

# Alaska Administrative Procedure Act

## Text of Article 7:

**Sec. 44.62.330.** Application of AS 44.62.330 - 44.62.630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under AS 44.62.330 - 44.62.630. This procedure, including accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under AS 44.62.330 - 44.62.630 is limited to named functions of the agency.

- (1) Board of Chiropractic Examiners;
- (2) Board of Dental Examiners;
- (3) State Board of Registration for Architects, Engineers, and Land Surveyors;
- (4) Board of Examiners in Optometry;
- (5) State Medical Board;
- (6) Division of Lands under Alaska Land Act where applicable;
- (7) Board of Nursing functions, except those related to findings of abuse, neglect, or misappropriation of property contained in the registry of certified nurse aides under AS 08.68.333;
- (8) Board of Pharmacy;
- (9) Board of Public Accountancy;
- (10) Department of Labor and Workforce Development as to

functions relating to employment security only as provided in (c) of this section;

(11) Real Estate Commission;

(12) Alaska Workers' Compensation Board, where procedures are not otherwise expressly provided by the Alaska Workers' Compensation Act;

(13) Department of Transportation and Public Facilities, as to functions relating to aeronautics and communications;

(14) Department of Public Safety, as to suspension or revocation of a security guard's license under AS 18.65.400 - 18.65.490;

(15) Department of Health and Social Services and Department of Environmental Conservation under AS 17.20 (Alaska Food, Drug, and Cosmetic Act), and Department of Commerce, Community, and Economic Development in connection with the licensing of embalmers and funeral directors under AS 08.42;

(16) Department of Environmental Conservation, under AS 18.35.010 - 18.35.090, concerning the regulation of tourist and trailer camps, motor courts, and motels;

(17) Board of Marine Pilots;

(18) Alaska Police Standards Council;

(19) Big Game Commercial Services Board;

(20) Alaska Public Offices Commission;

(21) Board of Fisheries;

(22) Board of Game;

(23) Department of Education and Early Development and Professional Teaching Practices Commission with regard to proceedings to revoke or suspend a teacher's certificate under AS 14.20.030 - 14.20.040 and AS 14.20.470(a)(4);

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

(25) Department of Environmental Conservation, except to the

extent that AS 44.62.360 - 44.62.400 are inconsistent with the manner in which proceedings are initiated under the provisions of AS 46.03 and AS 46.14;

(26) Board of Psychologist and Psychological Associate Examiners;

(27) Department of Fish and Game as to functions relating to the protection of fish and game under AS 16.05.871;

(28) Board of Veterinary Examiners;

(29) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of nursing home administrators;

(30) Board of Barbers and Hairdressers;

(31) Department of Natural Resources concerning the Alaska grain reserve program under former AS 03.12;

(32) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of audiologists and speech-language pathologists under AS 08.11;

(33) Department of Commerce, Community, and Economic Development concerning the licensing and regulation of hearing aid dealers under AS 08.55;

(34) Board of Certified Real Estate Appraisers;

(35) Department of Labor and Workforce Development as to functions related to employment rights of the organized militia under AS 26.05.075;

(36) Board of Certified Direct-Entry Midwives;

(37) Board of Marital and Family Therapy;

(38) Department of Revenue for administrative review of actions taken under AS 43.50 relating to a tobacco product manufacturer's compliance with statutory requirements regarding cigarette sales;

(39) Department of Commerce, Community, and Economic Development as to the licensing and regulation of private professional guardians and conservators under AS 08.26;

(40) Department of Commerce, Community, and Economic

Development relating to the licensing and regulation of persons making deferred deposit advances under AS 06.50;

- (41) Department of Health and Social Services relating to the civil history databases under AS 47.05.330 - 47.05.390;
- (42) State Commission for Human Rights, where procedures are not otherwise expressly provided in AS 18.80;
- (43) Alaska Retirement Management Board for administration of pension forfeitures under AS 37.10.310;
- (44) Department of Commerce, Community, and Economic Development relating to mortgage lending under AS 06.60;
- (45) Board of Massage Therapists;
- (46) Marijuana Control Board.

