

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

1409 HESS SB 719 - SB 778 1909

MAIL 19-Mar-82 15:28  
FROM: RAILBELT  
ATTN: STEVE HOLE  
SUBJ: SENATE REVIEW OF COMPUTERS IN ED

FOR: DOE/MLF  
MSG #: 28050  
DATE: 19-Mar-82  
TIME: 14:46

IN RESPONSE TO YOUR RECENT EMS REGARDING SENATE HESS COMMITTEE  
CONSIDERATION OF SB 719,720,721, AND 722. :

WE ARE WRITING TO EXPRESS OUR GRAVE CONCERN OVER REPORTS THAT THE  
CUT-BACKS IN FUNDING FOR COMPUTER ASSISTED INSTRUCTION ARE BEING  
CONSIDERED. WE WILL ENDEAVOR TO DESCRIBE OUR USE OF COMPUTERS IN  
THE SCHOOL SYSTEM IN ORDER TO HIGHLIGHT THEIR INTEGRAL PART OF OUR  
SCHOOL PROGRAM.

BEFORE DETAILING OUR DISTRICT'S USE OF COMPUTERS IN EDUCATION, TWO  
IMPORTANT ITEMS SHOULD BE NOTED:

1. OUR DISTRICT HAS ONLY ADVANCED TO THE LEVEL OF INCORPORATING  
COMPUTER ASSISTED INSTRUCTION THAT IT HAS, THROUGH THE LEADER-  
SHIP PROVIDED BY THE DEPARTMENT OF EDUCATION PARTICULARLY THE  
EDUCATIONAL TECHNOLOGY FOR ALASKA (ETA) DIVISION. THROUGH  
INSERVICE TRAINING AND MATERIALS DEVELOPMENT, THEY HAVE ENABLED  
DISTRICTS TO INCLUDE COMPUTER EDUCATION AND INSTRUCTION IN A  
VARIETY OF WAYS IN THE SCHOOLS. THIS HAS BEEN A DIRECT BENEFIT  
TO STUDENTS.
2. THE EFFECTIVE SCHOOLING REPORT HAS LISTED COMPUTER ASSISTED  
INSTRUCTION AS A RESEARCH BASED PRACTICE WHICH CAN SIGNIFICANTLY  
IMPROVE THE PERFORMANCE OF STUDENTS. UNDER THIS RESEARCH FINDING  
IS AN IMPORTANT NOTE OF INTEREST THAT COMPUTER ASSISTED INSTRU-  
TION IS "PARTICULARLY APPROPRIATE WHERE ENROLLMENT IN A GIVEN  
CONTENT OR SKILL AREA IS INSUFFICIENT TO WARRANT THE PROVIDING  
OF A TEACHER WHO IS A SPECIALIST IN THE AREA OF STUDY, WITH THE  
TEACHER HAVING RESPONSIBILITY BEING A GENERALIST, AS IN THE CASE  
IN MANY SMALL RURAL SCHOOLS". SINCE IMPLEMENTATION OF THIS  
EFFECTIVE SCHOOLING PRACTICE HAS ALREADY BEGUN, IT WOULD SEEM  
LEGISLATIVE SUPPORT SHOULD CONTINUE IN ORDER TO FURTHER THIS END.

THE INDIVIDUALIZED STUDY BY TELECOMMUNICATIONS (IST) COURSES DEVELOPED  
BY THE DEPARTMENT OF EDUCATION ARE USED EXTENSIVELY IN THE DISTRICT.  
THE COURSES USED ARE DEVELOPMENTAL READING, GENERAL MATH, ENGLISH, AND  
WE ARE CURRENTLY PILOTING THE U.S. HISTORY AND GENERAL SCIENCE COURSES.  
THESE COURSES ARE USED ON AN INDIVIDUAL BASIS OR IN SMALL GROUPS

ESPECIALLY WHEN THERE ARE NOT ENOUGH STUDENTS TO WARRANT A FULL CLASS, BUT YET STUDENTS NEED THE COURSES. WE HAVE USED THE 1ST ALASKA HISTORY COURSE FOR LARGE CLASSES (25 STUDENTS PER CLASS) SINCE THESE ARE THE ONLY ALASKA HISTORY MATERIALS WE FOUND THAT WERE AVAILABLE AND APPROPRIATE FOR USE WITH HIGH SCHOOL STUDENTS. WHEN THE 1ST HEALTH AND CONSUMER EDUCATION COURSES BECOME AVAILABLE, WE ALSO PLAN TO USE THEM WITH LARGE CLASS GROUPS. WE HAVE NOT ONLY USED THE 1ST COURSES WITH THE HIGH SCHOOL STUDENTS BUT HAVE FOUND THEM APPROPRIATE TO USE WITH ACCELERATED JUNIOR HIGH STUDENTS. THE COURSES ARE HIGHLY MOTIVATING AND STUDENTS ENJOY THE VARIETY PROVIDED BY THE COMPUTER ASSISTED INSTRUCTION. THE DEVELOPMENT OF THE 1ST COURSES HAVE BEEN EXTREMELY VALUABLE FOR THE RURAL SCHOOLS. IT HAS ENABLED US TO EXPAND OUR CURRICULUM WITHOUT HIRING ADDITIONAL STAFF.

THE MINNESOTA EDUCATIONAL COMPUTING CONSORTIUM (MECC) MATERIALS, OBTAINED AT DISCOUNT PRICES THROUGH AN AGREEMENT BETWEEN MECC AND THE DEPARTMENT OF EDUCATION, PROVIDE PROGRAMS THAT ARE USED AT ALL GRADES. THERE ARE MANY MECC PROGRAMS AVAILABLE FOR THE ELEMENTARY LEVEL THAT SERVE AS SUPPLEMENTS TO REGULAR INSTRUCTION.

BOTH THE MECC AND 1ST MATERIALS HAVE BEEN USED IN THE DISTRICT CORRESPONDENCE PROGRAM. IT HAS BEEN A DYNAMIC CHANGE FOR HOME STUDY AND BOTH PARENTS AND STUDENTS ARE PLEASED WITH THE RESULTS.

COMPUTERS ARE USED IN BUSINESS EDUCATION CLASSES FOR WORD PROCESSING, ACCOUNTING AND TAXES. STUDENTS ALSO USE COMPUTER PROGRAMS TO STUDY FOR COLLEGE ENTRANCE TESTS.

WE ALSO USE COMPUTERS TO TEACH BASIC COMPUTER PROGRAMMING TO HIGH SCHOOL AND JUNIOR HIGH STUDENTS. STUDENTS HAVE FORMED COMPUTER CLUBS AND THEY COME IN AFTER SCHOOL TO WORK ON PROGRAMMING ON THEIR OWN. THE COMPUTERS ARE AVAILABLE TO STUDENTS DURING LUNCH AND RECESS AS WELL.

COMPUTERS HAVE BEEN PURCHASED JOINTLY BY THE SCHOOL AND COMMUNITY LIBRARY BOARDS TO BE PLACED IN THE SCHOOL LIBRARIES. THESE COMPUTERS ARE USED BY STUDENTS DURING THE SCHOOL DAY AND AVAILABLE TO COMMUNITY MEMBERS IN THE EVENINGS AND ON SATURDAYS. WE HAVE CONDUCTED WEEKEND COMPUTER TRAINING SESSIONS FOR PARENTS THAT HAVE BEEN FULL.

