of this section, any right, title to, or interest which existed on June 30, 1955, in stock may continue so long as:

(1) The interest is in the stock of a facility established under the program prior to July 1, 1955, and

(2) The vendor was licensed in the program (whether or not for the operation of the vending facility in question) prior to July 1, 1955.

§ 305.5 Approval of application for designation as State licensing agency.

When the Secretary determines that an application submitted by a State vocational rehabilitation agency under § 305.2, and the accompanying rules and regulations indicate a plan of program operations which will stimulate and enlarge the economic opportunities for the blind, and which will meet all other requirements of this part, he shall approve the application and shall designate the applying State vocational rehabilitation agency as the State licensing agency.

§ 305.6 Vendor ownership of vending facilities.

(a) If a State licensing agency determines under § 305.4(c) that the right, title to, and interest in a vending facility may be vested in the blind vendor, the State licensing agency shall enter into a written agreement with each vendor who is to have such ownership. Such agreement shall contain in full the terms and conditions governing such ownership in accordance with criteria in the State licensing agency's regulations, this part, and the terms and conditions of the permit. The criteria established to govern the determination that the title may be so vested shall contain reasonable provisions to enable a vendor to purchase vending facility equipment and to ensure that no blind individual will be denied the opportunity to become a vendor because of his inability to purchase the vending facility equipment or the initial stock.

(b) The State licensing agency shall establish in writing and maintain policies determining whether the vendor-owner or the State licensing agency shall be required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment; and if the former, such policies shall provide that upon such vendor-owner's failure to do so, the State licensing agency may make the necessary maintenance, replacement, or repairs and make equitable arrangements for reimbursement.

(c) Where the vendor owns such equipment and is required to maintain the vending facility in good repair and in an attractive condition and replace worn-out or obsolete equipment, or agree to purchase additional new equipment, service charges for such purposes shall be equitably reduced and the method for determining such amount shall be established by the State licensing agency in writing.

(d) Where the vendor owns such equipment, the State licensing agency shall retain a first option to repurchase such equipment, and in the event the vendor-owner dies, or for any other reason ceases to be a licensee, or transfers to another vending facility ownership of such equipment shall become vested in the State licensing agency for transfer to a successor licensee subject to an obligation on its part to pay to such vendor-owner or his estate, the fair value therein, and

(e) The vendor-owner, his personal representative or next of kin shall be entitled to an opportunity for a full evidentiary hearing with respect to the determination of the amount to be paid by the State licensing agency for a vendor's ownership in the equipment. When the vendor-owner is dissatisfied with any decision rendered as a result of such hearing, he may file a complaint with the Secretary under § 306.13 to request the convening of an ad hoc arbitration panel.

§ 306.1 The issuance and conditions of licenses.

(a) The State licensing agency shall establish in writing and maintain ob-

jective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

- (1) Blind;
- (2) Citizens of the United States; and
- (3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

§ 306.2 Distribution and use of income from vending machines on Federal property.

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 205.32 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in an amount exceeding the average net income of the total number of the

jective criteria for licensing qualified applicants, including a provision for giving preference to blind persons who are in need of employment. Such criteria shall also include provisions to assure that licenses will be issued only to persons who are determined by the State licensing agency to be:

- (1) Blind;
- (2) Citizens of the United States; and
- (3) Certified by the State vocational rehabilitation agency as qualified to operate a vending facility.

(b) The State licensing agency shall provide for the issuance of licenses for an indefinite period but subject to suspension or termination if, after affording the vendor an opportunity for a full evidentiary hearing, the State licensing agency finds that the vending facility is not being operated in accordance with its rules and regulations, the terms and conditions of the permit, and the terms and conditions of the agreement with the vendor.

(c) The State licensing agency shall further establish in writing and maintain policies which have been developed with the active participation of the State Committee of Blind Vendors and which govern the duties, supervision, transfer, promotion, and financial participation of the vendors. The State licensing agency shall also establish procedures to assure that such policies have been explained to each blind vendor.

**§ 395.10** *Distribution and use of income from vending machines on Federal property.*

(a) Vending machine income from vending machines on Federal property which has been disbursed to the State licensing agency by a property managing department, agency, or instrumentality of the United States under § 395.9 shall accrue to each blind vendor operating a vending facility on such Federal property in each State in an amount not to exceed the average net income of the total number of blind vendors within such State, as determined each fiscal year on the basis of each prior year's operation, except that vending machine income shall not accrue to any blind vendor in any amount exceeding the average net income of the total number of blind

vendors in the United States. No blind vendor shall receive less vending machine income than he was receiving during the calendar year prior to January 1, 1974, as a direct result of any limitation imposed on such income under this paragraph. No limitation shall be imposed on income from vending machines, combined to create a vending facility, when such facility is maintained, serviced, or operated by a blind vendor. Vending machine income disbursed by a property managing department, agency or instrumentality of the United States to a State licensing agency in excess of the amounts eligible to accrue to blind vendors in accordance with this paragraph shall be retained by the appropriate State licensing agency.

(b) The State licensing agency shall disburse vending machine income to blind vendors within the State on at least a quarterly basis.

(c) Vending machine income which is retained under paragraph (a) of this section by a State licensing agency shall be used by such agency for the establishment and maintenance of retirement or pension plans, for health insurance contributions, and for the provision of paid sick leave and vacation time for blind vendors in such State, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency has provided to each such vendor information on all matters relevant to such purposes. Any vending machine income not necessary for such purposes shall be used by the State licensing agency for the maintenance and replacement of equipment, the purchase of new equipment, management services, and assuring a fair minimum return to vendors. An assessment charged to blind vendors by a State licensing agency shall be reduced pro rata in an amount equal to the total of such remaining vending machine income.

**§ 395.9** *The setting aside of funds by the State licensing agency.*

(a) The State licensing agency shall establish in writing the extent to which funds are to be set aside or caused to be set aside from the net

proceeds of the operation of the vending facilities and, to the extent applicable, from vending machine income under § 395.8(c) in an amount determined by the Secretary to be reasonable.

(b) Funds may be set aside under paragraph (a) of this section only for the purposes of:

(1) Maintenance and replacement of equipment;

(2) The purchase of new equipment;

(3) Management services;

(4) Assuring a fair minimum of return to vendors; or

(5) The establishment and maintenance of retirement or pension funds, health insurance contributions, and provision for paid sick leave and vacation time, if it is so determined by a majority vote of blind vendors licensed by the State licensing agency, after such agency provides to each such vendor information on all matters relevant to such proposed purposes.

(c) The State licensing agency shall further set out the method of determining the charge for each of the above purposes listed in paragraph (b) of this section, which will be determined with the active participation of the State Committee of Blind Vendors and which will be designed to prevent, so far as is practicable, a greater charge for any purpose than is reasonably required for that purpose. The State licensing agency shall maintain adequate records to support the reasonableness of the charges for each of the purposes listed in this section, including any reserves necessary to assure that such purposes can be achieved on a consistent basis.

§ 395.10 The maintenance and replacement of vending facility equipment.

The State licensing agency shall maintain (or cause to be maintained) all vending facility equipment in good repair and in an attractive condition and shall replace or cause to be replaced worn-out and obsolete equipment as required to ensure the continued successful operation of the facility.

§ 395.11 Training program for blind individuals.

The State licensing agency shall ensure that effective programs of vocational and other training services, including personal and vocational adjustment, books, tools, and other training materials, shall be provided to blind individuals as vocational rehabilitation services under the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516). Such programs shall include on-the-job training in all aspects of vending facility operation for blind persons with the capacity to operate a vending facility, and upward mobility training (including further education and additional training or retraining for improved work opportunities) for all blind licensees. The State licensing agency shall further ensure that post-employment services shall be provided to blind vendors as vocational rehabilitation services as necessary to assure that the maximum vocational potential of such vendors is achieved and suitable employment is maintained within the State's vending facility program.

§ 395.12 Access to program and financial information.

Each blind vendor under this part shall be provided access to all financial data of the State licensing agency relevant to the operation of the State vending facility program, including quarterly and annual financial reports, provided that such disclosure does not violate applicable Federal or State laws pertaining to the disclosure of confidential information. Insofar as practicable, such data shall be made available in braille or recorded tape. At the request of a blind vendor State licensing agency staff shall arrange a convenient time to assist in the interpretation of such financial data.

§ 395.13 Evidentiary hearings and arbitration of vendor complaints.

(a) The State licensing agency shall specify in writing and maintain procedures whereby such agency affords an opportunity for a full evidentiary hearing to each blind vendor (which

procedures shall also apply to cases under § 395.6(e)) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the blind vendor; and

(3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary

procedures shall also apply to cases under § 395.6(e) dissatisfied with any State licensing agency action arising from the operation or administration of the vending facility program. When such blind vendor is dissatisfied with any action taken or decision rendered as a result of such hearing, he may file a complaint with the Secretary. Such complaint shall be accompanied by all available supporting documents, including a statement of the decision which was rendered and the reasons in support thereof.

(b) The filing of a complaint under paragraph (a) of this section with either the State licensing agency or the Secretary shall indicate consent by the blind vendor for the release of such information as is necessary for the conduct of a full evidentiary hearing or the hearing of an ad hoc arbitration panel.

(c) Upon receipt of a complaint filed by a blind vendor which meets the requirements established by the Secretary, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. chapter 5, subchapter II, give notice, conduct a hearing, and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. chapter 7.

(d) The arbitration panel convened by the Secretary to hear the grievances of blind vendors shall be composed of three members appointed as follows:

- (1) One individual designated by the State licensing agency;
- (2) One individual designated by the blind vendor; and
- (3) One individual not employed by the State licensing agency or, where appropriate, its parent agency, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(e) If either the State licensing agency or the blind vendor fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(f) The decisions of an arbitration panel convened by the Secretary

under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(g) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

(h) The provisions of this section shall not require the participation of grantors of permits for the operation of vending facilities on property other than Federal property.

#### § 395.14 The State Committee of Blind Vendors.

(a) The State licensing agency shall provide for the biennial election of a State Committee of Blind Vendors which, to the extent possible, shall be fully representative of all blind vendors in the State program on the basis of such factors as geography and vending facility type with a goal of providing for proportional representation of blind vendors on Federal property and blind vendors on other property. Participation by any blind vendor in any election shall not be conditioned upon the payment of dues or any other fees.

(b) The State Committee of Blind Vendors shall:

(1) Actively participate with the State licensing agency in major administrative decisions and policy and program development decisions affecting the overall administration of the State's vending facility program;

(2) Receive and transmit to the State licensing agency grievances at the request of blind vendors and serve as advocates for such vendors in connection with such grievances;

(3) Actively participate with the State licensing agency in the development and administration of a State system for the transfer and promotion of blind vendors;

(4) Actively participate with the State licensing agency in the development of training and retraining programs for blind vendors; and

(5) Sponsor, with the assistance of the State licensing agency, meetings and instructional conferences for blind vendors within the State.

§ 395.15 Use of nominee agreements.

(a) The State licensing agency may enter into an agreement whereby another agency or organization undertakes to furnish services to blind vendors. Such agreement shall be in writing and shall contain provisions which:

(1) Clearly insure the retention by the State licensing agency of full responsibility for the administration and operation of all phases of the program;

(2) Specify the type and extent of the services to be provided under such agreement;

(3) Provide that no set-aside charges will be collected from blind vendors except as specified in such agreement;

(4) Specify that no nominee will be allowed to exercise any function with respect to funds for the purchase of new equipment or for assuring a fair minimum of return to vendors, except to collect and hold solely for disposition in accordance with the order of the State licensing agency any charges authorized for those purposes by the licensing agency; and

(5) Specify that only the State licensing agency shall have control with respect to selection, placement, transfer, financial participation and termination of the vendors, and the preservation, utilization, and disposition of program assets.

(b) If the State licensing agency permits any agency or organization other than a vendor to hold any right, title to, or interest in vending facilities or stock, the arrangement shall be one permitted by State law and shall specify in writing that all such right, title to, or interest is held by such agency or organization as the nominee of the State licensing agency for program purposes and subject to the paramount right of the State licensing agency to direct and control the use, transfer, and disposition of such vending facilities or stock.

§ 395.16 Permit for the establishment of vending facilities.

Prior to the establishment of each vending facility, other than a cafeteria, the State licensing agency shall submit an application for a permit setting forth the location, the amount of space necessary for the operation of

the vending facility; the type of facility and equipment, the number, location and type of vending machines and other terms and conditions desired to be included in the permit. Such application shall be submitted for the approval of the head of the Federal property managing department, agency, or instrumentality. When an application is not approved, the head of the Federal property managing department, agency, or instrumentality shall advise the State licensing agency in writing and shall indicate the reasons for the disapproval.

§ 395.17 Suspension of designation as State licensing agency.

(a) If the Secretary has reason to believe that, in the administration of the program, there is a failure on the part of any State licensing agency to comply substantially with the Act and this part, he shall so inform such agency in writing, setting forth, in detail, the areas in which there is such failure and giving it a reasonable opportunity to comply.

(b) If, after the lapse of a reasonable time, the Secretary is of the opinion that such failure to comply still continues and that the State licensing agency is not taking the necessary steps to comply, he shall offer to such agency, by reasonable notice in writing thereto and to the chief executive of the State, an opportunity for a hearing before the Secretary (or person designated by the Secretary) to determine whether there is a failure on the part of such agency to comply substantially with the provisions of the Act and of this part.

(c) If it is thereupon determined that there is a failure on the part of such agency to comply substantially with the Act and this part, appropriate written notice shall be given to such agency and to the chief executive of the State suspending such agency's designation as licensing agency effective 90 days from the date of such notice. A copy of such written notice shall be given to each department, agency, or instrumentality of the United States responsible for the maintenance, operation, and protection of Federal property on which

vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machines income from vending machines Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (c) of this section.

(d) If, before the expiration of 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section. In any event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors Federal property.

(a) Each department, agency, or instrumentality of the United States shall have control of the maintenance, operation and protection of Federal property on which shall take all steps necessary to provide that, wherever feasible, in light of appropriate space and potential program, one or more vending facilities shall be operated by blind licensees and located on all Federal property

vending machines subject to the requirements of § 395.32 are located in the State. Upon the suspension of such designation, vending machine income from vending machines on Federal property due for accrual to the State licensing agency under § 395.32 shall be retained in escrow by such department, agency, or instrumentality of the United States responsible for the maintenance, operation and protection of the Federal property on which such vending machines are located, pending redesignation of the State licensing agency or rescission of the suspension under paragraph (e) of this section.

(d) If, before the expiration of such 90 days, the Secretary (or person designated by him) determines that the State licensing agency is taking the necessary steps to comply, he may postpone the effective date of such suspension for such time as he deems necessary in the best interest of the program.

(e) If, prior to the effective date of such suspension, the Secretary (or person designated by him) finds that there is no longer a failure on the part of the State licensing agency to comply substantially with the provisions of the Act and this part, he shall so notify the agency, the chief executive of the State, and each Federal department, agency, or instrumentality required to place funds in escrow under paragraph (c) of this section. In such event the suspension of the designation shall not become effective and the requirement to place funds in escrow shall be terminated.

#### Subpart C—Federal Property Management

§ 395.30 The location and operation of vending facilities for blind vendors on Federal property.

(a) Each department, agency, or instrumentality of the United States in control of the maintenance, operation, and protection of Federal property shall take all steps necessary to assure that, wherever feasible, in light of appropriate space and potential patronage, one or more vending facilities for operation by blind licensees shall be located on all Federal property Pro-

vided that the location or operation of such facility or facilities would not adversely affect the interests of the United States. Blind persons licensed by State licensing agencies shall be given priority in the operation of vending facilities on any Federal property.

(b) Any limitation on the location or operation of a vending facility for blind vendors by a department, agency or instrumentality of the United States based on a finding that such location or operation or type of location or operation would adversely affect the interests of the United States shall be fully justified in writing to the Secretary who shall determine whether such limitation is warranted. A determination made by the Secretary concerning such limitation shall be binding on any department, agency, or instrumentality of the United States affected by such determination. The Secretary shall publish such determination in the FEDERAL REGISTER along with supporting documents directly relating to the determination.