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

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

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

- (1) civil or criminal penalties;
- (2) additional relief by injunction or restraining order;
- (3) penalty provisions relating to suspension, revocation, reissuance, and other similar matters of licenses, permits, leases, concessions, and other similar matters;

(4) related matters that in their context do not relate to procedure.

**Sec. 44.62.340.** Delegation of power by agencies.

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

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

**Sec. 44.62.350.** Appointment of hearing officers. (a) The governor shall assign a qualified, unbiased, and impartial hearing officer, with experience in the general practice of law, to conduct hearings under this chapter that are not conducted by the office of administrative hearings (AS 44.64.010). A hearing officer may perform other duties in connection with the administration of this chapter and other laws.

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

(c) Except for a hearing officer hired to conduct hearings under AS 23.20 (Alaska Employment Security Act), a hearing officer shall have been admitted to practice law for at least two years immediately before the appointment.

**Sec. 44.62.360.** Accusation. A hearing to determine whether a right, authority, license, or privilege should be revoked, suspended, limited, or conditioned is initiated by filing an accusation. The accusation must

(1) be a written statement of charges setting out in ordinary and

concise language the acts or omissions with which the respondent is charged, so that the respondent is able to prepare a defense;

- (2) specify the statute and regulation that the respondent is alleged to have violated, but may not consist merely of charges phrased in the language of the statute and regulation; and
- (3) be verified, unless made by a public officer acting in an official capacity or by an employee of the agency on whose behalf the proceeding is to be held; the verification may be on information and belief.

**Sec. 44.62.370.** Statement of issues. (a) A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed is initiated by filing a statement of issues. The statement of issues is a written statement specifying

- (1) the statute and regulation with which the respondent must show compliance by producing proof at the hearing; and
- (2) particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought.

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

(c) The statement of issues, together with the form for notice of defense and other information described in AS 44.62.380, shall be delivered to the respondent or sent by certified mail to the latest address on file with the agency, except that if a hearing has already been requested by the respondent,

- (1) AS 44.62.380 and 44.62.390 do not apply; and
- (2) the statement of issues together with the notice of hearing shall

be delivered or mailed to the parties as provided in AS 44.62.420.

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

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

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

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

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

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

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within 15 days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense," or by delivering or mailing a notice of defense as provided by AS 44.62.390 to: (here insert name and address of agency).

(c) The accusation and all accompanying information may be sent to the respondent by any means selected by the agency. However, the agency may not make an order adversely affecting the rights of the respondent unless

the respondent is served personally or by certified mail, files a notice of defense, or otherwise appears. Service may be proved in the manner authorized in civil actions. Service by certified mail is effective if a statute or agency regulation requires the respondent to file an address with the agency and to notify the agency of a change, and if a certified letter containing the accusation and accompanying material is mailed, addressed to respondent at the latest address on file with the agency.

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

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

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

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

(d) The notice of defense must be in writing, signed by or on behalf of the respondent, and must state the respondent's mailing address. It need not be verified or follow a particular form.

**Sec. 44.62.400.** Amended or supplemental accusation.

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

**Sec. 44.62.410.** Time and place of hearing. (a) The agency shall determine the time and place of hearing. The hearing shall be held in Juneau or Ketchikan, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the First Judicial District; in Anchorage if the transaction occurred or the respondent resides within the Third Judicial District; in Fairbanks or Nome, whichever is closer to the place where the transaction occurred or where the respondent resides, if the transaction occurred in or the respondent resides in the Second or Fourth Judicial District. The agency may, if the transaction occurred in a judicial district other than that of respondent's residence, select an appropriate place of hearing in either district. The agency may select a different place nearer the place where the transaction occurred or where the respondent resides, or the parties by agreement may select any place in the state.

