

ALASKA LEGISLATURE COMMITTEE FILES 1995-1996 8672

8657 HOUSE LABOR & COMMERCE

(A) any reason why the claim or dispute cannot be heard completely at the first hearing;

(B) whether the claim is barred under AS 23.30.022, 23.30.100, AS 23.30.105, AS 23.30.110, or otherwise barred by law or equity;

(C) whether the injury was proximately caused by the employee's willful intent to injure or kill any person;

(D) whether the injury was proximately caused by the employee being intoxicated or being under the influence of drugs;

(E) whether the last injurious exposure rule applies;

(F) by specific allegation, whether the employee has failed to minimize the disability;

(G) whether the employee has been overpaid or paid at a different rate than that which is due; and

(H) whether the employee's compensation rate should be adjusted under AS 23.30.175(b).

(4) A general denial is not an answer.

(5) The evidence presented at the hearing will be limited to those matters contained in the claim, petition, and answer, except as otherwise provided in this chapter. (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005(h) AS 23.30.100 AS 23.30.105
AS 23.30.110 AS 23.30.135 AS 23.30.175
AS 23.30.235

*Sec. 8. 8 AAC 45.050(f)(1) and (2) are amended to read:

(1) If a claim [AN APPLICATION] or petition has been filed and the parties agree [(A)] that there is no dispute as to any material fact and agree [, (B)] to the dismissal of the claim or petition, or [(C)] to the dismissal of a party, a stipulation of facts signed by all parties may be filed, consenting to the immediate filing [ISSUANCE] of an order based upon the stipulation of facts.

(2) Stipulations between the parties may be made at any time in writing before the close of the record, or may be made orally in the course of a hearing or prehearing. (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.012
AS 23.30.135

*Sec. 9. 8 AAC 45.052(a), (b), (d) and (f) are amended to read:

(a) A claim [AN APPLICATION] or petition must be filed together with [ACCOMPANIED BY] a medical summary on form 07-6103,

listing each medical report in the claimant's [APPLICANT'S] or petitioner's possession which is or may be relevant to the claim. The claimant [APPLICANT] or petitioner shall serve a copy of the summary form, along with copies of the reports, upon all parties to the claim and shall file the original summary form with the board.

(b) Within 5 [20] days after the date of service of the claim or petition and the medical summary form, the answering party shall file with the board an amended medical summary on form 07-6103, listing all reports in the answering party's possession which are or may be relevant to the claim and which are not listed on the claimant's [APPLICANT'S] medical summary form. In addition, the answering party shall serve the amended medical summary form, together [ALONG] with copies of the reports, upon all parties to the claim.

(d) Every 30 days after the filing of a claim [AN APPLICATION] or petition, a [ALL] party[PARTIES] must file with the board an updated medical summary form[S] if an additional medical report is obtained. A copy of the medical summary form, together with copies of the medical reports listed on the form, must be served upon all parties to the claim. If no additional medical report is obtained in a 30-day period, an updated medical summary is not necessary.

(f) The provisions of this section do not apply to claims [APPLICATIONS] or petitions requesting only

(1) an adjustment of the compensation rate or determination of the gross weekly earnings;

(2) penalties, additional compensation under AS 23.30.155, a determination that a controversy is invalid and filed in bad faith, or a determination under AS 23.30.155(o) that a controversy was frivolous or unfair;

(3) attorney's fees or legal costs;

(4) a determination of dependency in death cases; or

(5) [A DETERMINATION REGARDING] an offset under AS 23.30.225, unless the employee's medical condition is at issue under AS 23.30.225(b), or a reimbursement of an overpayment [AN OFFSET] under AS 23.30.155(j). (Eff 5/28/83, Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.070 AS 23.30.095

*Sec. 10. 8 AAC 45.054(a) and (c) are amended to read:

(a) The testimony of a material witness, including a party, may be taken by written or oral deposition in accordance with the Alaska Rules of Civil Procedure. In addition, the parties may agree[,] or, upon a party's petition, the board or designee [CHAIRMAN] will exercise [IN HIS] discretion [, DIRECT UPON PETITION OF A PARTY,] and direct that the deposition testimony of a witness be taken by telephone conference call. The party seeking

to introduce a witness' testimony by deposition shall pay the initial cost of the deposition.

(c) The board or division will issue subpoenas and subpoenas duces tecum in accordance with the Act. The person requesting the subpoena shall serve the subpoena at the person's [HIS OWN] expense. Neither the board nor the division will [NOT] serve subpoenas on behalf of a party. (Eff 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005 AS 23.30.115 AS 23.30.135

*Sec. 11. 8 AAC 45.054 is amended by adding a new subsection (e):

(e) If a party who has been properly served with a subpoena or subpoena duces tecum and a notice of deposition fails to appear at a scheduled deposition, the board will, in its discretion, order the party to pay the opposing party's costs for scheduling the deposition, including the opposing party's travel expenses. (Eff 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005 AS 23.30.115 AS 23.30.135

*Sec. 12. 8 AAC 45.060(a) and (b) are amended to read:

(a) The board will serve a copy of the claim [APPLICATION] upon each party or the party's representative of record.

(b) A party must file [FILING] a document, other than the annual report under AS 23.30.155(m), with the board either personally or by mail; the board will not accept any other form of filing. [,] Except for a claim [THE APPLICATION], a party shall serve a copy of a document filed with the board [IT] upon all parties, or if a party is represented, upon the party's representative. Service must be accomplished, either personally or by mail, in accordance with due process. Service by mail is complete at the time of deposit in the mail if mailed with proper postage and properly addressed to the board and the party at the party's last known address. A document is considered filed if mailed or delivered in accordance with 8 AAC 45.020(c). If [,] within 10 or less [A GIVEN NUMBER OF] days after service by mail, a right may be exercised or an act is to be done, three days must be added to the prescribed period. (In effect before 7/28/59; am 5/28/83, Register 86; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005(h) AS 23.30.110(b)
AS 23.30.135

*Sec. 13. 8 AAC 45.060 is amended by adding a new subsection (f):

(f) Immediately upon changing a service address, a party or a party's representative must file with the board and serve on the opposing party a written notice of a party's or party's representative's change of address for service. Until a party or the board receives written notice of a change of address, documents must be served upon a party at the party's last known address. (In effect before 7/28/59; am 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005(h) AS 23.30.110(b)
AS 23.30.135

*Sec 14. 8 AAC 45.065(a) - (f) are amended to read:

(a) After a claim or petition has been filed, a party may file a written request for a prehearing, and the board or designee will schedule a prehearing. [IN ANY ACTION,] Even if no claim, petition or request for prehearing has been filed, [T]he board or its designee [CHAIRMAN] will, in its [THEIR] discretion, direct the parties or their representatives to appear for a prehearing [CONFERENCE TO CONSIDER]. At the prehearing, the board or designee will exercise discretion in making determinations on

- (1) identifying and simplifying the issues;
- (2) amending the papers filed or the filing of additional papers:
- (3) accepting [OBTAINING] stipulations, requests for admissions of fact, or other documents which may avoid presenting unnecessary evidence at the hearing;
- (4) limiting the number of [EXPERT] witnesses, [AND] identifying those witnesses, or requiring a witness list in accordance with 8 AAC 45.112;
- (5) [SCHEDULING] the length, filing, and date for service of legal memoranda in accordance with 8 AAC 45.114 [BEFORE THE TIME SET FOR HEARING];
- (6) [DETERMINING] the relevance of information requested under 8 AAC 45.095; [OR]
- (7) other matters that may aid in the disposition of the case;
- (8) petitions to join a person;
- (9) consolidating two or more cases, even if a petition for consolidation has not been filed;
- (10) the possibility of settlement or using a settlement conference to resolve the dispute;
- (11) discovery requests;
- (12) the closing date for discovery;
- (13) the closing date for serving and filing of video recordings, audio recordings, depositions, video depositions, or any other documentary evidence; the date must be at least two working days before the hearing.

(14) whether a party intends at the time of hearing to seek to recusal of a board member, in accordance with AS 44.62.450(c), from participating in the hearing; or

(15) whether a party's opening and closing arguments, including a statement of the issues, at the hearing should be longer than permitted by 8 AAC 45.116.

(b) The designee [CHAIRMAN] will, in the designee's [his] discretion, conduct prehearings or settlement conferences without the presence of the [OTHER TWO] board members.

(c) After [FOLLOWING] a prehearing the board or designee [CHAIRMAN] will issue a summary of the actions taken at the prehearing, the amendments to the pleadings, and the agreements made by the parties or their representatives [CONCERNING THE MATTERS CONSIDERED]. The summary will limit the issues for hearing to those which are in dispute at the end of the pre-hearing [WHICH ISSUES NOT DISPOSED OF BY THE ADMISSIONS OR AGREEMENTS OF THE PARTIES]. Unless modified, the summary governs [CONTROLS] the issues and the [SUBSEQUENT] course of the hearing [ACTION].

(d) In accordance with 8 AAC 45.152, a[A] party may ask [request] that a prehearing summary be modified or amended by the board or designee to correct a misstatement of fact or to change a prehearing determination [CHAIRMAN FOR GOOD CAUSE SHOWN, AT ANY TIME BEFORE THE HEARING, AND UPON WRITTEN NOTICE TO ALL PARTIES].

(e) The board or designee [CHAIRMAN] may set a hearing date at the time of the prehearing. The board or designee will set the hearing for the first possible date on the board's hearing calendar unless good cause exists to set a later date. The primary considerations in setting a later hearing date will be whether a speedy remedy is assured and if the board's hearing calendar can accommodate a later date.

(f) The designee [CHAIRMAN] may conduct more than one prehearing on [IN] a claim or petition [AN ACTION]. (Eff. 5/28/83, Register 85; am / / Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec 15. 8 AAC 45.065 is amended by adding a new subsection (g) to read:

(g) The board or designee will not audio record a prehearing, but a party may record the prehearing at the party's expense. If a party records the prehearing and transcribes the recording, the party must file a copy of the recording and a certified transcript with the board and serve a copy upon the opposing party at least 10 days before a scheduled hearing. If a party fails to timely file the copy of the recording and a certified transcript, the board will exclude the transcript or recording from the evidence considered in making its decision. (Eff 5/28/83, Register 86; am / / Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec. 16. 8 AAC 45.070(b) is repealed and readopted to read:

(b) Except as provided in this section, no hearing will be scheduled unless a claim or petition has been filed and an affidavit of readiness for hearing has been filed stating the party has completed necessary discovery, has all the necessary evidence, and is fully prepared for the hearing.

(1) To request a hearing

(A) for review of an administrator's decision issued under AS 23.30.041(d), a party must file a claim or petition asking for review of the administrator's decision and an affidavit of readiness for hearing. The affidavit of readiness for hearing may be filed at the same time as the claim or petition. In reviewing the administrator's decision, the board will not consider evidence which was not available to the administrator at the time of the administrator's decision, unless the board determines the evidence is newly discovered and could not with due diligence have been produced for the administrator's consideration.

(B) on the written arguments and evidence in the board's case file regarding a claim or petition, a party must file an affidavit of readiness for hearing in accordance with subsection (b)(2) requesting a hearing on the written record. If the opposing party timely files an affidavit opposing a hearing on the written record, the board or designee will schedule an in-person hearing. If the opposing party does not timely file an affidavit opposing the hearing on the written record, the board will, in its discretion, decide the claim or petition based on the written record. If the board determines additional evidence or written arguments are needed to decide a claim or petition, the board will schedule an in-person hearing or will direct the parties to file additional evidence or arguments.

(C) an in-person hearing on a claim or petition, except for a venue determination, a party must file an affidavit of readiness in accordance with subsection (b)(2) requesting an in-person hearing.

(D) on a venue dispute, a party must file a petition asking the board to determine the venue and an affidavit of readiness for hearing on the written record. In accordance with 8 AAC 45.072, the hearing will consist of the board's reviewing the parties' written arguments and evidence in the board's file; no in-person hearing will be held.

(E) for default under AS 23.30.170, a party may file a claim together with an affidavit of readiness for hearing.

(2) Except as provided in subsection (b)(1), a party may not file an affidavit of readiness for hearing until after the opposing party files an answer under 8 AAC 45.050 to a claim or petition or 20 days after the service of the claim or petition, whichever occurs first. If an affidavit is filed before the time set by this paragraph,

(A) no action will be taken by the board or designee on the claim or petition; and

(B) the party must file another affidavit after the time set by this paragraph.

(3) If the board or designee determines a hearing should be scheduled even though no party has filed an affidavit of readiness for hearing, the board or designee will give notice of the hearing in accordance with AS 23.30.110 and 8 AAC 45.060(e). (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec. 17. 8 AAC 45.070(k) is repealed and readopted to read:

(k) The board will, in the board's discretion, permit a member

(1) to attend a hearing by telephone; or

(2) who did not attend a hearing before a two-member panel to review the written record, evidence and hearing recording and to deliberate with

(A) a deadlocked two-member panel to make a decision; or

(B) the remaining member of a two-member panel if, before a decision is filed on a case heard by a two-member panel, one member dies, resigns from the board, is replaced by the Governor, or the member's term of appointment expires.

Before the member is added to the panel, the board will write to the parties, stating the member's name, and give the parties an opportunity to request the member's disqualification from the panel in accordance with AS 44.62.450(c). (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 3/16/90, Register 113).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec. 18. 8 AAC 45.072 is amended to read:

8 AAC 45.072. VENUE. Unless the board determines that the convenience of the parties and the witnesses, or the board's convenience to assure a speedy remedy, otherwise dictates, a

hearing will take place in the city nearest the place where the injury occurred and in which a division office[S ARE] is located. After receiving a request in accordance with 8 AAC 45.070 and based on the documents filed with the board and the parties' written arguments, the board's panel in the city nearest the place where the injury occurred will decide a venue dispute. (Eff. 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec. 19. 8 AAC 45.074(a) is amended to read:

8 AAC 45.074(a). CONTINUANCES, CANCELLATION, OR CHANGES OF [AND FURTHER] HEARINGS. (a) Continuances, postponements, cancellations, or changes of scheduled hearings are not favored by the board and will not be routinely granted. The board or its designee will, in its discretion, grant a continuance, postponement, cancellation, or change of a scheduled hearing without a formal hearing only upon good cause shown by the party requesting the continuance, postponement, cancellation, or change. Good cause exists only when

(1) a material witness is unavailable on the scheduled date and the taking of the witness' deposition is not feasible;

(2) a party or representative of a party is unavailable because of an unintended and unavoidable court appearance;

(3) a party, a representative of a party, or a material witness, becomes ill or dies;

(4) a party, a representative of a party, or a material witness becomes unexpectedly absent from the hearing venue and cannot participate telephonically [STATE];

(5) despite a party's due diligence, irreparable harm may [WILL] result from a failure to grant the requested continuance or cancel the hearing; [OR]

(6) an agreed settlement has been reached by the parties less than 14 days before a scheduled hearing, [BUT IT DOES NOT CONFORM TO] the agreed settlement has not been put into writing, signed by the parties and filed with the board in accordance with 8 AAC 45.070(d)(1), the proposed settlement resolves all disputed issues, and the parties appear at the scheduled hearing to state the terms of the settlement on the record;

(7) the board determines at a scheduled hearing that due to surprise, excusable neglect, or the board's inquiry at hearing, that additional evidence or arguments are necessary to complete the hearing; [OR]

(8) the hearing was set under 8 AAC 45.160(d);

(9) the board requires a second independent medical examination under AS 23.30.095(k);

(10) the board determines that despite due diligence by a party in completing discovery before requesting a hearing and despite the party's good faith belief that the party was fully prepared for the hearing, evidence was obtained by the opposing

party after the request for hearing was filed which is or will be offered at the hearing, and due process requires the party requesting the hearing be given an opportunity to obtain rebuttal evidence;

(11) the hearing was requested for a review of an administrator's decision under AS 23.30.041(d), the party requesting the hearing has not had adequate time to prepare for the hearing, and both parties waive the right to a hearing with 30 days. (Eff. 5/28/83, Register 86; am 7/1/88, Register 107; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.110 AS 23.30.135

*Sec. 20. 8 AAC 45.082(c) and (d) are amended to read:

(c) For purposes of AS 23.30.095, an employee designates an attending physician after an injury by seeing a licensed physician and getting treatment or advice from that physician for the injury. For purposes of AS 23.30.095, an employer's choice of physician is made by having a physician or panel of physicians examine an injured worker or the injured worker's medical records and render an opinion. If an employer has a panel of physicians examine the employee or the employee's medical records, the panel will be considered a physician for purposes of determining whether the employer's change of physicians is in accordance with AS 23.30.095. For purposes of this section, to be a panel all physicians on a panel must complete their examinations, although not necessarily their reports, within three days of each other. If more than three days lapse between the examinations, the physicians do not constitute a panel, but rather a change of physicians.

