

HOUSE BILL NO. 232

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES OGAN, Kohring, Hodgins, Ryan, Sanders, Dyson, Kott, Mulder, Vezey

Introduced: 4/4/97

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act establishing the independent division of administrative hearings in the
2 Department of Administration in order to provide a source of independent
3 administrative hearing officers to preside in contested cases; relating to
4 administrative hearing officers; relating to contested case proceedings; and
5 providing for an effective date."

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

7 * **Section 1.** PURPOSE AND INTENT. The purpose of this Act is to increase the
8 separation between the adjudicatory functions of executive branch agencies and the agencies'
9 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act
10 to provide for the delivery of high quality adjudication services in a timely, efficient, and cost-
11 effective manner that will ensure respect for the dignity of the individuals whose cases are
12 being adjudicated and guarantee protection of their due process rights.

13 * **Sec. 2.** AS 44.21.020 is amended to read:

1 **Sec. 44.21.020. Duties of department.** The Department of Administration
2 shall

3 (1) make surveys and studies to improve administrative procedures,
4 methods, and organization;

5 (2) keep general accounts;

6 (3) approve vouchers and disburse funds for all purposes;

7 (4) operate centralized purchasing and supply services, and necessary
8 storerooms and warehouses;

9 (5) allot space in state buildings to the various departments according
10 to need and available space;

11 (6) supervise telephone, mailing, messenger, duplicating, and similar
12 services adaptable to centralized management;

13 (7) administer the public employees' retirement system and teachers'
14 retirement system;

15 (8) administer a statewide personnel program, including central
16 personnel services such as recruitment, examination, position classification, and pay
17 administration;

18 (9) administer the Alaska Pioneers' Homes;

19 (10) administer and supervise a statewide automatic data processing
20 program;

21 (11) study, design, implement, and manage the telecommunications
22 systems and services of the state under AS 44.21.305 - 44.21.330;

23 (12) [REPEALED

24 (13)] administer state veterans' home facilities; in carrying out its duties
25 under this paragraph, the department shall consult with the Department of Military and
26 Veterans' Affairs;

27 **(13) perform, through the chief administrative hearing officer, the**
28 **duties of the independent division of administrative hearings under AS 44.21.510 -**
29 **44.21.590 and AS 44.62.330 - 44.62.630.**

30 * **Sec. 3.** AS 44.21 is amended by adding new sections to read:

31 **Article 9. Independent Division of Administrative Hearings.**

1 **Sec. 44.21.510. Division created.** (a) There is created in the Department of
2 Administration an independent division of administrative hearings headed by the chief
3 administrative hearing officer.

4 (b) The chief administrative hearing officer

5 (1) shall be appointed by the commissioner of administration;

6 (2) must be licensed to practice law in this state and have been
7 admitted to practice law for at least five years;

8 (3) shall devote full time to the duties set out in AS 44.21.520 and may
9 not engage in the private practice of law for compensation while holding the office of
10 chief administrative hearing officer;

11 (4) is subject to the code of conduct adopted under AS 44.21.520(a)(8).

12 **Sec. 44.21.520. Powers and duties of chief administrative hearing officer.**

13 (a) The chief administrative hearing officer shall

14 (1) supervise the independent division of administrative hearings;

15 (2) employ staff, including hearing officers, who shall be in the
16 classified service;

17 (3) assign a hearing officer employed by the division to a contested
18 case that is governed by AS 44.62.330 - 44.62.630; if there is no qualified employee
19 of the division available to be assigned to a particular contested case, the chief
20 administrative hearing officer shall designate in writing an individual to serve on a
21 temporary contract basis as an administrative hearing officer in that proceeding; a
22 temporary administrative hearing officer must meet the professional qualifications and
23 standards applicable to permanent employees of the division who are hearing officers
24 but need not be on a register maintained under AS 39.25;

25 (4) protect and ensure the decisional independence of each hearing
26 officer;

27 (5) provide materials and establish and implement standards and
28 specialized training programs for hearing officers;

29 (6) provide and coordinate continuing education programs and services
30 for hearing officers, including research, technical assistance, and technical and
31 professional publications; compile and disseminate information to hearing officers; and

1 advise hearing officers of changes in the law relative to their duties;

2 (7) monitor the quality of state administrative hearings, including
3 contested case proceedings, whether governed by AS 44.62 (Administrative Procedure
4 Act) or not, and submit an annual report to the governor that includes a description of
5 the activities of the division and recommendations for statutory changes, if any, that
6 may be needed in relation to administrative hearings held by the division or other
7 agencies;

8 (8) adopt a code of conduct, based on the applicable canons of the code
9 of judicial conduct, to ensure the integrity and independence of the chief administrative
10 hearing officer and other hearing officers who are employees or contractors with the
11 division;

12 (9) adopt regulations under AS 44.62 (Administrative Procedure Act)
13 to implement AS 44.21.510 - 44.21.590 and the duties of the chief administrative
14 hearing officer and hearing officers assigned by the chief administrative hearing officer
15 under AS 44.62.330 - 44.62.630.