WE DO NOT KNOW OF ANY CASE WHERE COMPUTER USE HAS NOT ENHANCED INSTRUCTION AND INCREASED STUDENT MOTIVATION. WE CONTINUE TO NEED SUPPORT AND LEADERSHIP AS HAS BEEN GIVEN IN THE PAST BY THE LEGISLATURE AND THE DEPARTMENT OF EDUCATION.

IF YOU HAVE ANY QUESTIONS, DO NOT HESITATE TO CONTACT US OR VISIT ANY OF OUR SCHOOLS TO SEE OUR COMPUTER PROGRAMS.

SINCERELY,

KATHLEEN FORMELLA  
CURRICULUM COORDINATOR  
CC: RAILBELT

MAIL 19-Mar-82 15:34  
FROM: IDITAROD  
ATTN: STEVE HOLE  
SUBJ: G/T COUNT

FOR: DOE/MLF  
MSG #: 27999  
DATE: 18-Mar-82  
TIME: 16:16

WE HAVE 14 G/T STUDENTS IN THE IDITAROD AREA SCHOOL DISTRICT.

MALCOM FLEMING  
CC: IDITAROD

MAIL 19-Mar-82 15:34  
FROM: CHATHAM  
ATTN:  
SUBJ: 1932 DIRECTORY

FOR: DOE/MLF  
MSG #: 27989  
DATE: 18-Mar-82  
TIME: 16:00

PLEASE FORWARD TWO COPIES OF THE 1982 ALASKA EDUCATION DIRECTORY, IF POSSIBLE, TO CHATHAM SCHOOL DISTRICT, P O BOX 109, ANGOON ALASKA 99820. THANK YOU!

EUNICE JAMES  
SECRETARY  
CC: CHATHAM

MAIL 19-Mar-82 15:35  
FROM: HOONAH  
ATTN: STEVE HOLE  
SUBJ: LEGISLATIVE INQUIRY -

FOR: DOE/MLF  
MSG #: 27978  
DATE: 18-Mar-82  
TIME: 15:55

COMPUTER ASSISTED INSTRUCTION IS AN EDUCATIONAL FRONTIER THAT DESERVES FULL EXPLORATION. SINCE THE ADVENT OF THE MICRO-CHIP, COMPUTER TECHNOLOGY HAS INCREASED A THOUSAND FOLD. COMPUTERS ARE BECOMING AND WILL BECOME BY THE END OF THE '80S AS COMMON A HOUSEHOLD ITEM AS THE MICROWAVE OVEN. ITS CAPACITY FOR STORING KNOWLEDGE AND GIVING INFORMATION IS BOUNDLESS. ITS USEFULNESS AS A TEACHING TOOL IS LIMITED TO THE INSTRUCTORS KNOWLEDGE OF THE MACHINE. TEACHING AND FAMILIARITY WITH COMPUTERS IN THIS DECADE IS AS NECESSARY TO EDUCATION IN GENERAL AS THE SOVIET UNION'S SPUTNIK WAS TO AMERICAN SCIENCE PROGRAMS IN THE 50'S.

TOM BUDD, HIGH SCHOOL PRINCIPAL  
HOONAH PUBLIC SCHOOLS.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 719

Title An Act providing that the DOE conduct a computer network study

Requested by Senate Hess Date April 1, 1982

II. FISCAL DETAIL

Agency Affected Education

Program Category Affected Elementary and Secondary

BRU, Program, Or Subprogram(s) Affected Education Design and Delivery

(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		50.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>	-0-	50.0	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND	-0-	50.0	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE April 1, 1982

PREPARED BY Steve Hole

AGENCY Education

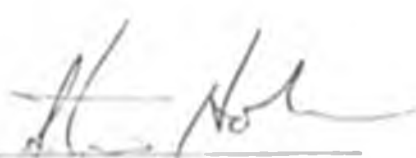
PHONE 65-2890

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



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7

COMMITTEE REPORT

HOUSE

FURTHER: FINANCE

(5)

3/26/82

Date: 4/1-4/2

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 737

"An Act making a special appropriation to the Department of Health and Social Services to be used to combat the causes and effects of birth defects; and providing for an effective date."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ reports it back with the following recommendations:

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

MEMBERS SIGNING  
DO PASS

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

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CHAIRMAN

POSITION PAPER  
SENATE BILL NO. 737

"An Act making a special appropriation to the Department of Health and Social Services to combat the causes and effects of birth defects."

This bill appropriates \$100,000 to this Department that may be utilized over the next 5 years, for which will continue to enhance a birth defects counseling service. In the past, this program was initiated and continued for several years by the National Foundation for Prevention of Birth Defects. It is anticipated that we will have to find another source to fund this service as that voluntary organization has indicated that other priorities have emerged for their support.

The Birth Defects program provides services ranging from diagnoses or confirmation of diagnoses, management and counseling. The categories covered include genetic disorders, chromosomal disorders (e.g. Down Syndrome), environmental (e.g. fetal alcohol syndrome) and those syndromes and malformations of unknown origin. They also receive many requests for information regarding amniocentesis, sickle-cell screening, drug exposure during pregnancy, etc.

The needs for services are rapidly increasing. The March of Dimes Birth Defects Foundation estimates that 1 out of 12 babies born has a significant birth defect. In Alaska during 1981, the Department of Vital Statistics recorded approximately 9550 live births, which statistically could represent almost 800 babies with significant birth defects. This is twice the number they can see in one year. A viable contracting mechanism has been established with the University of Washington using available Federal funds in addition to Foundation money. Federal funds are not available for FY 83 or beyond. This mechanism serves four cities in Alaska every two to four months. A continuation level would require close to \$50,000 per year. An expansion of the frequency and geographic availability of this service would require the expenditure of some additional funds.

POSITION

This service is considered by the Department to be a much needed preventive and cost effective program.

Recommended by:

E. S. Rabeau  
E. S. Rabeau, M.D., Director  
Division of Public Health

Date:

March 3, 1982

Approved by:

Helen D. Beirne  
Helen D. Beirne, Commissioner  
Department of Health and  
Social Services

Date:

3-3-82

THE LEGISLATURE OF THE STATE OF ALASKA  
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 737

Title "An Act making a special appropriation to the Department of Health and Social Services to combat the causes and effects of birth defects."  
Requested by Senate HESS Date 2/10/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services

Program Category Affected Health/Public Health

BRU, Program, Or Subprogram(s) Affected Child & Family Health

(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	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

The \$100,000 appropriation in this bill may be expended over a 5 year period.

IV. DATE March 3, 1982

PREPARED BY E.S. Rabeau, M.D.

AGENCY Dept. of Health & Social Services

Original: Legislative Finance

PHONE 465-3090

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

# STATE OF ALASKA

JAY S. HAMMOND, Governor

## DEPT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

POUCH H-06  
JUNEAU, ALASKA 99811-9976

PHONE: 465-3030

April 13, 1982

DOCUMENT NO. 143-82

The Honorable Michael Beirne  
Representative  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Representative Beirne:

In response to your staff's inquiries on SB 737 we have investigated the possibility of charging responsible third parties for genetic counseling services.

