

SENATE CS FOR CS FOR HOUSE BILL NO. 533(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/5/04

Referred: Rules

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the state's administrative procedures and to judicial oversight of
2 administrative matters."

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

4 * **Section 1.** AS 22.10.020(d) is amended to read:

5 (d) The superior court has jurisdiction in all matters appealed to it from a
6 subordinate court, or administrative agency when appeal is provided by law, **and has**
7 **jurisdiction over petitions for relief in administrative matters under**
8 **AS 44.62.305**. The hearings on appeal from a final order or judgment of a subordinate
9 court or administrative agency, except an appeal under AS 43.05.242, shall be on the
10 record unless the superior court, in its discretion, grants a trial de novo, in whole or in
11 part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall
12 be on the record.

13 * **Sec. 2.** AS 44.62 is amended by adding a new section to read:

14 **Sec. 44.62.305. Judicial relief in administrative matters. (a)**

1 Notwithstanding any other provision of law to the contrary and except as provided in
2 (f) and (g) of this section, a person may obtain judicial relief in an administrative
3 matter by the superior court before the state agency handling the administrative
4 proceeding on the matter issues a final administrative decision if

5 (1) the person is a party to the administrative proceeding;

6 (2) the person has satisfied the procedural requirements of the
7 administrative proceeding up to the time that the person petitions for judicial relief
8 under (b) of this section;

9 (3) the state agency has unreasonably delayed the progress of the
10 administrative proceeding; and

11 (4) further delay in reaching a final administrative decision will cause
12 the person immediate and irreparable damage.

13 (b) A person may seek judicial relief under (a) of this section by filing a
14 petition in the superior court. A person may not file the petition until 30 days after the
15 person has filed with the state agency handling the administrative proceeding a written
16 notice that the person intends to file the petition.

17 (c) In a proceeding begun under (b) of this section, if the superior court
18 determines that the person is eligible for judicial relief under (a) of this section, the
19 superior court may

20 (1) enjoin the administrative proceeding and determine the
21 administrative matter in the superior court;

22 (2) order that the administrative matter be handled by another form of
23 dispute resolution; or

24 (3) establish a deadline for the state agency to issue a final
25 administrative decision.

26 (d) After a person files a petition under (b) of this section, the state agency
27 shall continue with the administrative proceeding unless the superior court

28 (1) enjoins the administrative proceeding under (c)(1) of this section;

29 or

30 (2) issues an order under (c)(2) of this section.

31 (e) If the superior court decides that a person is not eligible for judicial relief

1 under (a) of this section, a party to the administrative proceeding may exercise any
2 right of appeal allowed under law for the final administrative decision as if the person
3 had not filed a petition under (b) of this section.

4 (f) A person may not obtain judicial relief under this section in a personnel
5 proceeding by a state agency. In this subsection, "personnel proceeding" includes a
6 proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance
7 arbitration procedure under a collective bargaining agreement.

8 (g) This section does not apply to an administrative proceeding of a state
9 agency if another statute of this state establishes a deadline for the state agency to
10 make a final decision in the administrative proceeding.

11 (h) In this section,

12 (1) "administrative matter" means the subject matter of an
13 administrative proceeding;

14 (2) "administrative proceeding" means

15 (A) a proceeding subject to AS 44.62.330 - 44.62.630; and

16 (B) a proceeding that is not subject to AS 44.62.330 -
17 44.62.630, that is authorized by statute for the adjudication of a state agency
18 matter by the state agency handling the matter or by a person appointed by the
19 state agency, and that involves a matter that directly affects the personal,
20 professional, or business interests of a specific person who is named in the
21 adjudication;

22 (3) "damage" means damage to the personal, professional, or business
23 interests of a person;

24 (4) "party" means a specific person whose personal, professional, or
25 business interests are the subject of an administrative proceeding and who is named in
26 the administrative proceeding;

27 (5) "person" does not include a state agency or other governmental
28 agency;

29 (6) "state agency" means a department, an institution, a board, a
30 commission, a division, an authority, and any other administrative unit of the
31 executive branch of state government, except a public corporation; the term includes

1 the University of Alaska.