16 (b) The chief administrative hearing officer may

17 (1) serve as a hearing officer in a contested case;

18 (2) set the requirements to be used under AS 39.25 to establish a
19 register of persons qualified to be hearing officers for contested cases governed by
20 AS 44.62.330 - 44.62.630; the requirements must include admission to the practice of
21 law in this state and the practice of law in this state for at least five years preceding
22 employment by the division;

23 (3) on request of a governmental agency, assign a hearing officer to a
24 contested case that is not governed by AS 44.62.330 - 44.62.630 or to another type of
25 hearing through a contract with the requesting agency;

26 (4) accept money, grants, bequests, and services that are consistent with
27 the purpose of the division from any public or private source.

28 **Sec. 44.21.530. Hearing officers.** (a) In addition to the powers and duties
29 specified in AS 44.62.330 - 44.62.630, a hearing officer who is an employee or
30 contractor with the division

31 (1) may engage in or encourage the use of alternative dispute resolution

1 methodologies, as appropriate, in a case to which the hearing officer is assigned;

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

6 (3) may perform other necessary and appropriate acts in the
7 performance of official duties; and

8 (4) is subject to the code of conduct established under
9 AS 44.21.520(a)(8).

10 (b) A hearing officer employed by the division

11 (1) may not perform duties inconsistent with the duties and
12 responsibilities of a hearing officer;

13 (2) shall, unless appointed to a position that is less than full-time,
14 devote full-time to the duties of the division;

15 (3) may not engage in the private practice of law for compensation
16 while holding a full-time position with the division.

17 (c) A hearing officer may not be made responsible to, nor be subject to the
18 supervision, direction, or direct or indirect influence of, an officer, employee, or agent
19 engaged in the performance of investigatory, prosecutory, or advisory functions for a
20 state agency.

21 **Sec. 44.21.540. Cooperation of other state agencies.** (a) State agencies shall
22 cooperate with the chief administrative hearing officer and with other hearing officers
23 assigned by the chief administrative hearing officer in the discharge of their duties of
24 office.

25 (b) Except as otherwise provided by law for an arbitration or similar
26 proceeding or in special circumstances recognized in regulations adopted under this
27 chapter, an agency may not select or reject a particular administrative hearing officer
28 who was assigned by the chief administrative hearing officer.

29 (c) After a matter is referred to the division by an agency, the referring agency
30 may not take further adjudicatory action with respect to the proceeding, except as a
31 party litigant or to render the final decision in the case under AS 44.62.500, as long

1 as the division has jurisdiction over the proceeding.

2 **Sec. 44.21.590. Definition.** In AS 44.21.510 - 44.21.590, "division" means
3 the independent division of administrative hearings.

4 * **Sec. 4.** AS 44.62.350(a) is amended to read:

5 (a) The governor shall assign a qualified, unbiased, and impartial hearing
6 officer, with experience in the general practice of law, to conduct hearings under this
7 chapter unless the hearings are for contested cases that are governed by
8 AS 44.62.330 - 44.62.630 or are for cases for which an agency has voluntarily
9 requested that a hearing officer be assigned by the chief administrative hearing
10 officer. For a hearing that is a contested case governed by AS 44.62.330 -
11 44.62.630 or that is a case for which an agency has voluntarily requested that a
12 hearing officer be assigned by the chief administrative hearing officer, the chief
13 administrative hearing officer shall assign a hearing officer under regulations
14 adopted by the chief administrative hearing officer to implement AS 44.21.510 -
15 44.21.590 and this section. The hearing officer may perform other duties in
16 connection with the administration of this chapter and other laws.