Indeed it is possible to get some reimbursement. For instance, genetics clinics in Washington State charge \$30 for an intake interview by a genetic associate and charge \$40-70 for a physician's extensive or comprehensive evaluation. At the University of Washington charges of \$120 for an initial visit and \$60 for follow-up visits. Blue Cross will pay these charges if, and only if, there is a patient who has the disease or condition. In about half of the cases managed in these clinics is this the case.

In the other half of the work load third party recovery would be unlikely. Examples of these cases are families with repeated misarrriages, families where there has been a death with congenital malformations or where a relative has a heritable disease. Much of genetic counseling is in this category.

Regarding travel expenses, we would have to negotiate this with the insurance carriers. In sum, billing of third parties for services under this appropriation is an additional source of revenue which we are willing to pursue. It will not, however, negate the need for the appropriation. The experience of genetic counseling services in other states indicates that only a portion of the necessary funding support will be recovered from third party billing.

Sincerely yours,



E.S. Rabeau, M.D.  
Director

ESR/DAS/sd



UNIVERSITY OF ALASKA, FAIRBANKS

Fairbanks, Alaska 99701

WAMI Medical Education Program

January 25, 1982

The Honorable Charles Parr  
The Alaska Senate  
Pouch V  
Juneau, AK 99811

Dear Charley:

Would you please give serious consideration to supporting legislation, based on the attached draft material, to maintain and strengthen a birth defects prevention and treatment program for Alaska?

Birth defects exert lifelong impairments for affected children. Medical understanding of these conditions has enormously expanded in the past two decades. Today over 600 syndromes are recognized. Most are individually rare but in the aggregate affect at least 4 percent of all newborns--500 infants in Alaska each year.

Because of the rarity and complexity of many of these problems, their management requires the services of physicians specializing in this area. Such physicians are only found in major medical centers. No such specialists are currently practicing in Alaska.

• An itinerant birth defects clinic program in Alaska was initiated by the March of Dimes in the early 70s and has been supported by MCD thru a series of annual grants to the WAMI Program. The March of Dimes is no longer able to continue this support.

The Department of Health and Social Services has provided assistance as its resources have permitted, largely thru the use of certain Federal funds which are now disappearing.

Both the March of Dimes funds and state funds have been used to partially support a birth defects specialist position thru the University of Washington School of Medicine, travel expenses for 7 to 8 itinerant clinics per year serving Ketchikan, Juneau, Sitka, Anchorage, Fairbanks and occasionally Bethel, and a trained coordinator in Anchorage.

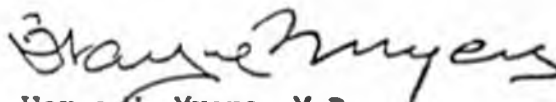
The attached draft authorizing bill and budget are intended to permit Department of Health and Social Services support of this program. The alternative is expensive with disruptive and recurring travel to medical centers

January 25, 1982

outside of Alaska for the children and their families. This is often at state expense. It is more cost effective to bring one or two specialists to substantial numbers of children, than to bring families to the specialists. The added benefit of education, advice and training provided by these itinerant specialists to local school, medical and nursing personnel further contribute to the day-to-day care of the children and assistance to these families.

I have initiated this modest legislative effort simply because I am convinced that it is in the best interest of the citizens of Alaska. The program which I administer anticipates no financial interest in this arrangement.

Sincerely,



Wayne W. Myers, M.D.  
Director, WAMI Program

/bd

Attachment

Distribution:

Senate

Don Bennett  
Richard Eliason  
Vic Fischer  
Jalmar Kerttula  
Charles Parr  
Bill Ray  
Armiss Sturgulewski  
Robert Ziegler

House

Michael Beirne  
Thelma Buchholdt  
Terry Martin  
Mike Miller  
Joe Montgomery  
Sarah J. Smith

FACT SHEET IN SUPPORT OF SENATE BILL 737

Each year since 1970 the March of Dimes has provided a grant to the University of Alaska to help develop genetics clinics, general pediatric clinics, Ob-Gyn clinics and in-service professional education programs at least every two months in the larger communities throughout Alaska. These are conducted by visiting medical professors from the School of Medicine, University of Washington.

More recently this program has complemented, and has been complemented by, the WAMI program whereby first year medical students receive their training at the University of Alaska. Communities throughout Alaska have also benefited through the March of Dimes clinics conducted by these same visiting professors. The savings in time and money to both programs has been great.

Needless to say March of Dimes volunteers throughout Alaska have also received excellent cooperation from the Department of Health and Social Services.

The continuation of the genetics portion of the March of Dimes' sponsored clinics is in serious jeopardy because March of Dimes annual grants, this year totaling \$74,952 to the University of Alaska and to the Alaska Department of Health and Social Services, were committed to three different clinic and educational purposes before it was learned that funds from the National Genetics Diseases Act would be cut off.

The March of Dimes grant to the University of Alaska is, this year, committed mainly to the prevention of fetal alcohol syndrome, a condition whereby pregnant women who drink alcohol in excess run the risk of giving birth to seriously defective and mentally retarded children.

Another March of Dimes grant to the Department of Health and Social Services will finance an infant screening program designed to detect congenital adrenal hyperplasia, a serious and usually fatal disease if not detected and treated at birth or very shortly thereafter. This newborn screening program involves the entire State of Alaska and will be used as a model to determine whether similar screening of newborns should be undertaken nationwide. It is reported that the highest incidence of this disease in the world (1 in 500 births) occurs among the Yupik speaking Eskimos.

Funds previously committed for the March of Dimes' sponsored genetics clinics are currently committed (contracts signed) for the above and this was done before it was known that other funds, previously counted on, would not be available for the continuation of the genetics clinics which, for the past 12 years have become a very important part of the medical care services and educational services available to all Alaskans.

The passage of Senate Bill No. 737 will be a life saver in more ways than one, will prevent much suffering among Alaskans needing genetic services and will save literally hundreds of thousands of dollars in tax funds through the prevention of serious birth defects one case of which, over the lifetime of a single patient, can cost more than the entire amount of the requested appropriation.

FEB 1 1982  
C-242

THE NATIONAL FOUNDATION-MARCH OF DIMES  
REPORT OF PROGRESS UNDER MEDICAL SERVICE GRANT

University of Alaska

Fairbanks

AK

Grantee Institution

City

State

Wayne W. Myers, M.D.

Northern Alaska Chapter

Program Director

Grantor Chapter

Calendar year covered by this Report:

1/1/81-12/31/81

- Describe briefly the extent to which the activities you planned to initiate or continue under this grant actually were carried out during the year covered by this report. - If the volume of services rendered can be expressed quantitatively, please do so, e.g. number of patients by diagnostic category, initial visits, return visits, etc. or numbers served with genetic services, prenatal care or other service.

The itinerant genetics and birth defects program conducted seven clinic tours providing 59 physician-days of clinic sessions and seeing 308 patients from 183 families. The number of patients seen this year increased 15% over the 267 patients seen in 1980. The latter figure similarly represented a 27% increase over the 210 patients seen in 1979.