(c) Priority in the operation of vending facilities in areas administered by the National Park Service or the National Aeronautics and Space Administration shall be given to blind vendors. Priority in the awarding of contracts for the operation of concessions in such areas when such concessions provide accommodations, facilities, and services of a scope or of a character not generally available in vending facilities operated by blind vendors shall be given in accordance with the provisions of the Concession Policy Act (Pub. L. 98-249, 16 U.S.C. 1) or the National Aeronautics and Space Act of 1958, as amended (Pub. L. 85-568, 42 U.S.C. 2473). The provisions of this part shall not apply when all accommodations, facilities, or services in such areas are operated by a single responsible concessioner.

§ 395.31 Acquisition and occupation of Federal property.

(a) Effective January 2, 1975, no department, agency, or instrumentality of the United States shall undertake to acquire by ownership, rent, or lease, or to otherwise occupy, in whole or in

part, any building unless it is determined that such building includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a purchase contract, an agreement to lease, or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply.

(b) Effective January 2, 1975, no department, agency, or instrumentality of the United States, shall undertake to occupy, in whole or in part, any building which is to be constructed, substantially altered, or renovated, or in the case of a building which is occupied on January 2, 1975 by a department, agency, or instrumentality of the United States, no such department, agency, or instrumentality shall undertake to substantially alter or renovate such building, unless it is determined that the design for such construction, substantial alteration, or renovation includes a satisfactory site or sites for the location and operation of a vending facility by a blind vendor. In those cases where a design contract or other similar commitment was entered into prior to January 2, 1975, the provisions of this paragraph shall not apply. For purposes of this paragraph, "substantial alteration or renovation of a building" means a permanent material change in the floor area of such building which would render such building appropriate for the location and operation of a vending facility by a blind vendor.

(c) The determination that a building contains a satisfactory site or sites under paragraph (a) or (b) of this section shall be made after consultation between the State licensing agency and the head of the department, agency, or instrumentality of the United States which is planning to acquire or otherwise occupy such building. In order to make such determination, effective on the publication date of this part each such department, agency, or instrumentality shall provide to the appropriate State licensing agency written notice of its intention to acquire or otherwise occupy such building. Such written notice shall be by certified or registered mail with return receipt and shall be provided as

early as practicable but no later than 60 days prior to such intended action. The written notice shall indicate that a satisfactory site or sites for the location and operation of a vending facility by blind persons is included in the plans for the building to be acquired or otherwise occupied and shall further assure that the State licensing agency shall be afforded the opportunity to determine whether such building includes a satisfactory site or sites for a vending facility. The written notice shall further assure that the State licensing agency, subject to the approval of the head of the Federal property managing department, agency, or instrumentality, shall be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to the completion of the final space layout of the building. The receipt of such written notice shall be acknowledged in writing promptly by the State licensing agency but no later than within 30 days and the State licensing agency shall indicate at that time whether it is interested in establishing a vending facility. A copy of the written notice to the State licensing agency and the State licensing agency's acknowledgement shall be provided to the Secretary.

(d) When, after a written notice has been provided under paragraph (c) of this section, the State licensing agency determines that the number of persons using the Federal property is or will be insufficient to support a vending facility, and the Secretary concurs with such determination, the provisions of paragraphs (a) and (b) of this section shall not apply. The provisions of paragraphs (a) and (b) of this section shall also not apply when fewer than 100 Federal Government employees are or will be located during normal working hours in the building to be acquired or otherwise occupied or when such building contains less than 15,000 square feet of interior space to be utilized for Federal Government purposes in the case of buildings in which services are to be provided to the public.

(e) The operation of a vending facility established under pre-existing arrangements shall not be affected by

the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenant had in operation or had entered into contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

#### § 395.32 Collection and distribution of vending machine income from vending machines on Federal property.

(a) The on-site official responsible for the Federal property of each property managing department, agency, instrumentality of the United States in accordance with established procedures of such department, agency, instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, ten per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility created by a blind vendor shall accrue to the State licensing agency with

the provisions of this section. The provisions of this section shall further not preclude future arrangements under which vending facilities to be operated by blind vendors may be established in buildings of a size or with an employee population less than that specified in paragraph (d) of this section: *Provided*, That both the State licensing agency and the Federal property managing department, agency or instrumentality concur in such establishment.

(f) Each department, agency, and instrumentality of the United States, when leasing property in privately owned buildings, shall make every effort to lease property capable of accommodating a vending facility. When, however, such department, agency, or instrumentality is leasing part of a privately owned building in which prior to the execution of the lease, the lessor or any of his tenants had in operation or had entered into a contract for the operation of a restaurant or other food facility in a part of the building not included in such lease and the operation of a vending facility by a blind vendor would be in proximate and substantial direct competition with such restaurant or other food facility, the provisions of paragraphs (a), (b), and (c) of this section shall not apply.

**§ 395.32 Collection and distribution of vending machine income from vending machines on Federal property.**

(a) The on-site official responsible for the Federal property of each property managing department, agency, or instrumentality of the United States, in accordance with established procedures of such department, agency, or instrumentality, shall be responsible for the collection of, and accounting for, vending machine income from vending machines on Federal property under his control and shall otherwise ensure compliance with the provisions of this section.

(b) Effective January 2, 1975, 100 per centum of all vending machine income from vending machines on Federal property which are in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which

shall disburse such income to such blind vendor operating such vending facility on such property provided that the total amount of such income accruing to such blind vendor does not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(c) Effective January 2, 1975, 50 per centum of all vending machine income from vending machines on Federal property which are not in direct competition with a vending facility operated by a blind vendor shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating such vending facility on such property. In the event that there is no blind vendor, such income shall accrue to the State licensing agency, except as indicated under paragraph (d) of this section. The total amount of such income disbursed to such blind vendor shall not exceed the maximum amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may accrue to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(d) Effective January 2, 1975, 30 per centum of all vending machine income from vending machines, which are not in direct competition with a vending facility operated by a blind vendor and which are on Federal property at which at least 50 per centum of the total hours worked on the premises occurs during a period other than normal working hours, shall accrue to the State licensing agency which shall disburse such income to the blind vendor operating a vending facility on such property. In the event that there is no blind vendor on such property, such income shall accrue to the State licensing agency. The total amount of such income disbursed to such blind vendor shall not exceed the maximum

amount determined under § 395.8(a). In the event that there is income from such vending machines in excess of the maximum amount which may be disbursed to the blind vendor under § 395.8(a), such additional income shall accrue to the State licensing agency for purposes determined in accordance with § 395.8(c).

(e) The determination that a vending machine on Federal property is in direct competition with a vending facility operated by a blind vendor shall be the responsibility of the on-site official responsible for the Federal property of each property managing department, agency or instrumentality of the United States, subject to the concurrence of the State licensing agency.

(f) In the case of vending machine income which, prior to the effective date of this part, has been disbursed to a blind vendor by a property managing department, agency, or instrumentality from proceeds which accrued from operations subsequent to January 2, 1975, pursuant to agreements in effect prior to such time, such income may be deducted, at the discretion of such property managing department, agency or instrumentality, from vending machine income due to the State licensing agency under paragraphs (b), (c), or (d) of this section.

(g) The collection of vending machine income and its disbursement to the appropriate State licensing agency shall be conducted on at least a quarterly basis.

(h) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, State licensing agencies, shall be renegotiated upon the expiration of the existing contract or other arrangement for consistency with the provisions of this section.

(i) The provisions of this section shall not apply to income from vending machines within operated retail sales outlets under the control of post exchange or ships' stores systems authorized under Title 10 of the United States Code; to income from vending machines operated by the Veterans Canteen Service; or to income from

vending machines not in direct competition with a blind vending facility at individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

(j) The provisions of this section shall not operate to preclude pre-existing or future arrangements, or regulations of departments, agencies, or instrumentalities of the United States, under which blind vendors or State licensing agencies may:

(1) Receive a greater percentage or amount of vending machine income than that specified in paragraphs (b), (c), and (d) of this section, or

(2) Receive vending machine income from individual locations, installations, or facilities on Federal property the total of which at such individual locations, installations, or facilities does not exceed \$3,000 annually.

#### § 395.33 Operation of cafeterias by blind vendors.

(a) Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise. Such operation shall be expected to provide maximum employment opportunities to blind vendors to the greatest extent possible.

(b) In order to establish the ability of blind vendors to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services, the appropriate State licensing agency shall be invited to respond to solicitations for offers when a cafeteria contract is contemplated by the appropriate property managing department, agency, or instrumentality. Such solicitations for offers shall establish criteria under which all responses will be judged. Such criteria

may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees. *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

#### § 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing, in the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

may include sanitation practices, personnel, staffing, menu pricing and portion sizes, menu variety, budget and accounting practices. If the proposal received from the State licensing agency is judged to be within a competitive range and has been ranked among those proposals which have a reasonable chance of being selected for final award, the property managing department, agency, or instrumentality shall consult with the Secretary as required under paragraph (a) of this section. If the State licensing agency is dissatisfied with an action taken relative to its proposal, it may file a complaint with the Secretary under the provisions of § 395.37.

(c) All contracts or other existing arrangements pertaining to the operation of cafeterias on Federal property not covered by contract with, or by permits issued to, State licensing agencies shall be renegotiated subsequent to the effective date of this part on or before the expiration of such contracts or other arrangements pursuant to the provisions of this section.

(d) Notwithstanding the requirements of paragraphs (a) and (b) of this section, Federal property managing departments, agencies, and instrumentalities may afford priority in the operation of cafeterias by blind vendors on Federal property through direct negotiations with State licensing agencies whenever such department, agency, or instrumentality determines, on an individual basis, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees. *Provided, however,* That the provisions of paragraphs (a) and (b) of this section shall apply in the event that the negotiations authorized by this paragraph do not result in a contract.

#### § 395.34 Application for permits.

Applications for permits for the operation of vending facilities other than cafeterias shall be made in writing on the appropriate form, and submitted for the review and approval of the head of the Federal property managing department, agency, or instrumentality.

#### § 395.35 Terms of permit.

Every permit shall describe the location of the vending facility including any vending machines located on other than the facility premises, and shall be subject to the following provisions:

(a) The permit shall be issued in the name of the applicant State licensing agency which shall:

(1) Prescribe such procedures as are necessary to assure that in the selection of vendors and employees for vending facilities there shall be no discrimination because of sex, race, age, creed, color, national origin, physical or mental disability, or political affiliation; and

(2) Take the necessary action to assure that vendors do not discriminate against any person or persons in furnishing, or by refusing to furnish, to such person or persons the use of any vending facility, including any and all services, privileges, accommodations, and activities provided thereby, and comply with Title VI of the Civil Rights Act of 1964 and regulations issued pursuant thereto.

(b) The permit shall be issued for an indefinite period of time subject to suspension or termination on the basis of compliance with agreed upon terms.

(c) The permit shall provide that:

(1) No charge shall be made to the State licensing agency for normal cleaning, maintenance, and repair of the building structure in and adjacent to the vending facility areas:

(2) Cleaning necessary for sanitation, and the maintenance of vending facilities and vending machines in an orderly condition at all times, and the installation, maintenance, repair, replacement, servicing, and removal of vending facility equipment shall be without cost to the department, agency, or instrumentality responsible for the maintenance of the Federal property; and

(3) Articles sold at vending facilities operated by blind licensees may consist of newspapers, periodicals, publications, confections, tobacco products, food, beverages, chances for any lottery authorized by State law and conducted by an agency of a State within such State, and other articles or serv-

ices as are determined by the State licensing agency, in consultation with the on-site official responsible for the Federal property of the property managing department, agency or instrumentality, to be suitable for a particular location. Such articles and services may be dispensed automatically or manually and may be prepared on or off the premises in accordance with all applicable health laws.

(d) The permit shall further provide that vending facilities shall be operated in compliance with applicable health, sanitation, and building codes or ordinances.

(e) The permit shall further provide that installation, modification, relocation, removal, and renovation of vending facilities shall be subject to the prior approval and supervision of the on-site official responsible for the Federal property of the property managing department, agency, or instrumentality, and the State licensing agency; that costs of relocations initiated by the State licensing agency shall be paid by the State licensing agency; and that costs of relocations initiated by the department, agency, or instrumentality shall be borne by such department, agency, or instrumentality.

(f) The operation of a cafeteria by a blind vendor shall be covered by a contractual agreement and not by a permit.

§ 395.36 Enforcement procedures.

(a) The State licensing agency shall attempt to resolve day-to-day problems pertaining to the operation of the vending facility in an informal manner with the participation of the blind vendor and the on-site official responsible for the property of the property managing department, agency, or instrumentality as necessary.

(b) Unresolved disagreements concerning the terms of the permit, the Act, or the regulations in this part and any other unresolved matters shall be reported in writing to the State licensing agency supervisory personnel by the Regional or other appropriate official of the Federal property managing department, agency, or instrumentality in an attempt to resolve the issue.

§ 395.37 Arbitration of State licensing agency complaints.

(a) Whenever any State licensing agency determines that any department, agency, or instrumentality of the United States which has control of the maintenance, operation, and protection of Federal property is failing to comply with the provisions of the Act or of this part and all informal attempts to resolve the issues have been unsuccessful, such licensing agency may file a complaint with the Secretary.

(b) Upon receipt of a complaint filed under paragraph (a) of this section, the Secretary shall convene an ad hoc arbitration panel which shall, in accordance with the provisions of 5 U.S.C. ch. 5, subchapter II, give notice, conduct a hearing and render its decision which shall be final and binding on the parties except that such decision shall be subject to appeal and review as a final agency action for purposes of the provisions of 5 U.S.C. ch. 7. The arbitration panel convened by the Secretary to hear complaints filed by a State licensing agency shall be composed of three members appointed as follows:

(1) One individual designated by the State licensing agency;

(2) One individual designated by the head of the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose; and

(3) One individual, not employed by the Federal department, agency, or instrumentality controlling the Federal property over which the dispute arose, who shall be jointly designated by the other members of the panel and who shall serve as chairman of the panel.

(c) If either the State licensing agency or the head of the Federal department, agency, or instrumentality fails to designate a member of an arbitration panel, the Secretary shall designate such member on behalf of such party.

(d) If the panel finds that the acts or practices of any department, agency, or instrumentality are in violation of the Act or of this part, the head of any such department, agency, or instrumentality (subject to any appeal

under paragraph (b) of this section, shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

under paragraph (b) of this section) shall cause such acts or practices to be terminated promptly and shall take such other action as may be necessary to carry out the decision of the panel.

(e) The decisions of an arbitration panel convened by the Secretary under this section shall be matters of public record and shall be published in the FEDERAL REGISTER.

(f) The Secretary shall pay all reasonable costs of arbitration under this section in accordance with a schedule of fees and expenses which shall be published in the FEDERAL REGISTER.

§ 395.38 Reports.

At the end of each fiscal year, each property managing department, agency, or instrumentality of the United States shall report to the Secretary the total number of applications for vending facility locations received from State licensing agencies, the number accepted, the number denied, the number still pending, the total amount of vending machine income collected and the amount of such vending machine income disbursed to the State licensing agency in each State.

at least 14 days before the proposed vacation.  
(Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060  
AS 23.15.020(c)

**4 AAC 54.260. VENDING FACILITY INCOME.** (a) For the first six months of operation of a new vending facility, the division will assure that the manager receives minimum earnings equal to the state minimum hourly wage times the number of days the facility was operated, computed on an eight-hour day. Extensions of the period covered by this minimum earnings guarantee may be approved only by the division's chief of services.

(b) The Vocational Rehabilitation Small Business Enterprise Revolving Fund established by AS 23.15.130 will be used to aid licensees in operating vending facilities whether or not the licensee's facility is located in a public building.