(1) If an employee injured on or after July 1, 1988 makes more than one change in the attending physician without the employer's written consent the board will

(A) deny a claim for the employer to pay for the treatment or care provided by the third or subsequent physician; and

(B) , if objected to by the opposing party, exclude the report or testimony of the third or subsequent physician from the evidence at a hearing on a claim.

(2) If an employer for a worker injured on or after July 1, 1988 makes more than one change in its choice of physician or panel of physicians without the injured worker's written consent and, if the opposing party objects at hearing to the report or testimony of the third or subsequent physician,

(A) the board will exclude the report or testimony from the evidence; and

(B) the excluded report cannot be relied upon to support controverting the claim.

(3) An employee injured before July 1, 1988, may change treating physicians at any time without board approval by

notifying the employer and the board of the change. Notice must be given in writing within 14 [20] days after the change of treating physicians. If, after a hearing, the board finds that the employee's repeated changes were frivolous or unreasonable, the board will, in its discretion, refuse to order payment by the employer.

(d) Medical bills for an employee's treatment are due and payable within 14 [30] days after the date the employer received the medical provider's bill and a completed report on form 07-6102. Unless the employer disputes the prescription charges or transportation expenses, an employer shall reimburse an employee's prescription charges or transportation expenses for medical treatment within 14 [30] days after the employer receives the medical provider's completed report on form 07-6102 and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. If the employer does not pay [THERE IS A DISPUTE THAT DELAYS PAYMENT OF]

(1) a medical bill or if the medical bill is not paid in full as billed, the employer shall tell [NOTIFY] the employee and medical provider in writing [OF] the reason for not paying all or a part of the bill [THE PARTIAL PAYMENT] or the reason for delay in payment within 14 [30] days after receipt of the bill and completed report on form 07-6102; [. IF THERE IS A DISPUTE THAT DELAYS PAYMENT]

(2) [OF] a prescription or transportation expense reimbursement request [IS NOT PAID] in full, the employer shall tell [NOTIFY] the employee in writing [OF] the reason for not paying all or a part of the request [THE PARTIAL PAYMENT] or the reason for delay within the time allowed in this section in which to make payment. If the employer makes a partial payment, the employer shall also itemize in writing the prescription or transportation expense requests not paid. (Eff. 5/28/83, Register 85; am 12/14/86, Register 100; am 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.045
AS 23.30.030 AS 23.30.095

*Sec. 21. 8 AAC 45.082(i)(2) is amended to read:

(2) The board will publish annually a bulletin for the "Workers' Compensation Manual," published by the department which gives the name and address of the organization whose schedule of providers' charge data must be used in determining the usual, customary, and reasonable fee for medical treatment or services for injuries that occur on or after July 1, 1988. The manual, and the organization's name and address are available upon request from the State of Alaska Workers' Compensation Division, P.O. Box 25512 [21149], Juneau, Alaska 99802-5512 [1149]. (Eff.

5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.045
AS 23.30.030 AS 23.30.095

*Sec. 22. 8 AAC 45.090(b) is amended to read:

(b) Except as provided in subsection (a), regardless of the date of an employee's injury the board will require [CHARGE] the employer to pay for the cost of an examination under AS 23.-30.095(k) or AS 23.30.110(a) and this section. (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100, am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.110(a)

*Sec. 23. 8 AAC 45.090 is amended by adding new subsection (g) to read:

(g) If an employee fails to attend an evaluation scheduled in accordance with this section and AS 23.30.095(k) or AS 23.-30.110(g),

(1) the employer will pay the physician's fee, if any, for the missed appointment, and

(2) upon petition by a party and after a hearing, the board will determine whether good cause existed for the employee's failure to attend the examination. If the Board finds

(A) good cause for missing the examination did not exist, the employee's compensation will be reduced in accordance with AS 23.30.155(1) to reimburse the employer the physician's fee and other expenses for the missed appointment; or

(B) good cause for missing the examination, the physician's fee and other expenses for the missed appointment will be the employer's responsibility. (In effect before 7/28/59; am 5/28/83; Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.095 AS 23.30.155(1)

*Sec. 24. 8 AAC 45.092(b)(3) is amended to read:

(3) An attorney who meets the following criteria may, by March 1 of each year, submit a letter to the Commissioner volunteering to serve on a panel to select [RECOMMEND] physicians for inclusion on the board's list as described in (5) of this subsection. The attorney must

(A) be admitted to the practice of law in this or another state;

(B) have personally presented a total of five cases, no more than two of which were resolved by agreed settlements, for board decision during the year preceding volunteering to serve on a panel [THE RECOMMENDATION]; and

(C) in the year preceding volunteering [THE RECOMMENDATION], have represented one class of litigants, either employee or employer, 90 percent of the time; based on the class of litigant, the Commissioner [BOARD] will classify the attorney as either an employee or employer attorney. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108, am 3/16/90, Register 113).

Authority: AS 23.30.005

AS 23.30.095(k)

*Sec. 25. 8 AAC 45.092(b)(4) is repealed and readopted to read:

(4) By May 1 of each year, the Commissioner shall choose, from the attorneys who volunteered in accordance with (3) of this subsection, two employee attorneys and two employer attorneys to serve on a panel to select physicians for inclusion on the board's list of physicians. The panel shall meet and select physicians by August 1 of each year. The Commissioner shall provide staff to schedule the panel's meetings, publish notice of the meetings, and arrange facilities or other support for the meeting to assist the panel, but the panel members will not be paid for their work or expenses for participating on the panel. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108, am 3/16/90, Register 113).

Authority: AS 23.30.005

AS 23.30.095

*Sec. 26. 8 AAC 45.092(5) is amended to read:

(5) The panel members shall vote, or abstain from voting, upon the physicians whose names were listed in the bulletin published under (2) of this subsection or are suggested by a panel member, even if the physician's name did not appear in the bulletin. [UPON RECEIPT OF LETTERS OF RECOMMENDATION A] A physician who receives three affirmative votes [FROM AT LEAST TWO EMPLOYEE ATTORNEYS AND TWO EMPLOYER ATTORNEYS WHO MEET THE CRITERIA OF (3) OF THIS SUBSECTION] will be sent by the board or its designee [WILL SEND THE PHYSICIAN] an application and a letter asking if the physician is interested in performing second independent medical examinations. Unless the board determines that good cause exists to extend the time, within 60 days after the date of the board's letter the physician must submit

(A) a completed application listing the physician's education, training, work experience, specialty, and the particular discipline in which the physician is licensed, as well as the names and addresses of professional organiza-

tions that have certified the physician or in which the physician is an active member;

(B) a copy of or proof of the physician's current license from the appropriate licensing agency in the state in which the physician practices;

(C) a certificate of insurance for the physician's current and enforceable professional liability insurance for the services performed; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy; and

(D) a certificate of insurance for the physician's workers' compensation insurance if the physician has employees; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108, am 3/16/90, Register 113).

Authority: AS 23.30.005 AS 23.30.095

*Sec. 27. 8 AAC 45.092(f) is amended to read:

(f) If the board or its designee determines that the list of independent medical examiners does not include an impartial physician with the specialty, qualifications, and experience to examine the employee, the board or its designee will notify the employee and employer that a physician not named on the list will be selected to perform the examination. The notice will state the board's preferred physician's specialty to examine the employee. Within 10 days after notice by the board or its designee, the employer and employee may each submit the names, addresses, and curriculum vitae, [SPECIALTIES] of no more than three physicians. If both the employee and the employer recommend the same physician, that physician will be selected to perform the examination. If no names are recommended by the employer or employee or if the employee and employer do not recommend the same physician, the board or its designee will select a physician, but the selection need not be from the recommendations by the employee or employer. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108, am 3/16/90, Register 113).

Authority: AS 23.30.005 AS 23.30.095(k)

*Sec. 28. 8 AAC 45.092 is amended by adding new subsections (g) through (i) to read:

(g) If a dispute listed in AS 23.30.095(k) exists, a party may petition the board to require a second independent medical evaluation. The party's petition must be filed within 60 days after the party received the medical reports which reflect the

dispute. If a party fails to timely request a second independent medical evaluation,

(1) the party's right to request an evaluation under AS 23.30.095(k) is waived, and

(2) no evaluation under AS 23.30.095(k) will be conducted, unless the board upon its own motion determines an evaluation is necessary.

(h) If the board requires an evaluation under AS 23.30.-095(k), the board will, in its discretion, direct

(1) a party to make two copies of all medical records, including medical providers' depositions, regarding the employee in the party's possession, put the copies in chronological order by date of treatment with the initial report on top and the most recent report at the end, number the copies consecutively, and put the copies in two separate binders;

(2) the copying party to serve the two binders of medical records upon the opposing party together with an affidavit verifying that the binders contain copies of all the medical reports relating to the employee in the party's possession;

(3) the party served with the binders to review the copies of the medical records to determine if the binders contain copies of all the employee's medical records in the receiving party's possession. The receiving party must file the two binders with the board within 10 days of receipt and, if the binders are

(A) complete, the receiving party must file the two sets of binders upon the board together with an affidavit verifying that the binders contain copies of all the employee's medical records in the party's possession; or

(B) incomplete, the receiving party must file the two binders upon the board together with two supplemental binders with copies of the medical records in the receiving party's possession which were missing from the binders and an affidavit verifying that the binders contain copies of all medical records in the party's possession. The copies of the medical records in the supplemental binders must be placed in chronological order by date of treatment and numbered consecutively. The party must also serve the party who prepared the first set of binders with a copy of the supplemental binder together with an affidavit verifying that the binder is identical to the supplemental binders filed with the board;

(4) the party, who receives additional medical records after the two binders have been prepared and filed with the board, to make three copies of the additional medical records, put the copies in three separate binders in chronological order by date of treatment, and number the copies consecutively. The party must file two of the additional binders with the board within seven days after receiving the medical records. The party must serve one of the additional binders on the opposing party, together with an affidavit stating the binder is identical to the

binders filed with the board, within seven days after receiving the medical records

(i) Until the parties receive the examiner's written report, communications by and with the second independent medical examiner are limited as follows:

(1) A party or a party's representative and the examiner may communicate as needed to schedule or change the scheduling of the examination;

(2) The employee and the examiner may communicate as necessary to complete the examination;

(3) The examiner's communications with a physician who has examined, treated or evaluated the employee must be in writing, and a copy of the written communication must be sent to the board and the parties. The examiner must request the physician report in writing and request that the physician not communicate in any other manner with the examiner about the employee's condition, treatment or claim.

(j) After a party receives the examiner's report, if a party wants the opportunity to

(1) submit interrogatories or depose the examiner, the party must file with the board, and serve upon the examiner and the other party, a notice of scheduling a deposition or copies of the interrogatories within 30 days after receiving the examiner's report. If notice or the interrogatories are not served in accordance with this subsection, the party waives the right to question the examiner unless the opposing party gives timely notice of scheduling a deposition.

(2) communicate with the examiner regarding the evaluation or report, the party must communicate in writing, serve the other party with a copy of the written communication at the same time the communication is sent or delivered to the examiner, and file a copy of the written communication with the board. No oral communication regarding the examination or report, except during the course of a deposition, is permitted between the parties and the examiner. (Eff. 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005 AS 23.30.095(k)

*Sec. 29. 8 AAC 45.110(a) is amended to read:

(a) The pleadings, report of hearing, documents, other reports and exhibits received in evidence at a hearing or otherwise placed in the record by board order, notices, claims, petitions, briefs, findings and awards, decisions, orders, and other documents and reports [ORDERED] filed in the case file established in accordance with 8 AAC 45.035 will be considered the written record at a hearing before the board [of a proceeding]. The written record, excluding medical or rehabilitation reports, will be open for public inspection at the board's

offices [OF THE BOARD] without charge. The parties, including the parties sought to be joined or consolidated, may inspect the entire written record at the board's offices without charge. (In effect before 7/28/59; am 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005

AS 23.30.107

*Sec. 30. 8 AAC 45.110 is amended by adding a new subsection (c):

(c) The hearing before the board will be tape recorded by the board. The board's tape recording will be

- (1) the official recording of the hearing;
- (2) used to prepare the transcript for the record on appeal;
- (3) kept separate from the case file; and
- (4) will be copied upon written request and payment of the appropriate fee. (In effect before 7/28/59; am 5/28/83, Register 86; am / / , Register)

Authority: AS 23.30.005

*Sec. 31. 8 AAC 45.114(3) is amended to read:

(3) be on 8 $\frac{1}{4}$ by 11-inch paper of at least 16-pound weight, have margins of at least one inch on all sides, exclusive of headers and page numbers, the text must be in clear and legible hand printing or writing in black or blue ink or in black type-face of at least 12 point Courier or 13 point Times New Roman or New Century Schoolbook, and have spacing of not less than one and one-half lines, except that quotations may be single-spaced and indented, and (Eff. 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005(h)

AS 23.20.135

*Sec. 32. 8 AAC 45.120(h) and (l) are amended to read:

(h) If a request is filed in accordance with (f) of this section, an opportunity for cross-examination will be provided unless the request is withdrawn or the board determines that

(1) under a hearsay exception of the Alaska Rules of Evidence the document is admissible;

(2) the document is not hearsay under the Alaska Rules of Evidence; or

(3) the document is a report of an examination performed by a board-chosen physician under AS 23.30.095(k) or AS 23.30.110(a).

(l) Unless a genuine question is raised as to the authenticity of the original or, in the circumstances, it would be unfair to admit the duplicate in place of the original, a dupli-

cate is admissible in accordance with this section to the same extent as an original.

(1) For purposes of this section, a duplicate is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, or by mechanical or electronic recording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

(2) The following duplicates are admissible to the same extent as an original:

(A) Certified duplicates [COPIES] of medical reports or records of any governmental agency [WILL BE ACCEPTED IN EVIDENCE IN PLACE OF THE ORIGINALS];

(B) A duplicate of the contents of a writing, recording or photograph is admissible if

(i) all originals are lost or destroyed, unless the party in bad faith lost or destroyed them;

(ii) no original can be obtained by any available judicial process or procedure; or

(iii) at a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing, and that party does not produce the original at hearing;

(iv) the writing, recording or photograph is not closely related to a controlling issue. (In effect before 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005(h) AS 23.30.095(k)
AS 23.30.110(c) AS 23.30.110(a)

*Sec. 33. 8 AAC 45.122 is repealed and readopted to read:

(a) By December 15 of each year, the board will issue a bulletin for the "Workers' Compensation Manual," published by the department, stating the edition of the American Medical Association Guides to the Evaluation of Permanent Impairment to be used on or after March 1 of the following year to rate a permanent impairment.