Professional education conferences for physicians, nurses and special education teachers were conducted in conjunction with each clinic tour.

In addition, the March of Dimes grant supported the following explicitly educational activities. Dr. Louis Gluck traveled from the University of California, San Diego, to present a workshop on neonatal intensive care at the Alaska Perinatal Care Conference in Anchorage, and to present a training session for pediatricians in Fairbanks. Kathe Dobbs, R.N. and Zane Brown, M.D. of the University of Washington presented workshops in Juneau and Fairbanks. Nancy Warren of Childrens Orthopedic Hospital, Seattle, spoke on genetic counselling at the Alaska Year of Persons with Disabilities Conference in Anchorage.

2. Explain briefly any changes made during the year in

(a) The kinds of services rendered under this grant:

No substantive changes.

(b) The geographic area or population served:

Continue to serve entire state of Alaska.

(c) The location or time schedule for these services:

No change.

(d) The sources of referral used:

Both public and physician outreach has been improved since the state of Alaska hired a half-time genetics associate in Anchorage October 1, 1981. Referrals have increased 25-30% for the last 2 clinics of the year.

(e) The schedule of charges, if any, for these services:

No charges, no changes.

(f) The composition of the professional staff engaged in rendering these services: Dr. Virginia Sybert of Childrens Orthopedic Hospital in Seattle has been retained on half-time salary through contract with the state of Alaska to provide continuity of care. She participated in 5 of the 7 clinic tours.

3. What, in your view, are the major strengths or accomplishments of your program?

The itinerant specialist clinic program appears to be the only cost-effective approach to providing highly qualified consultants to Alaska's small and widely scattered population. The state of Alaska is now assuming financial responsibility for the program.

4. What weaknesses or deficiencies do you see in your program and what measures do you suggest for improvement?

The itinerant program is now well organized and smoothly running as we turn its support over to the state of Alaska. We may be calling for support from the National Foundation officers in addition to local chapters in this effort.

5. Any additional comments?

Without the support of the National Foundation, the development and maturation of the birth defects program in Alaska would not have been possible.

The Foundation should, I believe, count this as one of its many successes in improving the health of American families.

Stanley D. Myers  
Signature of Program Director

28 Jan 82  
Date

Original submitted to Dr. Schibing

1/30/76

ALASKA STATISTIC Jan. - Nov. 1981

(by Families)

	No. of Clinics	No. of Clinic Days	No. of Clinic Visits	
			<u>NEW</u>	<u>RETURN</u>
Anchorage	5	10	97	24
Fairbanks	2	2	10	3
Juneau	3	3	25	7
Ketchikan	2	2	8	2
Sitka	1	1	6	1
			<u>146</u>	<u>37</u>

REFERRAL SOURCE

	Physicians	Self	Agency	Return
Anchorage	85	9	3	24
Fairbanks	10	1	0	3
Juneau	22	3	0	7
Ketchikan	8	0	0	2
Sitka	<u>2</u>	<u>3</u>	<u>1</u>	<u>1</u>
	127	16	4	37

DIAGNOSTIC CLASSIFICATION

GENERAL: 1 Diagnosis = 1 Family (except in cases where are multiple : diagnoses per family). Does not reflect total number of patients seen.

Single Gene Disorder

Aarskog syndrome	1
Adrenal hyperplasia	1
Aniridia	1
Cleft lip/palate and periorbital edema	1
Coloboma	1
Cystinosis	1
Carrier (Duchenne muscular dystrophy)	1
Ectopia lentis	1
Ehlers-Danlos (III)	2
Friedreich's Ataxia	1
Hemophilia	1
Juvenile onset diabetes mellitus	1
Lymphedema & distichiasis	1
Marfan syndrome	3
MR, hypotonia, dysmorphic, CHD, hernia, hyperextensibility	1
Metaphyseal epiphyseal dysplasia	1
Muscular dystrophy (? type)	1
Myotonic dystrophy	1
Neurofibromatosis	5
Osteogenesis Imperfecta II	1
PKU	2
Renoglycosuria	2
Retinal disease	1
Retinitis pigmentosa	1
Sickle trait	2
Stargaardt's disease	1
Tay-Sach's screen	2
Tuberous sclerosis	1
Waardenburg	1

40

Polygenic/Multifactorial

Asthma	1
Cleft lip/palate	1
Congenital hip dislocation	1
Constitutional short stature	9
Diabetes mellitus	1
Hypospadias	1
Mental retardation	2
Psoriasis	2
Neural tube defect	2
Seizures	3
	<u>23</u>

Chromosomal

Trisomy 21	3
14/21 Translocation	1
? Translocation Down syndrome	1
Turner syndrome	3
Trisomy 18	1
Triploidy	1
Ring 22	1
46XX/47XX+mar	2
47XXY	1
46XY+	1
48XXX	1

Environmental

Mysoline during preg.	1
Radiation exposure	3
Cerebral palsy	2
In utero constraint	1
Herpes encephalitis	1
Fetal alcohol syndrome	1
Hydrocephaly	1
Metopic craniosynostosis	1
Birth anoxia	2
Ricketts	1

14

Genetic Etiology Unclear, Not GeneticNormal, Condition R/O

Abnormal arm musculature	1
Amniotic band syndrome	1
Anterior placed anus	1
Aplasia cutis congenita (AD)*	1
Beckwith syndrome (AR)	1
Behavior problems	1
Bladder extrophy	1
Congenital hypothyroidism	1
Cornelia de Lange	1
Cylosomus	1
Esotropia	1
Giant hairy nevus	1
Hemangioma	5
Holoprosencephaly	1
Klippel-Trenaunay-Weber	3
Marcus Gunn phenomenon	1
Microcephaly	2
Moebius syndrome (AD)	1
Nevus of Ota	1
Pectus excavatum	1
Poland's anomaly (AD)	1
Radial ulner synostosis	1
Tight frenulum	1
Unilateral limb reduction defect	1
Unilateral pulmonary hypoplasia	1
Urethral malformation complex	1
Cancer	1
Urticaria pigmentosa (AD)	1

? Diagnosis 35

Achondroplasia VS Hypochondroplasia	1
Hypothyroidism	1
Leigh's encephalopathy	1
MR, R/O metabolic disease	1
Noonan VS Leopard syndrome	1
Mucopolysaccharidosis	1
Psychiatric problems	1
Tuberous sclerosis	1
Turner syndrome VS Neurofibromatosis	1
Urticaria pigmentosa	1
Urea cycle abnormality	1
X-linked mental retardation	1

12

Down syndrome	1
Klinefelter's syndrome	2
Hypothyroidism	1
Premature thelarche	1
Head growth	1
Developmental delay	1
Prader-Willi syndrome	1
Failure to thrive	1
Peutz-Jehger	1

10

Other

Multiple miscarriages	3
Advanced maternal age	2
Infertility	1

6

Unknowns

See page 4

\* - (AD) (AR) Cases have been reported with these modes of inheritance in the literature. ? etiology in our cases above.

