

HJR

18

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 24, 1999

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 3/16/99

The STATE AFFAIRS Committee considered:

HJR 18

HOUSE JOINT RESOLUTION NO. 18

CONST. AM: ADMINISTRATIVE HEARINGS

Proposing an amendment to the Constitution of the State of Alaska relating to an office of administrative hearings.

recommends it be replaced with the following committee substitute CSHJR 18 (STA) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) GOV

fiscal note(s) _____

zero fiscal note(s) _____

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Jeannette James</i>	✓			
<i>Hal Swoboda</i>		✓		
<i>Beth Bertolino</i>		✓		
<i>John Collins</i>	✓			
<i>[Signature]</i>	✓			
<i>Scott Dan</i>	✓			

CHAIR'S SIGNATURE *Jeannette James*

1-LS0513\D.2
Cook ✓
3/9/99

*Ordered CS
3/16/99*

AMENDMENT #!

OFFERED IN THE HOUSE
TO: HJR 18

BY REPRESENTATIVE OGAN

1 Page 1, line 1: *New Title*
2 Delete "an amendment"
3 Insert "amendments"

4 Page 1, following line 13:

5 Insert a new section to read:

6 *"* Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new*
7 *section to read:*

8 **Section 30. Application of Amendment Relating to Administrative**
9 **Hearings.** The 2000 amendment relating to administrative hearings made in Section
10 28 of Article III applies only to administrative hearings begun on or after January 1,
11 2002."

12 Renumber the following section accordingly.

13 Page 1, line 14:

14 Delete "amendment"

15 Insert "amendments"

*extend effective date
2 years from passage.*

Passed unanimously

Alaska State House of Representatives
STATE AFFAIRS COMMITTEE
Representative Jeannette James, Chair



Rm 102, Capitol Building, Juneau

Phone 465-3743, Fax 465-2381

Members:
Rep. John Coghill, Vice-Chair
Rep. Bill Hudson
Rep. Beth Kerttula
Rep. Scott Ogan
Rep. Harold Smalley
Rep. Jim Whitaker

March 15, 1999

Please add the following to your packet on HJR 18:

1. Proposed amendment,
2. Two letters of support,
3. Information from National Association of Administrative Law Judges.

Barbara

I-LS0513\D.2
Cook ✓
3/9/99

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OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

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15 Insert "amendments"

Subject:

Date: Sun, 8 Mar 1998 20:44:14 -0900

From: "sarah" <skyer@alaska.net>

To: "Scott Ogan" <Representative_Scott_Ogan@legis.state.ak.us>

CC: "John Torgerson" <Senator_John_Torgerson@legis.state.ak.us>, "Norm Rokeberg" <Representative_Norman_Rokeberg@legis.state.ak.us>, "Randy Phillips" <Senator_Randy_Phillips@legis.state.ak.us>

HJR 18 is a good bill. Currently, Dept. of Revenue Hearing Officers for CSED work in the CSED offices and are paid by CSED. I have always felt that these facts alone compromised their impartiality and fairness as finders of fact in Formal Hearing decisions. Scott Ogan apparently also recognizes the conflict of interest inherent in the current situation. Gary Maxwell of Families First Partnership

I Sarah Short also feel this Bill is one of the better ones. I would encourage participation from those affected by this state agency in order to make the most educated decision. If you do not include all the variables then the outcome can not be statistically correct. This is a major problem with many decisions made by the state (one sided solutions and/or input). Our organization would be willing to help compile data and input from those affected to assist the legislators in making more educated two sided decisions.

Sarah Short President
Families First Partnership
www.families-1st.org
907-561-5976

Please feel free to refer constituents to our organization for assistance. Hopefully we can help them get the help they need and find solutions to their problems with state agencies and free up your time to look at implementing those solutions once they are better laid out for you. Please also visit our web site and feel free to add any info you feel would assist us in helping your constituents. We are making progress on our district mapping project to see where the biggest areas of impact concerning state agency efficiency or lack of are. We hope to use this in supporting all of you in the future. Thank you for your support! Again I would like to up date you that we have doubled our size since the presentation to the Children's Caucus and we are in touch with many villages and communities. We will continue to grow.

Subject: HJR 18

Date: Mon, 08 Mar 1999 20:59:57 -0900

From: "Tony Bounds" <23sneaks@alaskalife.net>

To: sarah <skTyler@alaska.net>, Scott Ogan <Representative_Scott_Ogan@legis.state.ak.us>

CC: John Torgerson <Senator_John_Torgerson@legis.state.ak.us>,
Norm Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>,
Randy Phillips <Senator_Randy_Phillips@legis.state.ak.us>

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--
Tony K Bounds
President: The Multimedia Alliance, Inc.
Outstanding Web Development for Outstanding Business
(907) 349-7185 Fax: (907) 522-1345
www.multi-alliance.com

APPENDIX 2
QUALIFICATION STANDARDS
ADMINISTRATIVE LAW JUDGE
OFFICE OF ADMINISTRATIVE HEARINGS

The purpose of the Office of Administrative Hearings is to promote administrative justice and to serve the public interest. An Administrative Law Judge shall be distinguished for his or her integrity, wisdom and sound legal knowledge, and shall inspire confidence in his or her personal honesty, fairness and moral courage.