(b) It is presumed that the American Medical Association Guides to the Evaluation of Permanent Impairment [AMA] address the injury. If the board finds the presumption is overcome by clear and convincing evidence and if the permanent impairment cannot, in the board's opinion be determined under the AMA guides, then the impairment rating must be based on the State of Minnesota, Department of Labor and Industry, Permanent Partial Disability Schedule, effective July 1, 1993 [AMERICAN ACADEMY OF

ORTHOPEDIC SURGEONS MANUAL FOR EVALUATING PERMANENT PHYSICAL IMPAIRMENTS, first edition (1965). If a rating under the Permanent Partial Disability Schedule [AAOS] is not of the whole person, the rating must be converted to a whole person rating under the AMA guides.

(c) A rating of zero impairment under AMA guides is a permanent impairment determination and no determination may be made under the Permanent Partial Disability Schedule [AAOS]. (Eff. 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005

AS 23.30.095

*Sec. 34. 8 AAC 45.136 is amended by adding a new subsection (e) to read:

(e) The form prescribed by the board for the annual report is form 07-6115 if the employer does not pay benefits through use of a computer. If an employer uses a computer in paying benefits, then the form prescribed is computer automated media, excluding computer printed reports, in the format of 07-6115 and must be accompanied by an affidavit stating the information contained in the computer automated media is true and correct. (Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005(h)

AS 23.30.155

*Sec. 35. 8 AAC 45. is amended by adding a new section to read:

8 AAC 45.152. REVIEW AND MODIFICATION OF A DETERMINATION.

(a) As provided in this section, a party may request review and modification of a determination made under 8 AAC 45.065 by a single board member or a designee as defined in 8 AAC 45.900(13). If a request is timely filed under this subsection, the board member or a designee must act upon the request within 10 days after it is filed. To request review and modification, a party must within 10 days after service of the written determination, file with the board and serve upon the opposing party a written petition specifically stating

(1) the name of the person making the determination and the date of the determination for which review is requested;

(2) the reason why the determination should be modified; and

(3) the evidence, if any, supporting modification.

(b) If, in accordance with subsection (a), a party timely requested review and modification, the party may request that the board review and modify the determination. The request for board review must be in writing and filed with the board and served upon the opposing party

(1) within 10 days after service of the board member's or designee's determination on review; or

(2) within 30 days after filing the request under subsection (a) if the board member or designee does not timely act in accordance with subsection (a).

(c) If a request is timely filed under subsection (b), the board will, in its discretion, review the determination either at the time it hears the claim or petition, or at a separate hearing. If a separate hearing is held, the parties will be given notice of the hearing in accordance with AS 23.30.110. The board will affirm the determination if it is supported by substantial evidence. (Eff. / / , Register).

Authority: AS 23.30.005

*Sec. 36. 8 AAC 45.160(a), (d), (e) and (f) are amended to read:

(a) The board will review a settlement agreement [AGREEMENTS] which provides for the payment of compensation due or to become due and which undertakes to release the employer for any or all future liability. A settlement agreement [AGREEMENTS] will be approved by the board only where [A DISPUTE EXISTS CONCERNING THE RIGHTS OF THE PARTIES OR WHERE CLEAR AND CONVINCING] a preponderance of evidence demonstrates that approval would be for the best interest of the employee or the employee's [HIS] beneficiaries. The board will, in its discretion, require the employee to attend, and the employer to pay for, an examination of the employee by the board's independent medical examiner. If the board requires an independent medical examination, the board will not act on the agreed settlement until the independent medical examiner's report is received.

(d) The board will [INQUIRE INTO THE ADEQUACY OF ALL AGREED SETTLEMENTS AND WILL, IN ITS DISCRETION, SET THE MATTER FOR HEARING TO DETERMINE WHETHER AN AGREEMENT SHOULD BE APPROVED OR DISAPPROVED. AGREED SETTLEMENTS BETWEEN THE EMPLOYER AND THE EMPLOYEE OR OTHER PERSONS CLAIMING BENEFITS UNDER THE ACT ARE NOT FINAL UNTIL APPROVED BY THE BOARD], within 30 days after receipt of a written agreed settlement, review the written agreed settlement, the documents submitted by the parties, and the board's case file to determine

(1) if it appears by a preponderance of the evidence that the agreed settlement is in accordance with AS 23.30.012. and

(2) if the board finds the agreed settlement

(A) is in the employee's best interest, the board will approve, file and issue a copy of the approved agreement in accordance with AS 23.30.110(e); or

(B) lacks adequate supporting information to determine whether the agreed settlement appears to be in the employee's best interest or if the board finds that the agreed settlement is not in the employee's best interest, the board will deny approval of the agreed settlement, will notify the parties

in writing of the denial and will, in the board's discretion, inform the parties

(i) of the additional information that must be provided for the board to reconsider the agreed settlement; or

(ii) that either party may ask for a hearing to present additional evidence or argument for the board to reconsider the agreed settlement.

(1) To ask for a hearing under this paragraph, a party may write to the board or telephone the division; an affidavit of readiness is not required;

(2) The procedures in 8 AAC 45.070 and 8 AAC 45.074 do not apply to a hearing under this paragraph unless a party requests a hearing by filing an Affidavit of Readiness for Hearing.

(3) If a hearing is held under this section, the board will, in its discretion, notify the parties orally at the hearing of its decision or in writing within 30 days after the hearing.

(4) If after a hearing the board finds

(A) the preponderance of evidence supports the conclusion that the agreed settlement appears to be in the employee's best interest, the board will approve and file the agreed settlement in accordance with AS 23.30.110(e);

(B) the evidence is insufficient to determine whether the agreed settlement appears to be in the employee's best interest, the board will deny approval of the agreed settlement and request additional information from the parties; or

(C) the agreed settlement does not appear to be in the employee's best interest, the board will deny approval of the agreed settlement. The board will not prepare a written decision and order containing findings of fact and conclusions of law unless, within 30 days after the board's notification, a party files with the board a written request for findings of fact and conclusions of law together with the opposing party's written agreement to the request.

(e) An agreed settlement [SETTLEMENTS] in which the employee waives medical benefits, temporary or permanent benefits before the employee's condition is medically stable and the degree of impairment is rated, or benefits during rehabilitation training after the employee has been found eligible for benefits under AS 23.30.041(a) is [ARE] presumed not in the employee's best interest [UNREASONABLE], and will not be approved absent a showing by a preponderance of the evidence that the waiver is in the employee's best interest. In addition, a lump-sum settlement [SETTLEMENTS] of board-ordered permanent total disability benefits is [CLAIMS ARE] presumed not in the employee's best interest [UNREASONABLE], and will not be approved absent a showing by a preponderance of evidence that the lump-sum settlement is in the employee's best interest.

(f) In single-employer, multi-carrier claims, when an employee's claims have been consolidated under 8 AAC 45.050, or when parties have been joined under 8 AAC 45.040, no agreed settlement will be approved unless all parties have agreed to and signed the agreed settlement document. (In effect before 7/28/59; ;am 5/28/83, Register 86; am 12/14/86, Register 100; am / / , Register).

Authority: AS 23.30.005(h) AS 23.30.012
AS 23.30.041 AS 23.30.095(k)
AS 23.30.110(α)

*Sec 37. 8 AC 45.160 is amended by adding new subsections (g) to read:

(g) The employee or the employee's beneficiaries and the employer may agree to partially resolve a claim or a single issue, such as the employee's gross weekly earnings under AS 23-.30.220, and submit a partial agreed settlement for board approval under AS 23.30.012 to resolve only a part of the claim or a single issue.

(h) To report on the annual report and compensation report the benefits paid in an agreed settlement as benefits under AS 23.30.041(1), the agreed settlement must agree to

(1) reimburse an employee for tuition, books, or supplies purchased to implement a reemployment plan prepared by a rehabilitation specialist;

(2) pay an accredited educational or vocational institution for tuition, books and supplies;

(3) pay an expert for professional services for the following in connection with preparing a self-employment plan

(A) a feasibility study;

(B) analyzing a self-employment plan; or

(C) performing a market survey; or

(4) assist the employee in becoming self-employed by purchasing, or reimbursing the employee for the expenses for purchasing a business or the facilities, tools, or equipment for a business, but only if the administrator approves the self-employment plan or the parties sign a self-employment plan prepared by a rehabilitation specialist. (In effect 7/28/59; am 5/28/83, Register 86; am 12/14/86, Register 100)

Authority: AS 23.30.005 AS 23.30.012
AS 23.30.041(1) AS 23.30.220

*Sec. 38. 8 AAC 45.178(a) is amended to read:

(a) A person who seeks to represent a party in a matter pending before the board shall file a written notice of appearance with the board, and shall serve a copy of the notice upon all parties. The notice of appearance must include the represen-

tative's name, address, and phone number and must specify whether the representative is an attorney licensed to practice law within the State of Alaska. If the person who seeks to represent a party is not licensed to practice law within the State of Alaska, the notice of appearance must be accompanied by

(1) the injured worker's written authorization if the person represents the injured worker; or

(2) the employer's written authorization unless the person seeking to represent the employer is an employee of

(A) the employer's insurer; or

(B) the adjusting company handling the claim for the employer's insurer. (Eff. 5/28/83, Register 86; am / / , Register .)

Authority: AS 23.30.005

AS 23.30.110

*Sec. 39. 8 AAC 45.184(b) is amended to read:

(b) A person who is an executive officer and who desires [DESIRING] to waive coverage under the Act [ON THE GROUND HE IS AN EXECUTIVE OFFICER] shall petition the commissioner for a waiver. The petition for waiver must include

(1) proof of incorporation;

(2) a copy of the page of the minutes of the corporate meeting that reflects the petitioner's election or appointment as an executive officer;

(3) an affidavit [VERIFIED STATEMENT] signed by the petitioner stating under oath that the petitioner freely and voluntarily [AN INTENT TO] waives coverage under the Act;

(4) the petitioner's name, address, and title; and

(5) a copy of the first page of the articles of incorporation and a copy of the page or pages of the bylaws that state the officers' titles and duties. (Eff. 5/28/83, Register 86; am 3/16/90, Register 113; am / / , Register).

Authority: AS 23.30.005

AS 23.30.240

*Sec. 40. 8 AAC 45.186(e) is amended to read:

(e) In order to satisfy the 200-week rating requirement of AS 23.30.205(d)(2), a condition must qualify for an award of compensation under AS 23.30.190(a) that, if paid every two weeks instead of in a single lump sum, would be paid for [OF] 200 weeks or more [UNDER AS 23.30.190]. A disabling condition does not automatically satisfy AS 23.30.205(d)(2) merely because it is permanent in quality. (Eff. 5/28/83, Register 86; am / / , Register).

Authority: AS 23.30.005

AS 23.30.205

*Sec. 41. 8 AAC is amended by adding a new subsection to read:

8 AAC 45.188. NOTICE OF THIRD PARTY CLAIM. Notice required under AS 23.30.015(j) of the commencement of an action shall be in writing, filed with the board, and served upon all parties to the injured or deceased employee's compensation case. The notice must include the complete title and case number of the action. (Eff. / / , Register).

Authority AS 23.30.005 AS 23.30.015(j)

* Sec. 42. 8 AAC 45.210(d) is repealed.

* Sec. 43. 8 AAC 45.220 is amended to read:

(a) For purposes of calculating the gross weekly earnings under AS 23.30.220, "overtime or premium pay" means the rate of pay for hours worked in excess of 40 hours per week or eight hours a day;

(b) After calculating the gross weekly earnings less the payroll tax deductions under AS 2.330.220, the result will be rounded to the nearest dollar. (Eff. 12/14/86, Register 100; am / / , Register).

Authority: AS 23.30.005 AS 23.30.220

*Sec. 44. 8 AAC 45.400 is amended to read:

(a) This section applies to the rehabilitation specialists' list to be maintained by the administrator for injuries that occur on or after July 1, 1988. The list for a specific geographic area is available upon request from the State of Alaska, Workers' Compensation Division, P.O. Box 107019, Anchorage, Alaska 99510-7019.

(b) The list of rehabilitation specialists will be divided into two geographical sections. One section will contain the names and addresses of rehabilitation specialists whose business addresses are in this state. The other section will contain names and addresses of rehabilitation specialists whose business addresses are in other states or countries. The list

(1) for this state will be further subdivided into three geographical areas based on the senate districts for southeastern and southcentral Alaska, and an area comprised by combining the central and northwestern Alaska senate districts, as those districts are described in art. XIV, section 2, of the Constitution of the State of Alaska; a rehabilitation specialist's name will be placed on the list only once for this state by matching the rehabilitation specialist's primary business address to the senate district that contains that address;

(2) for other states or countries will be subdivided by city and state, or country; a rehabilitation specialist's name will be placed on the list by matching the rehabilitation specialist's business address to the appropriate city and state, or country. (Eff. 7/1/88, Register 107; am / / , Register).

Authority: AS 23.30.005

AS 23.30.041

*Sec. 45. 8 AAC 45.410(b) is repealed.

*Sec. 46. 8 AAC 45.420 is repealed and readopted to read:

(a) To be added to the administrator's rehabilitation specialists' list under 8 AAC 45.400, a person who qualifies under 8 AAC 45.410(a) must file a completed application that includes

(1) a signed statement listing the person's name and primary business address; the name, address, and telephone number of the firm at which the person works, if any; and the geographic areas in which the person is willing to provide services;

(2) proof of current Certified Insurance Rehabilitation Specialist or Certified Rehabilitation Counselor certification.

(3) a certificate of workers' compensation insurance if the person has employees; the certificate of insurance must provide for 30-day prior notice to the board of cancellation, nonrenewal, or material change of the policy; and

(4) a resume stating the persons' education, training, work experience, and the names and addresses of the professional organizations that have certified the person or in which the person is an active member.

(b) to be included on the administrator's rehabilitation specialists' list, a person who qualifies under 8 AAC 45.410(b) must comply with the application requirements of (a) of this section.

(c) Names will be added to the geographical listing in order of the receipt date of the completed application. If more than one completed application is received in a day, the names for that day will be placed on the list in alphabetical order. If a person's name is not added to the list, the administrator will notify the person and state in writing the reason for exclusion. Reasons for exclusion include an incomplete or illegible application or accompanying documents, or not meeting the requirements of AS 23.30.041(p)(6). (Eff. 7/1/88, Register 107; am / / , Register).

Authority: AS 23.30.005

AS 23.30.041

*Sec. 47. 8 AAC 45.430(3) is amended to read:

(3) Except as otherwise provided in this section, once a rehabilitation specialist receives an assignment whether or not rehabilitation fees result from that assignment, the administrator may not make another assignment to that rehabilitation specialist until assignments have been made to all other rehabilitation specialists listed from the same senate district if the rehabilitation specialist business address is in this state, or from the same city if the rehabilitation specialist's business address is not in this state. (Eff. 7/1/88, Register 107; am / / , Register).

Authority: AS 23.30.005

AS 23.30.041

*Sec. 48. 8 AAC 45.440 is repealed and readopted to read:

(a) The administrator will exercise discretion to disqualify a rehabilitation specialist from providing services under AS 23.30.041 for

(1) repeated failure to demonstrate suitable rehabilitation skills;

(2) failure to complete 30 percent or more of the eligibility evaluations or reemployment benefits plan assigned in a calendar year;

(3) failure to complete 30 percent or more suspended eligibility evaluation or reemployment plans assigned in a calendar year;

(4) failure to file an annual report on a form prescribed by the administrator stating the number of assignments, the cost of rehabilitation services for eligibility evaluations, writing and developing a reemployment plans and monitoring a reemployment plan. The report is due on or before March 1 of each year;

(5) significant failure by the rehabilitation specialist to adhere to statutory or regulatory requirements;

(6) unethical conduct by the rehabilitation specialist as defined by an appropriate professional organization;

(7) the rehabilitation specialist's knowingly falsifying information provided in connection with the rehabilitation specialist's application;

(8) disciplinary action against or decertification of the rehabilitation specialist by an appropriate certifying agency or professional organization;

(9) failure by the rehabilitation specialist to maintain workers' compensation insurance if the rehabilitation specialist has employees;

(10) fraudulent billing or reporting by the rehabilitation specialist;

(11) conviction of the rehabilitation specialist in a state or federal court of any offense involving moral turpitude; or

(12) declaration of the rehabilitation specialist's mental incompetency by a court of competent jurisdiction.