(c) The net proceeds from vending machines operated by private persons in public buildings for the purpose of profit-making must be paid by the operator directly to the division's small business enterprise fund on a monthly or quarterly basis, as specified by the division. The net proceeds will be utilized as follows:

(1) if machines are in direct competition with a vending facility licensee in the same building, the net proceeds from those machines accrues to each vendor operating a vending facility in the building in an amount up to the average net income of all vending facility licensees within the state, as determined each fiscal year on the basis of the prior year's operation;

(2) the proceeds from vending machines not in direct competition with a licensed vending facility or in excess of the funds required to be paid to a vendor under (1) of this subsection will be used to

(A) defray in part or total the cost of constructing new vending facilities in state-operated buildings;

(B) pay for the maintenance and replacement of equipment and the purchase of new equipment;

(C) pay for management services; and

(D) pay for the cost of health insurance, paid vacation and sick leave for vending facility operators;

(d) Income from vending machines located in any federally owned or leased buildings will be maintained in a separate Randolph-Sheppard account and shall be disbursed according to applicable federal regulations. (Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060  
AS 23.15.020(c)

## ARTICLE 8. HEARINGS AND APPEAL PROCEDURES

### Section

810. Requests for administrative review  
820. Procedure for hearings  
830. Appeals from final decisions of the division

**4 AAC 54.810. REQUESTS FOR ADMINISTRATIVE REVIEW.** (a) A person whose vending facility license is revoked pursuant to sec. 140 of this chapter, or who is otherwise adversely affected by a decision or other action of the division, may request administrative review of that action or decision, in writing, within 30 days of the date on which notice of the action or decision was mailed or personally given to him. The request must describe the action or decision and the grounds upon which review is being sought.

(b) Upon receipt of a request for administrative review, the division will schedule a meeting for a time and place convenient to the individual requesting the review and assign an employee of the division who was not involved in the initial action or decision to act as impartial conciliator.

(c) Participants in the administrative review are the individual requesting the review and, if desired, his representative and the division employee whose decision or action is to be reviewed. All participants will be afforded an opportunity to address the issues raised by the request for review. The impartial conciliator will attempt to resolve the issues and, if possible, inform the other participants of his decision immediately. The impartial conciliator will issue a written decision and mail it to the individual

requesting the review at his last reported address. The decision will inform the individual of his right to a further hearing on the matter pursuant to (d) of this section.

(d) If the individual requesting the review is dissatisfied with the decision of the impartial conciliator, he may request, in writing, a hearing on the matter within 30 days of mailing of the impartial conciliator's decision. The request for hearing must be addressed to the Director of Vocational Rehabilitation, Department of Education, Pouch F, Juneau, Alaska 99811, and must describe the matter on which the hearing is sought and the grounds upon which review is requested.

(e) Within 15 days of receipt of a request for hearing, the director will set a time and place convenient to the individual and appoint an individual who has not been involved in the matter under consideration to act as hearing officer. Written notice of the time and place of the hearing will be mailed to the individual at his last reported address at least 15 days before the hearing. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060  
AS 23.15.100(b)(6)

**4 AAC 54.820. PROCEDURE FOR HEARINGS.** (a) Participants at the hearing are the individual requesting the hearing and, if desired, his representative and the division employee whose action or decision is to be reviewed. The hearing officer has full authority to control the proceedings of the hearing and to rule on questions of admissibility of testimony and other evidence and on any other legal issues raised by the participants.

(b) All participants may present relevant evidence at the hearing, including testimony, affidavits, and documents relevant to the issue for which the hearing is being held. Depositions, affidavits, and documents that have been stipulated to by the participants prior to the hearing will also be entered into the record.

(c) Oral evidence will be taken only upon oath or affirmation.

(d) Common law rules of evidence will apply except when the hearing officer determines that their application is not required in order to

assure fair treatment of the complainant or respondent and that the evidence offered is relevant and of the sort on which responsible persons are accustomed to rely in the conduct of serious matters.

(e) The participants and the hearing officer may

(1) call and examine witnesses;

(2) introduce exhibits and other evidence;

(3) cross-examine opposing witnesses on matters relevant to the issue even though the matter was not covered in the direct examination. If the individual requesting the hearing does not testify, he may be called and examined by the hearing officer.

(f) The hearing officer may require that the testimony of a material witness be taken by deposition.

(g) Documents or affidavits intended to be used at a hearing should be submitted to the division prior to the hearing so that they may be stipulated to whenever possible.

(h) The hearing officer may order the continuance of a hearing for good cause shown.

(i) If a participant does not appear at a hearing that has been set, the hearing officer, unless good cause is shown, shall act upon the evidence presently at his disposal without notice to the absent participant.

(j) The hearing officer shall submit his recommendations and the hearing record to the director. The director shall examine the record and the hearing officer's recommendations and issue a written decision which shall be final. A copy of the decision shall be mailed to the participants at their last reported address. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060  
AS 23.15.100

**4 AAC 54.830. APPEALS FROM FINAL DECISIONS OF THE DIVISION.** (a) The decision of the director issued under sec. 820(j) of this chapter will inform the individual who requested the hearing and his representative, if

any, of his right to appeal that decision to the Superior Court within 30 days as provided in the Rules of Appellate Procedure of the State of Alaska.

(b) In the case of a blind vending facility manager covered under sec. 206 of the Randolph-Sheppard Act of 1973, the decision of the director issued under 4 AAC 54.820(j) will also inform the individual of his right to file a complaint with the United States Secretary of Health, Education and Welfare concerning the action or decision of the division. (Eff. 5/10/78, Reg. 66)

Authority: AS 14.07.060  
AS 23.15.100(b)(6)

#### ARTICLE 9. GENERAL PROVISIONS

##### Section

##### 990. Definitions

4 AAC 54.990. **DEFINITIONS.** Unless the context requires otherwise, in this chapter and AS 23.15.010 - 23.15.320

(1) "director" means the director of the division of vocational rehabilitation of the Department of Education or his designee;

(2) "division" means the division of vocational rehabilitation of the Department of Education;

(3) "net proceeds" means the conventional returns or commissions which would normally be paid by the machine operator to the building owner for the right to place his machines in that building, and will be negotiated between the machine operator and the division;

(4) "public building" means any building owned, leased or occupied by the state or an agency of the state for public purpose, financed by state funds or public bond indebtedness, however, it does not include buildings located on any land subject to the provisions of 42 USC §§ 354, 354a or 353, or which is similarly reserved in trust for the benefit of the University of Alaska. (Eff. 12/7/77, Reg. 64)

Authority: AS 14.07.060  
AS 23.15.020(c)

#### CHAPTER 57. LIBRARY SERVICES

##### Article

1. State Plan (4 AAC 57.010)
2. Library Materials Grants-In-Aid (4 AAC 57.050-4 AAC 57.090)

#### ARTICLE 1. STATE PLAN

##### Section

##### 10. Alaska state plan

4 AAC 57.010. **ALASKA STATE PLAN.** The Long Range Program for Library Development in Alaska 1977 - 1982, published in July 1977, is adopted by reference as the Alaska state plan for participation under the U.S. Library Services and Construction Act (Public Law 91-600). (In effect before 7/28/59; am 4/17/67, Reg. 24; am 10/4/73, Reg. 47; am 5/10/78, Reg. 66)

Authority: AS 14.56.010-080

Editor's Note: The Alaska State Plan may be obtained by writing the Commissioner, Department of Education, Pouch F, Juneau, Alaska 99811.

#### ARTICLE 2. LIBRARY MATERIALS GRANTS-IN-AID

##### Section

50. Purpose
60. Eligibility
70. Application
80. Exceptions
90. Definitions

4 AAC 57.050. **PURPOSE.** Grants-in-aid under AS 14.56.050 are available to assist municipalities and incorporated library associations in acquiring library materials for public use. Libraries and library associations may engage in cooperative agreements with other libraries for shared acquisitions and use of library materials acquired with grant-in-aid funds. (Eff. 5/25/79, Reg. 70)

Authority: AS 14.07.060  
AS 14.56.050

4 AAC 57.060. **ELIGIBILITY.** (a) Any municipality or incorporated library association operating a public library may apply for a grant-in-aid.

**Sec. 23.15.040. Division of vocational rehabilitation established.** The division of vocational rehabilitation is established under the Board of Vocational Rehabilitation to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 18 ch 208 SLA 1975)

**Sec. 23.15.050. Director of vocational rehabilitation.** The board shall appoint a director of the division of vocational rehabilitation. The director has the administrative authority delegated to him by the board and necessary to carry out AS 23.15.010 — 23.15.210 and the regulations and policies adopted by the board. (§ 37-9-6 ACLA 1949; am § 2 ch 144 SLA 1957; am §§ 2, 3 ch 79 SLA 1960; am § 9 ch 96 SLA 1967; am § 19 ch 208 SLA 1975)

**Sec. 23.15.060. Agreements under Social Security Act.** (a) The board acting through the division of vocational rehabilitation may enter into necessary agreements on behalf of the state with the Secretary of Health, Education and Welfare to carry out the provisions of the federal Social Security Act, as amended, and as it is subsequently amended, relating to the making of determinations of disability under Title II and Title XVI of that Act.

(b) The Department of Revenue shall act as the custodian of funds paid by the federal government to the state, shall comply with agreements entered into under the Social Security Act, and shall disburse the funds in accordance with instructions from the director of the division of vocational rehabilitation. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 20 ch 208 SLA 1975; am § 1 ch 5 SLA 1978)

*Effect of amendments.* — The 1978 amendment inserted "and Title XVI" near the end of subsection (a).

**Sec. 23.15.070. Personnel policies.** The board shall adopt personnel policies for the division of vocational rehabilitation. The director shall execute these policies and keep them on file in his office. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 21 ch 208 SLA 1975)

**Sec. 23.15.080. Eligibility for vocational rehabilitation service.**

(b) In determining the types and extent of vocational rehabilitation services to be provided to a handicapped individual, the division shall take into consideration any similar benefits which may be available to the individual under other programs. However, the division may not take other benefits into consideration when doing so would significantly delay the provision of needed services to the handicapped indi-

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vidual. The division need not take other benefits into consideration when they are for

- (1) diagnostic and related services (including transportation and subsistence in connection with those services);
  - (2) counseling, guidance, and referral;
  - (3) training, including personal and vocational adjustment training, and necessary training materials;
  - (4) services to members of families of handicapped individuals;
  - (5) job placement; and
  - (6) services necessary to assist handicapped individuals to maintain suitable employment.
- (am § 2 ch 2 SLA 1978)

*Effect of amendments.* — The 1978 amendment rewrote subsection (b). As the rest of the section was not affected by the amendment, it is not set out.

**Sec. 23.15.100. Powers and duties.**

- (b) In carrying out AS 23.15.010 — 23.15.210, the agency may
- (1) enter into agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;
  - (2) establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for these purposes;
  - (3) supervise the operation of vending stands and other small businesses established under AS 23.15.010 — 23.15.210 to be conducted by severely handicapped individuals;
  - (4) make studies, investigations, demonstrations and reports, and provide training and instruction (including the establishment and maintenance of the research fellowships and traineeships with the stipends and allowances which are considered necessary) in matters relating to vocational rehabilitation;
  - (5) license blind and severely handicapped persons for the operation of vending facilities on federal property and in public buildings, with blind persons having first priority for operation of the vending facilities; and
  - (6) promulgate regulations necessary for carrying out the provisions of AS 23.15.010 — 23.15.210.
- (am § 1 ch 75 SLA 1976)

*Cross references.* — As to contracts to operate vending facilities in state buildings, see AS 44.21.025.

*Editor's notes.* — As the rest of the section was not affected by the amendment, it is not set out.

**Sec. 23.15.110. Extension of services outside state.** Vocational rehabilitation service may be extended to the continental United States to all individuals eligible under AS 23.15.010 — 23.15.210. The

director of the division of vocational rehabilitation may place professional or clerical personnel or both inside the continental United States to carry out the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-8(3) ACLA 1949; am § 4 ch 144 SLA 1957; am § 22 ch 208 SLA 1975)

Sec. 23.15.130. Vocational rehabilitation small business enterprise revolving fund. (a) There is created in the state treasury a revolving fund designated as the vocational rehabilitation small business enterprise revolving fund. The fund shall be administered by the director.

(b) Receipts from the net proceeds of vending facilities in public buildings other than vending facilities operated by a licensee, shall be paid to the fund.

(c) The fund shall be used to aid licensees in operating vending machine facilities.

(d) In this section "net proceeds" means the gross receipts from operating a vending facility less the costs of operation and fair return to the operator, to be determined by the division. (§ 37-10 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 75 SLA 1976)

*intent removed*

Sec. 23.15.210. Definitions. In AS 23.15.010 — 23.15.210

(1) "agency" means the division of vocational rehabilitation;

(3) "director" means the director of the division of vocational rehabilitation;

(4) "handicapped individual" means an individual having a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(5) "individual having a physical or mental disability" means an individual who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting his activities or functioning;

(6) "vocational rehabilitation service" means goods and services, including diagnostic and related services, necessary to enable a handicapped individual to engage in gainful employment;

(7) "workshop" means a rehabilitation facility engaged in a production or service operation which is operated for the primary purpose of providing gainful employment or professional services to the handicapped as an interim step in the rehabilitation process for those who cannot readily be absorbed in the competitive labor market or during times when employment opportunities for them in the competitive labor market do not exist.

(8) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter

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subtends an angle of no greater than 20 degrees; an examination by an ophthalmologist or by an optometrist is necessary before a person is found to be blind;

(9) "severely handicapped person" means a person who has one or more physical or mental disabilities which seriously limit the person's functional capacities in terms of regular employment, and whose vocational rehabilitation requires multiple vocational rehabilitation services over an extended period of time;

(10) "licensee" means a blind or severely handicapped person licensed by the division of vocational rehabilitation under the Randolph-Sheppard Act (20 U.S.C. §§ 107 — 107b, 107d — 107e, 107f), AS 23.15.100(b)(5), and any regulations issued under federal law or AS 23.15.100(b)(5);

(11) "public building" means any building owned by the state or an agency of the state, or any space leased by the state or any agency of the state, and designated by the division as being appropriate for participation in the business enterprise program;

(12) "vending facility" means an automatic vending machine, cafeteria, snack bar, shelter, or counter where food, tobacco, or sundries are offered for sale.

(am § 23 ch 208 SLA 1975; am § 2 ch 75 SLA 1976; am §§ 3 — 6 ch 5 SLA 1978)

*Effect of amendments.* — The 1978 amendment, in paragraph (4), substituted "having" for "under," "and who can" for "but which is of such a nature that vocational rehabilitation services may," and the language beginning "benefit in terms of employability" for "render him fit to engage in a remunerative occupation" and inserted "for that individual" and "or results in." The amendment also substituted "having" for "who is under" in paragraph (5), substituted "enable a handicapped individual to engage in gainful employment" for "render a handicapped individual fit to engage in a

remunerative occupation," at the end of paragraph (6), and in paragraph (7), substituted "rehabilitation facility engaged in a production or service operation" for "place where manufacture or handiwork is carried on, and," "gainful employment or professional services to the handicapped" for "remunerative employment to severely handicapped individuals (A)," and "times" for "a time," inserted "process" near the middle of the paragraph and deleted "it" following "competitive labor market or."

As the rest of the section was not affected by the amendments, it is not set out.

## Article 2. Governor's Committee on Employment of Handicapped.

### Section

270. Cooperation with other committees and agencies

290. Employ the handicapped week

*Editor's notes.* — Section 7, ch 5, SLA 1978 amended the Article 2 heading by deleting "Physically" preceding "Handicapped."

Sec. 23.15.270. Cooperation with other committees and agencies. The committee shall work in close cooperation with local committees and with the President's Committee on Employment of the Handicapped to carry out the purpose of AS 23.15.220 — 23.15.320 more effectively, and with state and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (§ 1 ch 23 SLA 1960; am § 7 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment deleted "Physically" preceding "Handicapped" near the middle of the section.

Sec. 23.15.290. Employ the handicapped week. Each year the governor shall issue a proclamation designating the first full week in May as Alaska Employ the Handicapped Week. During this week, appropriate ceremonies shall be held throughout the state for the purpose of enlisting public support for, and interest in the employment of, the handicapped. The mayors of cities, and heads of government instrumentalities, and leaders of industry and business, educational and religious groups, labor, veterans, women, farm, scientific and professional, and all other interested organizations and individuals shall be invited to participate. (§ 4 ch 23 SLA 1960; am § 8 ch 5 SLA 1978)

Effect of amendments. — The 1978 amendment substituted "May as Alaska Employ the Handicapped Week" for "October as National Employ the Physically Handicapped Week" at the end of the first sentence and deleted "physically" preceding "handicapped" near the end of the second sentence.

Article 4. Manpower Development and Training.

Section

611. Department of Labor participation in manpower training programs

617. [Repealed]

Sec. 23.15.611. Department of Labor participation in manpower training programs.

(b) Repealed by § 2 ch 174 SLA 1975.

