

1 IN THE HOUSE

BY PARKER

2 HOUSE BILL NO. 724

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND 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  
17 an administrative judge and shall be appointed for a term of six years  
18 by the governor from two or more nominations submitted by the judicial  
19 council. The presiding officer is removable before the end of his term  
20 only for good cause.

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

25 (b) An administrative judge shall have been admitted to the  
26 practice of law for at least two years immediately before his employ-  
27 ment, shall be a graduate of a law school approved by the American Bar  
28 Association, and a member of the Alaska Bar or an attorney in good  
29 standing in the bar of another state.

1 (c) The presiding officer shall assign an administrative judge for  
2 any administrative adjudicatory proceeding arising under state law. An  
3 administrative judge so assigned is considered an employee of the office  
4 and not of the agency providing the hearing. When not engaged in hear-  
5 ing cases, an administrative judge may be assigned by the presiding  
6 officer to perform other duties of the office including those under sec.  
7 354 of this chapter.

8 (d) The office may contract for the services of an administrative  
9 judge when a staff member is not otherwise available or qualified to  
10 conduct a proceeding.

11 Sec. 44,62.354. DUTIES OF OFFICE. All hearings of state agencies,  
12 boards, commissions, and officers required to be conducted under this  
13 chapter shall be conducted by administrative judges on the staff of the  
14 office. However, the services of the office are not limited to those  
15 agencies set out in sec. 330 of this chapter, and shall be used by all  
16 state agencies. The office shall conduct hearings for municipalities  
17 under sec. 355 of this chapter upon their request. The office shall  
18 maintain a staff of technical and clerical personnel as is necessary to  
19 carry out the duties of the office. The office shall study the subject  
20 of administrative law and procedure in all its aspects; submit its  
21 suggestions to the various agencies in the interest of fairness, uni-  
22 formity and the expedition of business; and report its recommendations  
23 to the governor and legislature at the beginning of each session. The  
24 office shall compile and publish significant administrative law deci-  
25 sions. All departments, agencies, officers and employees of the state  
26 shall give the office ready access to their records and full information  
27 and reasonable assistance in any matter of research requiring recourse  
28 to them or to data within their knowledge or control.

29 Sec. 44.62.355. ADJUDICATION OF MUNICIPAL CONFLICTS. Municipalities

1 may request the office to adjudicate a conflict. A municipality re-  
2 questing adjudication by the office shall be responsible for the full  
3 costs of the proceeding, including the costs and expenses of the party  
4 with whom the municipality finds itself in conflict.

5 \* Sec. 2. AS 44.62.410 is amended to read:

6 Sec. 44.62.410. TIME AND PLACE OF HEARING. The agency shall  
7 consult the office and all parties in interest and, subject to the  
8 availability of the office's staff, shall determine the time and place  
9 of hearing. The hearing shall be held in the most convenient location  
10 with due regard [JUNEAU OR KETCHIKAN, WHICHEVER IS CLOSER] to the place  
11 where the matter arises and to the residence of the parties, [TRANS-  
12 ACTION OCCURRED OR WHERE THE RESPONDENT RESIDES, IF THE TRANSACTION  
13 OCCURRED IN OR THE RESPONDENT RESIDES IN THE SOUTHEASTERN SENATE DIS-  
14 TRICT; IN ANCHORAGE IF THE TRANSACTION OCCURRED OR THE RESPONDENT  
15 RESIDES WITHIN THE SOUTH CENTRAL SENATE DISTRICT; IN FAIRBANKS OR NOME,  
16 WHICHEVER IS CLOSER TO THE PLACE WHERE THE TRANSACTION OCCURRED OR WHERE  
17 THE RESPONDENT RESIDES, IF THE TRANSACTION OCCURRED IN OR THE RESPONDENT  
18 RESIDES IN THE CENTRAL OR NORTHWESTERN SENATE DISTRICTS. THE AGENCY  
19 MAY, IF THE TRANSACTION OCCURRED IN A SENATE DISTRICT OTHER THAN THAT OF  
20 RESPONDENT'S RESIDENCE, SELECT THE PLACE OF HEARING APPROPRIATE FOR  
21 EITHER DISTRICT. THE AGENCY MAY SELECT A DIFFERENT PLACE NEARER THE  
22 PLACE WHERE THE TRANSACTION OCCURRED OR WHERE THE RESPONDENT RESIDES,]  
23 or the parties by agreement may select any place in the state, subject  
24 to approval by the office.

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

26 (a) Before the hearing begins the agency or the assigned adminis-  
27 trative judge shall issue subpoenas and subpoenas duces tecum at the  
28 request of a party in accordance with the rules of civil procedure.  
29 After the hearing begins the agency hearing a case or an administrative

1 judge [A HEARING OFFICER] sitting alone may issue subpoenas and sub-  
2 poenas duces tecum.

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

4 (b) A subpoena issued under (a) of this section extends to all  
5 parts of the state and shall be served in accordance with the rules of  
6 civil procedure. No witness is obliged to attend at a place out of the  
7 election district in which he resides unless the distance is less than  
8 100 miles from his place of residence, except that the agency or the  
9 assigned administrative judge, upon affidavit of a party showing that  
10 the testimony of the witness is material and necessary, may endorse on  
11 the subpoena an order requiring the attendance of the witness.

12 \* Sec. 5. AS 44.62.500 is amended to read:

13 Sec. 44.62.500. DECISION IN A CONTESTED CASE. (a) If a contested  
14 case is heard before an agency (1) the administrative judge [HEARING  
15 OFFICER] who presided at the hearing shall be present during the con-  
16 sideration of the case and, if requested, shall assist and advise the  
17 agency; and (2) a member of the agency who has not heard the evidence  
18 may not vote on the decision.