(b) If the administrator is considering disqualifying a rehabilitation specialist under (a)(1)-(3) of this section, the administrator may meet with the rehabilitation specialist and develop a plan of corrective action.

(c) If the administrator believes that a rehabilitation specialist has engaged in unethical practices or activity, after written notification to the rehabilitation specialist, the administrator will exercise discretion to refer the issue to an appropriate professional rehabilitation organization for recommendations.

(d) Before disqualifying a rehabilitation specialist, the administrator shall notify the rehabilitation specialist in writing, served either personally or by certified mail, of the proposed disqualification. A rehabilitation specialist who has been notified of a proposed disqualification may, within 30 days after receipt of the notice, file a written request with the administrator for an opportunity to meet with the administrator to discuss the proposed disqualification.

(e) The administrator shall issue a written decision within 30 days after a meeting requested under (d) of this section. If no meeting is requested, the administrator shall issue a written decision within 45 days after the written notice of the proposed disqualification was served under (d) of this section.

(f) The administrator's written decision under (e) of this section will, in the administrator's discretion, either

(1) require the rehabilitation specialist to change professional behavior or upgrade skills according to a plan determined by the administrator;

(2) disqualify the rehabilitation specialist and explain the reasons for the action, the duration of the disqualification, and the conditions, if any, under which the rehabilitation specialist may reapply; or

(3) state that no grounds for disqualification or disciplinary action were found.

(g) The administrator's decision must be served upon the rehabilitation specialist or the rehabilitation specialist's representative, either personally or by certified mail. A copy must be sent to the employee or employer, if any, who requested that the administrator consider disqualifying the rehabilitation specialist. A disqualification decision is effective 10 days after the date of the decision unless a written request for board review is filed with the board and is served in accordance with (f) of this section within 10 days after the service of the administrator's decision.

(h) A disqualified rehabilitation specialist, an employee, or an employer, may request board review of the administrator's decision. If the

(1) disqualified rehabilitation specialist requests review, the rehabilitation specialist must serve a copy on any

other person whom the administrator served with a copy of the decision;

(2) employee or employer requests board review, the employee or employer must serve a copy of the review request upon the disqualified rehabilitation specialist.

(i) Upon request under (g) of this section, the board will schedule and hold a hearing in accordance with AS 23.30.110 and 8 AAC 45.070. The board's decision is final upon filing in accordance with AS 23.30.110. (Eff. 7/1/88, Register 107; am / / , Register).

Authority: AS 23.30.005 AS 23.30.041

*Sec 49. 8 AAC 45. is amended by adding new subsections to read:

8 AAC 45.441. TEMPORARY REMOVAL OF REHABILITATION SPECIALISTS. (a) The administrator has discretion to temporarily remove a rehabilitation specialist from the list of rehabilitation specialists for up to 90 days for failure to meet the reporting requirements specified in 8 AAC 45.440(2)(a), (b) or (c). (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.450. REASSIGNING A REHABILITATION SPECIALIST. (a) After a determination under 8 AAC 45.440 disqualifying a rehabilitation specialist is final, or if under 8 AAC 45.441 a rehabilitation specialist is temporarily removed from the list, the administrator will review the services provided by the disqualified rehabilitation specialist, and determine if the administrator should assign another rehabilitation specialist in accordance with 8 AAC 45.430 to complete an evaluation, formulate a reemployment plan, provide rehabilitation services or monitor a vocational rehabilitation plan. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.460. REQUEST FOR COVERAGE UNDER AS 23.30.045(c). (a) An employee eligible for reemployment benefits under AS 23.30.041 may ask the administrator in writing that the administrator place the employee in on the job training, work readiness, work therapy experience, or work sampling under AS 23.30.045(c). The employee's placement request must:

(1) include a reemployment benefits plan as described in 8 AAC 45.550(a) and (b)(1)-(5); and

(2) be filed with the administrator at least 20 days before the beginning date of the placement.

(b) The administrator will grant or deny the written request. The administrator will tell the parties

(1) if the request is granted;

(2) if the request is denied, the reasons for the denial, and

(3) how to request board review, under AS 23.30.041(j) and AS 23.30.110, of the decision. (Eff. / / , Register).

Authority: AS 23.30.041 AS 23.30.045 AS 23.30.110

8 AAC 45.500. REHABILITATION REPORTING REQUIREMENTS. (a) Regardless of the employee's date of injury, a rehabilitation specialist must file with the administrator all reports of evaluations and plans prepared by the rehabilitation specialist for an injured worker receiving rehabilitation assistance under the Act and this chapter. If the administrator has prescribed a form for an evaluation or plan, the rehabilitation specialist must file the completed form along with evaluation or plan. The rehabilitation specialist must serve a copy of an evaluation report or plan report upon the employer and the employee.

(b) Unless suspended or terminated by the administrator, an evaluation or plan assignment must continue to completion unless suspended or terminated by the administrator.

(c) Before suspending or terminating reemployment services, a written request must be submitted to the administrator by the rehabilitation specialist. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.502. CLOSURE REPORTS. In addition to any report required under the Act or this chapter and regardless of the employee's date of injury, the rehabilitation specialist must file a closure report with the administrator within 10 days after end of services to an injured worker. The closure report must include the outcome of the plan or evaluation, the actual cost of an implemented plan service or evaluation service, the employee's actual or projected return to work date, the name and address of the employer for whom the employee will work, and an itemization of the costs for the rehabilitation services. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.503 WAIVER OF VOCATIONAL REEMPLOYMENT BENEFITS. (a) If the parties agree to waive vocational reemployment benefits, a board approved form must be completed, signed by the employer and employee, filed with the administrator, and a copy served on the rehabilitation specialist. All rehabilitation specialist fees must be paid by the insurer to the rehabilitation specialist up to the date the rehabilitation specialist is notified that the agreement is signed. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.505. ELIGIBILITY FOR REEMPLOYMENT PLAN. For injuries occurring on or after July 1, 1988, the employer and employee may not agree or stipulate to the employee's right to reemployment plan benefits. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.510. NOTICE OF RIGHT TO REQUEST ELIGIBILITY EVALUATION. For injuries occurring on or after July 1, 1988, upon an insurer's receipt of a physician's report saying the employee may permanently be unable to return to the employee's occupation at the time of injury, the insurer must notify the employee on a board prescribed form of the opportunity to request an eligibility evaluation for reemployment benefits and file a copy of the notice with the administrator. The employee has 90 days from the date the notice is given by the insurer to request an eligibility evaluation. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.511. For purposes of AS 23.30.041, "an unusual and extenuating circumstance that prevents the employee from making a timely request" is

- (1) the employee is mentally incompetent;
- (2) the insurer failed to provide notice as required by 8 AAC 45.510; or
- (3) the employee proves no notice was given as required by 8 AAC 45.510. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.515. REQUEST FOR ELIGIBILITY EVALUATION. For an injury occurring on or after July 1, 1988, an employee or employer may request in writing, preferably on a form prescribed by the administrator, an eligibility evaluation. The request must include the employee's current address and telephone number, the employer's name, the date of the injury, and must be signed by the party making the request. The request must be accompanied by a written statement by a physician that the employee may be permanently precluded from returning to the employee's occupation at the time of injury. If the request is made by the employee it must also include

(a) the date the employee gave the employer notice of the injury; and

(b) if 90 days or more have passed since the employee gave the employer notice of the injury, the employee must state in writing the unusual and extenuating circumstance, as defined in 8 AAC 45.520, that prevented the employee from requesting the evaluation within 90 days of giving notice. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.516. DETERMINATION OF USUAL AND EXTENUATING CIRCUMSTANCE. If 90 days or more have passed between the date employee gave the employer notice of the injury and the date an employee files a request completed in accordance with 8 AAC 45.515, the administrator will determine if, in accordance with 8 AAC 45.520, an unusual and extenuating circumstance prevented the employee from timely requesting an eligibility evaluation. The administrator will the parties give written notice of the determination within 30 days after receiving the completed request. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.517. DETERMINATION ON AN ELIGIBILITY REQUEST.

(a) Within 30 days after receiving a written request, the administrator will determine if an eligibility evaluation will be done, and give the parties written notice of the determination. In making the determination, the administrator will consider whether

(1) the request is in complete accordance with 8 AAC 45.515;

(2) 8 AAC 45.516 is applicable, and if so, whether the administrator found an unusual and extenuating circumstance exists as defined in 8 AAC 45.520;

(3) the injury has been accepted as compensable by the employer; and

(4) the injury may permanently preclude the employee from returning to the occupation at the time of injury.

(b) If the administrator's determines

(1) under subsection (a) above that an employee is eligible or ineligible for an evaluation, the written determination will also tell the parties how to request review by the board of the determination. If the employee is eligible for an evaluation, the written notice will include

(A) the name of the rehabilitation specialist assigned by the administrator in accordance with 8 AAC 45.430;

(B) a statement that the administrator will decide the employee's eligibility for reemployment benefits within 14 days after the rehabilitation specialist's report is received by the administrator, and

(C) telling the employee or employer that any information they want the administrator to consider must be filed with the administrator within seven days after the rehabilitation specialist's report is filed.

(2) that the request is not complete in accordance with 8 AAC 45.515 or 8 AAC 45.516, if applicable, the written notice of the determination will tell the parties what information is needed. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.520. UNUSUAL AND EXTENUATING CIRCUMSTANCE. For purposes of AS 23.30.041, "an unusual and extenuating circumstance that prevents the employee from making a timely request" is

- (1) the employee is mentally incompetent;
- (2) the insurer failed to provide notice as required by 8 AAC 45.510; or
- (3) the employee proves no notice was given as required by 8 AAC 45.510. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.522. ELIGIBILITY EVALUATION. (a) For injuries occurring on or after July 1, 1988, if the administrator assigns a rehabilitation specialist under 8 AAC 45.515 and the employer disputes the eligibility for an evaluation by filing a request for the board to review the administrator's determination, the rehabilitation specialist shall proceed with the eligibility evaluation until the board's decision is filed after a hearing in accordance AS 23.30.110 and 8 AAC 45.070.

(b) In doing an eligibility evaluation, the rehabilitation specialist shall

(1) interview, either in-person or by telephone, the employee to get a description of the employee's job at the time of injury, information about other jobs the employee has held or received training for within 10 years before the injury, and information about other jobs the employee has held following the injury;

(2) use the information obtained from the employer and the employee to select a single or multiple job descriptions from the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Dictionary of Occupational Titles" that come the closest to matching each job the employee held or received training for which the employee meets the specific vocational preparation level for the job. The job description or descriptions selected shall be given to a physician to review and predict whether the employee is expected to have the permanent physical capacities and ability to do the job or jobs.

(3) review the physician's predictions provided under subsection (2), and

(A) if multiple SCODDOT job descriptions are required to describe a single job held by employee and if the physician disapproves any of the SCODDOT job descriptions, then the rehabilitation specialist must conclude the employee cannot return to that job; or

(B) if the physician predicts the employee can return to a job held in the past 10 years, the rehabilitation specialist must perform a labor market survey to determine if

the job exists and if there are reasonable vacancies available for that job.

(4) obtain information about offers of employment from the employer and whether the employment is offered under AAC 23.30.041(f);

(5) determine whether the employee has previously been rehabilitated and completed a retraining plan under a prior workers' compensation claim;

(6) determine whether a physician predicts that at the time of medical stability the employee will have a permanent impairment rating under the AMA Guides; and

(7) provide other information requested by the administrator for the evaluation.

(d) The rehabilitation specialist's report must be filed within 30 days after the administrator's assignment. If an extension is requested and granted, the report must be filed within 60 days after the assignment. The report must include the cost of the evaluation, specifically itemizing the rehabilitation specialist's charges for performing the evaluation, the conclusions of the evaluation and the reasons for the conclusions. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.525. OFFER OF EMPLOYMENT. (a) Except as provided in this section, for an injury occurring on or after July 1, 1988, an offer of employment under AS 23.30.041(f) must be

(1) in writing on an administrator's approved form and include a job description approved by a physician together with a brief survey of employers showing the job exists in the labor market;

(2) filed with the administrator and served upon the employee and assigned rehabilitation specialist; and

(3) made by an employer, or its subsidiary, who has previously employed the employee; the job offer cannot be made by an employer who has never employed the employee.

(b) Even if the employment offered did not exist in the employer's or its subsidiary's business at the time of the employee's injury, it will be considered an offer of employment if according to AS 23.30.041(f)(1). (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.530. DETERMINATION ON ELIGIBILITY FOR REEMPLOYMENT BENEFITS. Within 14 days after receiving a rehabilitation specialist's report for an employee injured on or after July 1, 1988, the administrator will determine whether the employee is eligible, ineligible, or insufficient information exists to make a determination on eligibility for reemployment benefits. The

administrator will give the parties written notice by certified mail of the determination, the basis for the determination, and how to request the board review the determination. If the administrator decides

(a) that the information in the board's file is insufficient or does not support the eligibility recommendation, the administrator must suspend the eligibility decision; and

(1) state in writing the reason for not deciding eligibility. The reasons include failure to file a complete evaluation as described in this section, and/or insufficient documentation to support the eligibility decision, and

(2) require the employee, employer or the rehabilitation specialist to file additional information within a reasonable period so eligibility can be decided.

(b) the employee is eligible for reemployment benefits, the notice will

(1) state that the employee must select a rehabilitation specialist within 10 days after the employee receives the notice;

(2) include a copy of the administrator's list of rehabilitation specialists in the employee's geographic area; and

(3) instruct the employee on how to tell the employer and administrator of the rehabilitation specialist selected. (Eff.

/ / , Register) .

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.535. SELECTION OF A REHABILITATION SPECIALIST. (a) Within 10 days after receipt of the administrator's notice under 8 AAC 45.530 of the employee's eligibility for benefits, the employee must file with the administrator and serve upon the employer written notice of the rehabilitation specialist selected by the employee.

(b) If the employer objects to the rehabilitation specialist selected by the employee, the employer must file written notice of that objection with the administrator within 10 days after receipt of the employee's written notice of selection of a rehabilitation specialist.

(c) If in accordance with (b) of this section the employer objects to the rehabilitation specialist the employee selected, the administrator shall assign a rehabilitation specialist in accordance with 8 AAC 45.430 and 8 AAC 45.540. (Eff. / / , Register) .

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.540. REHABILITATION SPECIALIST ASSIGNMENT FOR REEMPLOYMENT BENEFITS. (a) If the employer objects in accordance with 8 AAC 45.535(c) to the employee's selection of a rehabilitation specialist, the administrator shall notify the employee and employer by mail of the rehabilitation specialist to be assigned.

(1) Within 10 days after receiving the administrator notice, either the employer or the employee may file with the administrator a written notice objecting to the assignment; a copy of the notice must be served upon the other party and the rehabilitation specialist.

(2) If no objection is filed in accordance with subsection (a)(1), the rehabilitation specialist shall begin formulating a reemployment plan. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.542. CHANGE OF REHABILITATION SPECIALIST TO FORMULATE A PLAN. (a) If an employee has selected or been assigned a rehabilitation specialist to develop a plan and, before the plan is formulated, a change of residence by the employee or a change of business address by the rehabilitation specialist places the employee and rehabilitation specialist in different geographical locations, upon written notice that the worker has relocated, the administrator will decide if the reassignment is needed to complete the assignment.