(am § 2 ch 174 SLA 1975)

Editor's notes. — As the rest of the section was not affected by the amendment, it is not set out

Sec. 23.15.617. Manpower Training Advisory Council. Repealed by § 2 ch 174 SLA 1975.

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Editor's notes. — The repealed section derived from § 3, ch. 74, SLA 1969; § 6, ch. 104, SLA 1971.

The repealed section was amended by § 80, ch. 218, SLA 1976, which substituted

"commissioner of commerce and economic development" for "commissioner of economic development" in paragraph (4) of subsection (a).

## Chapter 20. Alaska Employment Security Act.

### NOTES TO DECISIONS

This chapter establishes a comprehensive program which provides unemployed workers with job placement services and cash benefits during the period of their unemployment. State Dep't of Labor v. Boucher, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978).

The primary purpose of the Alaska

Employment Security Act is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual and society as a whole. State Dep't of Labor v. Boucher, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978).

### Article 1. Administration.

#### Section

- 12. [Repealed]
- 15. [Repealed]
- 22. Actuarial studies
- 35. Duties and powers of director
- 45. Regulations and special rules

#### Section

- 85. Interstate benefit payments
- 110. Information obtained by department
- 115. Unauthorized disclosure of information

#### Sec. 23.20.005. Purpose.

### NOTES TO DECISIONS

Remedial statute. — The Alaska Employment Security Act, AS 23.20.005 — 23.20.535, is a remedial statute with the primary purpose of ameliorating the negative effects that involuntary unem-

ployment has on both the unemployed individual and society as a whole. Estes v. Department of Labor, Sup. Ct. Op. No. 2276 (File No. 5033), 625 P.2d 233 (1981).

#### Sec. 23.20.010. Policy.

### NOTES TO DECISIONS

The primary purpose of the Alaska Employment Security Act AS 23.20.005 — 23.20.535, is to ameliorate the negative effects that involuntary unemployment has on both the unemployed individual

and society as a whole. State Dep't of Labor v. Boucher, Sup. Ct. Op. No. 1669 (File No. 3329), 81 P.2d 660 (1978); Estes v. Department of Labor, Sup. Ct. Op. No. 2276 (File No. 5033), 625 P.2d 233 (1981).

(1) a passenger train shall have at least a minimum passenger crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, one brakeman, and one flagman;

(2) a freight train shall have at least a minimum freight crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two brakemen;

(3) a light engine without cars shall have at least a minimum light engine crew, which shall consist of one locomotive engineer, one locomotive fireman (or helper), and one conductor.

(b) Except for hostling movements and duties as negotiated for each railroad company, no person operating an Interstate Commerce Commission-regulated railroad offering passenger service in this state may operate an engine or locomotive, regardless of the form of energy used for propulsion, for switching cars or in transfer movements, unless every engine or locomotive is manned by a minimum crew consisting of one locomotive engineer, one locomotive fireman (or helper), one conductor, and two helpers.

(c) In this section "engine" includes connected, multiple units under single control.

(d) A person who violates a provision of this section may be fined up to \$500 upon conviction. Each violation constitutes a separate offense. (§ 1 ch 150 SLA 1970)

Legislative history reports. — For report on ch. 150, SLA 1970 (CSHB 666 am S), see 1970 House Journal, p. 604.

### Chapter 15. Employment Services.

#### Article

- 1. Vocational Rehabilitation (§§ 23.15.010 — 23.15.210)
- 2. Governor's Committee on Employment of Handicapped (§§ 23.15.220 — 23.15.320)
- 3. Employment Agencies (§§ 23.15.330 — 23.15.520)
- 4. Manpower Development and Training (§§ 23.15.610 — 23.15.617)
- 5. Work Incentive Program for Welfare Recipients (§ 23.15.650)

#### Article 1. Vocational Rehabilitation.

Section	Section
10. Board of Vocational Rehabilitation	110. Extension of services outside state
20. Powers and duties of board	120. Cooperation with federal government
30. Appointment of administrative officers	130. Vocational rehabilitation small business enterprise revolving fund
40. Division of vocational rehabilitation established	140. (Repealed)
50. Director of vocational rehabilitation	150. Receipt and disbursement of funds
60. Agreements under Social Security Act	160. Gifts
70. Personnel policies	170. Maintenance not assignable
80. Eligibility for vocational rehabilitation service	180. Hearings
90. Priority as to eligibility	190. Misuse of lists and records
100. Powers and duties	200. Limitation on political activity
	210. Definitions

Collateral references. — 48A Am. Jur. 2d, Labor and Labor Relations, §§ 2662, 2663.

51 C.J.S., Labor Relations, § 1044.

Sec. 23.15.010. Board of Vocational Rehabilitation. The Board of Education which administers the program of vocational education is designated as the Board of Vocational Rehabilitation to administer the vocational rehabilitation program. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.020. Powers and duties of board. (a) The board may cooperate with a federal agency, as provided and required by federal law for vocational rehabilitation.

(b) The board shall comply with these federal laws and the conditions necessary to secure the full benefit of the federal vocational rehabilitation laws, and shall do all things necessary to entitle the state to receive the benefits of the federal laws.

(c) The board may do all the things and adopt the regulations which are necessary to carry out the federal laws and the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.030. Appointment of administrative officers. The board may appoint administrative officers, and delegate to them the authority necessary to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 1 ch 79 SLA 1960)

Sec. 23.15.040. Division of vocational rehabilitation established. The division of vocational rehabilitation is established under the Board of Vocational Rehabilitation to carry out AS 23.15.010 — 23.15.210. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 18 ch 208 SLA 1975)

Sec. 23.15.050. Director of vocational rehabilitation. The board shall appoint a director of the division of vocational rehabilitation. The director has the administrative authority delegated to him by the board and necessary to carry out AS 23.15.010 — 23.15.210 and the regulations and policies adopted by the board. (§ 37-9-6 ACLA 1949; am § 2 ch 144 SLA 1957; am §§ 2, 3 ch 79 SLA 1960, am § 9 ch 96 SLA 1967; am § 19 ch 208 SLA 1975)

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**Sec. 23.15.060. Agreements under Social Security Act.** (a) The board acting through the division of vocational rehabilitation may enter into necessary agreements on behalf of the state with the Secretary of Health, Education and Welfare to carry out the provisions of the federal Social Security Act, as amended, and as it is subsequently amended, relating to the making of determinations of disability under Title II and Title XVI of that Act.

(b) The Department of Revenue shall act as the custodian of funds paid by the federal government to the state, shall comply with agreements entered into under the Social Security Act, and shall disburse the funds in accordance with instructions from the director of the division of vocational rehabilitation. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 20 ch 208 SLA 1975; am § 1 ch 5 SLA 1978)

**Effect of amendments.** — The 1978 amendment inserted "and Title XVI" near the end of subsection (a).

**Editor's notes.** — The Secretary of Education has succeeded to the responsibilities of the Secretary of Health,

Education and Welfare referred to in subsection (a).

Title II and Title XVI of the federal Social Security Act may be found in 42 U.S.C. § 401 et seq. and 42 U.S.C. § 1381 et seq., respectively.

**Sec. 23.15.070. Personnel policies.** The board shall adopt personnel policies for the division of vocational rehabilitation. The director shall execute these policies and keep them on file in his office. (§ 37-9-6 ACLA 1949; am § 2 ch 169 SLA 1955; am § 2 ch 144 SLA 1957; am § 21 ch 208 SLA 1975)

**Sec. 23.15.080. Eligibility for vocational rehabilitation service.** (a) Vocational rehabilitation service shall be provided directly or through a public or private instrumentality to a handicapped individual (1) who is a resident of the state at the time he applies for the service and whose vocational rehabilitation the agency determines after full investigation can be satisfactorily achieved, or (2) who is eligible for the service under an agreement with another state or with the federal government.

(b) In determining the types and extent of vocational rehabilitation services to be provided to a handicapped individual, the agency shall take into consideration any similar benefits which may be available to the individual under other programs. However, the agency may not take other benefits into consideration when doing so would significantly delay the provision of needed services to the handicapped individual. The agency need not take other benefits into consideration when they are for

(1) diagnostic and related services (including transportation and subsistence in connection with those services);

(2) counseling, guidance, and referral;

- (3) training, including personal and vocational adjustment training, and necessary training materials;
- (4) services to members of families of handicapped individuals;
- (5) job placement; and
- (6) services necessary to assist handicapped individuals to maintain suitable employment. ( § 37-9 7(1) ACLA 1949; am § 3 ch 144 SLA 1957; am § 2 ch 5 SLA 1978)

Revisor's notes. — The word "agency" was substituted for "division" in three places in subsection (b) by the revisor of statutes to conform to the definition in AS 23.15.210 (1).

Effect of amendments. — The 1978 amendment rewrote subsection (b).

Sec. 23.15.090. Priority as to eligibility. If vocational rehabilitation service cannot be provided for all eligible handicapped individuals who apply, the agency shall provide by regulation for determining the order to be followed in selecting those to whom the services will be provided. ( § 37-9-7(2) ACLA 1949; am § 3 ch 144 SLA 1957)

Sec. 23.15.100. Powers and duties. (a) In carrying out AS 23.15.010 — 23.15.210 the agency shall

(1) take the action it considers necessary or appropriate to carry out the purposes of AS 23.15.010 — 23.15.210, and adopt regulations in conformity with these purposes;

(2) determine the eligibility of applicants for vocational rehabilitation service;

(3) submit to the governor annual reports of activities and expenditures and, before each regular session of the legislature, estimates of sums required for carrying out AS 23.15.010 — 23.15.210 and estimates of the amounts to be made available for this purpose from all sources; and

(4) cooperate with public and private departments, agencies and institutions in providing for the vocational rehabilitation of handicapped individuals, studying the problems involved in providing this rehabilitation, and establishing, developing and providing, in conformity with the purposes of AS 23.15.010 — 23.15.210, the programs, facilities and services which may be necessary or desirable.

(b) In carrying out AS 23.15.010 — 23.15.210, the agency may

(1) enter into agreements with other states to provide for the vocational rehabilitation of residents of the states concerned;

(2) establish and operate rehabilitation facilities and workshops and make grants to public and other nonprofit organizations for these purposes;

(3) supervise the operation of vending stands and other small businesses established under AS 23.15.010 — 23.15.210 to be conducted by severely handicapped individuals;

(4) make studies, investigations, demonstrations and reports, and provide training and instruction (including the establishment and

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maintenance of the research fellowships and traineeships with the stipends and allowances which are considered necessary) in matters relating to vocational rehabilitation;

(5) license blind and severely handicapped persons for the operation of vending facilities on federal property and in public buildings, with blind persons having first priority for operation of the vending facilities; and

(6) adopt regulations necessary for carrying out the provisions of AS 23.15.010 — 23.15.210. (§ 37-9-8(1) (2) ACLA 1949; am § 4 ch 144 SLA 1957; am § 1 ch 75 SLA 1976)

Cross references. — As to contracts to operate vending facilities in state buildings, see AS 44.21.025.

Sec. 23.15.110. Extension of services outside state. Vocational rehabilitation service may be extended to the continental United States to all individuals eligible under AS 23.15.010 — 23.15.210. The director of the division of vocational rehabilitation may place professional or clerical personnel or both inside the continental United States to carry out the purposes of AS 23.15.010 — 23.15.210. (§ 37-9-8(3) ACLA 1949; am § 4 ch 144 SLA 1957; am § 22 ch 208 SLA 1975)

Sec. 23.15.120. Cooperation with federal government. (a) The agency shall cooperate with the federal government in carrying out the purposes of federal laws pertaining to vocational rehabilitation (including the licensing of blind persons to operate vending stands on federal property) and may adopt the methods of administration which are found by the federal government to be necessary for the proper and efficient operation of agreements or plans for vocational rehabilitation. The agency may comply with the conditions which are necessary to obtain the full benefits of the federal laws for the state and its residents.

*intent*

(b) Upon designation by the governor, the agency may perform functions and services for the federal government relating to individuals under a physical or mental disability, in addition to those provided in (a) of this section. (§ 37-9-9 ACLA 1949; am § 5 ch 144 SLA 1957)

Sec. 23.15.130. Vocational rehabilitation small business enterprise revolving fund. (a) There is created in the state treasury a revolving fund designated as the vocational rehabilitation small business enterprise revolving fund. The fund shall be administered by the director.

(b) Receipts from the net proceeds of vending facilities in public buildings, other than vending facilities operated by a licensee, shall be paid to the fund.

(c) The fund shall be used to aid licensees in operating vending machine facilities.

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(d) In this section "net proceeds" means the gross receipts from operating a vending facility less the costs of operation and a fair return to the operator, to be determined by the division. (§ 37-9-10 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 75 SLA 1976)

Cross references. — For provisions as to special funds, see AS 37-9-35.

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**Sec. 23.15.140. Vocational Rehabilitation Fund.**  
Repealed by § 2 ch 23 SLA 1968.

Editor's notes. — The repealed section derived from § 37-9-11, ACLA 1949; § 6, ch. 144, SLA 1957.

**Sec. 23.15.150. Receipt and disbursement of funds.** The Department of Revenue is designated custodian of all vocational rehabilitation funds in the state. (§ 37-9-12 ACLA 1949; added by § 6 ch 144 SLA 1957)

**Sec. 23.15.160. Gifts.** The board may accept a gift or donation from a public or a private source which is offered unconditionally for carrying out AS 23.15.010 — 23.15.210. The board may accept a conditional gift if, in the judgment of the agency, the conditions are proper and consistent with AS 23.15.010 — 23.15.210. (§ 37-9-13 ACLA 1949; added by § 6 ch 144 SLA 1957; am § 3 ch 23 SLA 1968)

**Sec. 23.15.170. Maintenance not assignable.** The right of a handicapped individual to maintenance under AS 23.15.010 — 23.15.210 is not transferable or assignable at law or in equity. (§ 37-9-14 ACLA 1949; added by § 6 ch 144 SLA 1957)

**Sec. 23.15.180. Hearings.** An individual applying for or receiving vocational rehabilitation who is aggrieved by the action or inaction of the agency is entitled to a fair hearing by the agency, in accordance with regulations. (§ 37-9-15 ACLA 1949; added by § 6 ch 144 SLA 1957)

**Sec. 23.15.190. Misuse of lists and records.** It is unlawful, except for purposes directly connected with the administration of the vocational rehabilitation program and in accordance with regulations, for a person to solicit, disclose, receive, or make use of, or authorize, knowingly permit, participate in, or acquiesce in the use of a list of, name, of, or information concerning, persons applying for or receiving vocational rehabilitation, directly or indirectly, derived from the records, papers, files, or communications of the state or an agency of the state, or acquired in the course of the performance of official duties. An officer or employee violating this provision is subject to discharge or suspension. (§ 37-9-16 ACLA 1949; added by § 6 ch 144 SLA 1957)

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Sec. 23.15.200. Limitation on political activity. No officer or employee engaged in the administration of the vocational rehabilitation program may use his official authority to influence or permit the use of the vocational rehabilitation program for the purpose of interfering with an election or affecting the results of an election or for a partisan political purpose. No officer or employee may solicit or receive, nor may an officer or employee be obliged to contribute or render, a service, assistance, subscription, assessment or contribution for a political purpose. An officer or employee violating this section is subject to discharge or suspension. (§ 37-9-17 ACLA 1949; added by § 6 ch 144 SLA 1957)

Sec. 23.15.210. Definition. In AS 23.15.010 — 23.15.210

(1) "agency" means the division of vocational rehabilitation;  
(2) "board" means the Board of Education acting as the Board of Vocational Rehabilitation;

(3) "director" means the director of the division of vocational rehabilitation;

(4) "handicapped individual" means an individual having a physical or mental disability which for that individual constitutes or results in a substantial handicap to employment and who can reasonably be expected to benefit in terms of employability from the provision of vocational rehabilitation services;

(5) "individual having a physical or mental disability" means an individual who has a physical or mental condition which materially limits, contributes to limiting, or, if not corrected, will probably result in limiting his activities or functioning;

(6) "vocational rehabilitation service" means goods and services, including diagnostic and related services, necessary to enable a handicapped individual to engage in gainful employment;

(7) "workshop" means a rehabilitation facility engaged in a production or service operation which is operated for the primary purpose of providing gainful employment or professional services to the handicapped as an interim step in the rehabilitation process for those who cannot readily be absorbed in the competitive labor market or during times when employment opportunities for them in the competitive labor market do not exist;

(8) "blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees; an examination by an ophthalmologist or by an optometrist is necessary before a person is found to be blind;

(9) "severely handicapped person" means a person who has one or more physical or mental disabilities which seriously limit the person's functional capacities in terms of regular employment, and whose

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vocational rehabilitation requires multiple vocational rehabilitation services over an extended period of time;

(10) "licensee" means a blind or severely handicapped person licensed by the division of vocational rehabilitation under the Randolph-Sheppard Act (20 U.S.C. §§ 107 — 107b, 107d — 107e, 107f), AS 23.15.100(b)(5), and any regulations issued under federal law or AS 23.15.100(b)(5);

(11) "public building" means any building owned by the state or an agency of the state, or any space leased by the state or any agency of the state, and designated by the division as being appropriate for participation in the business enterprise program;

(12) "vending facility" means an automatic vending machine, cafeteria, snack bar, shelter, or counter where food, tobacco, or sundries are offered for sale. (§ 37-9-5 ACLA 1949; am § 1 ch 169 SLA 1955; am § 1 ch 144 SLA 1957; am § 23 ch 208 SLA 1975; am § 2 ch 75 SLA 1976; am §§ 3 — 6 ch 5 SLA 1978)

**Effect of amendments.** — The 1978 amendment, in paragraph (4), substituted "having" for "under," "and who can" for "but which is of such a nature that vocational rehabilitation services may," and the language beginning "benefit in terms of employability" for "render him fit to engage in a remunerative occupation" and inserted "for that individual" and "or results in." The amendment also substituted "having" for "who is under" in paragraph (5), substituted "enable a handicapped individual to engage in gainful employment" for "render a handi-

capped individual fit to engage in a remunerative occupation" at the end of paragraph (6), and in paragraph (7), substituted "rehabilitation facility engaged in a production or service operation" for "place where manufacture or handiwork is carried on, and," "gainful employment or professional services to the handicapped" for "remunerative employment to severely handicapped individuals (A)," and "times" for "a time," inserted "process" near the middle of the paragraph and deleted "(B)" following "competitive labor market or."