19 (b) If a contested case is heard by an administrative judge [A  
20 HEARING OFFICER] alone, he shall prepare a proposed decision in a form  
21 which may be adopted as the decision in the case. A copy of the pro-  
22 posed decision shall be filed by the agency as a public record with the  
23 lieutenant governor and a copy of the proposed decision shall be served  
24 by the agency on each party in the case and his attorney. The agency  
25 itself may adopt the proposed decision in its entirety, or may reduce  
26 the proposed penalty and adopt the balance of the proposed decision.

27 (c) If the proposed decision is not adopted as provided in (b) of  
28 this section, the agency shall state in writing its reasons for not  
29 adopting the decision, and a final decision, including findings of fact

1 and conclusions of law, shall be separately stated. Findings of fact,  
2 if set out in statutory language, shall be accompanied by a concise and  
3 explicit statement of the underlying facts supporting the findings. If  
4 the agency determines that additional evidence is necessary, the agency  
5 may refer the matter to the office for assignment to the same or to  
6 another administrative judge to take additional evidence [THE AGENCY MAY  
7 DECIDE THE CASE UPON THE RECORD, INCLUDING THE TRANSCRIPT, WITH OR  
8 WITHOUT TAKING ADDITIONAL EVIDENCE, OR MAY REFER THE CASE TO THE SAME OR  
9 ANOTHER HEARING OFFICER TO TAKE ADDITIONAL EVIDENCE]. If the case is so  
10 assigned to an administrative judge [A HEARING OFFICER] he shall prepare  
11 a proposed decision as provided in (b) of this section upon the addi-  
12 tional evidence and the transcript and other papers which are part of  
13 the record of the earlier hearing. A copy of the proposed decision  
14 shall be furnished to each party and his attorney as prescribed by (b)  
15 of this section. The agency may not decide a case provided for in this  
16 subsection without giving the parties the opportunity to present either  
17 oral or written argument before the agency. [IF ADDITIONAL ORAL EVI-  
18 DENCE IS INTRODUCED BEFORE THE AGENCY, NO AGENCY MEMBER MAY VOTE UNLESS  
19 HE HEARD THE ADDITIONAL ORAL EVIDENCE.]

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

21       Sec. 44.62.515. DECISION TIME LIMITS. (a) The administrative  
22 judge shall render a proposed decision in a case which he hears within  
23 90 days from the conclusion of the hearings on the case or the submis-  
24 sion of briefs or memoranda, whichever occurs later.

25       (b) No salary warrant may be issued to an administrative judge  
26 until he has filed with the state officer designated to issue salary  
27 warrants an affidavit that no matter referred to him has been pending  
28 for more than 90 days from the time of the closing of the record on the  
29 matter, including the submission of motions, memoranda or briefs.

1 (c) A proposed decision of the administrative judge, upon which no  
2 action is taken by the agency within 30 days from the receipt of that  
3 decision, is the final decision of the agency.

4 \* Sec. 7. AS 44.62.540(b) is amended to read:

5 (b) The case may be reconsidered by the agency on all the perti-  
6 nent parts of the record and the additional evidence and argument that  
7 are permitted, or may be assigned to an administrative judge [A HEARING  
8 OFFICER]. A reconsideration assigned to an administrative judge [A  
9 HEARING OFFICER] is subject to the procedure provided in sec. 500 of  
10 this chapter. If oral evidence is introduced before the agency, no  
11 agency member may vote unless he has heard the evidence.

12 \* Sec. 8. AS 44.62.560(c) is amended to read:

13 (c) The complete record includes (1) the pleadings, (2) all notices  
14 and orders issued by the agency, (3) the proposed decision by an adminis-  
15 trative judge [A HEARING OFFICER], (4) the final decision, (5) a tran-  
16 script of all testimony and proceedings, (6) the exhibits admitted or  
17 rejected, (7) the written evidence, and (8) all other documents in the  
18 case.

19 \* Sec. 9. AS 44.62.580 is amended to read:

20 Sec. 44.62.580. CONTINUANCES. The agency may grant continuances.  
21 If an administrative judge [A HEARING OFFICER] is assigned to a hearing,  
22 no continuance may be granted except by him for good cause shown.

23 \* Sec. 10. AS 44.62.590(a) is amended to read:

24 (a) In a proceeding before an agency, the agency or the assigned  
25 administrative judge shall certify the facts to the superior court in the  
26 judicial district where the proceeding is held if a person in the pro-  
27 ceeding

- 28 (1) disobeys or resists a lawful order;  
29 (2) refuses to respond to a subpoena;

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- (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.

\* Sec. 11. AS 44.62.620 is amended to read:

Sec. 44.62.620. POWER TO ADMINISTER OATHS. In a proceeding under secs. 330 - 630 of this chapter an agency, agency member, secretary of an agency or administrative judge [HEARING OFFICER] may administer oaths and affirmations and certify official acts.

\* Sec. 12. AS 44.62.630 is amended to read:

Sec. 44.62.630. IMPARTIALITY. The functions of administrative judges [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 administrative judges [OFFICERS], except to the extent required for the disposition of ex parte matters authorized by law, shall 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.

\* Sec. 13. AS 44.62.640(b) is amended by adding new paragraphs to read:

- (6) "office" means the office of administrative adjudication;
- (7) "administrative judge" means a judge qualified under sec. 353 of this chapter.

\* Sec. 14. AS 44.62.350 and 44.62.640(b)(3) are repealed.