(b) If under (a) of this section the administrator assigns another rehabilitation specialist, the administrator will make the assignment in accordance with 8 AAC 45.430. (Eff. / / , Register).

Authority: AS 23.30.005

AS 23.30.041

8 AAC 45.550. REEMPLOYMENT PLANS. (a) If an employee injured on or after July 1, 1988, is eligible for reemployment benefits, the rehabilitation specialist must formulate a reemployment plan using one of the five options listed in AS 23.30.041(i).

(b) A reemployment plan report must be accompanied by a form approved by the administrator, and must include

(1) the information required under AS 23.30.041(h);

(2) a brief discussion of jobs explored under each of the retraining options of AS 23.30.041(i) and the supporting information for the selection of the occupational goal of the plan;

(3) a job analysis or job description approved by the employee's treating physician showing the employee will have the physical capacity to do the job duties of the reemployment plan;

(4) the anticipated end date of the plan; and

(5) the rehabilitation specialist's signature, and the signatures of the employee and the employer acknowledging receipt of a copy of the plan and whether they approve or disapprove the plan.

(c) If the employee and employer agree upon a reemployment plan within 90 days after the selection or assignment of a rehabilitation specialist, the rehabilitation specialist shall file the agreed upon plan with the administrator and the plan goes forward.

(d) If a plan is developed and written by the rehabilitation specialist and the employer and employee do not agree to the reemployment plan, a party may request the administrator review and approve the plan. A party may submit a reemployment plan which was not developed and written by the rehabilitation specialist and request the administrator to review and approve the plan. To request the administrator's review, a party must

(1) file the reemployment plan together with a review request form prescribed by the administrator, and

(2) serve a copy of the plan upon the other party.

(e) The administrator will not review or approve a plan which is not in accordance with subsection (d).

(f) If the party served in accordance with (d) of this section with copy of a plan objects to the plan and does not want the administrator to approve the plan, the party must within 10 days after being served file with the administrator written objection to the proposed plan. The party must serve a copy of the written objections upon the other party.

(g) If a reemployment plan is filed under (d) of this section and complies with the requirements of (d), the administrator must, based on the administrator's review of documents in the board's file, approve the plan, deny the plan, or request additional information.

(h) If a reemployment plan is filed under (d) and the employee and insurer did not sign or agree to the plan, the administrator will exercise discretion to schedule an informal rehabilitation conference to resolve the dispute. Upon agreement of the parties, the administrator may modify the plan filed under (d) of this section.

(i) If the administrator determines the information in the board's file is insufficient or does not support approving the plan, the administrator must in writing

(1) deny the plan; or

(2) ask the employee, employer or the rehabilitation specialist to file additional information within 20 days. If the additional information is not filed with the administrator within 20 days after service of the administrator's request, the administrator must deny the plan.

(j) If the administrator denies a plan, the administrator must state in writing the reason for denying the plan. Reasons for denying the plan include, but are not limited to

(1) failure to file a complete plan as described in (b) of this section or under AS 23.30.041(h) and (i); or

(2) insufficient documentation that the employee can complete the plan, do the duties of the job after completing the plan, complete the plan within the time and cost limits of the Act, or be employable at the completion of the plan.

(k) If a reemployment plan is filed under (d) and

(1) is approved by the parties or the administrator, the rehabilitation specialist must file progress reports every 60 days until end of the plan; or

(2) is not approved, the administrator will exercise discretion to direct the rehabilitation specialist to formulate another plan or assign another rehabilitation specialist in accordance with 8 AAC 45.430 to formulate another reemployment plan. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.555. REEMPLOYMENT PLAN COSTS. (a) If an injury occurred on or after July 1, 1988, a reemployment plan must be approved before expenses are incurred to carry out that plan. Except for reimbursing the employee for costs incurred under an approved reemployment plan, the money available under AS 23.30.041(1) may not be paid to the employee.

(b) If a self-employment plan is formulated or approved, the money available under AS 23.30.041(1) may be used to reimburse the employee for purchasing a business, or the facilities, equipment, or tools for a business. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.557. REEMPLOYMENT PLAN EXTENSION OR SUSPENSION. A rehabilitation specialist may request in writing that the administrator extend the time to formulate a rehabilitation plan, or suspend efforts to formulate a rehabilitation plan. The request must include telling the administrator of the circumstances and reasons for the extension or suspension. The administrator will exercise discretion and grant the request if

(1) the employee is not medically able to participate in reemployment plan activity; or

(2) a physician has not made a prediction of the employee's physical capacities. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.559. COST OF A REEMPLOYMENT PLAN. a) The employer and employee may agree to a plan that costs more than \$10,000; and

b) the administrator will exercise discretion to approve a plan that exceeds \$10,000 if the employee agrees to pay the costs in excess of \$10,000. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

8 AAC 45.560. SELECTED CHARACTERISTICS OF OCCUPATIONS DEFINED IN THE DICTIONARY OF OCCUPATIONAL TITLES. (a) For purposes of AS 23.30.041(e), it is presumed that the employee's job is addressed in the United States Department of Labor's "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles."

(b) If the administrator finds that "Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles" does not address the employee's job or the employee's job

does not exist in the labor market, then the administrator will determine the employee's eligibility based on the actual physical demands of the employee's job. (Eff. / / , Register).

Authority: AS 23.30.005 AS 23.30.041

*Sec. 50. 8 AAC 45.900(c) is amended by adding a new subsection (3) to read:

- (3) "cleaning persons" means persons who
 - (A) clean only a personal dwelling unit, as opposed to business or commercial units,
 - (B) are hired directly by the owner or tenant entitled to occupy the personal dwelling unit being cleaned, and
 - (C) the owner or tenant for whom they are cleaning actually lives in the personal dwelling unit being cleaned. (Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107, am 3/16/90, Register 113).

Authority: AS 23.30.005(h) AS 23.30.030 AS 23.30.041
AS 23.30.090 AS 23.30.175 AS 23.30.220
AS 23.30.230 AS 23.30.240 AS 23.30.265

*Sec. 51. 8 AAC 46.020(a)(3) is amended to read;

(3) accompanied by audited financial statements of the three most recent fiscal or calendar years for the employer; the employer may submit consolidated financial statements of its parent company if the employer does not have its own audited financial statements and the employer is a majority or wholly-owned subsidiary; public entities must submit audited comprehensive [THEIR THREE MOST RECENT] annual financial reports, including detail schedules, for their three most recent fiscal or calendar years: (Eff 11/20/83, Register 88; am / / , Register).

Authority: AS 23.30.005 AS 23.30.075 AS 23.30.090

*Sec 52. 8 AAC 46.040(c) is amended to read:

(c) [A MUNICIPALITY WILL NOT BE REQUIRED TO POST A SECURITY DEPOSIT. OTHER APPLICANTS] An employer who believes it should be exempted from posting a security deposit shall submit to the board a statement of reasons for exemption. (Eff 11/20/83, Register 88; am / / , Register).

Authority: AS 23.30.005 AS 23.30.075 AS 23.30.090

* Sec. 53. 8 AAC 46.080(a)(3) is amended to read:

(3) accompanied by audited financial statements, not previously submitted to the board in support of a prior certificate of self-insurance, for the self-insurer's most recent fiscal or calendar year; [, EXCEPT FOR] public entities [WHICH] must submit [THEIR MOST RECENT] audited comprehensive annual financial reports, including detail schedules, not previously submitted to the board in support of a prior certificate of self-insurance for their most recent fiscal or calendar year; and (Eff. 11/20/83, Register 88; am / / , Register).

Authority: AS 23.30.005 AS 23.30.090
AS 23.30.075 AS 23.30.155

*Sec. 54. 8 AAC 46.900 is amended by renumbering subsections (2) through (6) to become (3) through (7), and adding a new subsection (2) to read:

(2) "audited comprehensive annual financial reports" means, at a minimum, general purpose financial statements including all notes, combined statements by fund type, the individual fund statements and other schedules that provide additional detailed information relative to the general purpose financial statements, upon which an independent auditor has expressed a professional opinion that the accompanying statements present fairly the financial position of the public entity in conformity with generally accepted accounting principles, and statistical tables that present various financial, economic, social and demographic data about the public entity for the last ten years. (Eff. 11/20/83, Register 88; am / / , Register).

Authority: AS 23.30.005 AS 23.30.090 AS 23.30.265

EO

93

TONY KNOWLES
GOVERNOR



P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 8, 1996

The Honorable Gail Phillips
Speaker of the House
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

Dear Speaker Phillips:

Under the authority of art. III, sec. 23, of the Alaska Constitution, I am transmitting an Executive Order to transfer the Alaska regional economic assistance program (AS 44.33.026) from the Department of Commerce and Economic Development (DCED) to the Department of Community and Regional Affairs (DCRA).

The transfer of this program to DCRA is in the interest of more efficient functioning of state government. There are already several loan programs administered by DCRA to encourage rural economic development. Because the Alaska regional economic assistance program has essentially the same goals, placing this program in DCRA should result in more efficient operation.

I urge your support of this Executive Order.

Sincerely,

A handwritten signature in cursive script that reads "Tony Knowles".

Tony Knowles
Governor

FISCAL NOTE

No. 2
 Version: EO 93
 (H) Publish Date: 1-8-96

STATE OF ALASKA
1996 LEGISLATIVE SESSION

Revision Date: _____ Department: Commerce and Economic Development
 Title: Executive Order transferring the ARDOR Program BRU: Trade and Development
 to the Department of Community and Regional Affairs Component: Trade and Development
 Sponsor: Rules
 Requestor: Governor COMPONENT SERIAL NO. 2056

Expenditures/Revenues	(Thousands of Dollars)					
	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
OPERATING EXPENDITURES						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	
-----------------------------	--

CHANGE IN REVENUES	
---------------------------	--

FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 96) cost: \$ _____

POSITIONS	
FULL-TIME	
PART-TIME	
TEMPORARY	

ANALYSIS: (Attach a separate page if necessary)
 This Executive Order will have no fiscal impact. The financial transfer will be accomplished with an amendment to the FY 97 budget transferring the \$650.0 grant program and \$15.0 for administrative costs from the Department of Commerce and Economic Development, Division of Trade and Development, to the Department of Community and Regional Affairs.

Prepared by: Guy Bell, Director Phone: 465-2505
 Division: Administrative Services Date: January 5, 1996
 Approved by Commissioner: William L. Hensley Date: 1-5-96
 Agency: Commerce and Economic Development

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COMMITTEE COPY

FISCAL NOTE

Revision Date: _____ Dept. Affected: Community & Regional Affairs
 Title: EO - ARDOR BRU: Employment/Training/Rural Dev.
 Component: Rural Development Grants
 Sponsor: Rules Committee
 Requestor: Governor COMPONENT SERIAL NO. 667

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other 1007 I/A						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY96)
costs: _____

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

The ARDORS program is being transferred by Executive Order from the Department of Commerce and Economic Development to the Department of Community and Regional Affairs. Fiscal impacts will be addressed by budget amendment at a later date.

Prepared by: Remond Henderson, Director *Remond Henderson* Phone: 465-4708
 Division: Division of Administrative Services Date: 01/04/96
 Approved by Commissioner: Mike Irwin *Mike Irwin* Date: 01/04/96
 Agency: Community & Regional Affairs

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HB

17



GOLDEN VALLEY ELECTRIC ASSOCIATION INC. Box 71249, Fairbanks, Alaska 99707-1249, Phone 907-452-1151

February 24, 1995

Representative Joe Green
Alaska State Legislature
State Capitol (MS 3100)
Juneau AK 99801-1182

Dear Representative Green:

Golden Valley Electric Association supports CSHB 17.

This legislation will allow electric cooperatives to offer direct satellite television, sewer and water, and gas services when authorized by the Alaska Public Utilities Commission. Since the electric cooperative is the only utility serving many communities in Alaska, the ability to expand services will surely benefit many Alaskans.

Two other provisions of the bill are housekeeping items. One will allow members of a cooperative to vote on amendments to the articles of incorporation by mail. The other allows members to specify the officers of the cooperative in the bylaws. This will permit titles for officers that are consistent with other corporate boards.

I hope you will call me if you have any questions about our support of this bill. We appreciate your committee's consideration of our recommendations.

Best regards,

A handwritten signature in cursive script that reads 'Becki Gray'.

Becki Gray
Information Officer

kag



CHUGACH ELECTRIC

ASSOCIATION, INC.

February 23, 1995

The Honorable Joe Green
Alaska State Legislature
State Capitol
Juneau, AK 99801-1182

VIA FAX: 465-4316

Dear Joe:

Chugach appreciates your dedicated efforts in sponsoring and supporting HB17, particularly the sections concerning the amendment dealing with officers of a cooperative. However, in our opinion, Section 1, Legislative Intent, is too narrow in scope. I understand that any changes would be very difficult in view of what other ideas legislators have for the services that should be provided by cooperatives. Chugach suggests a more broad statement that would allow a cooperative to engage in "utility business" rather than "services". This is not intended to threaten the telephone companies, but I and the Board of Directors have discussed possible other lines of business that Chugach might want to investigate or offer. I am not prepared to give specifics on what possible business we have in mind, but if the opportunity were to present itself, Chugach would be happy if the scope was broadened.

Thanks again for your help. Hope to see you on March 14 at our dinner at the Baranof.

Sincerely,

A handwritten signature in cursive script that reads "Eugene N. Bjornstad".

Eugene N. Bjornstad
General Manager



ARECA

Electric Service for 300,000 Alaskans

Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

February 21, 1995

Representative Joe Green
Room 24, State Capitol
Juneau, Alaska

Dear Representative Green:

In reading the 1994 Annual Report from the Alaska Public Utilities Commission, I discovered some very interesting information related to your CS HB 17. The statistical report from the commission lists 106 communities served by electric cooperatives which do not have sewer systems and 104 such communities without water systems. If your legislation is enacted, it is likely that electric cooperatives will bring sewer and water systems to at least some of those communities within a few years.

Thank you for your leadership on this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dave", is written over a horizontal line.

David Hutchens
Executive Director

BILL: HB 17 SHORT TITLE: OFFICERS OF UTILITY COOPERATIVES

BILL VERSION:

SPONSOR(S): REPRESENTATIVE(S) GREEN

CURRENT STATUS: (H) L&C

STATUS DATE: 02/10/95

TITLE: "An Act relating to the titles that describe the two principal executive officers of electric and telephone cooperatives."

01/06/95	25	(H)	PREFILE RELEASED
01/16/95	25	(H)	READ THE FIRST TIME - REFERRAL(S)
01/16/95	25	(H)	STATE AFFAIRS, LABOR & COMMERCE
02/10/95	293	(H)	STA RPT CS(STA) NEW TITLE 6DP 1NR
02/10/95	294	(H)	DP: JAMES, PORTER, GREEN, ROBINSON
02/10/95	294	(H)	DP: WILLIS, OGAN
02/10/95	294	(H)	NR: IVAN
02/10/95	294	(H)	ZERO FISCAL NOTE (DCED) 2/10/95
02/10/95	294	(H)	REFERRED TO LABOR & COMMERCE

CS FOR HOUSE BILL NO. 17(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act expanding the services that may be offered by an electric cooperative
2 to include sewer and water and gas services when authorized by the Alaska
3 Public Utilities Commission, and to include direct satellite television services;
4 relating to officers of a telephone or electric cooperative; relating to amendment
5 of the articles of incorporation of a telephone or electric cooperative; relating to
6 reporting requirements of telephone and electric cooperatives; relating to
7 involuntary dissolution of telephone and electric cooperatives; and providing for
8 an effective date."