A candidate or incumbent shall possess, at a minimum, the following qualifications in order to obtain an appointment to, or retain the position of, Administrative Law Judge.

Integrity

An Administrative Law Judge shall possess a high degree of personal integrity, and shall deal with his or her appointments as a public trust. An Administrative Law Judge shall be honest, sincere, upright and principled, and shall exhibit compassion, humility and moral courage. An Administrative Law Judge shall be indifferent to private political or partisan influence. An Administrative Law Judge shall not administer the office for the purpose of advancing his or her personal ambitions, and shall not allow other affairs or private interests to interfere with the proper performance of official duties.

Impartiality

An Administrative Law Judge shall adhere to a high standard of justice and lawfulness, and shall treat all parties impartially and fairly without reference to his or her own feelings or interests. An Administrative Law Judge shall have the ability to preside justly and without bias. An Administrative Law Judge shall exhibit a willingness to hear and consider what is put forth on all sides of a debatable proposition, and shall have the ability to give genuine consideration to views with which he or she does not personally agree.

The Central Hearing Agency: Theory And Implementation In Maryland

Dedication

An Administrative Law Judge shall conduct his or her duties with industry and application and shall be conscientious, studious, thorough and punctual. An Administrative Law Judge shall not allow other affairs or private interests to interfere with the prompt performance of official duties.

Ability

An Administrative Law Judge shall possess superior self-discipline and shall exercise sound judgment in presiding, ruling on evidence, making decisions, and writing opinions. An Administrative Law Judge shall have the bearing and personality to allow him or her to deal with parties or counsel with sensitivity and without giving offense. An Administrative Law Judge shall be patient, courteous, attentive, yet shall also be firm and decisive. An Administrative Law Judge shall be mentally fit and alert and capable of performing the duties of office.

Ability to Preside:

An Administrative Law Judge shall conduct hearings with dignity and decorum and without interference which might detract from the proper atmosphere. An Administrative Law Judge shall so conduct himself or herself during hearings that his or her attitude, manner or tone toward attorneys or witnesses will not prevent the proper presentation of the cause or the ascertainment of truth. He or she shall not make an unnecessary display of learning, express a premature judgment, or add to the embarrassment or timidity of witnesses or attorneys. An Administrative Law Judge shall listen readily to others and be detached, even-handed and decisive.

Ability to Rule on Evidence:

An Administrative Law Judge shall be able to rule on evidence in accordance with applicable laws, rules, procedural regulations and legal precedent.

Ability to Make a Decision

An Administrative Law Judge shall possess the ability to decide causes before him or her in a fair, unbiased and impartial manner.

Ability to Write a Decision

An Administrative Law Judge shall be able to organize facts and legal opinion in a clear and concise manner.

Knowledge of Law

An Administrative Law Judge shall administer justice in accordance with the law and regulations governing the cause before him or her.

Timeliness

An Administrative Law Judge shall perform his or her duties in a timely manner as may be required in the particular cause.

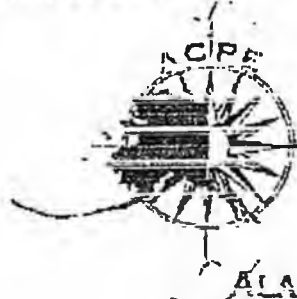
Minimum Experience and Education

An Administrative Law Judge shall, at minimum, possess a Juris Doctor or equivalent degree from an accredited college or university, and be a member in good standing of the bar of any jurisdiction.

In conjunction with the initial formation of the Office of Administrative Hearings, and in order to grandfather into the Office those Hearing Examiners who performed their prior duties in an exemplary manner, individuals may be appointed to the position of Administrative Law Judge prior to February 1, 1990, without regard to this minimum experience and education requirement.¹⁶¹

¹⁶¹The Office of Administrative Hearings Administrative Law Judge Qualification Standards went into effect January 1, 1990. A copy of the signed document is on file with the author.

Barbara



from the Executive Office of
ALASKA COMMISSION ON POSTSECONDARY EDUCATION

Fax Cover Sheet

The information contained in this fax is confidential and/or privileged. This fax is intended to be reviewed initially by only the intended recipient or a representative of the intended recipient. You are hereby notified that any review, dissemination, or copying of this fax or the information contained herein is prohibited. If you have received this fax in error, please immediately notify the sender by telephone and return this fax to the sender at the address below. Thank you.

