

1 IN THE SENATE BY RADER BY REQUEST

2 SENATE BILL NO. 167

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing the Office of Administrative
7 Adjudication."

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

9 * Section 1. AS 44.62 is amended by adding new sections to read:

10 Sec. 44.62.351. OFFICE OF ADMINISTRATIVE ADJUDICATION. There is
11 created the Office of Administrative Adjudication in the Alaska court
12 system.

13 Sec. 44.62.352. PRESIDING OFFICER. (a) The Office of Adminis-
14 trative Adjudication is under the direction and control of an executive
15 officer who shall be known as the presiding officer.

16 (b) The presiding officer shall have the same qualifications as a
17 hearing officer and shall be appointed for a term of six years by the
18 governor from two or more nominations submitted by the Judicial Council.
19 The presiding officer is removable before the end of his term only for
20 good cause.

21 Sec. 44.62.353. HEARING OFFICERS. (a) The presiding officer
22 shall appoint and maintain a staff of hearing officers qualified under
23 this section which is sufficient to fill the needs of the various state
24 agencies.

25 (b) A hearing officer shall have been admitted to the practice of
26 law for at least two years immediately before his employment, shall be
27 otherwise qualified by reason of background and experience and shall
28 meet the qualifications established by the court system.

29 (c) The presiding officer shall assign a hearing officer for any

1 administrative adjudicatory proceeding arising under state law. A
2 hearing officer so assigned is considered an employee of the office and
3 not of the agency providing the hearing. When not engaged in hearing
4 cases, hearing officers may be assigned by the presiding officer to
5 perform other duties of the office including those under sec. 354 of
6 this chapter.

7 (d) The office may contract for the services of a hearing officer
8 when a staff member is not otherwise available or qualified to conduct
9 a proceeding.

10 Sec. 44.62.354. DUTIES OF OFFICE. All hearings of state agencies,
11 boards, commissions, and officers required to be conducted under this
12 chapter shall be conducted by hearing officers on the staff of the
13 office. However, the services of the office are not limited to those
14 agencies set out in sec. 330 of this chapter, and shall be used by
15 all state agencies. The office shall maintain a staff of technical
16 and clerical personnel as is necessary to carry out the duties of the
17 office. The office shall study the subject of administrative law and
18 procedure in all its aspects; submit its suggestions to the various
19 agencies in the interest of fairness, uniformity and the expedition
20 of business; and report its recommendations to the governor and legis-
21 lature at the beginning of each session. The office shall compile
22 and publish significant administrative law decisions. All departments,
23 agencies, officers and employees of the state shall give the office
24 ready access to their records and full information and reasonable
25 assistance in any matter of research requiring recourse to them or to
26 data within their knowledge or control.

27 * Sec. 2. AS 44.62.410 is amended to read:

28 Sec. 44.62.410. TIME AND PLACE OF HEARING. The agency shall con-
29 sult the office and all parties in interest, and, subject to the

1 availability of the office's staff, shall determine the time and place
2 of hearing. The hearing shall be held in the most convenient location
3 with due regard [JUNEAU OR KETCHIKAN, WHICHEVER IS CLOSER] to the
4 place where the matter arises and to the residence of the parties,
5 [TRANSACTION OCCURRED OR WHERE THE RESPONDENT RESIDES, IF THE TRANS-
6 ACTION OCCURRED IN OR THE RESPONDENT RESIDES IN THE SOUTHEASTERN
7 SENATE DISTRICT; IN ANCHORAGE IF THE TRANSACTION OCCURRED OR THE RESPON-
8 DENT RESIDES WITHIN THE SOUTH CENTRAL SENATE DISTRICT; IN FAIRBANKS OR
9 NOME, WHICHEVER IS CLOSER TO THE PLACE WHERE THE TRANSACTION OCCURRED
10 OR WHERE THE RESPONDENT RESIDES, IF THE TRANSACTION OCCURRED IN OR THE
11 RESPONDENT RESIDES IN THE CENTRAL OR NORTHWESTERN SENATE DISTRICTS.
12 THE AGENCY MAY, IF THE TRANSACTION OCCURRED IN A SENATE DISTRICT OTHER
13 THAN THAT OF RESPONDENT'S RESIDENCE, SELECT THE PLACE OF HEARING AP-
14 PROPRIATE FOR EITHER DISTRICT. THE AGENCY MAY SELECT A DIFFERENT PLACE
15 NEARER THE PLACE WHERE THE TRANSACTION OCCURRED OR WHERE THE RESPON-
16 DENT RESIDES,] or the parties by agreement may select any place in the
17 state, subject to approval by the office.