Unknowns

Vertebral anomalies, facial assymetry, microphthalmia	1
MR, precocious puberty	1
Craniosynostosis, polydactyly, syndactyly, situs inversus	1
Triphalangeal thumbs, short forearms, pyloric stenosis, hypospadias	1
Anal atresia	1
Cystic kidneys, rudimentary bladder, bicornate uterus, dupl. vagina	1
Short stature and delayed puberty	1
Hernia, cryptorchidism, bilateral dislocated hips, hypospadias	1
Short stature, club foot, MR	1
Hernia, omphalocele, dysmorphic facies, scoliosis, craniosynostosis	1
Nystagmus, microcephaly, micrognathia, microphallus	1
Microcephaly, IDCR, short stature, MR, dysmorphic facies	1
Developmental delay and hypodontia	1
Absent right thumb	1
Genuvarum	1
Sensorineural hearing loss & seizures	1
Mental retardation	3
Dysmorphic facies, pulmonary stenosis	1
Short stature	2
Congenital heart block and genitourinary abnormalities	1
Sensorineural hearing loss	1
Choanal atresia and mental retardation	1
Hydranencephaly, large ears, abnormal scrotum	1
Developmental delay, hydrocephaly, dysmorphic facies	1
Dev. delay, dysmorphic, overlap of toes 2 & 3, tapering fingers	1
Dysmorphic, fixed joints, synostosis, motor delay	1
Devl delay, minor dysmorphic facies, ear abnormalities	1



# what's up?

## FETAL MONITORING

### EDUCATIONAL PROGRAM

SPONSORED BY: MARCH OF DIMES



PRESENTED BY: Kathe Dobbs, R.N. and Zane Brown, M.D.  
Regional Perinatal Care Program, University of Washington

DATE: Friday, October 9, 1981 10:30 a.m. - 4:45 p.m.  
Saturday, October 10, 1981 9:00 a.m. - 12:30 p.m.  
Self-assessment quiz 1:30 p.m. - 1:30 p.m. (may be taken)

PLACE: Chandler Room, Fairbanks Memorial Hospital

FEE: None TO REGISTER: Call 452-8181, ext. 503

#### SCHEDULE OF TOPICS:

- October 9 - Introduction to Monitoring (for those new to fetal monitoring)  
Premature Labor  
Antepartum Fetal Assessment  
Workshop A - Strip Interpretation - Antepartum Tracings  
Workshop B - Strip Interpretation - Baseline and Variability Examples  
Mechanics of Monitoring and Fetal Arrhythmias
- October 10 - Labor and Implications for the Fetus  
Workshop C - Strip Interpretation - Periodic Changes  
Workshop D - Strip Interpretation - Decreasing Fetal Reserve with  
Periodic Changes  
Strip Interpretation - Your Cases - Stump the Expert!

NOTE: Workshop portions will have two presentations: one for the beginning level, one for advanced. Please indicate which level you are planning to participate in when registering.

Physicians and nurses are invited to attend.

FHM nurses are urged to schedule time off with their Head Nurse or Supervisor.

C E A R P credit has been applied for.

JAN 29 1982.

THE NATIONAL FOUNDATION-MARCH OF DIMES  
REPORT OF PROGRESS UNDER MEDICAL SERVICE GRANT

University of Washington School of Medicine      Seattle      WA  
Grantee Institution.      City      State

Ronald C. Scott, M.D.      King

Program Director      Grantor Chapter  
1/1/81-12/31/81

Calendar year covered by this Report:

1. Describe briefly the extent to which the activities you planned to initiate or continue under this grant actually were carried out during the year covered by this report. If the volume of services rendered can be expressed quantitatively, please do so, e.g. number of patients by diagnostic category, initial visits, return visits, etc. or numbers served with genetic services, prenatal care or other service.

The March of Dimes has been a driving force in initiating genetic services within the Pacific Northwest. They have initiated funding in support of diagnostic facilities to evaluate children with congenital defects, the counseling of families with genetic diseases, the diagnostic and treatment programs for children with metabolic disorders, and an educational program to the professional and lay community of the region.

The current grant has supported this program by funding part of a physicians salary and by supporting a genetic associate. The funding of these positions has allowed the above mentioned goals to be achieved in a highly organized manner and within the frameworks of an academic discipline at a major University.

The grant allowed for services to be extended to the Children's Orthopedic Hospital in Seattle and for the development of regional clinics within the Pacific Northwest. These regional clinics were established at Spokane and Tacoma, Washington and more recently at Walla Walla and Yakima. As a regional extension of genetic services, the program provides consultative services to the State of Alaska. Such services have been provided to the cities of Anchorage, Fairbanks, Juneau, Ketchikan, and Sitka on a routine and scheduled basis. Two physicians trained in Medical Genetics spend one week

every other month in the State of Alaska at the above mentioned cities. On those visits they offer diagnostic expertise to the physicians of the region who request their genetic expertise. Laboratory support in cytogenetics and metabolism remain centralized in Seattle with specimens being sent from Alaska to the appropriate laboratory. As part of the program in Alaska, an educational component is a strong contributing arm. Advanced announcements of the consultants visit are made by newspaper articles or short announcements on television programs. The visiting geneticists offer a wide ranging educational interview with one of the public newspapers or television stations in support of the birth defects and genetics program.

The strength of the program is the concept that specialize genetic and perinatal services can be centralized within a tertiary care center, but with coordination, dedication, commitment, and clinical support to a large region. It is our belief that this can be achieved at minimum expense and in an effective manner through professional commitment to the concept of regional responsibility. To this end, we believe we have been successful and have developed a model program in offering genetic services to the Pacific Northwest.

The actual number of families receiving assistance from this grant during 1981 are as follows:

I. Seattle Area

A. Children's Orthopedic Hospital Genetics Clinic: 301 families

B. University Hospital Genetics Clinic: 151 families

C. Biochemical Genetics Clinic: 118 families

D. Prenatal Diagnostic Clinic

1. University Hospital: 704

2. Swedish Hospital: 364

TOTAL 1068

II. Regional Clinics Within the State of Washington

1. Spokane Genetics Services:	169 families
Prenatal Diagnostic Services:	<u>83</u> families
TOTAL	252
2. Tacoma Genetics Program:	66 families
Prenatal Diagnostic Services:	<u>50</u> families
TOTAL	116
3. Walla Walla Genetics Program:	103 families
Prenatal Diagnostic Services:	<u>24</u> families
TOTAL	127

III. Clinic Sites Within the State of Alaska

1. Anchorage  
    12 clinic days: 158 families
2. Fairbanks  
    3 clinic days: 22 families
3. Juneau  
    3 clinic days: 32 families
4. Ketchikan  
    2 clinic days: 10 families
5. Sitka  
    1 clinic day: 7 families

2. Explain briefly any changes made during the year in
  - (a) the kinds of services rendered under this grant;
  - (b) the geographic area or population served;
  - (c) the location or time schedule for these services;
  - (d) the sources of referral used;
  - (e) the schedule of charges, if any, for these services;
  - (f) the composition of the professional staff engaged in rendering these services;

Several significant changes were made during this years grant period:

- (a) Dr. Judith Hall has moved to University of British Columbia in Canada. Her loss represents a significant loss of clinical skills

that are available to our program. She represented a very dynamic and high quality force for the region.