**Article 2. Governor's Committee on Employment of Handicapped.**

Section	Section
220. Purpose	280. Appointment of advisors
230. Appointment of committee	290. Employ the handicapped week
240. Appointment and term of chairman	300. Manner of handling funds
250. Compensation and expenses	310. Gifts
260. Meetings	320. Annual report to governor
270. Cooperation with other committees and agencies	

**Editor's notes.** — Section 7, ch 5, SLA 1978 amended the Article 2 heading by deleting "Physically" preceding "Handicapped."

**Sec. 23.15.220. Purpose.** The purpose of AS 23.15.220 — 23.15.320 is to create a governor's committee on employment of the handicapped for Alaska to carry on a continuing program to promote the employment of the handicapped citizens of the state by creating statewide interest in the rehabilitation and employment of the handicapped, and by obtaining and maintaining cooperation with public and private groups and individuals in this field. (§ 1 ch 23 SLA 1960)

**Sec. 23.15.230. Appointment of committee.** The governor's committee consists of not more than 12 members appointed by the governor for a term not exceeding three years. The committee shall be composed of state leaders of industry, business, agriculture, labor, veterans, women, religious, educational, civic, fraternal, welfare, scientific, military, medical and other professions, or as many of these and like categories as may be feasibly represented. The initial members shall be appointed for terms of one, two, and three years as designated by the governor. A member may be reappointed and a vacancy shall be filled by the governor. (§ 2 ch 23 SLA 1960)

**Sec. 23.15.240. Appointment and term of chairman.** The governor shall appoint a chairman of the committee who serves as chairman for one year or until his successor is appointed. (§ 2 ch 23 SLA 1960)

**Sec. 23.15.250. Compensation and expenses.** Members of the committee may receive no compensation for services on the committee but are entitled to reimbursement for necessary expenses in accordance with existing law. (§ 2 ch 23 SLA 1960)

**Sec. 23.15.260. Meetings.** The committee shall meet annually, but at the request of the governor special meetings may be called. (§ 2 ch 23 SLA 1960)

**Sec. 23.15.270. Cooperation with other committees and agencies.** The committee shall work in close cooperation with local committees and with the President's Committee on Employment of the Handicapped to carry out the purpose of AS 23.15.220 — 23.15.320 more effectively, and with state and federal agencies having responsibilities for employment and rehabilitation of the handicapped. (§ 1 ch 23 SLA 1960; am § 7 ch 5 SLA 1978)

**Effect of amendments.** — The 1978 amendment deleted "Physically" preceding "Handicapped" near the middle of the section.

**Sec. 23.15.280. Appointment of advisors.** The division of vocational rehabilitation, the State Employment Service, the Department of Health and Social Services, and other state agencies which the committee names shall each designate a staff member who shall meet

BRIEFING PAPER

For Members of the Alaska State Legislature,  
Twelfth Legislature-Second Session

From The National Federation of the Blind of Alaska  
Sandy Sanderson, President  
242 E. 5th Ave. Anchorage, Alaska 99501

Re; SPONSORED SUBSTITUTE FOR SENATE BILL NO. 776

Background: A program to encourage and enable blind persons to become self-supporting through the operation of vending facilities on public property was first established by an act of Congress in 1936, referred to as the Randolph-Sheppard Act. All states cooperate today in providing such business opportunities to the blind.

The vending facilities range from small candy, cigarette, and newspaper stands to large multi-service cafeterias. Approximately 4000 blind people operate such businesses in this nation-wide program. Six facilities are located in Alaska-four on federal property and two on sites owned by the State.

Regardless of location, the concept is the same, to help the blind achieve independence and self-support through the operation of small businesses. Consistent with this intent, the blind vendors are individual entrepreneurs, licensed by the State. Thus, management of the program should emphasize maximum personal independence for each blind vendor and seek to eliminate bureaucratic paternalism of the state licensing agency. In a report issued on October 9, 1981, the official advisory committee to the Alaska Division of Vocational Rehabilitation criticized the agency for excessive management control

and a paternalistic approach toward the blind vendors. SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778 contains mechanisms to provide more independence and dignity for the blind while retaining a proper state licensing role.

Present Law: AS 23.15.100 (b) (5) authorizes the Division of Vocational Rehabilitation to issue licenses to blind and severely handicapped persons to operate vending facilities. This section also requires the Division to give a priority to blind persons in assigning vending facility locations. In this respect, the statute is consistent with the federal Randolph-Sheppard Act. The national program of vending facilities for the blind is governed largely by federal regulations, under which the Alaska Division of Vocational Rehabilitation is designated as the "State Licensing Agency." As such, the Division is responsible for supervising the vending facilities program under federal guidelines which are applicable to business enterprises located on federal and non-federal property. Financially the blind vending program is supported by federal funds matched by the state.

Need for additional State Legislation: Although the Randolph-Sheppard Act is very detailed in prescribing the conduct of the blind vendor program on federal property and assuring the priority for the blind, certain responsibilities are reserved to each state. Moreover, the priority for vending facilities to be operated by the blind on public property in each state must be secured by state law. The current Alaska Statute is deficient in several respects. As a result, the Division of Vocational Rehabilitation has filled this gap by exercising administrative discretion. This has led to

certain problems in implementing the blind vendor program, which now need to be addressed by the legislature in the form of SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778.

Explanation of proposed legislation: The SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778 is designed to update the Alaska Statute and to insure that certain requirements of the federal law are carried out within the State. For example, the bill establishes a requirement that vending facilities on public property in Alaska shall be made available for operation by the blind and severely handicapped, while retaining the priority of the present state law for the blind. It is important to note that the bill does not eliminate authority for the Division of Vocational Rehabilitation to license severely handicapped persons, other than blind persons, as vendors. As a practical matter, however, the Division has not licensed anyone other than blind persons to operate vending facilities in this program. This practice is also followed in other states and extends from the federal priority for the blind under the Randolph-Sheppard Act.

Among its other provisions, the bill requires the Division of Vocational Rehabilitation to furnish all necessary vending facility equipment and adequate, suitable, initial stocks of merchandise. This is included to enable new vending facilities to commence operation and to provide for program growth. In addition, increased revenue to meet these responsibilities will accrue to the division's vending facilities fund by means of payments from vending facilities on public property, other than those operated by blind or severely handicapped persons. The bill contains several features related to the establishment and operation of a State Committee of Blind Vendors. The Committee allows the blind vendors to participate in management

decisions as required by federal law. This management Committee for the vendors is especially critical in view of the intended emphasis on self-initiative and independence for the blind.

Thus, the purpose of a fully functioning Blind Vendors Committee is to reduce the possibility that the blind will be dominated by a paternalistic bureaucracy.

An important function of the Committee, along with the Division of Vocational Rehabilitation, is to develop and approve regulations which apply uniformly to each blind vendor and the overall administration of the program. Final decisions regarding program rules are reserved to the Commissioner of Education, after participation in negotiating the regulations by the Division and the Committee of Blind Vendors.

Finally, the bill assures that grievances of blind persons can be aired and resolved by means of administrative review and a full evidentiary hearing. If any dispute cannot be settled in this manner, a federal arbitration procedure is available, or the matter may be litigated in the State Courts.

Position of The National Federation of the Blind of Alaska: The National Federation of the Blind of Alaska urges the legislature to approve the SPONSORED SUBSTITUTE FOR SENATE BILL NO. 778. This bill will improve opportunities for the blind of Alaska to become self-supporting, tax paying citizens. It is a bill designed to strengthen current law and does not depart from legislative intent so far expressed in current law. Rather, this bill expands upon the framework of the State Statute now in effect by describing more fully the manner in which this program is intended to operate.

MEMORANDUM

April 7, 1982

SUBJECT: Vocational Rehabilitation  
(CSSSSB 778 (State Affairs))

TO: Senator Brad Bradley

FROM: Tamara Brandt Cook  
Legislative Counsel

You have asked for a section-by-section analysis of CSSSSB 778 (State Affairs) dealing with vocational rehabilitation:

Sec. 1. Adds to the list of duties of the division of vocational rehabilitation. The division must survey the potential for providing vending facilities on public property and establish vending facilities operated by blind or severely handicapped persons when feasible, provide training and supervision needed to enable blind persons and severely handicapped persons to operate vending facilities, and provide vending equipment and stock necessary to enable blind persons and severely handicapped persons to operate vending facilities.

Sec. 2. If the division of vocational rehabilitation licenses blind persons and severely handicapped persons for the operation of vending facilities, they must be licensed in accordance with a new section added by this Act. The license is for operation of vending facilities on public property rather than for the operation of vending facilities on federal property and in public buildings. "Public property" is defined elsewhere in the Act.

Sec. 3. Changes existing reference to "public buildings" to "public property".

Sec. 4. Several new sections are added.

Sec. 23.15.132 - a vending facility may not be established on state property except as authorized by the director of vocational rehabilitation. An authorized vending facility shall be selected and located after consulting with the persons responsible for the maintenance of the property.

Sec. 23.15.133 - the division of vocational rehabilitation is authorized to issue a license for the operation of a vending facility on public property to a qualified blind or severely handicapped person who is a state resident. A license does not expire but may be revoked if the licensed vendor is not operating the facility in accordance with regulations.

Sec. 23.15.134 - a Committee of Vendors consisting of licensed blind or severely handicapped vendors is established. The committee shall participate in administrative and program development decisions concerning vending facilities operated by licensed vendors. With active participation by the committee, the division of vocational rehabilitation is required to respond to grievances of licensed vendors, develop a statewide system for transfer and promotion of licensed vendors, develop training programs for vendors and persons interested in becoming licensed vendors, organize meetings for licensed vendors, adopt regulations necessary to assure that vending facilities operated by licensed vendors are administered uniformly whether the facility is located on state or federal property. Before each meeting of the Committee of Vendors the division must provide written information on matters to be considered. The division must provide reasons for decisions and actions that do not conform to recommendations of the committee.

Sec. 5. "Public property" is defined to include real or personal property owned or leased by the state or federal government, an agency of the state or federal government, or a political subdivision of the state or federal government.

Sec. 6. The definition of "vending facility" is expanded to include carts and to include facilities whether the goods are dispensed automatically or manually and whether prepared on or off the premises.

Sec. 7. "Active participation" for purposes of determining the powers of the Committee of Vendors is defined.

Sec. 8. Notwithstanding the provision of this Act requiring vending facilities to be established on public property only on authorization of the director of vocational rehabilitation, a vending facility being operated on the effective date of the Act is allowed to continue to be operated under the terms of the existing contract until the contract expires or is terminated.

TBC:jdn

PACKET FOR SB 778(SA)

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7. AS 23.15 , AAC 54.810, AS 44.62.330-630
8. Federal laws
9. Federal regulations
10. Proposed CS(HESS)
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ALASKA DIVISION OF VOCATIONAL REHABILITATION PROPOSED AMENDMENTS  
TO HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO.778  
(HESS)

Delete section 2.

Substitute the following language for that found on page 2, lines 14-22:

Sec. 23.15.133 VENDORS' LICENSES. (a) The agency shall issue a license for the operation of a vending facility to a person who is a resident of the state at the time of application and who qualifies for a license under (1) the Randolph-Sheppard Act (20 U.S.C. sec. 107); or (2) regulations adopted by the agency with active participation by the Committee of Vendors.

(b) A license issued under this section does not expire. However, a license may be revoked by the agency if the agency finds that the licensed vendor is not operating the facility in accordance with regulations adopted by the agency.

(c) The agency shall adopt regulations setting forth rights of persons licensed under (a) of this section. These rights shall be at least as extensive as those rights accorded by the Randolph-Sheppard Act (20 U.S.C. sec. 107). A blind person licensed under (a) of this section is entitled to all the rights accorded by the Randolph-Sheppard Act (20 U.S.C. 107).

Substitute the following language on page 2 lines 23-25:

Sec. 23.15.134 COMMITTEE OF VENDORS. (a) the Committee of Vendors consisting of six licensees elected by all persons who are licensed under AS 23.15.133 is established.

All references in the remainder of 23.15.134 shall be to the "Committee of Vendors" and to "licensed vendors".

Substitute the following language for that found on page 3, Section 5 (b) lines 27-29 and page 4, lines 1-2:

A person aggrieved by a decision or action of the agency  
under AS 23.15.133 or 23.15.134....

A blind person may also ....

CROSS TABULATIONS

	SPACE	SPACE	SPACE	SPACE	51CUR	16MJR	16	MJR	51CUR	SPACE	SPACE	SPACE	SPACE	
							COUNT	- ZEROS	COUNT	- ZEROS	COUNT	- ZEROS	COUNT	- ZEROS
1					00		44		44					
2					02		532		532					
3					06	100	1							
4					06	106	1							
5					06	112	1	5						
6					06	122	1						Summary:	
7					06	126	1							
8					06	212	1							
9					06	243	1						06 = 5	
10					06	274	1						10 = 1	
11					06	300	2						14 = 1	
12					06	301	2						16 = 4	
13					06	310	1						18 = 26	
14					06	312	1						20 = 3	
15					06	318	3						22 = 16	
16					06	323	2						24 = 2	
17					06	332	2							
18					06	338	2							
19					06	350	1							
20					06	359	3							
21					06	370	1						TOTAL = 63	
22					06	376	1							
23					06	378	2							
24					06	390	1							
79					10	532	4							
80					10	630	3							
81					10	642	2							
82					10	643	1							
83					10	662	2							
84					10	669	1						100-10-1 = ...	
85					10	689	1						NO legal protection	
86					10	699	2	1	141				110-11-1 = ...	
87					14	147	1						w/ ...	
88					14	229	1							
89					14	310	1							
90					14	316	1							
91					14	318	1							
92					14	323	1							
93					14	338	1							
94					14	339	1							
95					14	350	2							
96					14	359	3							
97					14	363	1							
98					14	370	1							
99					14	379	3							
100					14	381	1							
101					14	383	1							
102					14	396	1							
103					14	398	3							
104					14	399	9							
105					14	409	1							
106					14	434	1							
107					14	449	2							
108					14	500	4							

Summary:

06 = 5  
 10 = 1  
 14 = 1  
 16 = 4  
 18 = 26  
 20 = 3  
 22 = 16  
 24 = 2

TOTAL = 63

100-10-1 = ... NO legal protection

110-11-1 = ... w/ ...