DATE: 3/4/99

SEND TO: Marty W. [unclear]

FAX #: 465-2267

NUMBER OF PAGES: 5
(INCL. COVER SHEET)

FROM: Donna [unclear]

MESSAGE: Copy of [unclear] testimony.

Not present meeting, but would give you an idea of comments.

Personnel Use Only

DOCUMENT SENT BY: _____

DATE / TIME COMPLETED: _____

3030 VINTAGE BLVD. • JUNEAU, ALASKA 99801-7109
(907) 455-5740 • FAX (907) 465-3293
EXECUTIVE_DIRECTOR@EDUC.STATE.AK.US

HJR 18 House State Affairs Thurs. March 4, 9:00 a.m.

Capitol 102

ACPE's concern related to the proposal that the Office of Administrative Hearings "render final agency decisions."

ACPE, in its primary roles as institution regulator and financial lending agency, currently receives a wide variety of requests for exceptions to statutory and regulatory requirements..

Under its statutory mandate to regulate institutions and administer the state's student financial aid programs, the Commission requests statutory authority, promulgates regulations, and develops and implements policies designed both to meet its fiduciary responsibility for Alaska Student Loan Corporation funding and to protect Alaskan consumers. Staff then follow these requirements by administering the terms and conditions of Alaska Student Loans and by monitoring the regulated public's compliance with minimum standards to operate postsecondary institutions in Alaska and market their educational products to Alaskans.

As the staff and Commission carry out these duties, dissatisfied customers who are denied different types of accommodation currently follow, based on the nature of the appeal, several variations of administrative due process:

- 1) Appeal determination to staff; if denied appeal staff determination to the executive director. The executive director is the final administrative appeal and the matter must then be taken to the superior court. The types of issues subject to this process are

generally very technical and related to the terms and conditions of the loans as set out in statute and regulation. For example, request for deferment of payments, loan settlement offers, forgiveness denials, defaults, etc.

- 2) Appeal of a default determination to the executive director. Current statutes require that a borrower appeal this determination within 30 days of the default notice and the executive director's determination is the final administrative decision.
- 3) Appeal determination to staff; if denied appeal staff determination to the executive director; if denied appeal executive director decision to the full Commission. The Commission is the final administrative appeal and the matter must then be taken to the superior court. The single issue subject to this process is denial of a loan.
- 4) Appeal staff determination to the executive director; if denied appeal the executive director's decision to an impartial hearing officer. The hearing officer's decision is the final administrative appeal. His/her decision must be taken to the superior court. Two issues subject to this process are request for cancellation due to medical conditions.
- 5) Appeal staff action directly to a hearing officer. Hearing officer issues a recommended decision to the Commission. The Commission may choose to accept, reject or amend the hearing officer's decision (or in some instances delegate this task to the executive director). The Commission's decision is the final administrative appeal. His/her decision must be taken to the superior court. The primary issue subject to this process is the annual garnishment of Permanent Fund Dividends.

Reviewing activity for the past two years, the Commission has had between approximately 500 and 750 appeals each year. Our contractual costs for hearings have been significantly diminished due to the fact the only issue that produces significant appeals that currently go to the hearing officer is PFD garnishment. Because these actions occur simultaneously, they are adjudicated en masse allowing for peak efficiency on the part of the hearing officer without undue delays for the appellants. The average annual costs for a hearing officer (based on the past two years) is approximately \$19,000. These represent the costs for about one-half the total appeals received.

If the agency were required to revise the due process so that all appeals are routed to an administrative hearing officer, we have very serious concerns about the costs and time involved. Currently both the staff and the executive director comply with a standard internal deadline of responding to a customer's appeal within 10 business days of its receipt. The exceptions to this are requests for medical cancellation due to the complex and detailed materials required to support such a request. Appeals of default status are especially time-sensitive because certain collection options available to the Commission are only applicable to defaulted accounts.

Potential delays aside, the costs, with conservative assumptions of three hours of preparation and two hours per hearing would increase this agency expenses by more than \$125,000 per year. Because all expenses occurred in the administration of the program are paid from corporation funds, these costs would be passed along to our customers utilizing the loan program.

Lastly, as the responsible *fiduciary* of the ASLC, it would be very concerning to shift decision-making authority outside the executive staff and boards charged with managing the corporation's assets.

Thank you for the opportunity to air these issues, I'd be happy to answer any questions.

STATE OF ALASKA

TONY KNOWLES, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

March 3, 1999

The Honorable Jeannette James
Chair, House State Affairs Committee
State Capitol
Juneau, AK

Re: House Joint Resolution 18 (Constitutional Amendment /
Administrative Hearings)

Dear Representative James:

I am writing to provide some preliminary legal observations on HJR 18. Under that resolution, a constitutional amendment would be placed before the voters that would vest all power to conduct administrative law hearings and to render final "agency" decisions in an office created for that purpose. The concept of a centralized hearing function is intriguing. However the scope of the proposed amendment, as well as centralization of all final decision-makers in one office, poses concerns for the functioning of state agencies and programs.