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

10 * Section 1. LEGISLATIVE INTENT. (a) It is the intent of the legislature that an electric
11 cooperative is authorized to expand the types of utility services it offers only when the Alaska
12 Public Utilities Commission finds that it is in the public interest that those services be
13 provided and that the electric cooperative applying to provide the service is fit, willing, and

1 able to do so.

2 (b) It is further the intent of the legislature that these certificates of public convenience
3 and necessity, like other certificates for the same kinds of utility service, be exclusive as to
4 area rather than permitting the electric cooperative to enter into competition with another
5 provider of the same kind of utility service.

6 * Sec. 2. AS 10.25.020 is amended to read:

7 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric
8 cooperative may

9 (1) generate, manufacture, purchase, acquire, accumulate, and transmit
10 electric energy, and distribute, sell, supply, and dispose of electric energy to its
11 members, to governmental agencies and political subdivisions, and to other persons not
12 exceeding 10 percent of the number of its members; however, a cooperative that
13 acquires existing electric facilities may continue service to persons, not in excess of
14 40 percent of the number of its members, who are already receiving service from these
15 facilities without requiring them to become members, and these persons may become
16 members upon the terms as may be prescribed in the bylaws;

17 (2) assist persons to whom electric energy is or will be supplied by the
18 cooperative in wiring their premises and in acquiring and installing electrical and
19 plumbing appliances, equipment, fixtures, and apparatus by financing them, and in
20 connection with these services wire or have wired the premises, and buy, acquire,
21 lease, sell, distribute, install, and repair electric and plumbing appliances, equipment,
22 fixtures, and apparatus;

23 (3) assist persons to whom electric energy is or will be supplied by the
24 cooperative in constructing, equipping, maintaining, and operating electric cold storage
25 or processing plants by financing them or otherwise;

26 (4) operate a waste heat distribution system;

27 (5) operate a heating distribution system that was in existence on June 9,
28 1988;

29 (6) provide one or more of the following utility services if the
30 cooperative has received a certificate of convenience and necessity under
31 AS 42.05.221 - 42.05.281 from the Alaska Public Utilities Commission; the utility

1 services may include sewer and water and gas services;

2 (7) provide direct satellite television programming services.

3 * Sec. 3. AS 10.25.200 is amended to read:

4 Sec. 10.25.200. OFFICERS. The officers of a cooperative are those officers
5 authorized by the bylaws [A PRESIDENT, A VICE PRESIDENT, A SECRETARY
6 AND A TREASURER]. The officers shall be elected annually by the board of
7 directors from among its members. If authorized by the bylaws, the election may
8 be conducted by written ballot. When a person holding an office ceases to be a
9 director, that person ceases to hold office. [THE OFFICES OF SECRETARY AND
10 OF TREASURER MAY BE HELD BY THE SAME PERSON.] The board of
11 directors may [ELECT OR] appoint those [SUCH] other [OFFICERS,] agents [,] or
12 employees that [AS] it considers necessary or advisable and shall prescribe their
13 powers and duties. An officer may be removed from office and a successor elected
14 in the manner prescribed in the bylaws.

15 * Sec. 4. AS 10.25.210 is amended to read:

16 Sec. 10.25.210. AMENDMENT OF ARTICLES OF INCORPORATION. A
17 cooperative may amend its articles of incorporation as follows, except that it may
18 change the location of its principal office in the manner set out in AS 10.25.230:

19 (1) the proposed amendment shall be presented to [A MEETING OF]
20 the members [,] or district delegates at a meeting or by written notice; if the
21 proposed amendment is presented at a meeting, [AND] the notice of the meeting
22 must set out or have attached to it the proposed amendment;

23 (2) if the proposed amendment, with any changes, is approved by the
24 affirmative vote of not less than two-thirds of those members [,] or district delegates
25 voting on it, the presiding officer of the board of directors [PRESIDENT OR VICE
26 PRESIDENT] shall execute and acknowledge articles of amendment on behalf of the
27 cooperative and the officer designated by the board [SECRETARY] shall affix and
28 attest to the seal of the cooperative; if the cooperative accepts ballots both at a
29 meeting and by mail, a member may vote by mail or at the meeting.

30 * Sec. 5. AS 10.25.220(b) is amended to read:

31 (b) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing

1 the articles of amendment shall make and annex to them an affidavit stating that the
2 provisions of this section regarding the amendment were complied with.

3 * Sec. 6. AS 10.25.230 is amended to read:

4 Sec. 10.25.230. CHANGE OF LOCATION OF PRINCIPAL OFFICE. A
5 cooperative may, upon authorization of its board of directors or its members, change
6 the location of its principal office by filing a certificate reciting the change of principal
7 office, executed and acknowledged by its presiding officer [PRESIDENT OR VICE
8 PRESIDENT] under its seal, attested by the officer designated by the board [ITS
9 SECRETARY], in the office of the commissioner.

10 * Sec. 7. AS 10.25.240(a) is amended to read:

11 (a) Except as provided in (b) of this section, one or more cooperatives, each
12 designated in this section as "merging cooperative," may merge into another
13 cooperative, designated in this section as "surviving cooperative," by complying with
14 the following requirements:

15 (1) the proposition for the merger of the merging cooperatives into the
16 surviving cooperative and proposed articles of merger shall be submitted to the
17 members of each merging cooperative and of the surviving cooperative; the notice
18 shall have attached to it a copy of the proposed articles of merger;

19 (2) if the proposed merger and the proposed articles of merger, with
20 any amendments, are approved by the affirmative vote of not less than two-thirds of
21 those members of each cooperative voting on them, articles of merger in the form
22 approved shall be executed and acknowledged on behalf of each cooperative by its
23 presiding officer [PRESIDENT OR VICE PRESIDENT] and its seal shall be affixed
24 by the officer designated by the board [ITS SECRETARY].

25 * Sec. 8. AS 10.25.250(c) is amended to read:

26 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] of each
27 cooperative shall make and annex to the articles an affidavit stating that the provisions
28 of this section regarding the articles were complied with by the cooperative.

29 * Sec. 9. AS 10.25.260 is amended to read:

30 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, designated
31 in this section as "consolidating cooperative," may consolidate into a new cooperative,

1 designated in this section as the "new cooperative," by complying with the following
2 requirements:

3 (1) the proposition for the consolidation into the new cooperative and
4 proposed articles of consolidation shall be submitted to the members of each
5 consolidating cooperative; the notice shall have attached to it a copy of the proposed
6 articles of consolidation:

7 (2) if the proposed consolidation and the proposed articles of
8 consolidation, with any amendments, are approved by the affirmative vote of not less
9 than two-thirds of those members of each consolidating cooperative voting on them,
10 articles of consolidation in the form approved shall be executed and acknowledged on
11 behalf of each consolidating cooperative by its presiding officer [PRESIDENT OR
12 VICE PRESIDENT] and its seal shall be affixed and attested by the officer
13 designated by the board [ITS SECRETARY].

14 * Sec. 10. AS 10.25.270(c) is amended to read:

15 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] of each
16 consolidating cooperative executing the articles of consolidation shall make and annex
17 to the articles an affidavit stating that the provisions of this section regarding the
18 articles were complied with by the cooperative.

19 * Sec. 11. AS 10.25.290(c) is amended to read:

20 (c) If the proposition for the conversion of the corporation into a cooperative
21 and the proposed articles of conversion, with any amendments, are approved by the
22 affirmative vote of not less than two-thirds of those members of the corporation voting
23 on them or, if the corporation is a stock corporation, by the affirmative vote of the
24 holders of not less than two-thirds of those shares of the capital stock of the
25 corporation represented at the meeting and voting on them, or, in the case of a
26 corporation having no members and no shares of its capital stock outstanding, by the
27 affirmative vote of not less than two-thirds of its incorporators, articles of conversion
28 in the form approved shall be executed and acknowledged on behalf of the corporation
29 by its presiding officer [PRESIDENT OR VICE PRESIDENT] and its seal shall be
30 affixed and attested by the officer designated by the board [ITS SECRETARY].

31 * Sec. 12. AS 10.25.300(c) is amended to read:

1 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing
2 the articles of conversion shall make and annex to it an affidavit stating that the
3 provisions of this section were complied with regarding the articles. The articles of
4 conversion are the articles of incorporation of the cooperative.

5 * Sec. 13. AS 10.25.320(d) is amended to read:

6 (d) Upon approval, a certificate of election to dissolve, hereafter designated the
7 "certificate," executed and acknowledged on behalf of the cooperative by its presiding
8 officer [PRESIDENT OR VICE PRESIDENT] under its seal, attested by the officer
9 designated by the board [ITS SECRETARY], shall be submitted to the commissioner
10 for filing together with an affidavit by the officer executing the certificate stating that
11 the statements in the certificate are true. The certificate must state the name of the
12 cooperative, the address of its principal office, and that the members of the cooperative
13 have voted to dissolve the cooperative.

14 * Sec. 14. AS 10.25.350 is amended to read:

15 Sec. 10.25.350. TERMINATION OF COOPERATIVE AFFAIRS. The board
16 of directors shall wind up and settle the affairs of the cooperative, collect sums owing
17 to it, liquidate its property and assets, pay and discharge its debts, obligations, and
18 liabilities, other than those to patrons arising by reason of their patronage, and do all
19 other things required to wind up its business. After paying or discharging or
20 adequately providing for the payment or discharge of all its debts, obligations, and
21 liabilities, other than those to patrons arising by reason of their patronage, the directors
22 shall distribute remaining sums, first, to patrons for the pro rata return of all amounts
23 standing to their credit by reason of their patronage [,] and, second, to members for
24 the pro rata repayment of membership fees. Sums then remaining shall be distributed
25 among its members and former members in proportion to their patronage, except to the
26 extent participation in the distribution has been legally waived. The board of directors
27 shall thereupon authorize the execution of articles of dissolution. The presiding
28 officer [PRESIDENT OR VICE PRESIDENT] shall execute and acknowledge articles
29 of dissolution on behalf of the cooperative and the officer designated by the board
30 [SECRETARY] shall affix and attest to the seal.

31 * Sec. 15. AS 10.25.360(b) is amended to read:

1 (b) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing
2 the articles of dissolution shall make and annex to the articles an affidavit stating that
3 the statements contained in the articles are true.

4 * Sec. 16. AS 10.25.480 is amended to read:

5 Sec. 10.25.480. EXECUTION AND FILING OF STATEMENT. The
6 statement of change of office or agent shall be executed by the cooperative by its
7 presiding officer [PRESIDENT OR VICE PRESIDENT], verified by the person
8 executing the statement, and directed to the commissioner. If the commissioner finds
9 that the statement conforms to this chapter, the commissioner shall file it in the
10 commissioner's office. Upon the filing, the change of address of the registered office,
11 and the appointment of the registered agent, or both, as the case may be, is effective.

12 * Sec. 17. AS 10.25 is amended by adding new sections to read:

13 Sec. 10.25.522. BIENNIAL REPORT. (a) A cooperative shall file with the
14 commissioner a biennial report, signed by the officer designated by the board, setting out

15 (1) the name of the cooperative;

16 (2) the name of the registered agent of the cooperative and its registered
17 office;

18 (3) the address of the cooperative's principal place of business in the
19 state;

20 (4) a brief statement of the character of the business in which the
21 cooperative is engaged in this state;

22 (5) the names and addresses of the members of the cooperative's board
23 of directors; and

24 (6) the names and addresses of the cooperative's presiding officer and
25 the other officers designated by the board.

26 (b) A cooperative filing articles of incorporation during an even-numbered year
27 shall file the biennial report under this section before July 2 of each even-numbered year.
28 A cooperative filing its articles of incorporation during an odd-numbered year shall file
29 the biennial report before July 2 of each odd-numbered year.

30 Sec. 10.25.524. FORM OF BIENNIAL REPORT; DELINQUENT REPORT;
31 INVOLUNTARY DISSOLUTION. (a) The biennial report shall be made on forms
32 furnished by the department. The information contained in the biennial report shall be

1 given as of June 30 of the reporting year. The biennial report is delinquent if not filed
2 before August 1 of the reporting year. The provisions in AS 10.06 (Alaska Corporations
3 Code) relating to involuntary dissolution of business corporations apply to telephone and
4 electric cooperatives.

5 (b) If the commissioner finds that the biennial report conforms to the
6 requirements of this chapter, the commissioner shall accept the report. If the biennial
7 report does not conform to the requirements of this chapter, the commissioner shall
8 return the report to the cooperative for necessary corrections.

9 Sec. 10.25.526. FILING NOTICE OF CHANGE OF OFFICER OR DIRECTOR.

10 (a) In the event of a change of an officer or director of a corporation during the 12
11 months following the filing of the biennial report, the corporation shall file a notice of
12 change amending that report. The notice of change is due on or before July 2 of the
13 year following the year in which the report was filed.

14 (b) The cooperative shall file the notice of change with the commissioner. The
15 notice must state the name and current address of a director or officer who was not
16 stated in the cooperative's most recently filed biennial report and indicate the name of
17 the person replaced and the office held. The notice shall be signed by the officer
18 designated by the board.

19 * Sec. 18. AS 10.25.530 is amended to read:

20 Sec. 10.25.530. FEES. (a) The commissioner shall establish by regulation and
21 charge and collect fees for

- 22 (1) filing articles of incorporation;
23 (2) filing articles of amendment;
24 (3) filing articles of consolidation or merger;
25 (4) filing articles of conversion;
26 (5) filing certificate of election to dissolve;
27 (6) filing articles of dissolution;
28 (7) filing certificate of change of principal office and designation or
29 change of registered office and registered agent; [AND]
30 (8) acting as agent for service of process; and
31 (9) filing the biennial report.

32 (b) The department may by regulation charge each cooperative subject to this

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chapter a fixed fee in place of the various fees specified in this chapter other than the fee for the biennial report and for the routine administrative services rendered to the corporation by the department.

* Sec. 19. AS 10.25.640 is amended by adding a new paragraph to read:

(6) "presiding officer" means the presiding officer of the board of directors of the cooperative.

* Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 2, 1995

SUBJECT: CSHB 17 (L&C) (Telephone and Electric Cooperatives)

TO: Representative Pete Kott
Attn: George Dozier

FROM: Teresa B. Cramer 
Legislative Counsel

As I mentioned to George Dozier of your staff on the telephone, I have some concerns about the Committee Substitute I have prepared for HB 17.

Direct Satellite Television Service. I have added reference to direct satellite television service into the title (in a different clause) to meet the constitutional requirement as to bill titles.

Biennial reports. I have a number of concerns about this amendment adopted by the committee:

1. Note that the enclosed CS contains a reference in the title to the biennial report requirements and to the involuntary dissolution provision.
2. Is the schedule set out in the amendment realistic (technically due before July 2, with information as of June 30)?
3. Does the committee intend that all of the provisions relating to involuntary dissolution of business corporations apply to telephone and electric cooperatives? (See AS 10.06.628 - 10.06.678). Was a more limited reference intended, to involuntary dissolution by the commissioner? (See AS 10.06.633 in particular) If a more limited application was intended, there will still need to be provisions for how the involuntary dissolution is implemented.
4. Subsection (b) of the first new section, "Biennial Report", addresses when reports are due, but it is not clear that this applies to cooperatives that already exist.

Representative Pete Kott

March 2, 1995

Page 2

5. I am unclear about the intended timing for filing a notice of change of officer or director in the last proposed section of the amendment. I have interpreted the reference in subsection (a) to "the year following the filing of the biennial report," to mean the 12 months following the report. Is this correct?

Since HB 17 has passed from your committee, you may wish to share these questions with the next committee of referral.

