

SCOMM

#47:3

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 28, 1985

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the use of teleconferencing for meetings and hearings held under the Administrative Procedure Act (AS 44.62). The bill confirms and clarifies that teleconferencing is a legally permissible means for increasing efficient public access and input to government bodies. Provisions to safeguard the constitutional and statutory rights of the public relating to hearings and public meetings are included in the bill.

The availability of new communications technology combined with our declining revenues make passage of this important measure a timely step towards economical efficient expansion of public access to the administrative process.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield  
Governor

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date: \_\_\_\_\_

Page 1 of 2

**REQUEST**

BITT/Resolution No.: NA 140  
 Title: Relating to use of telecon-  
ferencing  
 Sponsor: Governor  
 Requestor: \_\_\_\_\_  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Administration  
 Program Category Affected: \_\_\_\_\_  
General Government  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Telecommunications

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL</b>	0	0	0	0	0	0
<b>REVENUE</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:** 0 0 0 0 0 0

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS: (Attach a separate page if necessary)**

See Attached

Prepared By: [Signature] Phone: 465-2041  
 Division: Telecommunications Services Date: 12/5/84

Approved by Commissioner: Lisa Rudd Date: 1/11/85  
 Agency: Department of Administration

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

Page 2 of 2

100-1-10 1/3 1/2

House Bill  
Fiscal Note Analysis  
Prepared by Division of Telecommunications Services  
Department of Administration  
December 5, 1984

This bill will clarify the legitimate use of teleconferencing for meetings and hearings held under the Administrative Procedures Act (AS 44.62). Specifically it will permit teleconference use by publically funded bodies for presentations, discussions and testimony at public hearings, and for counting quorum and voting.

The legal clarification of teleconference use will have no direct fiscal impact. Indirectly, however, some fiscal impact may be felt as increased use of teleconferencing could save money currently expended for travel.

Clarification and the resulting increase in use will allow for greater participation in public policy making as well as broader dissemination of information to and from governmental entities and the public.

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF ADMINISTRATION

POUCH C (MS 0200)  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-2200

OFFICE OF THE COMMISSIONER

February 7, 1985

Mr. Erik Dahl  
Administrative Assistant  
Office of Representative H.A. 'Red' Boucher  
Pouch V (MS 3100)  
Juneau, AK 99811

Dear Erik:

Enclosed is information regarding HB 140, relating to the use of teleconferencing.

You will notice that some of the back-up material refers to SB 111, which was a similar bill that did not get out of committee last year.

Please feel free to call me at 465-2200 or Cynthia Halterman at 465-2401 if you have any questions.

Sincerely,

*Sioux*  
Sioux Plummer  
Acting Deputy Commissioner

SP/sg  
8/2D1/0207-01/2  
Enclosure

cc: Ted McIntire  
Senior Planner  
Division of Telecommunications Services  
Department of Administration

Rebecca Burch  
Special Assistant  
to the Commissioner  
Office of the Commissioner  
Department of Administration

MF 37

CSSB III  
POSITION PAPER

The Division of Telecommunications Services, Department of Administration, supports the passage of CSSB III (An Act relating to public meetings under the Administrative Procedures Act) because it will clarify past and present ambiguities relating to the use of teleconferencing at public meetings. Specifically, it will clarify the legality regarding voting and establishing quorums by teleconference.

Teleconferencing has proven to be an effective communications medium when used to disseminate or gather information. It is only when teleconferencing has been used for voting that questions regarding quorums and other legal considerations for meetings have arisen.

The intent to legally clarify teleconferencing has no direct fiscal impact on State agencies. However, it is noted that if this legislation becomes law, there are potential fiscal considerations for all teleconference users. It is assumed that by clearing up legal questions, teleconferenced meetings will become more popular and occur more frequently. This has the potential to reduce travel costs and to increase equipment and long distance telephone costs. Equipment costs could be for the purchase of teleconference terminal equipment and apparatus. In the final analysis, by clearing up legal considerations, resulting in increased teleconferencing activities and reduced travel would save money for the State. It is more cost effective to teleconference than it is to travel.