17 * **Sec. 5.** AS 44.62.350(b) is amended to read:

18 (b) An agency with hearing officers may continue their employment as hearing
19 officers on an unbiased and impartial basis within the particular agency and may hire
20 additional officers and prescribe additional qualifications. However, a hearing officer
21 within an agency other than the independent division of administrative hearings
22 may not be assigned to a contested case that is governed by AS 44.62.330 -
23 44.62.630.

24 * **Sec. 6.** AS 44.62.450(a) is amended to read:

25 (a) A hearing in a contested case shall be presided over by a hearing officer.
26 [THE AGENCY ITSELF SHALL DETERMINE WHETHER THE HEARING
27 OFFICER HEARS THE CASE ALONE OR WHETHER THE AGENCY HEARS
28 THE CASE WITH THE HEARING OFFICER.]

29 * **Sec. 7.** AS 44.62.450(b) is amended to read:

30 (b) The [IF THE AGENCY HEARS THE CASE THE HEARING OFFICER
31 SHALL PRESIDE AT THE HEARING, RULE ON THE ADMISSION AND

1 EXCLUSION OF EVIDENCE, AND ADVISE THE AGENCY ON MATTERS OF
 2 LAW. THE AGENCY SHALL EXERCISE ALL OTHER POWERS RELATING TO
 3 THE CONDUCT OF THE HEARING, BUT MAY DELEGATE ANY OR ALL OF
 4 THESE OTHER POWERS TO THE HEARING OFFICER. IF THE HEARING
 5 OFFICER HEARS A CASE ALONE, THE] hearing officer shall exercise all powers
 6 relating to the conduct of the hearing.

7 * **Sec. 8.** AS 44.62.450(c) is amended to read:

8 (c) A hearing officer [OR AGENCY MEMBER] shall voluntarily seek
 9 disqualification and withdraw from a case in which the hearing officer [OR AGENCY
 10 MEMBER] cannot accord a fair and impartial hearing or consideration. A party may
 11 request the disqualification of a hearing officer [OR AGENCY MEMBER] by filing
 12 an affidavit, before the taking of evidence at a hearing, stating with particularity the
 13 grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.
 14 The [IF THE REQUEST CONCERNS AN AGENCY MEMBER THE ISSUE SHALL
 15 BE DETERMINED BY THE OTHER MEMBERS OF THE AGENCY. IF THE
 16 REQUEST CONCERNS THE HEARING OFFICER, THE] issue shall be determined
 17 [BY THE AGENCY WHEN THE AGENCY HEARS THE CASE WITH THE
 18 HEARING OFFICER, AND] by the hearing officer [WHEN THE OFFICER HEARS
 19 THE CASE ALONE. AN AGENCY MEMBER MAY NOT WITHDRAW
 20 VOLUNTARILY OR BE DISQUALIFIED IF THE DISQUALIFICATION WOULD
 21 PREVENT THE EXISTENCE OF A QUORUM QUALIFIED TO ACT IN THE
 22 PARTICULAR CASE].

23 * **Sec. 9.** AS 44.62.500(b) is amended to read:

24 (b) **Except as provided in (e) of this section** [IF A CONTESTED CASE IS
 25 HEARD BY A HEARING OFFICER ALONE], the hearing officer shall prepare a
 26 proposed decision in a form that may be adopted as the decision in the case. A copy
 27 of the proposed decision shall be filed by the agency as a public record with the
 28 lieutenant governor, and a copy of the proposed decision shall be served by the agency
 29 on each party in the case and the party's attorney. **Except as provided in (e) of this**
 30 **section, the** [THE] agency itself may adopt the proposed decision in its entirety, or
 31 may reduce the proposed penalty and adopt the balance of the proposed decision.

1 * **Sec. 10.** AS 44.62.500(c) is amended to read:

2 (c) If the proposed decision is not adopted as provided in (b) of this section,
3 the agency may decide the case upon the record, including the transcript, with or
4 without taking additional evidence, or may refer the case to the **chief administrative**
5 **[SAME OR ANOTHER] hearing officer with a request to assign the same or**
6 **another hearing officer** to take additional evidence. If the case is so assigned, the
7 hearing officer shall prepare a proposed decision as provided in (b) of this section
8 upon the additional evidence and the transcript and other papers that are part of the
9 record of the earlier hearing. A copy of the proposed decision shall be furnished to
10 each party and the party's attorney as prescribed by (b) of this section. The agency
11 may not decide a case provided for in this subsection without giving the parties the
12 opportunity to present either oral or written argument before the agency. If additional
13 oral evidence is introduced before the agency, an agency member may not vote unless
14 that member has heard the additional oral evidence.