TBC:klb

95-114.klb

9-LS0096K -
Cramer
3/6/95

CS FOR HOUSE BILL NO. 17(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act expanding the services that may be offered by an electric cooperative
2 to include sewer and water and gas services when authorized by the Alaska
3 Public Utilities Commission, and to include direct satellite television services;
4 relating to officers of a telephone or electric cooperative; relating to amendment
5 of the articles of incorporation of a telephone or electric cooperative; relating to
6 reporting requirements of telephone and electric cooperatives; relating to
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8 an effective date."

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11 cooperative is authorized to expand the types of utility services it offers that are subject to
12 regulation by the Alaska Public Utilities Commission only when the commission finds that
13 it is in the public interest that those services be provided and that the electric cooperative

1 applying to provide the service is fit, willing, and able to do so.

2 (b) It is further the intent of the legislature that these certificates of public convenience
3 and necessity, like other certificates for the same kinds of utility service, be exclusive as to
4 area rather than permitting the electric cooperative to enter into competition with another
5 provider of the same kind of utility service.

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11 members, to governmental agencies and political subdivisions, and to other persons not
12 exceeding 10 percent of the number of its members; however, a cooperative that
13 acquires existing electric facilities may continue service to persons, not in excess of
14 40 percent of the number of its members, who are already receiving service from these
15 facilities without requiring them to become members, and these persons may become
16 members upon the terms as may be prescribed in the bylaws;

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19 plumbing appliances, equipment, fixtures, and apparatus by financing them, and in
20 connection with these services wire or have wired the premises, and buy, acquire,
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22 fixtures, and apparatus;

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25 or processing plants by financing them or otherwise;

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28 1988;

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19 the members [,] or district delegates at a meeting or by written notice; if the
20 proposed amendment is presented at a meeting, [AND] the notice of the meeting
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22 (2) if the proposed amendment, with any changes, is approved by the
23 affirmative vote of not less than two-thirds of those members [,] or district delegates
24 voting on it, the presiding officer of the board of directors [PRESIDENT OR VICE
25 PRESIDENT] shall execute and acknowledge articles of amendment on behalf of the
26 cooperative and the officer designated by the board [SECRETARY] shall affix and
27 attest to the seal of the cooperative; if the cooperative accepts ballots both at a
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1 provisions of this section regarding the amendment were complied with.

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7 PRESIDENT] under its seal, attested by the officer designated by the board [ITS
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15 surviving cooperative and proposed articles of merger shall be submitted to the
16 members of each merging cooperative and of the surviving cooperative; the notice
17 shall have attached to it a copy of the proposed articles of merger;

18 (2) if the proposed merger and the proposed articles of merger, with
19 any amendments, are approved by the affirmative vote of not less than two-thirds of
20 those members of each cooperative voting on them, articles of merger in the form
21 approved shall be executed and acknowledged on behalf of each cooperative by its
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23 by the officer designated by the board [ITS SECRETARY].

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3 proposed articles of consolidation shall be submitted to the members of each
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5 articles of consolidation;

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7 consolidation, with any amendments, are approved by the affirmative vote of not less
8 than two-thirds of those members of each consolidating cooperative voting on them,
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23 holders of not less than two-thirds of those shares of the capital stock of the
24 corporation represented at the meeting and voting on them, or, in the case of a
25 corporation having no members and no shares of its capital stock outstanding, by the
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9 for filing together with an affidavit by the officer executing the certificate stating that
10 the statements in the certificate are true. The certificate must state the name of the
11 cooperative, the address of its principal office, and that the members of the cooperative
12 have voted to dissolve the cooperative.

13 * Sec. 14. AS 10.25.350 is amended to read:

14 Sec. 10.25.350. TERMINATION OF COOPERATIVE AFFAIRS. The board
15 of directors shall wind up and settle the affairs of the cooperative, collect sums owing
16 to it, liquidate its property and assets, pay and discharge its debts, obligations, and
17 liabilities, other than those to patrons arising by reason of their patronage, and do all
18 other things required to wind up its business. After paying or discharging or
19 adequately providing for the payment or discharge of all its debts, obligations, and
20 liabilities, other than those to patrons arising by reason of their patronage, the directors
21 shall distribute remaining sums, first, to patrons for the pro rata return of all amounts
22 standing to their credit by reason of their patronage [,] and, second, to members for
23 the pro rata repayment of membership fees. Sums then remaining shall be distributed
24 among its members and former members in proportion to their patronage, except to the
25 extent participation in the distribution has been legally waived. The board of directors
26 shall thereupon authorize the execution of articles of dissolution. The presiding
27 officer [PRESIDENT OR VICE PRESIDENT] shall execute and acknowledge articles
28 of dissolution on behalf of the cooperative and the officer designated by the board
29 [SECRETARY] shall affix and attest to the seal.

30 * Sec. 15. AS 10.25.360(b) is amended to read:

31 (b) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing

1 the articles of dissolution shall make and annex to the articles an affidavit stating that
2 the statements contained in the articles are true.

3 * Sec. 16. AS 10.25.480 is amended to read:

4 Sec. 10.25.480. EXECUTION AND FILING OF STATEMENT. The
5 statement of change of office or agent shall be executed by the cooperative by its
6 presiding officer [PRESIDENT OR VICE PRESIDENT], verified by the person
7 executing the statement, and directed to the commissioner. If the commissioner finds
8 that the statement conforms to this chapter, the commissioner shall file it in the
9 commissioner's office. Upon the filing, the change of address of the registered office,
10 and the appointment of the registered agent, or both, as the case may be, is effective.

11 * Sec. 17. AS 10.25 is amended by adding new sections to read:

12 Sec. 10.25.522. BIENNIAL REPORT. (a) A cooperative shall file with the
13 commissioner a biennial report, signed by the officer designated by the board, setting out

14 (1) the name of the cooperative;

15 (2) the name of the registered agent of the cooperative and its registered
16 office;

17 (3) the address of the cooperative's principal place of business in the
18 state;

19 (4) a brief statement of the character of the business in which the
20 cooperative is engaged in this state;

21 (5) the names and addresses of the members of the cooperative's board
22 of directors; and

23 (6) the names and addresses of the cooperative's presiding officer and
24 the other officers designated by the board.

25 (b) For a cooperative in existence on the effective date of this Act, the biennial
26 report is due July 15 of odd-numbered years. A cooperative filing articles of
27 incorporation during an even-numbered year shall file the biennial report under this
28 section before July 15 of each even-numbered year. A cooperative filing its articles of
29 incorporation during an odd-numbered year shall file the biennial report before July 15
30 of each odd-numbered year.

31 Sec. 10.25.524. FORM OF BIENNIAL REPORT; DELINQUENT REPORT;
32 INVOLUNTARY DISSOLUTION. (a) The biennial report shall be made on forms

1 furnished by the department. The information contained in the biennial report shall be
2 given as of June 30 of the reporting year. The biennial report is delinquent if not filed
3 before August 1 of the reporting year. The commissioner may involuntarily dissolve a
4 cooperative if the cooperative is delinquent six months in filing its biennial report. In
5 exercising the power of involuntary dissolution, the commissioner has the powers and
6 shall comply with the requirements of involuntary dissolutions for corporations under
7 AS 10.06 (Alaska Corporations Code).

8 (b) If the commissioner finds that the biennial report conforms to the
9 requirements of this chapter, the commissioner shall accept the report. If the biennial
10 report does not conform to the requirements of this chapter, the commissioner shall
11 return the report to the cooperative for necessary corrections.

12 Sec. 10.25.526. FILING NOTICE OF CHANGE OF OFFICER OR DIRECTOR.

13 (a) In the event of a change of an officer or director of a corporation during the 12
14 months following the filing of the biennial report, the corporation shall file a notice of
15 change amending that report. The notice of change is due on or before July 15 of the
16 year following the year in which the report was filed.

17 (b) The cooperative shall file the notice of change with the commissioner. The
18 notice must state the name and current address of a director or officer who was not
19 stated in the cooperative's most recently filed biennial report and indicate the name of
20 the person replaced and the office held. The notice shall be signed by the officer
21 designated by the board.

22 * Sec. 18. AS 10.25.530 is amended to read:

23 Sec. 10.25.530. FEES. (a) The commissioner shall establish by regulation and
24 charge and collect fees for

- 25 (1) filing articles of incorporation;
26 (2) filing articles of amendment;
27 (3) filing articles of consolidation or merger;
28 (4) filing articles of conversion;
29 (5) filing certificate of election to dissolve;
30 (6) filing articles of dissolution;
31 (7) filing certificate of change of principal office and designation or
32 change of registered office and registered agent; [AND]

- 1 (8) acting as agent for service of process; and
2 (9) filing the biennial report.

3 (b) The department may by regulation charge each cooperative subject to this
4 chapter a fixed fee in place of the various fees specified in this chapter other than the
5 fee for the biennial report and for the routine administrative services rendered to the
6 corporation by the department.

7 [(c) REPEALED.]

8 * Sec. 19. AS 10.25.640 is amended by adding a new paragraph to read:

9 (6) "presiding officer" means the presiding officer of the board of
10 directors of the cooperative.

11 * Sec. 20. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 17 (STA)

Revision Date: _____
 Title: Electric and Telephone Cooperatives

 Sponsor: Representative Green
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	1.1	1.1	1.1	1.1	1.1	1.1
-------------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1J06 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: \$ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There are currently 38 electric and telephone cooperatives formed under Alaska Statute 10.25. Nineteen of these corporations were formed in an odd year; 19 of these corporations were formed in an even year. If the proposed amendment is adopted, establishing a biennial reporting requirement with a filing fee of \$60.00 would result in an increase of revenue to the department in the amount of approximately \$1,100 each year.

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

 Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 5/25

 Date: 5/25

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COMMITTEE
ECONOMIC TASK FORCE

Representative Joe Green

Sponsor Statement

CSHB 17 - Electric Cooperative Services & By-laws

CSHB 17 proposes amendments to Title 10 in three different categories: The range of services that can be offered (sections 1, 2,); By-law changes relating to titles of officers (sections 4-18); and, By-law changes relating to elections (section 3).

Category 1 (Bill Sections 1 & 2): For many years electric cooperatives in Alaska, and across the country, have relied on the federal Rural Electrification Administration for low interest loans to build facilities to generate and transmit electricity. Last fall, the federal government reorganized the REA, and combined it with other programs which have traditionally provided loans for other utilities. The new agency is called the Rural Utility Service (RUS).

The new RUS provides loans for water, sewer, electric, and telephone facilities. RUS is encouraging electric cooperatives to provide sewer and water service where it is needed in their electric service areas. **The problem is, Alaska's cooperatives cannot take advantage of these new opportunities without a statutory change.**

CSHB17 expands the list of services that can be offered by an electric cooperative. The new services include water, sewer, natural gas, and direct satellite television. It is expected that this new flexibility will benefit consumers as utilities will be able to consolidate services to achieve better economies, and theoretically lower rates. Consumers, especially in rural areas, would also benefit from a cooperative's ability to develop conventional natural gas accumulations too small for commercial effort and/or develop so-called "coal-bed methane." These otherwise non-commercial gas accumulations offer potential as an environmentally friendly fuel for both heating and electrical generation.

Sponsor Statement
CSHB 17
Page 2

Of course, the services offered, and the rates charged for them are still subject to approval by the Alaska Public Utilities Commission, unless the consumers vote to deregulate the cooperative.

Category 2 (Bill Sections 4-18): CSHB 17 also provides a local option for the assignment of titles for the board officers of each cooperative. Current statute restricts the presiding officer of a utility board of directors to assume the title of "president." Cooperatives like Chugach Electric, who go to investment bankers in New York for their financing, believe it would be an advantage to them to be able to use standard business titles for their officers .

Category 3 (Bill Section 3): CSHB 17 clarifies the statutory language for election procedures. Language in section 4 removes ambiguity over the number of votes necessary to change cooperation by-laws by making it clear that a two-thirds affirmative vote of members voting at the annual meeting, or by mail, is required to amend the articles of incorporation.

CS FOR HOUSE BILL NO. 17(STA)
IN THE LEGISLATURE OF THE STATE OF ALASKA
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GREEN

A BILL

FOR AN ACT ENTITLED

1 "An Act expanding the services that may be offered by an electric cooperative to
2 include direct satellite television, sewer and water, and gas services when authorized
3 by the Alaska Public Utilities Commission; relating to officers of a telephone or
4 electric cooperative; relating to amendment of the articles of incorporation of a
5 telephone or electric cooperative; and providing for an effective date."

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

7 * Section I. LEGISLATIVE INTENT. (a) It is the intent of the legislature that an electric
8 cooperative is authorized to expand the types of utility services it offers only when the Alaska
9 Public Utilities Commission finds that it is in the public interest that those services be provided
10 and that the electric cooperative applying to provide the service is fit, willing, and able to do so.

11 (b) It is further the intent of the legislature that these certificates of public convenience
12 and necessity, like other certificates for the same kinds of utility service, be exclusive as to area
13 rather than permitting the electric cooperative to enter into competition with another provider of

1 the same kind of utility service.

2 * Sec. 2. AS 10.25.020 is amended to read:

3 Sec. 10.25.020. POWERS OF ELECTRIC COOPERATIVE. An electric
4 cooperative may

5 (1) generate, manufacture, purchase, acquire, accumulate, and transmit
6 electric energy, and distribute, sell, supply, and dispose of electric energy to its members,
7 to governmental agencies and political subdivisions, and to other persons not exceeding
8 10 percent of the number of its members; however, a cooperative that acquires existing
9 electric facilities may continue service to persons, not in excess of 40 percent of the
10 number of its members, who are already receiving service from these facilities without
11 requiring them to become members, and these persons may become members upon the
12 terms as may be prescribed in the bylaws;

13 (2) assist persons to whom electric energy is or will be supplied by the
14 cooperative in wiring their premises and in acquiring and installing electrical and
15 plumbing appliances, equipment, fixtures, and apparatus by financing them, and in
16 connection with these services wire or have wired the premises, and buy, acquire, lease,
17 sell, distribute, install, and repair electric and plumbing appliances, equipment, fixtures,
18 and apparatus;

19 (3) assist persons to whom electric energy is or will be supplied by the
20 cooperative in constructing, equipping, maintaining, and operating electric cold storage
21 or processing plants by financing them or otherwise;

22 (4) operate a waste heat distribution system;

23 (5) operate a heating distribution system that was in existence on June 9,
24 1988;

25 (6) provide one or more of the following utility services if the
26 cooperative has received a certificate of convenience and necessity under
27 AS 42.05.221 - 42.05.281 from the Alaska Public Utilities Commission; the utility
28 services may include direct satellite television, sewer and water, and gas services.

29 * Sec. 3. AS 10.25.200 is amended to read:

30 Sec. 10.25.200. OFFICERS. The officers of a cooperative are those officers
31 authorized by the bylaws [A PRESIDENT, A VICE PRESIDENT, A SECRETARY

1 AND A TREASURER]. The officers shall be elected annually by the board of directors
2 from among its members. If authorized by the bylaws, the election may be conducted
3 by written ballot. When a person holding an office ceases to be a director, that person
4 ceases to hold office. [THE OFFICES OF SECRETARY AND OF TREASURER MAY
5 BE HELD BY THE SAME PERSON.] The board of directors may [ELECT OR]
6 appoint ~~those~~ [SUCH] other [OFFICERS,] agents [,] or employees that [AS] it considers
7 necessary or advisable and shall prescribe their powers and duties. An officer may be
8 removed from office and a successor elected in the manner prescribed in the bylaws.