AGENCIES THAT WOULD LOSE PRIMARY FUNCTION

Some agencies exist for the primary function of conducting administrative hearings. Under HJR 18, they would no longer have that function. Those agencies include: Alaska Workers' Compensation Board, State Board of Parole, Occupational Safety and Health Review Board, Fisherman's Fund Advisory and Appeal Council, State Assessment Review Board, and Violent Crimes Compensation Board. All of these agencies are boards and commissions; most are comprised of citizen appointees.

REMOVAL OF IMPORTANT LICENSING OVERSIGHT

Certain of the citizen boards and commissions currently make final determinations regarding fitness for licensing and impose sanctions for violations of ethical or professional standards. Those boards and commissions include, for example, all occupational licensing boards, the Alcoholic Beverage Control Board, the Professional Teaching Practices Commission, and the Alaska Police Standards Council. The Commission on Judicial Conduct performs a similar function for the judiciary. Under the constitutional amendment, the boards and

commissions would no longer be able to provide their expertise and public perspective on questions of fitness and discipline.

Some licensing decisions are directed to department officials. These include facility licensing for foster care, nursing homes, substance abuse treatment centers, and a variety of other residential facilities; licensing for insurance carriers and agents, and a variety of other professions; certificates of fitness to work in the electrical wiring, hazardous painting, and plumbing trades; and licensing of gambling and tobacco sales establishments. Those agencies carry their own expertise regarding these matters.

The proposed amendment to the constitution may remove administrative review of denials of admissions to the bar, and bar discipline, from the Alaska Bar Association and vest it in the Office of Administrative Appeals. Because the Alaska Supreme Court presently exercises final authority over these decisions, a real question would exist over the allocation of constitutional power between these two bodies.

CURTAILED ENFORCEMENT RESPONSIBILITIES

A number of other agencies have statutory enforcement responsibilities that would be substantially curtailed if they lost adjudicatory functions. These include: the Alaska Labor Relations Agency, the Alaska Commission for Human Rights, Alaska Public Utilities Commission, the Alaska Commission on Postsecondary Education (regulation of institutions only), and the Alaska Public Offices Commission.

SCOPE OF APPLICATION

The proposed amendment is modeled after Art. IV, § 1 of the Alaska Constitution, giving judicial power to the courts. Both provisions have phrases that state that the "jurisdiction . . . shall be prescribed by law." The Alaska courts have held that the legislature may not, by statute, take away ultimate judicial power vested in the courts under the Alaska constitution. See, e.g., Royzkydal v. State, 939 P.2d 1091, 1094-95 (Alaska App. 1997). By including the same language in HJR 18, it would appear that the legislature could not exempt any agency or type of hearing from the proposed constitutional amendment, should it be adopted by the voters.

The proposed amendment would encompass all aspects of state programs. The proposed Office of Administrative Hearings would hear and decide in benefit determination hearings, such as public assistance and medical aid programs, vocational rehabilitation, employment security, and retirement programs. It would also replace the newly created Office of Tax Appeals. It would make final determinations on forest practices; oil, gas, and mining permits; health care facility certificates of need; aeronautic regulation; elevator safety; and concealed gun permits. Appeals from loan decisions by the state's lending agencies would be moved from the entities with responsibility for those loan funds.

The amendment would also cover all administrative due process reviews in which the state is acting as an employer, purchaser, contractor, or landowner. This would include all procurement appeals, personnel appeals, and land use disputes.

The term "administrative law hearings" could be interpreted to include any due process review currently undertaken by an agency. The term may not be to those matters currently heard under the Administrative Procedure Act or under an alternative statutory hearing process. An internal agency procedure to provide due process review of a staff decision could come within the reach of the proposed amendment.

INCREASED APPELLATE REVIEW

Although a hearing officer might develop familiarity with certain topics through case assignments, the hearing officer would not attain the agency's expertise on the subject. The individual hearing officer would also be able to set policy for the state government, rather than confirmed cabinet members or board appointees. Many of the cabinet members and board appointees have a lifetime of experience and study in their fields. On review, the courts would probably not give deference to final decisions made by the Office of Administrative Hearings and would instead conduct a trial de novo, substituting the court's judgment for the hearing officer's. This procedure would inevitably increase costs for all litigants. The judiciary, in turn, would then be setting state policy.

NEED FOR INTERIM PROCEDURES

The resolution contains no delayed start-date, so that should the proposed amendment be passed by the voters, existing administrative hearing functions would terminate without the alternative in place. A number of current agency hearing processes are conducted on an expedited schedule in order to accommodate the need for an immediate decision.