(b) Dr. Virginia Sybert has assumed the responsibility for coordinating genetic services to the State of Alaska. One-half of her salary is funded by the State of Alaska to assist with this program. She participates in each visit to Alaska and selects an appropriate genetic specialist to assist her with these visits. We anticipate continued support from the State of Alaska for this aspect of the program.

Those individuals who served as consultants to Alaska during 1981 consist of the following:

Dr. Thomas Bird  
Associate Professor  
Division of Neurology

Dr. Peter Byers  
Assistant Professor  
Department of Medicine/Biochemistry

Dr. Judith Hall  
Professor  
Department of Medicine/Pediatrics

Dr. Arno Motulsky  
Professor  
Department of Pediatrics

Dr. Roberta Pagon  
Assistant Professor  
Department of Pediatrics

Dr. C. Ronald Scott  
Professor  
Department of Pediatrics

No visiting faculty was used during 1981.

Postdoctoral fellows in Medical Genetics participate in the clinical services and offered consultative assistance under faculty guidance as participants in the regional clinics. Participating fellows for 1981:

- Dr. Susan Cassidy
- Dr. Philip Chance
- Dr. Robert Mueller
- Dr. Jack Jung
- Dr. Margot Van Allen
- Dr. Jeff Murray

3. What, in your view, are the major strengths or accomplishments of your program?

The strength of the program has been the interdisciplinary nature and quality of the clinical faculty. We have been fortunate in having a well organized and centrally integrated program in which the members work well together and have been supportive of the service needs of the region. We have a sophisticated and supportive medical community that has been receptive to receiving genetic information for improving the quality of care for their patients. A significant administrative concept has been that of "in place" clinics under the direct medical supervision of local physicians who take the responsibility of supervising the regional clinics. The University personnel serve as "consultants" to the clinics. In this manner, local control for patient referral remains at the direction of the community with the University personnel only offering advice and assistance as requested.

4. What weaknesses or deficiencies do you see in your program, and what measures do you suggest for improvement?

The major problem in offering genetic services are the financial constraints that exist in offering time dependent, nonprocedure oriented medical services. With the decreasing availability of federal funds and the shifting of money into the "block-grant" concept, we once again will need strong support at the local level to assure continued support for genetic services.

Charles Scott  
Signature of Program Director

1/25/82  
Date



# March of Dimes

BIRTH DEFECTS FOUNDATION

Public Information Department / 1275 Mamaroneck Avenue, White Plains, New York, 10605 / 914-428-7100

## News Release

contact: Martha Kongsberg  
914-428-7100

FOR IMMEDIATE RELEASE  
(mailed Feb.. 25, 1982)

Expanded medical insurance coverage to include services related to genetic illnesses is being studied by the Blue Cross and Blue Shield Associations.

The one-year study is being supported by grants from the March of Dimes Birth Defects Foundation and by the Bureau of Community Health Services, Department of Health and Human Services.

Support for counseling services for inherited disorders such as Down Syndrome, sickle cell anemia, or Tay Sachs disease now comes chiefly from March of Dimes and programs administered by HHS. Those agencies are funding the study to investigate the possibility of private reimbursement that will remove financial barriers to obtaining genetic services.

The \$181,968 study will focus on payments for screening and diagnostic work for a host of genetically transmitted disorders.

Coverage to include counseling services for prospective parents at risk of transmitting a genetic disease will also be investigated.

"Many insurance plans do not cover genetic services at all, and there is little consistency among those that do," said Dr. Arthur J. Salisbury, March of Dimes' vice president for medical services.

Although most genetic illnesses are rare, collectively they have a major impact. It is estimated that 30 percent of admissions to children's hospitals are the result of genetically related disorders and that such disorders account for 40 percent of pediatric mortality. Approximately 4.8 million Americans are retarded as a result of genetically related diseases.

Insurers have been reluctant to pay for screening services or for the services of non-physician genetic counselors, according to Dr. Vincent Hutchins, Director of the Office of Maternal and Child Health, Health Services Administration.

"Without these components, the victims of these illnesses will not have adequate information or explanations of options to make educated decisions about having a family," Hutchins said.

Each year, the birth of genetically handicapped children in the U.S. creates a future commitment to custodial care of more than \$2 billion. Dr. Hutchins noted that "insurance coverage for screening, diagnostic and counseling services will make more money available to support scientific research into the prevention and treatment of genetic illnesses."

Screening of prospective parents who might be carriers of certain genetic disorders enables them to know the risks of having a handicapped child before they conceive. After conception, diagnostic tests often can determine whether a child has been affected by a genetic disorder. In some instances treatment for the disorder can begin before the child is born.

Among items to be investigated are what services could be included under a genetic services benefit, how much it would cost, and its market potential. The study will also review related administrative issues.

Though the study's immediate impact may be to affect the coverage of the Blue Cross and Blue Shield Plans, in the long run it could shape coverage provided by other insurers and federal health care programs.

• • •

Case

For 12 years, a carefully planned program for the prevention <sup>and</sup> of children with birth defects has been developed within the State of Alaska. This program is now in jeopardy because of a sudden and unexpected termination of federal funds to the Pacific Northwest. The loss of this program will result in significant costs to the State of Alaska for the care of children with birth defects.

The program supports the visits of pediatricians with special training in human genetics to assist with the diagnosis, management and counseling of children or families with congenital defects. These visits often result in the prevention of progressive retardation in infants by specific therapy or in the prevention of further children being born with serious and untreatable illness through family counseling. During 1981, 250 families sought assistance through this program in the cities of Anchorage, Fairbanks, Juneau, Ketchikan and Sitka. If only one child is prevented from becoming a burden on the State, the savings is estimated at \$800,000 over the life time of that child in 1980 dollars.

The loss of this program would immediately increase the medical and transportation costs to Alaska citizens who would seek this service outside of Alaska. Worse still, would be the birth and suffering of small children with serious defects who would need the resources of the State to assist with their medical and custodial care.

The infusion of \$100,000 to carry-over the program is a small price to prevent this financial burden.

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# NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

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**Robert C. Manners**  
Executive Secretary  
Juneau Office

**Robert C. Cooksey**  
Deputy Executive Secretary  
Juneau Office

**James D. Aller**  
Field Staff  
Juneau Office

**Charles L. O'Connell**  
Deputy Executive Secretary  
Anchorage Office

**Dianne Anderson**  
Field Staff  
Anchorage Office

**Steve Pulkkinen**  
Field Staff  
Anchorage Office

**Mary Ann Eininger**  
Deputy Executive Secretary  
Fairbanks Office

March 24, 1982

TO: Senator Parr, Chairman  
Members of the Senate HESS Committee

RE: SB 767; "An Act relating to the membership of  
the Alaska Commission on Postsecondary Education"

NEA-Alaska supports this bill and encourages that provision be made for the inclusion of a full-time student as a member of the Commission.


We further recommend that SB 767 be amended in Section 2 to provide a new paragraph (g) which would provide expanding the number of Commission members to include two public school guidance counselors. Amendment to Section 3 by adding a paragraph (f) would provide for appointment by the Governor from lists submitted to him by NEA-Alaska.

The presence of public school guidance counselors on the Commission enhances the Purpose, Intent, as stated in 14.40.901.