120-12-1 = ...

140-11-1 = ...

# MEMORANDUM

# State of Alaska

TO: The Honorable Michael Beirne, Chairman  
House Health, Education and Social  
Services Committee  
Alaska State Representative,

DATE: April 12, 1982

FILE NO:

TELEPHONE NO: 465-2800

FROM: Marshall L. Lind, Commissioner  
Department of Education

SUBJECT: Memorandum on  
CSSS SB 778 (SA)

Attached you will find a copy of a memorandum which addresses an important aspect of CS SS SB 778 (SA), a bill which has recently passed the Senate and which, I am sure, will be referred to your HESS committee. The attached memorandum addresses an issue associated with the bill which, in our view, forces us to oppose it as it is written.

The recommended amendment to the definition proposed in Section 7 of the bill, as posed in Mr. Botelho's memorandum, is, in our view, extremely critical and necessary.

Thank you for your consideration in this matter.

FISCAL NOTE

I. REQUEST

Bill/Resolution Number: SB-778

Title: "An Act relating to the operation of vending facilities on ..."

Requested by: Senator Brad Bradley

Date: 3-26-82

II. FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Adult and Postsecondary Education

BRU, Program, or Subprogram(s) Affected: Vocational Rehabilitation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source):	-	-	-	-	-	-

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME	N/A	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

This bill has no fiscal impact on this agency.

IV. DATE: 3-26-82

PREPARED BY: Steve Hole

AGENCY: Department of Education

PHONE: 465-2890

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



# MEMORANDUM

State of Alaska

TO: Mike Morgan, Director  
Division of Vocational  
Rehabilitation  
Department of Education

DATE: April 7, 1982

FILE NO:

TELEPHONE NO: 465-3603

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: CSSSSB 778 (SA)

By: *BM*  
Bruce M. Botelho  
Assistant Attorney General

It is my understanding that the above bill passed out of Senate State Affairs on April 6, 1982. Proposed AS 23.15.134(b) provides in part:

"The director shall assure active participation by the committee of vendors in administrative, policy, program development decisions concerning vending facilities operated by licensed vendors."  
(italics added)

Proposed AS 23.15.210(13) reads:

"Active participation" means a process that is more than an advisory role through which the committee of vendors is provided the opportunity to substantively influence program policies, standards, and procedures affecting the operation of vending facilities by licensed vendors.

I wish to express my deep concern about the proposed definition of "active participation". Under the federal regulations the state committee is clearly an advisory body. In contrast, the definition in CSSSB 778 implies that the committee has decision making power. ("... more than an advisory role"). The definition is a clear invitation for litigation in that the bill places the committee and the division in a tug of war over respective lines of authority because it fails to address whether and to what extent the committee of vendors may take independent action in the implementation of program policies, standards and procedures.

If the definition of "active participation" is intended to confer some concurrent authority on the committee of vendors, then it has the effect of defusing management responsibilities to two bodies, one of which consists exclusively of recipients of services provided by the other. The concept is both poor management and poor precedent for the many other advisory bodies established both by state and federal statute.

Accordingly, I suggest that the definition of "active participation" should read substantially as follows:

"active participation" means a process through which the committee of vendors is provided the opportunity to confer with the division, initiate recommendations and comment on program policies, standards, and procedures affecting the operation of vending facilities by licensed vendors.

BMB/jf

licensee, shall be paid into (TO) the fund.

1 for sale and dispensed automatically or manually whether prepared on  
2 or off the premises.

3 \* Sec. 7. AS 23.15.210 is amended by adding a new paragraph to read:

4 (13) "active participation" means a process that is more than  
5 an advisory role through which the Committee of Vendors is provided the  
6 opportunity to substantively influence program policies, standards, and  
7 procedures affecting the operation of vending facilities by licensed  
8 vendors.

9 \* Sec. 8. Notwithstanding AS 23.15.132 enacted in sec. 3 of this Act, a  
10 vending facility being operated on public property on the effective date of  
11 this Act may continue in operation until the contract under which the vending  
12 facility is being operated expires or is terminated. After the contract  
13 expires or is terminated, the vending facility shall cease to operate until  
14 the provisions of AS 23.15.132 are met.

SEVERELY DISABLED CLASSIFICATION

CLASSIFIED AS SEVERE

- 100-119 Blindness Both eyes -
- 120-129 Blindness: one eye, other eye defective -
- \* 140-149 Other Visual impairments -  
if, with correction, unable to obtain driver's license for visual reasons
- 200-219 Deafness: able or unable to talk -
- \* 220-229 Other hearing impairments -  
if loss exceeds 70 decibels in better ear in conversational range with correction
- 300-339 Orthopedic impairment involving 3 or more limbs involving one upper and one lower limb -
- 355, 375, 395 Muscular dystrophy -
- 356, 376, 396 Multiple sclerosis -
- 358, 378, 398 Accidents and injuries involving the spinal cord -
- \* 340, 341, 343, 350, 352, 354, 357, 359 Impairment of one or both upper limbs -  
if both, and assistance of another person or device is needed for activities of daily living
- \* 360, 361, 363, 370, 372, 374, 377, 377 Impairment of one or both lower limbs -  
if locomotion is impaired to a degree that bilateral upper limb assistance devices are required, or individual is unable to utilize public buses or trains

\*Included among severely disabled provided additional factor(s) pertain

- 400-409      Loss of at least one upper and one lower extremity -
- 410-419      Loss of both major upper extremities -
- \* 430-439      Loss of one or both major lower extremities -  
                  if bilateral at the ankle or above, or if one at mid-thigh that requires bilateral upper limb assistance devices, or individual is unable to utilize public buses or trains
- \* 500 -      Psychotic disorders -  
                  if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the description on Page 4 for moderate or severe.
- \* 510 -      Psychoneurotic disorders -  
                  if now requiring institutional care in a mental hospital or psychiatric ward of a general hospital; or has history of being institutionalized for treatment for three months or more, or on multiple occasions; or meets the description on Page 5 for moderate or severe.
- 532-534      Mental retardation - moderate and severe -
- 600 -      Colostomies resulting from malignant neoplasms -
- 601 -      Laryngectomies resulting from malignant neoplasms -
- 602 -      Leukemia and Aleukemia -
- \* 615 -      Other endocrine system disorders -  
                  if cystic fibrosis
- 620 -      Hemophilia -
- \* 629      Anaemia and other diseases of the blood and blood forming organs -  
                  if symptomatic sickle cell anaemia

- 630      Epilepsy -  
           if not seizure - free for two years
- \* 640,641,642,      Cardiac & Circulatory conditions -  
    643,644            if classified 2C\*\* or worse
- \* 651,652,653,      Respiratory diseases -  
    654,659            if maximum breath capacity is less than 55 percent  
                       of predicted or shortness of breath on climbing one  
                       flight of stairs or walking 100 yards on the level
- 664 -                Colostomies -
- \* 670 -                Conditions of genito - urinary system -  
                       if end stage renal failure
- 680 -                Cleft palate and harelip with speech imperfections -
- 684 -                Laryngectomies -
- 685 -                Aphasia resulting from intracranial hemorrhage, embolism,  
                       or thrombosis (stroke) -

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\*\* New York Heart Association Classification as adopted by the American Heart Association

Psychotic disorders

**Mild:** Minor distortions of thinking with little or no disturbance in activities of daily living. With provisions of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Able to accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress, may require follow-up supervision, guidance or support. Includes one-time, short-term institutionalized discharges doing well on medication.

**Moderate:** Definite disturbances of thinking with definite but mild disturbances in behavior. Includes hospital discharges who require daily medication to avoid rehospitalization. With provision of rehabilitation services, capable of maintaining themselves in the community and of engaging in low-stress competitive employment, but at least initially requiring continuing supervision, guidance, motivation and support. Misunderstanding of instructions, activity, self-isolation, or over-reaction in gesture, speech or emotion may be displayed during the VR process and may cause concern to people in the work milieu.

**Severe:** (a) Severe disturbances of thinking and behavior that entail potential harm to self or others: (b) or, in the extreme, severe disturbances of all components of daily living, requiring constant supervision and care. Persons in (a) with the provision of rehabilitation services may be capable of maintaining themselves in the community and to engage in limited or sporadic productive activity only under continuing supervision in sheltered or protective environment, including halfway houses. Unable to communicate readily, have difficulty differentiating between their fantasies and reality, behavior is disruptive and often menacing to others, shouting, vulgarity, carelessness of dress and excretory functions, or possible suicidal attempts necessitate continuing observation, professional intervention and medication, especially during early stages of the rehabilitation process.

### Psychoneurotic disorders

**Mild:** Stress reactions to daily living without substantial loss of personal or social efficiency. With the provision of rehabilitation services, can maintain independent living in the community and engage in competitive employment. Can accept direction, maintain adequate interpersonal relations and concentrate sufficiently to perform job requirements. Only under occasional conditions of particular internal, social or economic stress will require supervision, guidance and support after placement.

**Moderate:** Stress reactions which modify patterns of daily living. Can maintain themselves in the community and perform adequately in low-stress competitive employment with the provision of rehabilitation services. May require medication and continuing supervision, motivation and support at least during early post-placement. Their fears, indecision, loss of interest or occasional odd behavior will be evident during the rehabilitation process, and may moderately interfere with job performance and other workers' activities in employment when stressful situations arise.

**Severe:** Stress reactions to daily living that result in continuing regression and tissue-organ pathology. Capable of productive work but only under sheltered, non-competitive conditions in a highly structured or protective environment, at least initially. May require continuing medication. Bizarre and disruptive behavior, loss of interest in activities of daily living, problems with memory and concentration will be evident in the counseling process and with their interference with other workers necessitate continuing supervision, guidance, motivation and support by professional staff in the work situation. Conversion reactions, poor eating and cleanliness habits may create considerable health problems.

## FUNCTIONAL LIMITATION FACTORS

In this grouping are those conditions, whether a single disability or a combination of disabilities, which when presented in terms of clinical description and functional limitations, the State agency/ (counselor/medical consultant) can determine:

- a. There exists substantial loss of functional capacity and restriction of activity attributable to medical factors, such that the client:
  - (1) Is unable to make use of public bus or train, or
  - (2) Is unable to perform sustained work activity of six hours or more, or
  - (3) Has disfigurement or deformity so pronounced as to cause social rejection, or
  - (4) Speech is unintelligible to non-family members, or
  - (5) Is unable to climb one flight of stairs or walk 100 yards on the level without pause, or
  - (6) Has loss of manual dexterity or coordination sufficient that he is unable to button buttons, wind a watch or write intelligibly; and
- b. The client will normally require multiple vocational rehabilitation services over an extended period of time.

CLASSIFICATION OF DISABLING CONDITIONS

RSA Code	Disabling Conditions
(1--)	<u>VISUAL IMPAIRMENTS</u>
(10-)	Blindness, both eyes, no light perception, due to:
100	cataract
101	glaucoma
102	general infectious, degenerative, and other specified diseases, including ocular and local infections
106	congenital malformations
107	accident, poisoning, exposure or injury
109	ill-defined and unspecified causes
(11-)	Blindness, both eyes (with correction not more than 20/200 in better eye or limitation in field within 20 degrees, but not code 10), due to:
110	cataract
111	glaucoma
112	general infectious, degenerative, and other specified diseases, including ocular and local infections
116	congenital malformations
117	accident, poisoning, exposure or injury
119	ill-defined and unspecified causes
(12-)	Blindness, one eye, other eye defective (better eye with correction less than 20/60, but better than 20/200, or corresponding loss in visual field), due to:
120	cataract
121	glaucoma
122	general infectious, degenerative, and other specified diseases, including ocular and local infections
126	congenital malformations
127	accident, poisoning, exposure or injury
129	ill-defined and unspecified causes
(13-)	Blindness, one eye, other eye good, due to:
130	cataract
131	glaucoma
132	general infectious, degenerative, and other specified diseases, including ocular and local infections
136	congenital malformations
137	accident, poisoning, exposure or injury
139	ill-defined and unspecified causes
( )	These are not actual codes, but identifications of major groupings.

RSA Code	Disabling Conditions
(14-)	Other visual impairments, due to:
140	cataract
141	glaucoma
142	general infectious, degenerative, and other specified diseases, including ocular and local infections
146	congenital malformations
147	accident, poisoning, exposure or injury
149	ill-defined and unspecified causes
(2--)	HEARING IMPAIRMENTS
(20-)	Deafness, unable to talk, due to:
200	degenerative and other non-infectious and specified diseases of ear
202	upper respiratory infections and other infectious diseases
206	congenital malformations
208	accident, poisoning, exposure or injury
209	ill-defined and unspecified causes
(21-)	Deafness, able to talk, due to:
210	degenerative and other non-infectious and specified diseases of ear
212	upper respiratory infections and other infectious diseases
216	congenital malformations
218	accident, poisoning, exposure or injury
219	ill-defined and unspecified causes
(22-)	Other hearing impairments, due to:
220	degenerative and other non-infectious and specified diseases of ear
222	upper respiratory infections and other infectious diseases
226	congenital malformations
228	accident, poisoning, exposure or injury
229	ill-defined and unspecified causes
(3--)	ORTHOPEMIC DEFORMITY OR FUNCTIONAL IMPAIRMENT, EXCEPT AMPUTATIONS
(30-,31-)	Impairment involving three or more limbs or entire body, due to:
300	cerebral palsy
301	congenital malformation or other and ill-defined birth injury

RSA Code	Disabling Conditions
303	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
310	arthritis and rheumatism
312	intracranial hemorrhage, embolism, and thrombosis (stroke)
314	poliomyelitis
315	muscular dystrophy
316	multiple sclerosis
317	Parkinson's disease
318	accidents and injuries involving the spinal cord
319	all other accidents, injuries, and poisonings
(32-,33-)	Impairment involving one upper and one lower limb (including side), due to:
320	cerebral palsy
321	congenital malformations and ill-defined birth injury
323	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
330	arthritis and rheumatism
332	intracranial hemorrhage, embolism, and thrombosis (stroke)
334	poliomyelitis
335	muscular dystrophy
336	multiple sclerosis
337	Parkinson's disease
338	accidents and injuries involving the spinal cord
339	all other accidents, injuries, and poisonings
(34-,35-)	Impairment involving one or both upper limbs (including hands, fingers, and thumbs), due to:
340	cerebral palsy
341	congenital malformations and ill-defined birth injury
343	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
350	arthritis and rheumatism
352	intracranial hemorrhage, embolism, and thrombosis (stroke)
354	poliomyelitis
355	muscular dystrophy
356	multiple sclerosis
357	Parkinson's disease
358	accidents and injuries involving the spinal cord
359	all other accidents, injuries, and poisonings

RSA Code	Disabling Conditions
(36-,37-)	Impairment involving one or both lower limbs (including feet and toes) due to:
360	cerebral palsy
361	congenital malformations and ill-defined birth injury
363	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
370	arthritis and rheumatism
372	intracranial hemorrhage, embolism, and thrombosis (stroke)
374	poliomyelitis
375	muscular dystrophy
376	multiple sclerosis
377	Parkinson's disease
378	accidents and injuries involving the spinal cord
379	all other accidents, injuries, and poisonings
(38-,39-)	Other and ill-defined impairments (including trunk, back, and spine), due to:
380	cerebral palsy
381	congenital malformations and ill-defined birth injury
383	other diseases, infectious and non-infectious, other infections (including local), and other neurological and mental diseases (excluding code 630, epilepsy)
390	arthritis and rheumatism
392	intracranial hemorrhage, embolism, and thrombosis (stroke)
394	poliomyelitis
395	muscular dystrophy
396	multiple sclerosis
397	Parkinson's disease
398	accidents and injuries involving the spinal cord
399	all other accidents, injuries, and poisonings
(40-)	<b>ABSENCE OR AMPUTATION OF MAJOR AND MINOR MEMBERS</b>
(40-)	Loss of at least one upper and one lower major extremity (including hands, thumbs, and feet), due to:
400	malignant neoplasms
402	congenital malformations
404	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
409	accidents, injuries, and poisonings