15 * **Sec. 11.** AS 44.62.500 is amended by adding new subsections to read:

16 (d) An agency may not

17 (1) modify, reverse, or remand the proposed decision of a hearing
18 officer unless it specifies on the record the reasons for the modification, reversal, or
19 remand; this paragraph does not apply to a modification to reduce a proposed penalty;
20 or

21 (2) modify, reverse, remand, or order reconsideration of the final
22 decision of a hearing officer in a case governed by (e) of this section.

23 (e) Notwithstanding AS 44.62.340 or any other law, the decision of a hearing
24 officer in a case that, by law, is governed by the contested case procedures of
25 AS 44.62.330 - 44.62.630 is the final administrative decision, not subject to agency
26 review. In addition, an agency that voluntarily uses a hearing officer assigned to a
27 case by the chief administrative hearing officer may authorize the hearing officer to
28 make the final administrative decision in the case. A copy of the final administrative
29 decision in a case governed by this subsection shall be served by the chief
30 administrative hearing officer on each party in the case and the party's attorney. The
31 chief administrative hearing officer shall file the decision as a public record with the

1 lieutenant governor. The appeal of a final decision under this subsection is governed
 2 by AS 44.62.560 - 44.62.570. Reconsideration of the final decision is governed by
 3 AS 44.62.540.

4 * **Sec. 12.** AS 44.62.520(a) is amended to read:

5 (a) A decision becomes effective 30 days after it is delivered or mailed to the
 6 respondent unless

7 (1) a reconsideration is ordered within that time;

8 (2) the agency itself, or the hearing officer in a case where the final
 9 decision is made by a hearing officer, orders that the decision become effective
 10 sooner; or

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

13 * **Sec. 13.** AS 44.62.540 is amended to read:

14 **Sec. 44.62.540. Reconsideration.** (a) Except as provided in
 15 AS 44.62.500(d), the [THE] agency or the hearing officer who heard the case may
 16 order a reconsideration of all or part of the case on its own motion or on petition of
 17 a party. To be considered by the agency or the hearing officer, a petition for
 18 reconsideration must be filed with the agency or the independent division of
 19 administrative hearings within 15 days after delivery or mailing of the decision. The
 20 power to order a reconsideration expires 30 days after the delivery or mailing of a
 21 decision to the respondent. If no action is taken on a petition within the time allowed
 22 for ordering reconsideration, the petition is considered denied.

23 (b) In a case where the final decision was rendered by the agency, the
 24 [THE] case may be reconsidered by the agency on all the pertinent parts of the record
 25 and the additional evidence and argument that are permitted, or the agency may
 26 request the chief administrative hearing officer to assign the reconsideration [BE
 27 ASSIGNED] to a hearing officer. A reconsideration assigned to a hearing officer is
 28 subject to the procedure provided in AS 44.62.500. If oral evidence is introduced
 29 before the agency, an agency member may not vote unless that member has heard the
 30 evidence. In a case where the final decision was rendered by a hearing officer, the
 31 case may be reconsidered by the hearing officer on all the pertinent parts of the

1 **record and the additional evidence and argument that are permitted.**

2 * **Sec. 14.** AS 44.62.590(a) is amended to read:

3 (a) In a proceeding before an agency **or hearing officer**, the agency **or**
4 **hearing officer** shall certify the facts to the superior court in the judicial district where
5 the proceeding is held if a person in the proceeding

6 (1) disobeys or resists a lawful order;

7 (2) refuses to respond to a subpoena;

8 (3) refuses to take oath or affirmation as a witness;

9 (4) refuses to be examined; or

10 (5) is guilty of misconduct at a hearing or so near the hearing as to
11 obstruct the proceeding.

12 * **Sec. 15.** AS 44.62.640(b) is amended by adding a new paragraph to read:

13 (6) "chief administrative hearing officer" means the person appointed
14 under AS 44.21.510 to supervise the independent division of administrative hearings,
15 Department of Administration.

16 * **Sec. 16.** AS 44.62.500(a) is repealed.

17 * **Sec. 17.** TRANSITIONAL PROVISION. A hearing officer who is employed by an
18 agency on July 1, 1997, may be hired as an employee of the independent division of
19 administrative hearings established under AS 44.21.510, enacted by sec. 3 of this Act, if the
20 person applies for a position with the division and meets the qualifications established for the
21 position.

22 * **Sec. 18.** This Act takes effect July 1, 1997.