Sioux Plummer  
Sioux Plummer, Director  
Division of Telecommunications Services  
Department of Administration

4-28-83  
Date

Juliana Guy  
Juliana Guy, Deputy Commissioner  
for Telecommunications  
Department of Administration

4-29-83  
Date

Lisa Rudd  
Commissioner Lisa Rudd  
Department of Administration

5/3/83  
Date

# MEMORANDUM

# State of Alaska

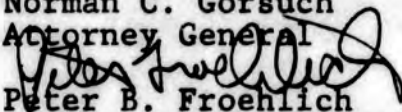
TO: Erik Dahl  
Administrative Assistant  
House Special Committee on  
Telecommunications

DATE: February 13, 1985

FILE NO: 377-043-85

TELEPHONE NO: 465-3600

FROM: Norman C. Gorsuch  
Attorney General

By:   
Peter B. Froehlich  
Assistant Attorney General  
and Assistant Legislation Attorney

SUBJECT: HB 140 on the use of  
teleconferencing  
under the Admini-  
strative Procedure  
Act

As you recently requested by telephone, a clean copy of my June 23, 1982 memorandum on the "legal implications of teleconferencing" is attached to this memorandum.

As recognized in 1982 by the introduction of HB 703 and as reiterated in my June 23, 1982 memorandum and in the governor's transmittal letters accompanying HB 111 in 1983 and HB 140 this year, it remains necessary to enact legislation to confirm and clarify the legitimacy of teleconferencing in administrative proceedings. Although teleconferencing is arguably already acceptable for at least some proceedings, only legislation like HB 140 can assure that actions taken and decisions made at or after teleconferenced proceedings will not be challenged in court.

In the words of Governor Sheffield's January 28, 1985 transmittal letter to Speaker Grussendorf, "The availability of new communications technology combined with our declining revenues make passage of this important measure [HB 140] a timely step towards economical efficient expansion of public access to the administrative process."

Please let me know if I can provide you or the committee any further information about HB 140 and its background.

NCG:PBF:md

Attachment

cc: Hon. Lisa Rudd, Commissioner  
Department of Administration

Sioux Plummer, Director  
Division of Teleconference Services  
Department of Administration

Arthur H. Peterson  
Assistant Attorney General  
Legislation/Regulations Section  
Department of Law

# MEMORANDUM

# State of Alaska

TO: Alex Mills  
Deputy Commissioner  
Department of Administration

DATE: June 23, 1982

FILE NO:

TELEPHONE NO: 465-3600 ex. 62

FROM: WILSON L. CONDON  
ATTORNEY GENERAL

SUBJECT: Legal Implications  
of Teleconferencing

By: *Peter B. Froehlich*  
Peter B. Froehlich  
Assistant Attorney General

You asked recently for my thoughts concerning any legal implications raised by the use of teleconferencing for meetings and hearings conducted by state boards, commissions, or agencies. Unfortunately, the situation is not nearly as clear cut as it seemed to me when we first discussed it several days ago.

I have reviewed the Administrative Procedure Act, AS 44.62 (APA), HB 703 which was introduced last session on this subject (but did not gain passage), and some correspondence between this office, legislative counsel and the House Labor and Commerce Committee concerning that bill.

The implications raised by teleconferencing for meetings and hearings of government bodies can be divided into several categories, including establishing quorums, taking testimony, and taking action. There are also at least two types of teleconferencing, including audio, with visual and only audio, and several types of proceedings by governmental bodies including hearings on proposed regulation actions under AS 44.62.210 (legislative type hearings), and adjudicatory hearings usually under AS 44.62.330--44.62.630 at which the grant or withdrawal of a right is considered, and other meetings to consider and take other actions.

The legal implications of teleconferencing are different depending on the combination of these variables involved in a particular instance. They may also vary according to whether it is the members of the governmental body, witnesses, parties, or the general public that is participating in a proceeding by teleconferencing.

The legal issues raised by teleconferencing proceedings of governmental bodies can be best solved or eliminated by some blanket legislation similar to HB 703. However, even without that clarification, at this time we can confidently make some general statements. First, legislative type hearings on proposed regulation actions may be conducted by teleconference regardless

Alex Mills  
Deputy Commissioner

June 23, 1982  
Page -2-

of the combination of the variables mentioned above. The conduct of these hearings is largely a matter of common sense and basic fairness. Of course the public notice of the proposed regulation action must include the details of any teleconferencing.