In the routine of their normal duties and responsibilities, guidance counselors regularly counsel students on educational career planning and acquire substantial information and data which would be essential to the functions of the Commission. A more direct tie between the Commission and the public secondary schools of the State seems most appropriate.

Thank you for your consideration of this request.

Respectfully submitted:

  
Robert Manners  
Executive Secretary

RM: jw

I. REQUEST

Bill/Resolution No. CS SB 767

Title Relating to Membership of Commission on Postsecondary Education

Requested by Senate HESS

Date March 26, 1982

II. FISCAL DETAIL

Agency Affected Education

Program Category Affected (Commission on Postsecondary Education

BRU, Program, Or Subprogram(s) Affected

(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.						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE March 26, 1982

PREPARED BY Paul Gulyas

AGENCY Commission on Postsecondary Education

Original: Legislative Finance

PHONE 445-2850

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)



# Alaska Statewide Student Association

P.O. BOX 518  
DOUGLAS, ALASKA 99824

REPRESENTING STUDENTS OF THE UNIVERSITY OF ALASKA STATEWIDE SYSTEM

## POSITION PAPER: SB 767 (Membership/Postsecondary)

This bill has the effect of replacing one of the public members of the Alaska Commission on Postsecondary Education with a full-time student. The student would be chosen by a process similar to that by which the University Board of Regents' student member is chosen, and would be subject to the same restrictions: he or she would have to remain a full time student for the full two-year term.

The candidates for the position would be chosen by campus elections at each UA campus plus Sheldon Jackson and Alaska Pacific U. The Governor would then choose from the candidates the student member of the Commission.

There are two major reasons for the change: first, this would help to bridge the communications gap which currently exists between students and the Commission. Second, students can be positive, contributing members of boards and commissions, as evidenced by the just-previous student regent, Tim Burgess, and the new student regent, Sara Hannan.

Two alternatives have been suggested. One would have the student regent sit on the Commission. However, this would be an incredibly heavy work load, as the student must remain a full-time student in good standing. Also, this would leave Sheldon Jackson and APU students out of the process.

The other alternative would be to have the Governor simply appoint a student to one of the public slots. However, since the public positions are for five years, and there is no way to ascertain that the student will remain a student, chances are that most of that term would be served by an ex-student.

We feel that the approach in SB767 is the best method available. We strongly urge you to pass the bill out of committee promptly and with a "do pass" recommendation.

ASSA

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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 (AM4)

(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

(1) civil or

(2) addition

(3) penalty

and other sim other similar

(4) related

(§ 2 (ch 2) ch SLA 1966; an

ch 143 SLA 1 am §§ 3, 4 ch

SLA 1971; an ch 17 SLA 19

§ 2 ch 7 FSSL am § 6 ch 9 S

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 suspension 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 paragraph 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 Control Board, in aid of a license application, 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 leasing procedure Division of Land Act. Alyeska Sup. Ct. Op. No. P.2d 1006 (1967).

But not to leases. — The Alaska Administrative Procedure Act do 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 procedure Administrative Board, which has of the list of agencies accordance therewith ment of Admini 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. 45 (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).*

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

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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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Sec. upon hi a notice (1) re (2) of acts or (3) of indefini pare hi (4) a (5) p (b) W notices section agency (c) T a notio denial ( file the hearing hearing all obje (d) T of the i verifie

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 ap

Sec. 44.62.420. Agency request of the hearing sitting at

(b) Agency request of the hearing sitting at

(c) Agency request of the hearing sitting at

(d) Agency request of the hearing sitting at

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(u) Agency request of the hearing sitting at

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

cross-examine an affidavit has the same effect.

(b) The affidavit is introduced in the following manner:

The affiant is introduced orally and the name of the affiant is given.

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Cited in *Group v. State*.

**Sec. 44.62.480. Notice of decision.** The agency shall give notice of its decision to the parties in the matter. The notice shall be given in the hearing record, or by other means, and shall state the reasons therefor. The notice shall be given to the parties in the hearing record, or by other means, and shall state the reasons therefor.

Am. Jur. 2d, Administrative Law, § 376-396.

**Sec. 44.62.481. The agency's decision.** The agency's decision shall be given in the hearing record, or by other means, and shall state the reasons therefor. The notice shall be given to the parties in the hearing record, or by other means, and shall state the reasons therefor.

**Sec. 44.62.482. The agency's decision.** The agency's decision shall be given in the hearing record, or by other means, and shall state the reasons therefor. The notice shall be given to the parties in the hearing record, or by other means, and shall state the reasons therefor.

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 1984 File No 3489- 602 P 2d 602 (1979).

Cited in In re Application of Peterson, Sup Ct Op No 813 File No 1988- 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 801) 111 P 2d 529 (1942).

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). *Hering v. Alaska Workers' 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. 909 (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 42.62)", 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 Com'n.*, Sup. Ct. Op. No. 909 (File No. 194), 518 P.2d 92 (1974).

**Factors to which section constitutes above of discretion.** — Where the

written decision of the Workers' Compensation Board contained no such findings as required by this section, the board abused its discretion. *Mentley v. Callier*, Sup. Ct. Op. No. 95 (File No. 94), 267 P.2d 684 (1963).

**Disclosure of basis for determination of motions to dismiss.** — The 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. *Merrison-Kendall Co. v. Verren*, Sup. Ct. Op. No. 345 (File No. 610), 414 P.2d 536 (1966); *Alaska Ind.-Mach. Inc. v. Alaska Workers' Comp. Bd.*, Sup. Ct. Op. No. 359 (File No. 692), 417 P.2d 305 (1966); *Chief of Kenaiak Detail Layer Deakins Ace's v. State, ABC Bd.*, Sup. Ct. Op. No. 1983 (File No. 207), 602 P.2d 634 (1979).

**Am. Jur. 2d—Workers' Comp. Law** 44-460-462, 473-505.

**Sec. 44.62.530, 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 the time, (2) the agency itself orders that the decision become effective earlier, 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 production. The terms of production 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. (1) 20 (b) 2) ch 143 SLA 1970)

**Quoted in:** *Pac. American Petroleum Co. (a. s. State Dept. of Natural Resources v. State Oil Co.*, Sup. Ct. Op. No. 545 (Business Sup. Ct. Op. No. 1007), 756 So. 2d No. 918, 413 P.2d 11 (1966); *Trans. 2073*, 529 P.2d 1 (1975).

**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 reviews 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-1); 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 60 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 reconsideration of the decision. The provisions of this chapter shall not apply to a decision of a hearing officer. (§ 21 (ch 2) ch 143 SLA 1969)

The word "final" in the context of "final decision" does not mean "final and unreviewable." The provisions of this chapter shall not apply to a decision of a hearing officer.

**Sec. 44.62.560. Right of appeal.** A party aggrieved by a decision of a hearing officer shall be permitted to file a petition for reconsideration of the decision. The provisions of this chapter shall not apply to a decision of a hearing officer.

(c) The provisions of this chapter shall not apply to a decision of a hearing officer.

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)

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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).

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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.

(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.

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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).

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**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).

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The substance restricts the only whether of fact are evidence, a contrary to *Rodgers*, Sup. 1918), 522 P.

The statute findings of fact if they are evidence on this standard statutory, the evidence in Alaska Public Communication 2079 (File No. 2079).