Implementation of the proposed constitutional amendment would take time. The legislature would need to rewrite all existing statutes governing administrative due process procedures. HB 232, introduced last session, attempted to address a portion of these procedures. The last draft of that bill was 202 pages long, and this office identified a long list of statutes (65, alone, for agencies under the Administrative Procedure Act) that had been omitted.

I have not addressed within the scope of these comments the question whether the courts would allow these amendments to the constitution through this procedure (Art. XIII, § 1), rather than requiring a constitutional convention (Art. XIII, § 4).


The Honorable Jeannette James

March 3, 1999
Page 4

I appreciate this opportunity to communicate with your committee and look forward to ongoing opportunities to discuss the issues raised in HJR 18.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Teresa Williams
Assistant Attorney General

TW:jem

cc: Members, House State Affairs Committee
Representative Scott Ogan
Pat Pourchot, Legislative Director, Office of the Governor
Chrystal Smith, Legislative Liaison, Department of Law
Deborah Behr, Department of Law

Re: (no subject)

Subject: Re: (no subject)

Date: Thu, 25 Feb 1999 16:09:58 -0900

From: Shari Kochman <shari_kochman@gov.state.ak.us>

Organization: Alaska Office of the Governor

To: Barbara Cotting <Barbara_Cotting@legis.state.ak.us>

request is in
thanks

Barbara Cotting wrote:

>

> *I have scheduled the following bill for hearing on March 4 and need*

> *fiscal notes:*

>

> *HJR 18, Scott ogan, Const.Am. Administrative Hearings.*

>

> *It should impact Elections and Admin.*



SPONSOR STATEMENT

HJR 18

Elimination of in-house administrative hearing officers

This constitutional amendment, if approved by voters, will establish an office of administrative hearings apart from and separate from state agencies.

All research shows significant cost savings, efficiency of process, and a re-establishment of fairness, when hearing officer functions are consolidated, held to due process standards, and politically insulated from agencies.

Benefits to the public, in addition to saving money, are extremely positive. They include less litigation, stable investment climate, comfort for small entrepreneurs, and an increase in public confidence in fair hearings.

Perhaps most importantly, full time independent hearing officers provide a level playing field for those challenging regulations. They also hold those who develop, promulgate, and enforce regulations to a higher standard. All data shows regulations become less onerous when unbiased hearing officers, governed not by commissioners, but due process, scrutinize them.

HJR 18, like due process reforms in 25 other states, will correct inefficiency, increase professional standards, save money, restore public confidence, stimulate development and restore the proper balance between the adjudicatory and prosecutorial functions of executive branch.



REPRESENTATIVE SCOTT OGAN

Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

FOR IMMEDIATE RELEASE: February 24, 1999

CONTACT: 907-465-3878

Measure To Move State Hearing Officers Away From Agencies

(JUNEAU) -- A constitutional amendment introduced by Rep. Scott Ogan, Palmer will separate the administrative hearing officer functions away from the State bureaucracies that now employ them. A more economical independent hearing office headed by an administrative law judge, and confirmed by the legislature, would be established completely separate from other agencies and department heads.

"Our system is in the dark ages," said Ogan. "Alaskans are ruled by an antiquated system of hearing officers who work for the very agencies which promulgate the regulations. How can people expect fair due process when their quasi-judicial hearing officer answers to their commissioner's agenda?"

The amendment is based on changes made in at least 24 other states to create fair, efficient, professional administrative hearings. Ogan has been working closely with a number of professional persons including a nationally known expert, and an Administrative Law judge here in Alaska.

"There is broad support for separating hearing officers from their agencies. It's hard to believe 'in house' hearings provide due process," said Ogan. Winston Churchill once said, "When you have a lack of separation of powers between the executive and the judiciary, you have a tyranny."

Ogan had introduced a bill in the last legislature to initiate independent hearings but changed tactics this session. "The Knowles Administration, while saying they were supportive of the concept, ran interference with the legislature setting up the details of the plan. This new approach will avoid the criticism of micro managing. If the people approve of independent hearing officers, hopefully the administration will come to the table," said Ogan.

Ogan touts his measure as being cost efficient and points to other states that have put independent offices into place. A report from Colorado shows fewer officers, much faster hearings, high public approval, and fewer cases needing litigation.

"There is no doubt this will save the state millions of dollars. Our Court System will see fewer cases. The bureaucracy will be more cautious with regulations if they are held accountable by an independent tribunal!" said Ogan. "The biggest savings will be to the public, who will have better regulations, fair hearings, and consistent public policy."

###

Broadcasters note:

Comments are available on the House Majority Actuality Line 1-800-478-6540

- **Centralized hearings save both public and private dollars**

PUBLIC SECTOR

Problem: Agency hearing officers serve a government master.

Alaska's non-centralized hearing offices mean a multitude of directions and a fragmented approach to adjudicatory functions. Each agency, hearing officer and support staff operate differently.

