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Bannister
3/16/20

CS FOR SENATE BILL NO. 88()

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - SECOND SESSION

BY

**Offered:
Referred:**

Sponsor(s): SENATOR MICCICHE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the office of administrative hearings; relating to the types of**
2 **proceedings handled by the office of administrative hearings; relating to the entities that**
3 **may use the services of the office of administrative hearings; relating to the duties of the**
4 **chief administrative law judge, including the power to hire professional staff; relating to**
5 **the qualifications and powers of administrative law judges, including subpoena power;**
6 **relating to the compensation of the chief administrative law judge; relating to**
7 **complaints against administrative law judges and hearing officers; relating to**
8 **reimbursement for costs incurred by the office of administrative hearings; relating to**
9 **procedures for requesting and conducting proceedings of the office of administrative**
10 **hearings; and providing for an effective date."**

11 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

12 *** Section 1.** AS 18.80.120(b) is amended to read:

(b) The commission shall request the chief administrative law judge to appoint, under AS 44.64.020, an administrative law judge employed or retained by the office of administrative hearings to preside over a hearing conducted under this section. **AS 44.64.040 and 44.64.050** [AS 44.64.040 - 44.64.055], 44.64.070 - 44.64.200, and the procedures in AS 44.62.330 - 44.62.630 (Administrative Procedure Act) apply to the hearing except as otherwise provided in this chapter.

* **Sec. 2.** AS 39.25.120(c)(20) is amended to read:

(20) the chief administrative law judge, [AND] administrative law judges, **and professional staff** of the office of administrative hearings;

* **Sec. 3.** AS 44.64.010(d) is amended to read:

(d) The chief administrative law judge shall receive a monthly salary that is **equal to a step in** [NOT LESS THAN STEP A NOR MORE THAN STEP F,] Range 27 [,] of the salary schedule in AS 39.27.011(a) [FOR JUNEAU, ALASKA]. The chief administrative law judge is in the partially exempt service.

* **Sec. 4.** AS 44.64.020 is amended to read:

Sec. 44.64.020. Powers and duties of chief administrative law judge. (a)

The chief administrative law judge shall

- (1) supervise the office;
- (2) employ administrative staff, who shall be in the classified service;
- (3) employ administrative law judges **and professional staff**, who shall be in the partially exempt service;
- (4) preside over administrative hearings **and other proceedings** handled by the office or, based **on** [UPON] the qualifications and expertise of the administrative law judges, assign administrative law judges to preside over hearings **or other proceedings handled by the office**, and protect, support, and enhance the decisional independence of the administrative law judges;
- (5) establish and implement performance standards, including provision for timeliness, and peer review programs for administrative law judges employed or retained by the office;
- (6) make available and facilitate training and continuing education programs and services in administrative procedure, administrative adjudication,

substantive law, **alternative** [ALTERNATE] dispute resolution, and technical matters for administrative law judges and other administrative adjudicators;

(7) survey administrative hearing participants and use other methods to monitor the quality of administrative hearings held by the office and other [STATE] agencies, and submit to the governor and the legislature on January 31 of each year the results of the survey along with a report that includes a description of the activities of the office and recommendations for statutory changes that may be needed in relation to the administrative hearings held by the office or other [STATE] agencies;

(8) review and comment on regulations proposed by [STATE] agencies to govern procedures in administrative hearings;

(9) enter into contracts as necessary to carry out the functions of the office;

(10) annually prepare and submit to the commissioner of administration a budget for the office for the next fiscal year that **must** [SHALL] include and separately identify funding for training and continuing education; a copy of the budget submitted to the commissioner under this paragraph shall also be submitted to the **finance committee** [FINANCE COMMITTEE] of each house of the legislature;

(11) after consulting with affected agencies, adopt regulations under AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and implement this chapter;

(12) receive and review applications from individuals seeking appointments to the Workers' Compensation Appeals Commission and submit the names of individuals to the governor for appointment as provided in AS 23.30.007(d); and

(13) appoint a chair pro tempore for the Workers' Compensation Appeals Commission as provided in AS 23.30.007(m).