(b) A party may request that the party or a witness participate by telephone in a hearing. The requesting party shall pay the costs of the telephonic participation. Unless a finding is made that the telephonic participation

would substantially prejudice the rights of an opposing party, the agency shall grant the request for that party or witness to participate telephonically if

- (1) no party objects;
- (2) the witness lives more than 30 miles one way from the hearing site;
- (3) the party lives more than 100 miles one way from the hearing site; or
- (4) other good cause is shown to the satisfaction of the agency.

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

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

You are notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) upon the ..... day of ....., 2 ..., at the hour of ....., upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You may have subpoenas issued to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office or agency).

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

(b) A subpoena issued under (a) of this section extends to all parts of the state and shall be served in accordance with the rules of civil procedure. A witness is not obliged to attend at a place out of the house district in which the witness resides unless the distance is less than 100 miles from the place of residence, except that the agency, upon affidavit of a party showing that the testimony of the witness is material and necessary, may endorse on the subpoena an order requiring the attendance of the witness.

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

(1) fees as prescribed for a witness in court actions, unless the witness is an officer or employee of the state or a political subdivision of the state;

(2) reimbursement of transportation expenses in accordance with standards established by the Department of Administration under AS 39.20.160, for required travel in excess of 30 miles round trip from the witness's residence; and

(3) reimbursement of food and lodging expenses in accordance with standards established by the Department of Administration under AS 39.20.160 for each day of actual attendance and for each day of reasonable and necessary travel to and from the place of the hearing if the witness attends a hearing or deposition at a point so distant from the residence of the witness that a return to the residence from day to day is not practicable.

(d) Fees, transportation expenses, and food and lodging expenses shall be paid by the party at whose request the witness is subpoenaed.

**Sec. 44.62.440.** Depositions. (a) Upon a motion with good cause shown or upon stipulation of the parties, an agency may order discovery, including a deposition to perpetuate testimony, by any reasonable method including those methods prescribed by law in civil actions.

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

**Sec. 44.62.450.** Hearings. (a) A hearing in a contested case shall be presided over by a hearing officer. Unless the hearing is conducted by the office of administrative hearings (AS 44.64.010), the agency itself shall determine whether the hearing officer hears the case alone or whether the agency hears the case with the hearing officer.

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

(c) A hearing officer or agency member shall voluntarily seek disqualification and withdraw from a case in which the hearing officer or agency member cannot accord a fair and impartial hearing or consideration. A party may request the disqualification of a hearing officer or agency member by filing an affidavit, before the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. If the request concerns an agency member the issue shall be determined by the other members of the agency. If the request concerns the hearing officer, the issue shall be determined by the agency when the agency hears the case with the hearing officer, and by the hearing officer when the officer hears the case alone. An agency member may not withdraw voluntarily or be disqualified if the disqualification would

prevent the existence of a quorum qualified to act in the particular case.

(d) The proceedings at the hearing shall be reported by a phonographic reporter or recorder, or other adequate means of assuring an accurate record.

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

(b) Each party may

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

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

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

(e) Unless a different standard of proof is stated in applicable law, the

(1) petitioner has the burden of proof by a preponderance of the evidence if an accusation has been filed under AS 44.62.360 or if the renewal of a right, authority, license, or privilege has been denied;

(2) respondent has the burden of proof by a preponderance of the evidence if a right, authority, license, or privilege has been initially denied or not issued.

**Sec. 44.62.470.** Evidence by affidavit. (a) At any time 10 or more days before a hearing or a continued hearing, a party may mail or deliver to the opposing party a copy of an affidavit that the party proposes to introduce in evidence, together with a notice as provided in (b) of this section. Unless the opposing party, within seven days after that mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, the party's right to cross-examine the affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not given after request for it is made, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

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

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

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

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

**Sec. 44.62.500.** Decision in a contested case. (a) If a contested case is heard before an agency

- (1) the hearing officer who presided at the hearing shall be present during the consideration of the case and, if requested, shall assist and advise the agency; and
- (2) a member of the agency who has not heard the evidence may not vote on the decision.