Solution: Independent, Centralized Hearings

States that have created central hearing functions report much higher efficiency, with cross-training, full time processing, performance budgeting, consolidated goals and high expectations.

- **Centralized hearings increase dollars and business**

PRIVATE SECTOR

Problem: Unfair regulation closes businesses.

Persons and businesses seeking redress in Alaska do not feel agency hired and managed hearing officers are impartial. When agencies sit in judgement on the regulations they promulgate it discourages those who seek fair treatment. We lose business investment and capital.

Solution: Independent Centralized Hearings

Private sector investment and development is much more likely to succeed in a predictable fair environment. Central hearing offices establish a true and impartial judgement providing the fairness investors need to finance and establish their projects.

- **Central Panels, reduce litigation, improve due process and revolutionize regulation writing and promulgation.**

Problem: Lack of due process, timely, fair hearings

Alaska's fragmented, expensive administrative hearing process serves a multitude of masters and rarely overturns or challenges the regulations they consider.

Solution: Independent, Central Hearings

Professional, fair, well-trained independent hearing officers provide real mitigation, and raise the standard of those who attempt to justify regulations. Independent officers function with due process as their guide. The citizen and the agency are on a level playing field and conflicts are more often resolved without further litigation.

WHY ALASKA NEEDS INDEPENDENT HEARING OFFICERS ?

TO DELIVER HIGH QUALITY ADJUDICATION SERVICES FOR THE STATE OF ALASKA IN A TIMELY, COST EFFICIENT AND COST EFFECTIVE MANNER, WITH RESPECT FOR THE DIGNITY OF INDIVIDUALS AND THEIR DUE PROCESS RIGHTS

When an administrative hearing process in other states gets extremely high marks from the public, legislature, administration, judiciary, as well as the State Bar Associations, while substantially reducing costs to government, and the private sector, we in Alaska need to give it close scrutiny.

BACKGROUND

At least 18 states have now adopted the Central Panel approach to handling regulation dispute resolution. While it is not possible to list all the practical and political reasons for such adoptions, the following summary of information from Colorado is a good example of both the mission and results of their administrative hearing process.

FROM COLORADO.....

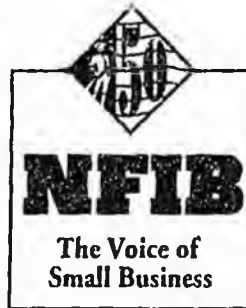
- * The model act they have provided for our review has been unanimously adopted by the American Bar Association House of Delegates (1997)
- * The Colorado Division of Independent Hearing Officers (Central Panels) reports the following effects of their efforts:
 1. *Increases efficiencies in all segments of the hearing process*
 2. *Substantially reduces typical hearing delays*
 3. *Reestablishes public confidence in government*
 4. *Builds a better business and investment climate in state*
 5. *Relieves agencies of a burdensome, unpopular process*
 6. *Provides all segments of government large or small, with same high quality of adjudication services*
 7. *Provides for clear budgeting by legislature and agencies*
 8. *Eliminates undue agency influence*
 9. *Reduces court costs by avoiding protracted litigation*
 10. *Reduces agency costs both internally and externally*
 11. *Encourages less controversial regulation*
 12. *Reduces political bias in hearing process*

SPECIFIC FINDINGS BASED ON PUBLIC SURVEYS AND AUDITS

- * Worker's comp. Premiums have been reduced by 22%
- * Prior to establishing the Division the State had 40 Hearing Officers for workers comp. Including full time, part time, and contract personnel. After consolidation there were 12 full time Hearing Officers on state payroll. Backlogs have now been reduced by 95%, with average hearing times of 88 days instead of the previous 263 days.
- * The Hearing Office functions at a 97% approval rating as indicated by those they serve in the public and government.
- * The Hearing Office has set a goal to not satisfy, but to delight those they serve.
- * The Hearing Office staff's mission is to further the goal of quality and timely adjudications.
- * The Hearing Office constantly attempts to match the delivery of services with client expectations.
- * The overall approval rating for judges is 97% and 96% for staff.
- * All complaints filed against the Hearing Office are thoroughly investigated, and the complaint process is well advertised and easy to use.

The Colorado Hearing Office operates on the premise, "When quality culture exists in an adjudication organization, it's accomplishments can be measured and it's successes proven, the organization will survive and prosper in the 21st. century."

Perhaps that is why the private sector development interests, have been the driving force in the adoption of these new adjudication procedures which focus not on what is right for government, but what is fair to the citizen under their rights of "due process".



NFIB Alaska

Statement of Support of HJR 18

A resolution calling for a constitutional amendment to create an office of administrative hearings separate from state agencies.