RSA Code	Disabling Conditions
(41-)	Loss of both major upper extremities (including hands or thumbs), due to:
410	malignant neoplasms
412	congenital malformations
414	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
419	accidents, injuries, and poisonings
(42-)	Loss of one major upper extremity (including hand or thumb), due to:
420	malignant neoplasms
422	congenital malformations
424	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
429	accidents, injuries, and poisonings
(43-)	Loss of one or both major lower extremities (including feet), due to:
430	malignant neoplasms
432	congenital malformations
434	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
439	accidents, injuries, and poisonings
(44-)	Loss of other and unspecified parts (including fingers and toes, but excluding thumbs), due to:
440	malignant neoplasms
442	congenital malformations
444	diseases, infectious and non-infectious (including peripheral vascular, diabetes, tuberculosis of bones and joints), and infections (including gangrene)
449	accidents, injuries, and poisonings
(5--)	MENTAL, PSYCHONEUROTIC, AND PERSONALITY DISORDERS
(50-)	Psychotic disorders:
500	psychotic disorders
(51-)	Psychoneurotic disorders:
510	psychoneurotic disorders
(52-)	Other mental disorders:
520	alcoholism
521	drug addiction
522	other character, personality, and behavior disorders

RSA Code	Disabling Conditions
(52-)	Mental retardation: 1/
530	mental retardation, mild
532	mental retardation, moderate
534	mental retardation, severe
(6--)	OTHER DISABLING CONDITIONS FOR WHICH ETIOLOGY IS NOT KNOWN OR NOT APPROPRIATE
(60-)	Other conditions resulting from neoplasms (not elsewhere classified):
600	colostomies resulting from malignant neoplasms
601	laryngectomies resulting from malignant neoplasms
602	leukemia and aleukemia
605	other malignant neoplasms
609	benign and unspecified neoplasms
(61-)	Allergic, endocrine system, metabolic and nutritional diseases:
610	hay fever and asthma
611	other allergies
614	diabetes mellitus
615	other endocrine system disorders (except code 616, cystic fibrosis)
616	cystic fibrosis
619	avitaminoses and other metabolic diseases
(62-)	Diseases of the blood and blood-forming organs:
620	hemophilia
621	sickle cell anemia
629	other anemia and diseases of the blood and blood-forming organs (except code 602, leukemia and aleukemia)
(63-)	Other specified disorders of the nervous system:
630	epilepsy
639	other disorders of the nervous system, not elsewhere classified
(64-)	Cardiac and circulatory system conditions:
640	congenital heart disease
641	rheumatic fever and chronic rheumatic heart disease
642	arteriosclerotic and degenerative heart disease
643	other diseases or conditions of heart
644	hypertensive heart disease
645	other hypertensive disease
646	varicose veins and hemorrhoids
649	other conditions of circulatory system

1/ See page 31 for definitions.

RSA Code	Disabling Conditions
(65-)	Respiratory system conditions:
650	tuberculosis of the respiratory system
651	emphysema
652	pneumoconiosis and asbestosi.
653	bronchiectasis
654	chronic bronchitis and sinusitis
659	other conditions of respiratory system
(66-)	Digestive system conditions:
660	conditions of teeth and supporting structures
661	ulcer of stomach and duodenum
662	chronic enteritis and ulcerative colitis
663	hernia
664	colostomies (from other than malignant neoplasms)
669	other conditions of digestive system
(67-)	Genito-urinary system conditions:
670	genito-urinary system conditions (except code 671, end-stage renal failure)
671	end-stage renal failure
(68-)	Speech impairments:
680	cleft palate and harelip with speech imperfections
682	stammering and stuttering
684	laryngectomies (from other than malignant neoplasms)
685	aphasia resulting from intracranial hemorrhage, embolism, or thrombosis (stroke)
689	other speech impairments (except code 685, aphasia resulting from stroke)
(69-)	Disabling diseases and conditions, not elsewhere classified:
690	diseases and conditions of the skin and cellular tissue
699	other disabling diseases and conditions

Michael C. Morgan, Director

April 12, 1982

Nancy Groszga  
c/o Senator Fischer Office  
Pouch V  
Juneau, Alaska 99811

Dear Nancy:

Attached are the revised regulations covering all the areas the vendors presented to Senator Fischer's attention and which we discussed with Bruce Potelho on Tuesday April 6, 1982. Hopefully this will adequately address the concerns that the vendors presented to you about the regulations.

The changes made are as follows:

1. 4 AAC 54.310 (c)(2), "have completed a vocational evaluation to determine compatibility with management of a vending stand."

Number 5 of the same section was deleted.

2. 4 AAC 54.340 (e), "a temporary license is issued for an initial six month evaluation period. Following successful completion of the sixth month period as evidenced by the licensee's compliance with 4 AAC 54.370, a permanent license will be issued. A license is not transferable and is revocable pursuant to 4 AAC 54.460. The license does not authorize the holder to operate a vending facility at a location other than describe in the license."

Section (c)(1), was changed by the addition, "as described in 4 AAC 54.370."

3. 4 AAC 54.360, "In consultation with the committee of vendors, the division will provide appropriate in service training and post employment services for licensee's to expand and improve their capacity for upward mobility in the program."
4. 4 AAC 54.370 (6), "submitting accurate and timely reports to the division as the division requires"

Sections 8 and 9 were deleted.

5. 4 AAC 54.380 (a), "a vending facility operator shall personally operate the facility unless he has designated an assistant manager, a temporary relief manager or assistant vacation manager who has been approved by the division."

Section (b), "the vending facility operator must submit to the division the designated temporary relief manager or substitute vacation manager as far in advance as is possible. Except for good cause advance requests for substitute vacation managers must be submitted at least thirty days before the proposed vacation."

6. 4 AAC 54.460 (a)(2), "absences of more than four days without approval from the division."

Section (5), "operating the facility in a manner which places the division's investment in the facility at risk including destruction or neglect of equipment, failure to follow fire and safety standards, failure to pay wholesalers, failure to keep adequate stock on hand or carrying on illegal practices."

Section (8), "demonstrated incompetency in the operation of the vending facility including inadequate record keeping, failure to keep the required hours on a consistent basis, failure to employ report adequate staff during absences, and failure to accept division management oversight."

Section (9), "submitting untimely, inaccurate or false reports on expenditures and income to the division."

Section (h), "In its discretion the division may permit a licensee to continue operating the facility for a probationary period in lieu of revocation proceedings. The initial probationary period may not exceed ninety days. During the probation the licensee shall take corrective action. If the licensee takes corrective action but is experiencing difficulty in compliance, the division may extend the probation for an additional ninety days."

Section (i), "The licensee shall be notified of the probationary period in writing by certified mail with return receipt requested. Probation will begin when the letter is received."

Nancy Groszack  
April 12, 1982  
Page 3

7. 4 AAC 54.490 (9), "The licensee and the division may present oral or documentary evidence, submit rebuttal evidence and conduct examination and cross examination of witness's. The testimony shall be under oath."

Number 11, "The hearing shall be electronically recorded and the transcript may be made at the oral evidence of the discretion of the division. The division shall pay all transcript costs and will provide the licensee with one copy of the transcript."

Number 13, "The decision of the hearing officer shall set forth findings, fact, and conclusions with respect to each of the issues. The decision shall be made within fifteen working days of the hearing. The decision will be mailed promptly to the vending facility operator and the division personally or by certified letter with return receipt requested. Vendors shall be notified of his appeal rights and through a certified letter."

I want to express the Division's appreciation for your assistance with this matter. Also attached is a copy of a letter sent to every vendor on 12/15/82 with the regulations requesting their input and offering to meet with the entire committee at Division expense to discuss the proposed regulations. Should you have any additional comments on these please feel free to call.

Sincerely,

Theda Mason-Smith  
Facilities Specialist

Enclosure

MS:lk

## Section

- 300. Scope of Regulations
- 310. Prerequisites for Training of Vending Facility Managers
- 320. Training of Vending Facility Managers
- 330. Certification of Trained Vending Facility Managers
- 340. Licensing of Certified Vending Facility Managers
- 350. Reimbursement
- 360. Continuing Education
- 370. Responsibilities of a Licensee
- 380. Vending Facility Staffing
- 390. Establishment of Vending Facility Locations
- 400. Equipment, Fixtures and Initial Stock
- 410. Repair and Replacement of Equipment and Fixtures
- 420. Termination of Business
- 430. Distribution and Use of Vending Machine Income
- 440. Income and Set-Aside Funds
- 450. Access to Program and Financial Information
- 460. Revocation of Licenses
- 470. Administrative Review
- 480. Evidentiary Hearing

4 AAC 54.300. SCOPE OF REGULATIONS. Sections of this chapter apply to the Randolph-Sheppard Vending Facility Program (P.L. 83-565 as amended) administered by the Division of Vocational Rehabilitation and the state vending facility program established under AS 23.15.100 (b) and AS 23.15.130. (Eff. / / , Register )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.310. PREREQUISITES FOR TRAINING OF VENDING FACILITY MANAGERS. (a) The division will provide training in vending facility management to an applicant who meets the following requirements:

(1) The applicant has had no previous training as a vending facility manager; and

(2) for placement in vending facilities on federal property, the applicant is blind and a citizen of the United States; or

(3) for placement in vending facilities on state property, the applicant is blind or severely handicapped.

(b) The division may provide training in vending facility management to an applicant meeting the requirements of (a)(2) or (3) of this section.

(c) Unless waived by the director for good cause shown, the applicant shall.

REGISTER

EDUCATION

4 AAC 54.310  
4 AAC 54.320  
4 AAC 54.330

(1) have had a complete physical examination within the preceeding six months, including an eye examination by an ophthalmologist or an optometrist if the applicant is blind;

(2) have completed a vocational evaluation to determine compatibility with management of a vending stand;

(3) have sufficient educational skills, knowledge, and capacity to benefit from on-the-job and formal training in the operation of a vending facility;

(4) be able to work an eight hour day, five days a week, based on the physical examination and vocational evaluation during placement in an actual vending facility setting for a minimum of thirty days. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.320. TRAINING OF VENDING FACILITY MANAGERS. (a) The division will determine the training necessary to prepare an applicant to operate as a manager of a vend'ng facility on an individual basis. The training may include:

(1) personal and vocational adjustment;

(2) business management (e.g. customer relations, business mathematics, merchandising, inventory control, financial reporting, taxation and accounting procedures);

(3) food handling and preparation;

(4) books, tests, and other training devices or materials; and

(5) relocation out-of-state for temporary periods of time. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.330. CERTIFICATION OF TRAINED VENDING FACILITY MANAGERS. (a) The division will certify an applicant for vending facilities on federal property who meets the requirements of 4 AAC 54.310(a)(2) and who has successfully completed the training program described in 4 AAC 54.320.

(b) The division will certify an applicant for vending facilities on state property who meets the requirements of 4 AAC 54.310(a)(3) and who has successfully completed the training program described in 4 AAC 54.320.

(c) An applicant who meets the requirements of 4 AAC 54.310(a)(2) and (3) and who has successfully completed the training program described in 4 AAC 54.320 shall be certified in both vending programs.

(d) A person who is certified in a vending program shall be enrolled on the vending program roster for placement in a vending facility as a substitute manager. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.340. LICENSING OF CERTIFIED VENDING FACILITY MANAGERS. (a) The division will license a certified vending facility manager into a vending program when:

(1) a vending facility in that vending program is available for immediate placement; and

(2) the division and the eligible manager have entered into a written operating agreement setting forth the duties under this chapter.

(b) A temporary license is issued for an initial six month evaluation period. Following successful completion of the six month period as evidenced by the licensee's compliance with 4 AAC 54.370, a permanent license will be issued. The license is not transferable and is revocable pursuant to 4 AAC 54.460. The license does not authorize the holder to operate a vending facility at a location other than that described in the license.

(c) The division will apply the following priorities in the order listed to select a certified vending vending facility manager for licensure:

(1) A current licensee who requests a new location. When more than one licensee requests promotion or transfer to another facility, the division will review each candidate based on seniority, training, and past performance as described in 4 AAC 54.370;

(2) a certified vending facility manager who has demonstrated his ability to manage a facility. When more than one manager requests placement in a facility, the division will review each candidate based on seniority, evaluations by the the division staff and evaluation reports filed by licensees for whom the manager has worked;

(3) a former licensee who desires to return to a vending program and whose previous record demonstrates his ability as a licensee. The division will review each candidate based on training, experience, past performance and reason for leaving the vending program. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.350. REIMBURSEMENT. (a) The division shall pay the personal moving costs at rates afforded division employees for a licensee entering a vending program for the first time when the vending facility to which he is assigned is at least 50 miles from his present home.

REGISTER

EDUCATION

4 AAC 54.350  
4 AAC 54.360  
4 AAC 54.370  
4 AAC 54.380

(b) A current licensee selected for a new facility or a former licensee requesting re-entry into a vending program must pay his personal moving costs. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.360. CONTINUING EDUCATION. In consultation with the Committee of Vendors, the Division will provide appropriate in-service training and post-employment services for licensees to expand and improve their capacity for upward mobility within the program. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.370. RESPONSIBILITIES OF A LICENSEE. The responsibilities of a licensee include:

(1) operating the facility in accordance with laws relating to vending facilities, public health, taxes, compensation of employees, worker's compensation, insurance, civil rights, and fire and safety codes;

(2) maintaining business accounts and records separate from personal accounts;

(3) maintaining a commercial bank account in which all funds not required as cash on hand are deposited;

(4) making payment for all business expenses in a timely fashion;

(5) retaining receipts for goods and services bought for the business;

(6) submitting accurate and timely reports to the division as the division requires; and

(7) obtaining and maintaining personal and property damage liability insurance, naming the State of Alaska as an additional insuree, with limits of \$100,000 for each person and \$300,000 for each occurrence, and insurance against loss by fire or other hazard of the vending facility property. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.380. VENDING FACILITY STAFFING. (a) A vending facility operator shall personally operate the facility unless he has designated an assistant manager, a temporary relief manager or a substitute vacation manager who has been approved by the Division.

## REGISTER

## EDUCATION

4 AAC 54.380  
 4 AAC 54.390  
 4 AAC 54.400  
 4 AAC 54.410

(b) The vending facility operator must submit to the division the designated temporary relief manager or substitute vacation manager as far in advance as is possible. Except for good cause, advance requests for substitute vacation managers must be submitted at least thirty (30) days before the proposed vacation. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
 AS 23.15.100(b)(6)

4 AAC 54.390. ESTABLISHMENT OF VENDING FACILITY LOCATIONS. (a) In deciding to establish vending facility locations on federal property, in state buildings, and in private buildings where vending facilities are permitted by the owner, the division will apply the following criteria:

(1) The building in which the vending facility is to be located must either house at least 250 employees on a daily basis or evidence foot traffic through it of at least 400 persons daily;

(2) at least 250 square feet of floor space must be available for the vending facility;

(3) adequate utility outlets or hookups must be available; and

(4) a permit or authorization to establish a vending facility in the building must be obtainable. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
 AS 23.15.100(b)(6)

4 AAC 54.400. EQUIPMENT, FIXTURES AND INITIAL STOCK. (a) The division will provide architectural services, equipment, fixtures, initial supplies and inventory, and initial operating funds, as it considers necessary, for each vending facility the division establishes in federal or state public buildings.

(b) All rights, title, and interest in the equipment, fixtures, initial inventory, and initial operating funds remain vested in the division.

(c) A licensee shall not acquire on his own or make additions to or reductions in equipment provided to the facility by the division without the prior written approval of the division. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
 AS 23.15.100(b)(1)

4 AAC 54.410. REPAIR AND REPLACEMENT OF EQUIPMENT AND FIXTURES. (a) The division will maintain all vending equipment and will replace worn out or obsolete equipment as required. A licensee shall take reasonable care of equipment and give routine day-to-day maintenance of that equipment.

(b) the division will pay the entire cost of repair during:

(1) the first six months of operation of a facility (new licensee or new facility);

(2) the first three months of operation for equipment transferred from one facility to another; and

(3) the first thirty days for equipment in a facility to which a licensee has been transferred or promoted from another facility.

(c) After the lapse of time set forth in 4 AAC 54.410(b), the licensee shall pay the first \$50 of repair costs where the division has first authorized the repair. Unauthorized repairs are the sole responsibility of the licensee unless the repairs were necessary to avoid the loss of life or property.