(b) If a contested case is heard by a hearing officer alone, the hearing officer shall prepare a proposed decision in a form that may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record with the lieutenant governor, and a copy of the proposed decision shall be served by the agency on each party in the case and the party's attorney. Except as otherwise provided in AS 44.64.060(e),

for a hearing conducted by the office of administrative hearings, the agency itself may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in (b) of this section the agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned the hearing officer shall prepare a proposed decision as provided in (b) of this section upon the additional evidence and the transcript and other papers that are part of the record of the earlier hearing. A copy of the proposed decision shall be furnished to each party and the party's attorney as prescribed by (b) of this section. The agency may not decide a case provided for in this subsection without giving the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, an agency member may not vote unless that member has heard the additional oral evidence. This subsection does not apply to a hearing conducted by the office of administrative hearings.

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

(b) A decision in a primarily judicial proceeding has retroactive effect in the same manner as a decision of a state court.

**Sec. 44.62.520.** Effective date of decision; stay. (a) A decision becomes effective 30 days after it is delivered or mailed to the respondent unless

- (1) a reconsideration is ordered within that time;
- (2) the agency itself orders that the decision become effective

sooner; or

(3) a stay of execution is granted for a particular purpose and not to postpone judicial review.

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

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

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

**Sec. 44.62.540.** Reconsideration. (a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of a party. To be considered by the agency, a petition for reconsideration must be filed with the agency within 15 days after delivery or mailing of the decision. The power to order a reconsideration expires 30 days after the delivery or mailing of a decision to the respondent. If no action is taken on a petition within the time allowed for ordering reconsideration, the petition is considered denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of

the record and the additional evidence and argument that are permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer is subject to the procedure provided in AS 44.62.500. If oral evidence is introduced before the agency, an agency member may not vote unless that member has heard the evidence.

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

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

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

(c) The complete record includes

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

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

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

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

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

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not

supported by

- (1) the weight of the evidence; or
- (2) substantial evidence in the light of the whole record.

(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may

- (1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence; or
- (2) admit the evidence at the appellate hearing without remanding the case.

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

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

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

(g) A stay may not be imposed or continued if the court is satisfied that it is against the public interest.

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

(i) If a final administrative order or decision is the subject of a proceeding under this section, and the appeal is filed while the penalty imposed is in effect, finishing or complying with the penalty imposed by the administrative

agency during the pendency of the proceeding does not make the determination moot.

**Sec. 44.62.580.** Continuances. The agency may grant continuances. If a hearing officer is assigned to a hearing, a continuance may not be granted except by the hearing officer for good cause shown.

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

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

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

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

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

- (1) the proceeding taken;
- (2) the penalties imposed; and
- (3) the way the person charged may be purged of the contempt.

**Sec. 44.62.600.** Voting procedure. A member of an agency qualified to vote

on a question may vote by mail or by teleconferencing. A vote by teleconferencing shall be recorded in a manner that identifies each person who has voted and how the person voted.

**Sec. 44.62.610.** Charge. A sum authorized to be spent under AS 44.62.330 - 44.62.630 by an agency is a legal charge against the appropriations of the agency.

**Sec. 44.62.620.** Power to administer oaths. In a proceeding under AS 44.62.330 - 44.62.630 an agency, agency member, secretary of an agency, or hearing officer may administer oaths and affirmations and certify official acts.

**Sec. 44.62.630.** Impartiality.

The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties and the facts and the law, and consistent with the orderly and prompt dispatch of proceedings. These officers, except to the extent required for the disposition of ex parte matters authorized by law, may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present. Copies of all communications with these officers shall be served upon all parties.<sup>[2]</sup>