(b) In carrying out the responsibilities of the office, the chief administrative law judge shall seek to accomplish the following goals:

(1) provide for the delivery of high quality adjudication **and alternative dispute resolution** services in a timely, efficient, and cost-effective

manner;

(2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated and protect them from threats, intimidation, and harassment;

(3) foster open and clearly explained agency decisions and improve public access to the process of administrative adjudication;

(4) guarantee protection of all parties' due process rights, increase the public parties' perception of fairness in administrative adjudication, and foster acceptance of final administrative decisions by the public and affected parties;

(5) protect the integrity of the process of administrative adjudication and decisional independence of administrative adjudicators; and

(6) increase consistency in administrative procedures and decisions.

* **Sec. 5.** AS 44.64.030(b) is amended to read:

(b) An agency or entity may request the office to conduct an administrative hearing, arbitration, or alternative dispute resolution [OTHER PROCEEDING] of the requesting [THAT] agency or entity or to conduct several administrative hearings, arbitrations, or alternative dispute resolutions [OTHER PROCEEDINGS] under statutes or ordinances not listed in (a) of this section. The office may provide the service after entering into a written agreement with the requesting agency or entity describing the services to be provided and procedures, which must be consistent with applicable law, to be applied and providing for reimbursement by the requesting agency or entity to the office of the costs incurred by the office in providing the services.

* **Sec. 6.** AS 44.64.030(c) is amended to read:

(c) To the extent otherwise permitted by law, the agency or entity may delegate to the administrative law judge assigned to conduct the hearing on behalf of the agency or entity the authority to make a final agency or entity decision in the matter. The final decision may be appealed to the superior court by any party.

* **Sec. 7.** AS 44.64.040(a) is amended to read:

(a) An administrative law judge must be admitted to practice law in this state and must have been admitted to practice in this state for at least four [TWO] years

before being employed or retained with the office, except that, if the duties of an administrative law judge who is employed or retained by the office will include conducting a proceeding under AS 43.05.405 - 43.05.499, the administrative law judge must be admitted to practice law in this state and must have been admitted to practice in this state or another state for four years before being employed or retained with the office. The chief administrative law judge shall establish additional qualifications for administrative law judges employed or retained by the office and for those administrative law judges that may be assigned to particular types of cases. An administrative law judge is in the partially exempt service. Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and (16).

* **Sec. 8.** AS 44.64.040(b) is amended to read:

(b) An administrative law judge employed or retained by the office may, in conducting an administrative hearing or other proceeding for an agency or entity, exercise the powers authorized by law for exercise by that agency or entity in the performance of its duties in connection with the hearing or other proceeding. An administrative law judge may

(1) engage in alternative dispute resolution under regulations adopted by the chief administrative law judge that is in addition to any alternative [ALTERNATE] dispute resolution procedure used by an agency or entity before the case is referred to the office;

(2) order a party, a party's attorney, or another authorized representative of a party to pay reasonable expenses, including attorney fees, incurred by another party as a result of actions done in bad faith or as a result of tactics used frivolously or solely intended to cause unnecessary delay;

(3) perform other necessary and appropriate acts in the performance of official duties.

* **Sec. 9.** AS 44.64.040(c) is amended to read:

(c) An administrative law judge employed by the office must devote full time to the duties of the office unless serving [APPOINTED TO A POSITION THAT IS] less than full time [FULL-TIME]. An administrative law judge employed by the

office may not perform duties inconsistent with the duties and responsibilities of an administrative law judge.

* **Sec. 10.** AS 44.64.050(c) is amended to read:

(c) Except as provided in (e) of this section, the chief administrative law judge shall receive and consider all complaints against administrative law judges or hearing officers employed or retained by the office or another agency alleging violations of (a) of this section or of the code of hearing officer conduct. The chief administrative law judge shall deliver the complaint to the attorney general when the chief administrative law judge determines that

(1) the complaint alleges a violation that occurred

(A) not more than three years before the complaint was filed; or

(B) in connection with an adjudication or other proceeding, and the complaint was filed not more than two years after conclusion of the adjudication or other proceeding, including resolution of all appeals; and

(2) the conduct alleged, if true, would constitute a violation of

(A) [(1) SUBSECTION] (a) of this section; or

(B) [(2)] the code and would warrant disciplinary action under the regulations adopted under (b) of this section.