The requirement be based serves three ensure that decisions of fact, second opportunity reasoning the decision reviewing evaluate the Alaska Public Communication 2079 (File No. 2079).

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, S* 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

Am. Jur. 2d 2d. Administrat

Sec. 44.62 the agency & district where (1) disobey (2) refuses (3) refuses (4) refuses (5) is guilty obstruct the (b) Upon an order direct why he should the certified

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 *ard* *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)).

Effect of regulations in to prequalify

Sec. 44.6 Administration

Applied in Ass'n, Sup. Ct. 4310, 4311). Cited in Part

Part

Chapter 65. Interstate 44.6. 66. Review (55)

Chapter

Section 10. Authority under 20. Form, code 30. Limitation 40. Payment

Sec. 44 contract, agreement, furnishing, including services estimate ES LA 19

Am. Jur. Jur. 2d, Art. 63 Am. Jur.





Reference to Text. For the date of the enactment of the Food and Drug Administration Act of 1974, referred to in section 201(a)(1), see the table below.

The Food and Drug Administration Act, referred to in section 201(a)(1), is amended to read as follows: (1) "The Secretary shall, in accordance with section 201(a)(1), in carrying out his duties under this section—

(A) to provide for each licensed blind person such vending facility equipment, and adequate initial stock of suitable articles to be vendible 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 transferee 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 or the agency and after opportunity for a fair hearing;

(3) that if any funds are not sold, or cannot be so sold, from the net proceeds of the operation of the vending facility such funds shall be not sold, or cannot be so sold, 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 program, that funds under this paragraph shall be not sold for such purposes; Provided, However, That in no event shall the amount of such funds to be not sold from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary;

(4) to provide to any blind licensee desirous with any written request from the operator or administrator of the vending facility program an opportunity for a fair hearing, and to agree to submit the operations of any blind licensee and otherwise provided by such hearing to arbitration as provided in section 1974-1 of this title; (5) to provide to any blind licensee desirous with any written request from the operator or administrator of the vending facility program an opportunity for a fair hearing, and to agree to submit the operations of any blind licensee and otherwise provided by such hearing to arbitration as provided in section 1974-1 of this title;

Section 201(a)(1) of the Food and Drug Administration Act of 1974, referred to in section 201(a)(1), is amended to read as follows: (1) "The Secretary shall, in accordance with section 201(a)(1), in carrying out his duties under this section—

Reference to Text. For the date of the enactment of the Food and Drug Administration Act of 1974, referred to in section 201(a)(1), see the table below.

The Food and Drug Administration Act, referred to in section 201(a)(1), is amended to read as follows: (1) "The Secretary shall, in accordance with section 201(a)(1), in carrying out his duties under this section—

(A) to provide for each licensed blind person such vending facility equipment, and adequate initial stock of suitable articles to be vendible 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 transferee 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 or the agency and after opportunity for a fair hearing;

(3) that if any funds are not sold, or cannot be so sold, from the net proceeds of the operation of the vending facility such funds shall be not sold, or cannot be so sold, 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 program, that funds under this paragraph shall be not sold for such purposes; Provided, However, That in no event shall the amount of such funds to be not sold from the net proceeds of any vending facility exceed a reasonable amount which shall be determined by the Secretary;

(4) to provide to any blind licensee desirous with any written request from the operator or administrator of the vending facility program an opportunity for a fair hearing, and to agree to submit the operations of any blind licensee and otherwise provided by such hearing to arbitration as provided in section 1974-1 of this title; (5) to provide to any blind licensee desirous with any written request from the operator or administrator of the vending facility program an opportunity for a fair hearing, and to agree to submit the operations of any blind licensee and otherwise provided by such hearing to arbitration as provided in section 1974-1 of this title;

Section 201(a)(1) of the Food and Drug Administration Act of 1974, referred to in section 201(a)(1), is amended to read as follows: (1) "The Secretary shall, in accordance with section 201(a)(1), in carrying out his duties under this section—



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, part 90 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 Hous. Plan No. 2, § 6, off. July 16, 1946, 11 P.R. 7822, 40 Stat. 1060; 1953 Hous. 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 Hous. Plan No. 2, § 6, off. July 16, 1946, 11 P.R. 7873, 40 Stat. 1060; 1953 Hous. Plan No. 1, § 5, 8, off. Apr. 11, 1953, 16 P.R. 2053, 67 Stat. 621; 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. 93-651, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, part 90 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, part 90 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. 93-651, see 1974 U.S. Code Cong. and Adm. News, Vol. 1, part 90 Stat. 1.

Legislative History. For legislative history and purpose of Pub.L. 93-651, 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, part 90 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, part 90 Stat. 1.

### Index to Notes

Private right of action 1

Administrative proceeding 1  
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1. Administrative proceeding  
1. 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, 501 F.2d 378.

2. Class action  
2. 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, 501 F.2d 378.

3. Review  
3. Provisions of 1974 amendments to this chapter which provided for judicial review of "final agency action" did not direct district court of jurisdiction to reconsider 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, 501 F.2d 378.

4. 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; ceding 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.

Intent competition between vending machines and vending facilities; operation of receipt 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-

section, including provisions of section 206 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, 413 F.Supp. 303) H.R. 14225 was deemed to have become law without the approval of the President on May 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, § 306, Nov. 21, 1974, 89 Stat. 2-1, to exactly the same manner as it was enacted by Pub. L. 93-618.

Prior revisions. A prior section 6 of section 107e of this title, was renumbered section 6 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. 90-88, Title VI, Oct. 17, 1979, 93 Stat. 806, set out as a note under section 3601 of this title, 190 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 341 of this title.

U.S. Code Cong. and Adm. News. For the text of Pub. L. 93-651, see 1979 U.S. Code Cong. and Adm. News, Vol. 1, prec. 60 Stat. 1.

Legislative History. For legislative history and purpose of Pub. L. 93-618, see 1974 U.S. Code Cong. and Adm. News, p. 6322.

§ 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 a 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 to Federal registers

(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 16, 1976, c. 438, § 6, as added Dec. 7, 1974, Pub. L. 93-614, Title II, § 108, 89 Stat. 1624, and amended Nov. 21, 1974, Pub. L. 93-651, Title II, § 206, 89 Stat. 2-11.

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  
June 1, 1975, 50 per centum of all vending machine income from vend-  
ing 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 peri-  
ods 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 institutions, installations, or facilities on Fed-  
eral 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. 583) 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  
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.

#### § 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. 583) 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 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. 1974, 412 F.Supp. 282) H.R. 10225 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, in exactly the same manner as it was amended by Pub.L. 93-516, Title II, § 206, Nov. 21, 1974, 88 Stat. 1024.

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) H.R. 10225 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, in 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 meant 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 pocket-voted 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 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

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) H.R. 10225 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, in 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) H.R. 10225 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, in exactly the same manner as it was amended by Pub.L. 93-516, Title II, § 206, Nov. 21, 1974, 88 Stat. 1024.

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. 7110(e) and 7401(a))

390.43 *Who are allowable costs?*

In addition to those allowable costs established in EDOAR 11 75.530-1402, 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. 7111(c) and 7401(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;

(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 agrees 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 § 305.32 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