9 * Sec. 4. AS 10.25.210 is amended to read:

10 Sec. 10.25.210. AMENDMENT OF ARTICLES OF INCORPORATION. A
11 cooperative may amend its articles of incorporation as follows, except that it may change
12 the location of its principal office in the manner set out in AS 10.25.230:

13 (1) the proposed amendment shall be presented to [A MEETING OF] the
14 members [,] or district delegates at a meeting or by written notice; if the proposed
15 amendment is presented at a meeting, [AND] the notice of the meeting must set out
16 or have attached to it the proposed amendment;

17 (2) if the proposed amendment, with any changes, is approved by the
18 affirmative vote of not less than two-thirds of those members [,] or district delegates
19 voting on it, the presiding officer of the board of directors [PRESIDENT OR VICE
20 PRESIDENT] shall execute and acknowledge articles of amendment on behalf of the
21 cooperative and the officer designated by the board [SECRETARY] shall affix and
22 attest to the seal of the cooperative: if the cooperative accepts ballots both at a meeting
23 and by mail, a member may vote by mail or at the meeting.

24 * Sec. 5. AS 10.25.220(b) is amended to read:

25 (b) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing the
26 articles of amendment shall make and annex to them an affidavit stating that the
27 provisions of this section regarding the amendment were complied with.

28 * Sec. 6. AS 10.25.230 is amended to read:

29 Sec. 10.25.230. CHANGE OF LOCATION OF PRINCIPAL OFFICE. A
30 cooperative may, upon authorization of its board of directors or its members, change the
31 location of its principal office by filing a certificate reciting the change of principal

1 office, executed and acknowledged by its presiding officer [PRESIDENT OR VICE
2 PRESIDENT] under its seal, attested by the officer designated by the board [ITS
3 SECRETARY], in the office of the commissioner.

4 * Sec. 7. AS 10.25.240(a) is amended to read:

5 (a) Except as provided in (b) of this section, one or more cooperatives, each
6 designated in this section as "merging cooperative," may merge into another cooperative,
7 designated in this section as "surviving cooperative," by complying with the following
8 requirements:

9 (1) the proposition for the merger of the merging cooperatives into the
10 surviving cooperative and proposed articles of merger shall be submitted to the members
11 of each merging cooperative and of the surviving cooperative; the notice shall have
12 attached to it a copy of the proposed articles of merger;

13 (2) if the proposed merger and the proposed articles of merger, with any
14 amendments, are approved by the affirmative vote of not less than two-thirds of those
15 members of each cooperative voting on them, articles of merger in the form approved
16 shall be executed and acknowledged on behalf of each cooperative by its presiding
17 officer [PRESIDENT OR VICE PRESIDENT] and its seal shall be affixed by the officer
18 designated by the board [ITS SECRETARY].

19 * Sec. 8. AS 10.25.250(c) is amended to read:

20 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] of each
21 cooperative shall make and annex to the articles an affidavit stating that the provisions
22 of this section regarding the articles were complied with by the cooperative.

23 * Sec. 9. AS 10.25.260 is amended to read:

24 Sec. 10.25.260. CONSOLIDATION. Two or more cooperatives, designated in
25 this section as "consolidating cooperative," may consolidate into a new cooperative,
26 designated in this section as the "new cooperative," by complying with the following
27 requirements:

28 (1) the proposition for the consolidation into the new cooperative and
29 proposed articles of consolidation shall be submitted to the members of each
30 consolidating cooperative; the notice shall have attached to it a copy of the proposed
31 articles of consolidation;

1 (2) if the proposed consolidation and the proposed articles of
2 consolidation, with any amendments, are approved by the affirmative vote of not less
3 than two-thirds of those members of each consolidating cooperative voting on them,
4 articles of consolidation in the form approved shall be executed and acknowledged on
5 behalf of each consolidating cooperative by its presiding officer [PRESIDENT OR
6 VICE PRESIDENT] and its seal shall be affixed and attested by the officer designated
7 by the board [ITS SECRETARY].

8 * Sec. 10. AS 10.25.270(c) is amended to read:

9 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] of each
10 consolidating cooperative executing the articles of consolidation shall make and annex
11 to the articles an affidavit stating that the provisions of this section regarding the articles
12 were complied with by the cooperative.

13 * Sec. 11. AS 10.25.290(c) is amended to read:

14 (c) If the proposition for the conversion of the corporation into a cooperative and
15 the proposed articles of conversion, with any amendments, are approved by the
16 affirmative vote of not less than two-thirds of those members of the corporation voting
17 on them or, if the corporation is a stock corporation, by the affirmative vote of the
18 holders of not less than two-thirds of those shares of the capital stock of the corporation
19 represented at the meeting and voting on them, or, in the case of a corporation having no
20 members and no shares of its capital stock outstanding, by the affirmative vote of not less
21 than two-thirds of its incorporators, articles of conversion in the form approved shall be
22 executed and acknowledged on behalf of the corporation by its presiding officer
23 [PRESIDENT OR VICE PRESIDENT] and its seal shall be affixed and attested by the
24 officer designated by the board [ITS SECRETARY].

25 * Sec. 12. AS 10.25.300(c) is amended to read:

26 (c) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing the
27 articles of conversion shall make and annex to it an affidavit stating that the provisions
28 of this section were complied with regarding the articles. The articles of conversion are
29 the articles of incorporation of the cooperative.

30 * Sec. 13. AS 10.25.320(d) is amended to read:

31 (d) Upon approval, a certificate of election to dissolve, hereafter designated the

1 "certificate," executed and acknowledged on behalf of the cooperative by its presiding
2 officer [PRESIDENT OR VICE PRESIDENT] under its seal, attested by the officer
3 designated by the board [ITS SECRETARY], shall be submitted to the commissioner
4 for filing together with an affidavit by the officer executing the certificate stating that the
5 statements in the certificate are true. The certificate must state the name of the
6 cooperative, the address of its principal office, and that the members of the cooperative
7 have voted to dissolve the cooperative.

8 * Sec. 14. AS 10.25.350 is amended to read:

9 Sec. 10.25.350. TERMINATION OF COOPERATIVE AFFAIRS. The board
10 of directors shall wind up and settle the affairs of the cooperative, collect sums owing to
11 it, liquidate its property and assets, pay and discharge its debts, obligations, and
12 liabilities, other than those to patrons arising by reason of their patronage, and do all
13 other things required to wind up its business. After paying or discharging or adequately
14 providing for the payment or discharge of all its debts, obligations, and liabilities, other
15 than those to patrons arising by reason of their patronage, the directors shall distribute
16 remaining sums, first, to patrons for the pro rata return of all amounts standing to their
17 credit by reason of their patronage [,] and, second, to members for the pro rata repayment
18 of membership fees. Sums then remaining shall be distributed among its members and
19 former members in proportion to their patronage, except to the extent participation in the
20 distribution has been legally waived. The board of directors shall thereupon authorize
21 the execution of articles of dissolution. The presiding officer [PRESIDENT OR VICE
22 PRESIDENT] shall execute and acknowledge articles of dissolution on behalf of the
23 cooperative and the officer designated by the board [SECRETARY] shall affix and
24 attest to the seal.

25 * Sec. 15. AS 10.25.360(b) is amended to read:

26 (b) The presiding officer [PRESIDENT OR VICE PRESIDENT] executing the
27 articles of dissolution shall make and annex to the articles an affidavit stating that the
28 statements contained in the articles are true.

29 * Sec. 16. AS 10.25.480 is amended to read:

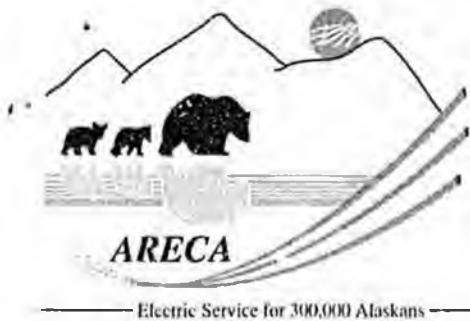
30 Sec. 10.25.480. EXECUTION AND FILING OF STATEMENT. The statement
31 of change of office or agent shall be executed by the cooperative by its presiding officer

1 [PRESIDENT OR VICE PRESIDENT], verified by the person executing the statement,
2 and directed to the commissioner. If the commissioner finds that the statement conforms
3 to this chapter, the commissioner shall file it in the commissioner's office. Upon the
4 filing, the change of address of the registered office, and the appointment of the
5 registered agent, or both, as the case may be, is effective.

6 * Sec. 17. AS 10.25.640 is amended by adding a new paragraph to read:

7 (6) "presiding officer" means the presiding officer of the board of
8 directors of the cooperative.

9 * Sec. 18. This Act takes effect immediately under AS 01.10.070(c).



Alaska

Rural

Electric

Cooperative

Association, Inc.

703 W. Tudor Rd., #200
Anchorage, AK 99503
(907) 561-6103
FAX (907) 561-5547

Electric Service for 300,000 Alaskans

February 15, 1995

Representative Pete Kott, Chairman
House Labor & Commerce Committee
Juneau, AK

Re: CS for HB 17(STA)

Dear Rep. Kott:

We hope that CS SB 17 will be scheduled in your committee soon, and this letter is intended to explain the bill and tell you that we do support it.

This bill amends the Electric and Telephone Cooperative Act (AS 10.25) in three different ways.

1. Expansion of Powers for Electric Cooperatives

Section 2 of the bill would permit electric cooperatives to have it within their corporate powers, like any business corporation, to engage in certain other kinds of utility services. Specifically, it would authorize electric cooperatives to provide direct satellite television, sewer, water, and gas services. Before a co-op could engage in these businesses, it would have to receive a certificate from the APUC. An electric cooperative would **not** be authorized to engage in telephone or cable television services. Section 1 provides the clear intent that co-ops would **not** be able to serve areas already served by some other utility.

The reason for the authorized expansion into sewer and water services comes from the reorganization within the US Department of Agriculture in 1994. The Rural Electrification Administration was replaced by the Rural Utilities Service, and that department's rural utility loan and grant programs were all put in one place. RUS is now encouraging electric co-ops to provide sewer and water services with federal loans (and some grants) in communities within their electric service areas that need it. The RUS budget for FY 95 provides \$900 million for rural sewer and water.

One electric co-op, Naknek Electric Association, hopes to find a local supply of natural gas to use in generating electricity. It would help with their efforts to gain economies of scale if they could also provide gas for space heating in their communities.

Direct satellite television may become available in Alaska when an additional satellite is launched within the next few years. The electric cooperatives have access to this programming through an organization they organized called National Rural Telecommunications Cooperative. When it becomes technically possible, the electric cooperatives could provide this programming to their members who live in scattered locations where cable TV is not feasible.

2. Local Option on Cooperative Titles

Section 3 permits the electric and telephone cooperatives to decide in their bylaws what to call the board officers. The purpose of this amendment is to permit those cooperatives who choose to do so, to use standard business titles for their officers. This is considered to be an advantage when these larger cooperatives deal with investment bankers. Several subsequent sections are conforming amendments.

3. Statutory Housekeeping

In working with the statutes, the attorneys representing the electric cooperatives have noticed a few ambiguities that were overlooked when these statutes were last amended in the mid-1980s. The amendments in Section 4, including the removal of a misplaced comma, make it clear that amendments to the articles of incorporation can be voted on by mail as well as at a meeting and that it takes 2/3 of those voting, not 2/3 of all members, to approve those amendments. Also, a change of wording in Section 3 permits co-op boards to elect their officers by written ballot.

Our association does unanimously support this legislation, and we hope it will be advanced at the earliest opportunity.

Sincerely,

David Hutchens
Executive Director

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 17

Revision Date: _____
 Title: Officers of Utility Cooperatives

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities & Corporations
 Component: _____

Sponsor: Representative Green
 Requestor: _____

COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: \$ 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

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities & Corporations

Phone: 465-2521
 Date: _____

Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Date: 1/24/95

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STATE OF ALASKA
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
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TELECOPIER TRANSMITTAL SHEET

Date: March 1, 1995 Time:

To: Attn: George
House Labor & Commerce Committee

From: Mike Monagle

RE: CSHB 17

Number of Pages Being Transmitted: 3 Pages

Special Instructions: The Department will be testifying this afternoon on CSHB 17 & will be proposing an amended. Please provide a copy of the following proposal for each of the committee members. Please call me if you have any questions. Thank-you.

CSHB 17 (STA)**Amendments Proposed**

AS 10.25.____ is amended to add a new section:

Sec. 10.25.____. Biennial Report.

(a) Each cooperative shall file with the department before July 2 of the reporting year a biennial report signed by an officer designated by the board setting out

- (1) the name of the cooperative;
- (2) the name of its registered agent and address of its registered office;
- (3) the address of its principal place of business in the state;
- (4) a brief statement of the character of the business in which the cooperative is engaged in this state;
- (5) the names and addresses of the members of its board of directors;
- (6) the names and addresses of its presiding officer and other officers designated by the board;

(b) A cooperative filing its articles of incorporation during an even numbered year must file the biennial report before July 2 of each even-numbered year. A cooperative filing its articles of incorporation during an odd numbered year must file the biennial report before July 2 of each odd-numbered year.

AS 10.25.____ is amended to add a new section:

Sec. 10.25.____. Form of Biennial Report; Delinquent Report.

(a) The biennial report shall be made on forms furnished by the department. The information contained in the biennial report shall be given as of June 30 of the reporting year. The biennial report is delinquent if not filed before August 1 of each odd or even year as provided in this section. The provisions in AS 10.06 (Alaska Corporations Code) relating to involuntary dissolution of business corporations apply to telephone and electric cooperatives.

(b) If the department finds that the biennial report conforms to the requirements of this chapter, it shall accept it. If the biennial report does not conform to the requirements of this chapter, the department shall return it to the cooperative for necessary corrections.

AS 10.25.____ is amended to add a new section:

Sec. 10.25.____. Biennial License Fee.

(a) Each cooperative formed under this chapter shall pay to the department a biennial license fee. The fee shall be paid before July 2 of the reporting year.

(b) The license fee of each cooperative shall be established by the department by regulation.*

AS 10.25.____ is amended to add a new section:

Sec. 10.25.____. Filing Notice of Change of Officer/Director.

(a) In the event of a change of an officer or director of a corporation during the year following the filing of the biennial report, the corporation shall file notice of change amending that report before July 2 of that year.

(b) The notice shall be filed in the office of the commissioner and must state the name and current address of a director or officer not stated in the corporation's last filed biennial report, and the name of the person replaced and the office held. The notice shall be signed by the officer designated by the board.

*The current biennial license fee for cooperatives formed under AS 10.15 is \$60.00; there is a late filing fee of \$10.00. The division would anticipate a similar fee for electric and telephone cooperatives formed under AS 10.25.

FISCAL NOTE

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. CSHB 17 (STA)

Revision Date: _____
 Title: Electric and Telephone Cooperatives

 Sponsor: Representative Green
 Requestor: _____

Department Affected: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations

 COMPONENT SERIAL NO. 1233

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	1.1	1.1	1.1	1.1	1.1	1.1
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 95) cost: \$ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

There are currently 38 electric and telephone cooperatives formed under Alaska Statute 10.25. Nineteen of these corporations were formed in an odd year; 19 of these corporations were formed in an even year. If the proposed amendment is adopted, establishing a biennial reporting requirement with a filing fee of \$60.00 would result in an increase of revenue to the department in the amount of approximately \$1,100 each year.

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations

Phone: 465-2521
 Date: 5/75

Approved by Commissioner: William L. Hensley
 Agency: Commerce and Economic Development

Date: 5/1/95

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#1

Amendment to CSHB 17 (STA)

In HOUSE LABOR & COMMERCE

March 1, 1995

Page 1, Line 2, after "to include" delete "direct satellite television"

Page 2, Line 29, after "may include" delete "direct satellite television"

Page 2, Section 2, add new subsection 7 to read "provide direct satellite television programming services."