* **Sec. 11.** AS 44.64.060(a) is amended to read:

(a) The chief administrative law judge shall, by regulation, establish procedures for administrative hearings conducted by the office. Each administrative hearing under the jurisdiction of the office or that has been transferred to the office by an agency **or entity** shall be conducted in accordance with statutes **or ordinances** that apply to that hearing, including, if applicable, AS 44.62 (Administrative Procedure Act). In case of conflict between this section and another applicable statute **or ordinance** establishing procedures for administrative hearings, the other statute **or ordinance** prevails. However, **except as otherwise provided in AS 44.64.030(b),** to the extent regulations adopted by an agency for the conduct of an administrative hearing conflict with regulations adopted by the chief administrative law judge under

1 this subsection, the regulations adopted by the chief administrative law judge control
2 to the maximum extent possible without conflicting with applicable statutes.

3 * **Sec. 12.** AS 44.64.060(b) is amended to read:

4 (b) When an agency receives a request for a hearing that is subject to
5 AS 44.64.030, the agency shall, within 10 days and in writing, deny the request for
6 reasons provided by law or grant the request and refer the case to the office **with a**
7 **copy of the request for a hearing, the names, addresses, electronic mail addresses,**
8 **and telephone numbers of all parties and their representatives, and the document**
9 **containing the decision or other matter under review.** The agency shall
10 immediately give notice of the denial or referral to the requesters and the office. If the
11 request is denied, the denial may be appealed to the **office or** [SUPERIOR COURT]
12 as provided by other law. If the request is granted, the agency shall, within **20** [15]
13 days after receiving the request, compile and transmit to the office a copy of the
14 [REQUEST FOR A HEARING, THE NAMES, ADDRESSES, AND TELEPHONE
15 NUMBERS OF ALL PARTIES AND THEIR REPRESENTATIVES, AND THE
16 AGENCY'S DECISION, IF ANY, TOGETHER WITH THE] record relied on to
17 support the decision **or other matter.** Any information provided to the office that is
18 confidential by law shall be identified by the agency as confidential and shall be kept
19 confidential by the office.

20 * **Sec. 13.** AS 44.64.060(d) is amended to read:

21 (d) An administrative law judge employed or retained by the office shall,
22 within 120 days after the date the agency received the request for a hearing, prepare a
23 proposed decision, unless another [TIME] period is provided by law or agreed to by
24 the parties and the chief administrative law judge. **With the approval of the chief**
25 **administrative law judge, an administrative law judge may stay a proceeding to**
26 **allow related criminal prosecutions or civil litigation to proceed first. The**
27 **running of the 120-day deadline under this subsection is suspended during a stay**
28 [THE ADMINISTRATIVE LAW JUDGE SHALL IMMEDIATELY SUBMIT THE
29 PROPOSED DECISION TO THE AGENCY].

30 * **Sec. 14.** AS 44.64.060(e) is amended to read:

31 (e) A proposed decision in an administrative hearing **must** [SHALL] be in a

form that may be adopted as the final decision by the agency with authority to make the final decision. The proposed decision is a public record, except as otherwise provided by statute. A copy of the proposed decision shall be served by the office on each party in the case or on the attorneys representing those parties in the hearing. Unless the office has established a shorter [TIME] period **or, for good cause and with the consent of all parties to the hearing, a longer period,** or **unless** another statute has established a different [TIME] period, within 30 days after the proposed decision is served, a party may file with the **office** [AGENCY] a proposal for action under (1) - (5) of this subsection. **The administrative law judge may permit a party to reply to a proposal for action and shall, within 15 days after the final date for submission of proposals for action, transmit the proposed decision and any proposals for action and replies to the final decision maker or return the matter to the administrative law judge to prepare a revised proposed decision under (d) of this section.** The agency with authority to make a final decision in the case retains **the** [AGENCY] discretion in the final disposition of the case and shall, within 45 days after the date the **office transmits to the agency the proposed decision or revised** proposed decision [IS SERVED] or at the next regularly scheduled meeting that occurs at least **20** [45] days after the **office transmits to the agency the proposed decision or the revised proposed decision** [PROPOSED DECISION IS SERVED], do one or more of the following:

- (1) adopt the proposed decision as the final agency decision;
- (2) return the case to the administrative law judge to take additional evidence or make additional findings or for other specific proceedings, in which case the administrative law judge shall complete the additional work and return the revised proposed decision to the agency within 45 days after the original decision was returned under this paragraph **or within another period prescribed in the order returning the case to the administrative law judge;**
- (3) exercise its discretion by revising the proposed enforcement action, determination of best interests, order, award, remedy, sanction, penalty, or other disposition of the case, and adopt the proposed decision as revised;
- (4) in writing, reject, modify, or amend a factual finding in the

proposed decision by specifying the affected finding and identifying the testimony and other evidence relied on by the agency for the rejection, modification, or amendment of the finding, and issue a final agency decision;

(5) in writing, reject, modify, or amend an interpretation or application in the proposed decision of a statute or regulation directly governing the agency's actions by specifying the reasons for the rejection, modification, or amendment, and issue a final agency decision.

* **Sec. 15.** AS 44.64.060(f) is amended to read:

(f) If a final decision is not issued timely in accordance with (e) of this section, the administrative law judge's proposed decision **or, if the proposed decision has been revised under (e) of this section, the administrative law judge's revised proposed decision,** is the final agency decision.

* **Sec. 16.** AS 44.64.060 is amended by adding new subsections to read:

(g) Except as otherwise provided by statute, agency regulation, or an ordinance in an administrative hearing subject to AS 44.64.060(a), an administrative law judge may, for good cause shown, issue a subpoena to compel the attendance and testimony of witnesses and the production of documents and records.

(h) After a final agency decision has been issued under (e) of this section, the maker of the final decision may reopen a proceeding for a reason provided in Rule 60(b), Alaska Rules of Civil Procedure. This subsection does not supersede or modify authority to reopen a proceeding as otherwise provided by law.

* **Sec. 17.** AS 44.64.080(c) is amended to read:

(c) After an administrative hearing is referred by an agency to the office for hearing, the agency may not take further adjudicatory action in the case, except **for agency staff acting** as a party litigant **and the official or body with authority to render a final decision taking action under AS 44.64.060(e)** [OR TO RENDER A FINAL DECISION AS PROVIDED BY LAW]. This subsection does not otherwise limit the agency's authority to take action affecting a party to the case.

* **Sec. 18.** AS 44.64.200(1) is amended to read:

(1) "administrative hearing" means a quasi-judicial hearing before an agency **or entity**; it does not include an informal conference or review held by an

agency or entity before a [FINAL] decision is issued or a rate-making proceeding or other nonadjudicative public hearing;

* **Sec. 19.** AS 44.64.200 is amended by adding new paragraphs to read:

(6) "entity" means a municipality, school district, or other governmental entity;

(7) "other proceeding" means an arbitration or alternative dispute resolution conducted under AS 44.64.030(b);

(8) "school district" means a borough school district, a city school district, or a regional educational attendance area under AS 14.

* **Sec. 20.** AS 44.64.055 is repealed.

* **Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) The change in compensation made by AS 44.64.010(d), as amended by sec. 3 of this Act, applies only to an individual who is appointed on or after the effective date of sec. 3 of this Act.

(b) The four-year admission requirement in AS 44.64.040(a), as amended by sec. 7 of this Act, applies to an individual whose employment or retention as an administrative law judge by the office of administrative hearings established under AS 44.64.010 begins on or after the effective date of sec. 7 of this Act.

(c) AS 44.64.050(c), as amended by sec. 10 of this Act, applies to a complaint against an administrative law judge or hearing officer received on or after the effective date of sec. 10 of this Act.

(d) In this section,

(1) "administrative law judge" has the meaning given in AS 44.64.200;

(2) "hearing officer" has the meaning given in AS 44.64.200.

* **Sec. 22.** Section 10 of this Act takes effect July 1, 2021.