March 3, 1999

The Alaska Chapter of the National Federation of Independent Business has 3,700 members, making it the largest small-business advocacy group in the state. The legislative agenda of NFIB is determined by ballot. The following question was contained in the 1998 ballot:

Should in-house state agency hearing officers be moved to an independent office in the Department of Administration in order to foster an impartial hearing process when citizens challenge government decisions? **Seventy-nine percent of the members voted yes, 7% voted no and 14% were undecided.**

NFIB/Alaska supports the formation off an Office of Administrative Hearings and additionally supports HJR 18, which would place the question before the citizens of the state of Alaska.

Background: State legislatures and administrations in many states are reforming their administrative hearing process to separate the appeal process from the agency making the decision in dispute. Currently a citizen who wishes to appeal a state agency decision must petition a hearing officer from the same agency with which they have the disagreement. NFIB believes the current process does not provide for a fair and impartial hearing process when a person must appeal to the same agency they are disputing with. Creating a central hearing adjudication system with highly skilled hearing officers who are not connected to the agencies will provide a more objective process. Other states that have implemented an independent central hearing system have experienced efficiencies in all segments of the hearing process with an overall reduction in costs. Additionally, they have seen a reduction in hearing delays and less litigation.

NFIB/Alaska urges support for HJR 18.

Submitted by Thyas Shaub on behalf of NFIB/Alaska.

Table 1
Expenditures for Administrative Adjudications
Fiscal Years 1994 - 1996
(dollars in thousands)

Department	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996
Administration (a)	727.8	886.6	812.8
Commerce and Economic Development (b)	837.4	928.1	1,056.6
Community and Regional Affairs (c)	0.0	0.0	0.0
Corrections (d)	64.5	0.0	0.0
Education (e)	63.7	172.0	190.3
Environmental Conservation (f)	5.0	7.4	75.0
Fish and Game (g)	629.2	614.5	612.6
Health and Social Services (h)	341.7	296.0	353.4
Labor (i)	1,684.7	1,781.6	2,041.0
Law (j)	0.0	0.0	0.0
Military and Veterans' Affairs (k)	0.0	0.0	0.0
Natural Resources (l)	7.0	7.8	0.8
Public Safety (m)	15.0	18.0	32.1
Revenue (n)	370.7	374.1	352.6
Transportation and Public Facilities (o)	114.7	46.0	137.3
University of Alaska (p)	276.2	192.2	205.6
Alaska Court System (q)	2.9	5.3	12.3
Office of the Governor, Lt. Governor, and Division of Elections (r)	16.8	9.6	46.3
Total	5,157.3	5,339.2	5,928.7

NOTES:

Departments responded to a survey asking for administrative appeals expenditures for fiscal years 1994 through 1996. Data include amounts spent for personal services (hearing officers, persons serving in that capacity, and support personnel); contractual arrangements; and associated costs including travel, equipment, and supplies. Costs associated with judicial review of administrative procedures were not included.

- (a) Administration--Most expenditures were for labor-related appeals. The department is responsible for mediation and arbitration in labor relations disputes for all departments.
- (b) Commerce and Economic Development--Most expenditures were for occupational licensing appeals, and at least 60 percent of these expenditures were for investigations regarding licensing and disciplinary actions. The department total does not include complete data for the Alaska Public Utilities Commission because of changes in their accounting system.
- (c) Community and Regional Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (d) Corrections--Most 1994 expenditures were for an RSA with the Department of Law for prisoner rights litigation.
- (e) Education--Most expenditures were for special education and vocational rehabilitation related appeals. The department continues to compile data for 1994; consequently, the 1994 data is incomplete.
- (f) Environmental Conservation--Most expenditures were for air quality, water quality, or solid waste permit appeals.
- (g) Fish and Game--Most expenditures were for permit appeals before the Commercial Fisheries Entry Commission.
- (h) Health and Social Services--Most expenditures were for appeals concerning Medicaid and cash benefits for public assistance programs.
- (i) Labor--Most expenditures were for workers' compensation and unemployment benefit appeals.
- (j) Law--No expenditures for administrative appeals during fiscal years 1994-1996.
- (k) Military and Veterans' Affairs--No expenditures for administrative appeals during fiscal years 1994-1996.
- (l) Natural Resources--Most expenditures were for appeals concerning procurement disputes or land use permits.
- (m) Public Safety--Most expenditures were for hearings before the Violent Crimes Compensation Board.
- (n) Revenue--Most expenditures concerned permanent fund dividend eligibility and child support enforcement.
- (o) Transportation and Public Facilities--Most expenditures were for construction and lease appeals.
- (p) University of Alaska--Most expenditures were for labor relations, procurement-related appeals, and student grievances.
- (q) Alaska Court System--Expenditures were for procurement-related appeals.
- (r) Office of the Governor--Expenditures were for hearings before the Human Rights Commission.

SOURCES: Directors of Administrative Services for each department.