It is just as clear that adjudicatory hearings may not validly be conducted by audio only teleconferencing. This is because "due process of law", required by both the state and federal constitutions, includes the right of a person to confront and be confronted by witnesses against him, and this right requires visual observation of witnesses and their demeanor. It is possible that a procedure could be established for waiver of this right by parties to an adjudicatory proceeding but legislative authorization would insure against challenge of these waivers.

It is also clear that public meetings which otherwise comply with AS 44.62.310--44.62.312 (concerning open meetings) may also be teleconferenced. However, it is doubtful that a meeting in which the only public access was by teleconferencing, would comply with those statutes unless they are amended.

Finally, although it is not nearly as clear, there is a strong argument that most governmental groups can establish a quorum and vote for purposes of taking formal action by teleconferencing. Of course, other procedural requirements would have to be met such as public notice, public access and public record of the vote. Also, members of a body who vote by teleconferencing would have to have had the opportunity to hear, see, or otherwise evaluate relevant testimony and evidence, or at least a staff prepared summary of it. In the case of an adjudicatory hearing, each decision maker should probably have had the opportunity to personally view witnesses unless all parties agree otherwise.

It would be much safer, in terms of avoiding possible challenge of administrative actions, if a blanket amendment were added to the APA, clarifying the legitimacy of establishing quorums and taking votes by teleconferencing.

There are a myriad of possible other legal implications raised by a various combination of the variables mentioned, which I have not addressed. Nonetheless, I hope this memorandum is some help to you. Please let me know if you require any more detailed analysis of the issues it raises, or assistance in preparing appropriate legislation for introduction next session.

PBF/pkh

## HB 140

(Teleconferencing under the Administrative Procedure Act)

### SECTION-BY-SECTION ANALYSIS

\* Section 1 is a general statement of the intent of the bill to allow state agencies to use teleconferencing technology for increased efficiency and convenience but without diminishing any rights of parties. The bill amends sections in four articles within the Administrative Procedure Act.

#### Article 4. PROCEDURE FOR ADOPTING REGULATIONS

\* Section 2 amends AS 44.62.210 which is entitled "Public Proceedings" to clarify that agencies proposing to adopt administrative regulations may accept comments from the public by any form of communication unless the notice of the proposed regulation specifically limits the acceptable form of comments. This amendment would affirm a growing current practice.

#### Article 6. AGENCY MEETINGS PUBLIC

\* Sections 3 -- 5 amend AS 44.62.310 -- 312, commonly referred to as our "Open Meeting Law". Only these sections of the bill apply to the legislative branch and that is only because the statutes amended already apply to that branch.

\* Section 3 amends AS 44.62.310(a) to permit teleconference participation at public meetings of a public body (except for house and senate sessions) by both members of the body and members of the public, according to rules established by the body.

\* Section 4 amends AS 44.62.310(e) to add a requirement that the notices already required for public meetings must include specific information about the meeting and about any teleconferencing that will be used.

\* Section 5 adds a new paragraph to AS 44.62.312(a) stating the policy that the use of teleconferencing is for the convenience of parties, the public, and the bodies conducting meetings.

#### Article 8. ADMINISTRATIVE ADJUDICATION

\* Section 6 adds a new subsection to AS 44.62.410 which is entitled "Time and Place of Hearing". The new subsection

authorizes the parties to an administrative adjudication to agree to use teleconferencing in conducting a hearing.

\* Section 7 amends AS 44.62.600 and changes its title to "Voting Procedure". The amended section permits voting by members of an agency in an adjudication by means of teleconferencing, in addition to the currently authorized mail method. If votes are by teleconference they must be recorded to identify the way each member voted.

#### Article 9. GENERAL PROVISIONS

\* Section 8 adds a new general section to AS 44.62 to broadly authorize the use of teleconferencing for any proceeding or act under the Administrative Procedure Act and specifically for establishing quorums, taking public input, and for voting when all voters have had a substantially equal chance to review testimony and evidence. This section, which is really the most important single section of the bill, includes a proviso similar to that in the intent statement in section 1 of the bill, that the use of teleconferencing may not violate statutory or constitutional rights of parties.

\* Section 9 adds a paragraph to AS 44.62.640 to define "teleconferencing" as information exchange by audio or video electronic media.