(d) Vending facility operators are responsible for reporting, at the first opportunity, all incidents of damage, breakage, theft or malfunction of facility equipment or fixtures to the division. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.420. TERMINATION OF BUSINESS. (a) A licensee who discontinues operation of a vending facility is responsible for the financial liabilities incurred in operating the facility. If the wholesale value of saleable merchandise, cash on hand and the facility account is greater than the value of the original inventory and cash provided the facility by the division, the division will reimburse the licensee for the excess, less any unpaid bills or other liabilities. If the wholesale value of saleable merchandise, cash on hand and the facility account is less than the value of the original inventory and cash provided the facility by the division, the licensee shall pay the division the balance.

(b) When a licensee discontinues operation of a vending facility, the licensee and the division shall conduct an inventory to ensure the equipment, fixtures, and initial inventory the division provided are accounted for in an operable condition. (Eff. / / , Reg. )

Authority AS 23.15.010(c)

4 AAC 54.430. DISTRIBUTION AND USE OF VENDING MACHINE INCOME. (a) The net proceeds from vending machines operated by private persons in state or federal buildings for profit must be paid into the Small Business Enterprise Fund on a quarterly basis. Income derived from vending machines in federally owned or leased buildings will be held and accounted for separately from any income from vending machines in state owned or leased buildings and will be expended only to assist licensees on federal property.

(b) If a vending machine is in direct competition with a licensee in the

same building, the net proceeds from the machine accrue to the licensee in an amount not to exceed the lesser of:

(1) the average net income of all licensees within the state, determined each fiscal year on the basis of the prior year's operation; or

(2) an amount equal to the average net income of all blind vending facility operators in the United States, determined on the basis of the prior year's operation.

(c) This section does not apply to income from a vending machine which is part of a vending facility operated by a licensee.

(d) The division will retain the net proceeds from vending machines not in direct competition with a licensed vending facility and net proceeds exceeding the requirements of 4 AAC 54.430(b). The division will use the proceeds to aid licensees for:

(1) vacation time, health insurance plans, retirement, and pension plans;

(2) maintenance of equipment;

(3) purchase of new or replacement equipment;

(4) management and consultative services;

(5) ensuring a fair minimum return to beginning licensees; and

(6) defraying, in part or total, the cost of constructing new vending facilities.

(e) Use of the net proceeds committed by the division to benefits described in 4 AAC 54.430(d)(1) will be determined by a majority of licensees on a biennial basis. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(c)

4 AAC 54.440. INCOME AND SET-ASIDE FUNDS. (a) the monthly income of a licensee is the net profit of the vending facility for the month.

(b) The division will augment the income of a licensee up to the state minimum wage when the licensee's income is below the state minimum wage and:

(1) the licensee has been licensed six months or less; or

(2) the vending facility has been in operation for six months or less.

(c) The division will establish a set-aside fund from the net profits of the vending facilities to carry out programs under 430 (d)(1) when revenues

from (a) are insufficient only after majority vote of licensees.

(d) If the division establishes a set-aside fund, it will set forth in writing the assessment for each vending facility and, in the case of vending facilities on federal property, will submit the set-aside plan to the Commissioner of Rehabilitation Services for his review and approval as required under 34 CFR 395.3(a)(11)(IV).

(e) Set-aside revenues from vending facilities on federal property will be accounted for separately from those derived from vending facilities on state property, and will be expended in accordance with 4 AAC 54.430(e)(1) - (5) to assist only licensees on federal property. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.450. ACCESS TO PROGRAM AND FINANCIAL INFORMATION. The division will provide licensee access to all financial data respecting the vending programs and will prepare an annual financial report on the vending programs for distribution to licensees. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.460. REVOCATION OF LICENSES. (a) A license is issued for an indefinite period of time but may be suspended or revoked after affording the licensee an opportunity for a hearing under 4 AAC 54 for the following reasons:

(1) In the case of facilities on federal property, the licensee experiences an improvement of vision so that the licensee is no longer blind, or, in the case of facilities operated on state property, the licensee experiences an improvement in the disabling condition so that the licensee is no longer blind or severely disabled;

(2) absences of more than four days without approval from the division;

(3) extended illness (exceeding three months) with a documented medical diagnosis of prolonged incapacity to operate the vending facility in a manner consistent with the needs of the location, or other available locations in the vending facility program. This period may be extended by the director if adequate coverage of the facility can be arranged;

(4) a request by the management of the building in which the vending facility is located that the operator be moved for failure to comply with applicable building rules;

(5) operating the facility in a manner which places the division's investment in the facility, at risk including destruction or neglect of

equipment, failure to follow fire and safety standards, failure to pay wholesalers, failure to keep adequate stock on hand or carrying on illegal practices;

(6) failure to pay a government agency, supplier, or creditor of any taxes or other amounts of money due;

(7) refusal to cooperate with the division or to abide by the terms of the written operating agreement;

(8) demonstrated incompetency in the operation of a vending facility, including inadequate record keeping, failure to keep the required hours on a consistent basis, failure to employ adequate staff during absences, and failure to accept Division management oversight;

(9) submitting untimely, inaccurate or false reports on expenditures and income to the division; or

(10) failure to comply with the provisions of this chapter or with applicable health codes.

(b) In its discretion, the division may permit a licensee to continue operating the facility for a probationary period in lieu of revocation proceedings. The initial probationary period may not exceed 90 days. During the probation, the licensee shall take corrective action. If the licensee takes corrective action but is experiencing difficulty in compliance, the division may extend the probation for an additional 90 days. (Eff. / / . Reg. )

(1) The licensee shall be notified of the probationary period in writing by certified mail with return receipt requested. Probation will begin on the date the letter is received.

Authority AS 23.15.010(c)  
AS 23.15.100(b)(6)

4 AAC 54.470. ADMINISTRATIVE REVIEW. An administrative review is the procedure through which a licensee or his representative may seek review of an adverse division action arising from the administration of the vending facility program. The following procedures apply in the conduct of an administrative review.

(1) At the time of licensing, the division will inform the licensee in writing of his right to seek administrative review of adverse actions and the procedures to be followed in obtaining one.

(2) A licensee or his designee must request an administrative review within fifteen (15) working days of the action with which he is aggrieved.

(3) A written request for an administrative review stating the issues to be resolved must be transmitted to the director of the division

(4) The division will assign a member of its administrative staff who has not in any way participated in the agency action in question as review officer.

(5) The division shall conduct the review within fifteen (15) working days of the receipt by the division of the written request of the licensee. The division shall hold the review in the division office nearest the licensee during regular agency hours at a time convenient to the licensee.

(6) The division shall provide transportation and reader or other communication services to the vending facility operator when necessary.

(7) A record of the administrative review will be maintained for two years.

(8) When an informal administrative review does not resolve a dispute to the satisfaction of the licensee, the licensee may request an evidentiary hearing. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.480. EVIDENTIARY HEARING. The following procedures apply in the conduct of an evidentiary hearing:

(1) A licensee, or his designee, must request an evidentiary hearing within fifteen (15) working days of any administrative review decision he wishes to appeal;

(2) A written request for an evidentiary hearing stating the issues to be appealed must be transmitted to the director of the division personally or by certified mail with return receipt requested;

(3) A licensee may retain local counsel or other representation at his own expense in an evidentiary hearing;

(4) The division will schedule the hearing within fifteen (15) working days of its receipt of the written request unless the division and the licensee agree in writing to another time. The division will hold the hearing in the division office nearest the vendor during regular agency hours at a time convenient to the licensee;

(5) The division will notify the licensee in writing of the time and place fixed for the hearing;

(6) The division will provide the licensee a copy of his case file at no charge;

(7) The division will provide transportation and reader or other communication services to the licensee if necessary;

(8) The hearing officer shall be an impartial official who has no involvement with the state agency action at issue or with the administration of the vending facility program. The hearing officer may be staff member of another agency or a state agency hearing officer.

(9) The licensee and the division may present oral or documentary evidence, submit rebuttal evidence, and conduct examination and cross examination of witnesses. The testimony shall be under oath.

(10) All papers and documents to be introduced into evidence at the hearing must be filed with the hearing officer and provided to the other party.

(11) The hearing shall be electronically recorded. A transcript may be made of the oral evidence at the discretion of the division. The division will pay all transcript costs and will provide the licensee with one copy of the transcript.

(12) The transcript of testimony, exhibits, and all papers and documents filed in the hearing shall constitute the exclusive record for the decision.

(13) The decision of the hearing officer shall set forth findings of fact and conclusions with respect to each of the issues. The decision shall be made within fifteen (15) working days of the hearing. The decision shall be mailed promptly to the vending facility operator and the division personally or by certified mail with return receipt requested. The vendor shall be notified of his appeal rights in the same certified letter.

(14) A licensee in the federal vending program who is dissatisfied with the decision rendered after an evidentiary hearing may request an Arbitration Panel be convened by filing a complaint with the Secretary to the Department of Education under 34 CFR 295.13(a) within fifteen (15) working days of his receipt of the decision. A licensee in the state vending program may exercise his right to appeal under the Alaska Rules of Appellate Procedure. (Eff. / / , Reg. )

Authority AS 23.15.020(c)  
AS 23.15.100(b)(6)

4 AAC 54.490 should be amended by adding the following paragraphs:

( ) "blind" means a person who, after examination by a physician skilled in the diseases of the eye or optometrist, has been determined to have not more than 20/200 central visual acuity in the better eye with correcting lenses, or an equally disabling loss of a visual field as evidenced by limitation of the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;

( ) "set-aside fund" means those funds paid by licensees to the division from the net proceeds of the operation of each vending facility.

( ) "severely handicapped" means a person who meets the criteria of severe disability published in \_\_\_\_\_, (19 \_\_\_\_ ed.);

( ) "vending program" means the state business enterprise program and the federal vending facility program for the blind established by the Randolph-Sheppard ACT (P.L. 83-565 as amended), (Eff. \_\_\_\_ / \_\_\_\_ / \_\_\_\_, Reg. \_\_\_\_ )

Authority

## How A Vending Business Operates

- A Vending Operator is a retailer who owns and places machines to sell products or services, sometimes in combination with other retailing methods.
- Automatic vending is a small local business. Of the 100,000 or so "vending operators," almost half employ three or fewer persons, only 18% have 20 or more employees.
- Through hard work and innovations the vending industry has increased its total sales volume from \$ 100 million in 1948 to \$5.5 billion in 1969. However, profit margins have remained low, averaging less than 6% before income taxes.

### The History of Vending

Vending in the United States started in 1888 when the first gum venders were placed on location on elevated train platforms in New York.

Vending as we know it today did not begin however, until the late 1920's, with the first widespread use of cigarette machines.

It is during World War II that automatic retailing first became a well known type of business. The use of vending machines in defense plants to serve refreshments for production workers led to post-war inventions and developments for beverage and food service as we know it today.

The demand for convenience and for extra sales of goods and services around the clock established vending as an important factor in the economy in the 1950's. Since that time the public has expressed an increasing desire for convenient, inexpensive and sanitary service in thousands of factories, schools, offices and public entertainment sites. Vending has satisfied this

demand with ever improving equipment and trained service personnel.

The cornerstone of this business is the vending specialist, or "operator."

### The Vending Operator

He buys vending machines from the manufacturer, seeks "locations" to place his equipment and is responsible for stocking, servicing and maintaining the machines. He stocks the machines with products purchased from literally thousands of "product suppliers."

Many of these products are name-brands which are also retailed in other channels of marketing.

To sell through machines the "operator" establishes a headquarters providing product storage, servicing, repair and bookkeeping facilities, commissaries for food production and garaging space for his service trucks.

He runs this business on the basis of "routes." Where volume requirements demand a single location may constitute a route. Essentially he is a retailer and food service specialist who employs machines as part of his over-all offer of service.

His main function is merchandising and selling, for (contrary to general belief) vending is anything but "automatic."

Key factors in his success are proper selection of equipment and products to satisfy customer preferences. Frequent and proper servicing of the machines is most important.

To this end he employs servicemen and repairmen who must be on the job around the clock for

(continued on back)

## How A Vending Business Operates

(continued)

machine breakdowns mean customer dissatisfaction, loss of sales and further reduction of an already close profit margin.

Service is his main stock-in-trade and well trained "routemen" are the difference between profit and loss.

To place his machines in restaurants, transportation terminals, factories, offices, schools, hospitals or any other locations, the operator usually enters into a contractual agreement with the location owner.

For the privilege of placing his machines and furnishing the vending and manual food service the operator usually pays a percentage of his gross sales in "commissions" to the location owner.

At present there are some 6,000 vending and contract food service firms in the United States, nearly all of them locally owned and operated.

No vending business can operate beyond a radius of about 30 miles from its local headquarters, just like the dry cleaner or TV repair shop.

Therefore, even with the recent development of about 15 national and regional vending companies,

every vending business is a locally operated firm and all but a few are locally owned.

According to national statistics, almost half of all vending operators have three or fewer employees. Only 18 per cent employ 20 or more persons. All told, an estimated 50,000 employees derive their entire income working for vending companies.

Vending is a highly competitive business. Usually there are several local vending companies competing for any available "locations" in the community. Whether they be outdoor locations for a soft-drink machine or complete refreshment or food service installations in a factory, "new" locations seldom are obtained without strong competition among local companies.

The increasing volume of vending — from \$400 million in 1946 to \$5.5 billion in 1982 — is primarily due to the innovations in equipment and merchandising which progressive vending operators have applied with ingenuity and specialized know-how.

### Vending Profit Margins

It should be noted that the increasing volume of sales has had no similar effect on profit margins. The original cost of vastly more complicated machines and the ever increasing expenses of servicing and costs of product have depressed net profits to an alarmingly low margin. The national average net profit (before income taxes) has continued at less than 6% of sales in 1982 in spite of higher volume.



Official Business

# Alaska State Legislature

## House of Representatives

Committee on

### Health, Education & Social Services

Pouch V  
State Capitol  
Juneau, Alaska 99811

#### MEMORANDUM

TO: HOUSE H.E.S.S. COMMITTEE  
FROM: Barbara Wilkins, C.A.  
DATE: 4/20/82  
RE: HCSCSSSSB778(HESS)

This bill introduces new language into the Alaska Statutes regarding Vocational Rehabilitation which duplicates the federal program for blind vendors, but goes even farther to establish equivalent rights for the severely handicapped in the event they participate in the vending facility program. The Committee of Blind Vendors is mandated under 20 USC 107b-1(2) and 34 CFR 395.14, but is left out of the Division's proposed regulations.

PROPOSED AMENDMENT #2

- \*\* Page 3, line 21: Delete "uniform" and replace with the phrase, "in a substantially equivalent manner"
- \*\* Page 1, line 21: Delete "vending"
- \*\* Page 2, line 28: Delete rest of line beginning with ~~the change requested by the XXXXXXXX~~  
"the Randolph-Sheppard. . . ." and insert "this Act."

Please have ready for final. Thank you.

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST.

Bill/Resolution Number: SB-778

Title: "An Act relating to the operation of vending facilities on ..."

Requested by: Senator Brao Brajley Date: 3-26-82

II. FISCAL DETAIL

Agency Affected: Education

Program Category Affected: Adult and Postsecondary Education

BRU, Program, or Subprogram(s) Affected: Vocational Rehabilitation

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)	FY					
	82	83	84	85	86	87
100 PERSONAL SERVICES	-	-	-	-	-	-
200 TRAVEL	-	-	-	-	-	-
300 CONTRACTUAL	-	-	-	-	-	-
400 COMMODITIES	-	-	-	-	-	-
500 EQUIPMENT	-	-	-	-	-	-
600 LAND & STRUCTURES	-	-	-	-	-	-
700 GRANTS, CLAIMS, ETC	-	-	-	-	-	-
800 MISCELLANEOUS	-	-	-	-	-	-
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)	FY					
	82	83	84	85	86	87
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	-	-	-	-	-	-
OTHER (Specify Source)	-	-	-	-	-	-

POSITIONS	FY					
	82	83	84	85	86	87
FULL TIME	N/A	-	-	-	-	-
PART TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)  
This bill has no fiscal impact on this agency.

IV. DATE: 3-26-82

PREPARED BY: Steve Hole  
AGENCY: Department of Education  
PHONE: 465-2890

Original: Legislative Finance  
cc: Budget and Management  
Prime Sponsor (First Legislator named)  
3/30/82 (Rev. 12/81)