TABLE 2
Expenditures for Administrative Adjudications (a)
Fiscal Years 1994-1996
(dollars in thousands)

Department	Fiscal Year 1994				Fiscal Year 1995				Fiscal Year 1996			
	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total	Federal Receipts	General Fund	Other Receipts (b)	Total
Administration	0.0	727.8	0.0	727.8	0.0	886.6	0.0	886.6	0.0	812.8	0.0	812.8
Commerce and Economic Development	0.0	820.4	17.0	837.4	0.0	911.1	17.0	928.1	0.0	1,056.6	17.0	1,056.6
Community and Regional Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Corrections	0.0	64.5	0.0	64.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Education	46.5	0.0	17.2	63.7	138.9	10.0	23.1	172.0	123.1	20.0	47.2	190.3
Environmental Conservation	0.0	5.0	0.0	5.0	0.0	7.4	0.0	7.4	0.0	75.0	0.0	75.0
Fish and Game	0.0	629.2	0.0	629.2	0.0	614.5	0.0	614.5	0.0	612.6	0.0	612.6
Health and Social Services	170.3	171.4	0.0	341.7	147.3	148.7	0.0	296.0	142.0	162.2	49.2	353.4
Labor	682.7	1,002.0	0.0	1,684.7	735.1	1,048.5	0.0	1,781.6	852.1	1,188.9	0.0	2,041.0
Law	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Military and Veterans' Affairs	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Natural Resources	0.0	7.0	0.0	7.0	0.0	7.8	0.0	7.8	0.0	0.8	0.0	0.8
Public Safety	0.0	0.0	15.0	15.0	0.0	0.0	18.0	18.0	2.0	1.6	28.5	32.1
Revenue	0.0	90.3	280.4	370.7	101.4	39.2	233.5	374.1	123.5	39.5	189.8	352.6
Transportation and Public Facilities	114.7	0.0	0.0	114.7	14.4	9.6	22.0	46.0	112.2	0.7	24.4	137.3
University of Alaska	0.0	276.2	0.0	276.2	0.0	192.2	0.0	192.2	0.0	205.6	0.0	205.6
Alaska Court System	0.0	2.9	0.0	2.9	0.0	5.3	0.0	5.3	0.0	12.3	0.0	12.3
Office of the Governor, Lt. Governor, and Division of Elections	0.0	16.8	0.0	16.8	0.0	9.6	0.0	9.6	0.0	46.3	0.0	46.3
Total	1,014.2	3,813.5	329.6	5,157.3	1,137.1	3,888.5	313.6	5,339.2	1,354.9	4,234.9	356.1	5,928.7

NOTES:

(a) Departments responded to a survey asking for data on expenditures for administrative appeals for fiscal years 1994 through 1996, including amounts spent for all personal services, contractual arrangements, and all associated costs such as travel, equipment, and supplies. Departments excluded costs associated with judicial review of administrative procedures. See Table 1 for additional notes.

(b) "Other" receipts include Reimbursable Service Agreements (RSA) from other agencies (for DCED and DHSS), administrative funds from the Permanent Fund (for Revenue), and an RSA of lease receipts from Anchorage International Airport (for DOT/PF).

SOURCES: Directors of Administrative Services in each department

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHJR 18(STA)

Revision Date/Time (Note if correction) _____	Dept. Affected <u>Office of the Governor</u>
Title <u>Constitutional Amendment relating to</u>	BRU <u>Elective Operations</u>
<u>an office of administrative hearings</u>	Component <u>General and Primary</u>
Sponsor <u>Representative Ogan</u>	
Requester <u>House State Affairs Committee</u>	Component Serial No. <u>22</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This figure includes the cost of providing information about this issue in the Official Election Pamphlet, as required by AS 15.58. However, only six measures can be printed on an 8-1/2 by 14 inch ballot. If this measure requires printing an 8-1/2 by 18 inch ballot, the cost will increase by \$22.0.

Prepared by <u>Gail Fenuma</u> <i>Gail Fenuma</i>	Phone <u>465-3935</u>
Division <u>Division of Elections</u>	Date/Time <u>3/17/99 8:34 AM</u>
Approved by <u>Lt. Governor Fran Ulmer</u> <i>Fran Ulmer</i>	Date <u>3/17/99</u>
Agency <u>Office of the Lieutenant Governor</u>	

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR18

Revision Date/Time (Note if correction) _____ Dept. Affected Office of the Governor
 Title Constitutional Amendment relating to BRU Elective Operations
an office of administrative hearings Component General and Primary
 Sponsor Representative Ogan
 Requester House State Affairs Committee Component Serial No. 22

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual	1.5					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1.5	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1.5					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1.5	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
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Prepared by Gail Fenumiai Phone 465-3935
 Division Division of Elections Date/Time 2/26/99 10:05 AM
 Approved by Lt. Governor Fran Ulmer Date 2/26/99
 Agency Office of the Lieutenant Governor

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