18 * Sec. 3. AS 44.62.430(a) is amended to read:

19 (a) Before the hearing begins the agency or the assigned hearing
20 officer shall issue subpoenas and subpoenas duces tecum at the request
21 of a party in accordance with the rules of civil procedure. After the
22 hearing begins the agency hearing a case or a hearing officer sitting
23 alone may issue subpoenas and subpoenas duces tecum.

24 * Sec. 4. AS 44.62.430(b) is amended to read:

25 (b) A subpoena issued under (a) of this section extends to all
26 parts of the state and shall be served in accordance with the rules of
27 civil procedure. No witness is obliged to attend at a place out of the
28 election district in which he resides unless the distance is less than
29 100 miles from his place of residence, except that the agency or the

1 assigned hearing officer, upon affidavit of a party showing that the
2 testimony of the witness is material and necessary, may endorse on the
3 subpoena an order requiring the attendance of the witness.

4 * Sec. 5. AS 44.62.500(c) is amended to read:

5 (c) If the proposed decision is not adopted as provided in (b)
6 of this section, the agency shall state in writing its reasons for not
7 adopting the decision, and a final decision, including findings of
8 fact and conclusions of law, shall be separately stated. Findings of
9 fact, if set out in statutory language, shall be accompanied by a
10 concise and explicit statement of the underlying facts supporting the
11 findings. If the agency determines that additional evidence is neces-
12 sary, the agency may refer the matter to the office for assignment to
13 the same or to another hearing officer to take additional evidence.

14 [IF THE PROPOSED DECISION IS NOT ADOPTED AS PROVIDED IN (b) OF THIS
15 SECTION THE AGENCY MAY DECIDE THE CASE UPON THE RECORD, INCLUDING
16 THE TRANSCRIPT, WITH OR WITHOUT TAKING ADDITIONAL EVIDENCE, OR MAY
17 REFER THE CASE TO THE SAME OR ANOTHER HEARING OFFICER TO TAKE ADDITIONAL
18 EVIDENCE.] If the case is so assigned to a hearing officer he shall
19 prepare a proposed decision as provided in (b) of this section upon
20 the additional evidence and the transcript and other papers which are
21 part of the record of the earlier hearing. A copy of the proposed
22 decision shall be furnished to each party and his attorney as prescribed
23 by (b) of this section. The agency may not decide a case provided for
24 in this subsection without giving the parties the opportunity to present
25 either oral or written argument before the agency. [IF ADDITIONAL ORAL
26 EVIDENCE IS INTRODUCED BEFORE THE AGENCY, NO AGENCY MEMBER MAY VOTE
27 UNLESS HE HAS HEARD THE ADDITIONAL ORAL EVIDENCE.]

28 * Sec. 6. AS 44.62 is amended by adding a new section to read:

29 Sec. 44.62.515. DECISION TIME LIMITS. (a) The hearing officer

1 shall render a proposed decision in a case which he hears within 90
2 days from the conclusion of the hearings on the case or the submission
3 of briefs or memoranda, whichever occurs later.

4 (b) No salary warrant may be issued to a hearing officer until
5 he has filed with the state officer designated to issue salary warrants,
6 an affidavit that no matter referred to him has been pending for more
7 than 90 days from the time of the closing of the record on the matter,
8 including the submission of motions, memoranda or briefs.

9 (c) A proposed decision of the hearing officer,
10 upon which no action is taken by the agency within 30 days from the
11 receipt of that decision, is the final decision of the agency.

12 * Sec. 7. AS 44.62.590(a) is amended to read:

13 (a) In a proceeding before an agency, the agency or the assigned
14 hearing officer shall certify the facts to the superior court in the
15 judicial district where the proceeding is held if a person in the
16 proceeding

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

22 hearing as to obstruct the proceeding.

23 * Sec. 8. AS 44.62.640(b)(3) is amended to read:

24 (3) "hearing officer" means a hearing officer qualified
25 under sec. 353 [350] of this chapter;

26 * Sec. 9. AS 44.62.640(b) is amended by adding a new paragraph to read:

27 (6) "office" means the Office of Administrative Adjudication.

28 * Sec. 10. AS 44.62.350 is repealed.
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