

SJR

19

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SJR19

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 Senator Taylor
 Requester Senate Judiciary 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						
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CHANGE IN REVENUES ()						
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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 Gail Fenumig *Gail Fenumig* Phone 465-3935
 Division Division of Elections Date/Time 3/26/99 9:25 AM
 Approved by C Lt. Governor Fran Ulmer Date 3/26/99
 Agency Office of the Lieutenant Governor

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SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 3/24/99

FURTHER: Finance

Date of 5-Day Notice: 3/25/99
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: _____

Judiciary Committee considered

SENATE JOINT RESOLUTION NO. 19

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical title
- new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Handwritten]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Gov.	3/26	<input checked="" type="checkbox"/>	

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

NFIB Alaska



Statement of Support of SJR 19

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

March 29, 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 SJR 19, 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 SJR 19.

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

Alaska State Legislature

Chairman,
Judiciary Committee
Administrative Regulations
Revenue Committee

Vice Chairman,
Resources Committee



Senator Robin L. Taylor

State Capitol
Juneau, Alaska 99801-1182
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SPONSOR STATEMENT

SJR 19

Constitutional Amendment to the State of Alaska relating to an office of administrative hearings.

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 the 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 businesses, and an increase in public confidence in administrative 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 a commissioner, but by due process, scrutinize them.

SJR 19, like due process reform in 25 other states, will correct inefficiency, increase professional standards, save money, restore public confidence, stimulate development and restore the proper balance.

District A:

Hyder • Ketchikan • Kupreanof • Meyers Chuck • Petersburg • Saxman • Sitka • Wrangell

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	888.8	0.0	888.8	0.0	812.8	0.0	812.8
Commerce and Economic Development	0.0	820.4	17.0	837.4	0.0	811.1	17.0	828.1	0.0	1,058.8	17.0	1,058.8
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	48.5	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	612.8	0.0	612.8
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	1,046.5	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	1.8	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	352.8
Transportation and Public Facilities	114.7	0.0	0.0	114.7	14.4	9.8	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	205.8	0.0	205.8
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	18.8	0.0	18.8	0.0	9.8	0.0	9.8	0.0	48.3	0.0	48.3
Total	1,014.2	3,813.5	329.6	5,157.3	1,137.1	3,888.5	313.8	5,339.2	1,354.9	4,234.9	358.1	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 Agreement (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/FP)

SOURCES: Directors of Administrative Services in each department.

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
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PHONE: (907) 465-3600
FAX: (907) 465-2075

March 26, 1999

The Honorable Robin Taylor
Chair, Senate Judiciary Committee
State Capitol
Juneau, AK

Re: SJR 19, Constitutional amendment for administrative hearings

Dear Senator Taylor:

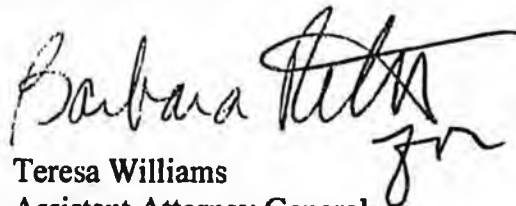
I am writing with respect to SJR 19, which is pending for hearing before your committee.

I have prepared the attached analysis of the language contained in SJR 19. Currently, the legislature has the discretion to legislate administrative adjudicative authority. A constitutional amendment would presumably limit that discretion. If the intent is to change administrative adjudicative authority without curtailing the legislature's current powers, the appropriate route would be through statutory change rather than amendment to the state's constitution.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By:



Teresa Williams
Assistant Attorney General

TW:jem

Attachment

cc: Members, Senate Judiciary Committee
Pat Pourchot, Legislative Director, Office of the Governor
Chrystal Smith, Legislative Liaison, Department of Law
Deborah Behr, Legislation Attorney, Department of Law

ANALYSIS OF LANGUAGE IN SJR 19

I. THE OFFICE OF ADMINISTRATIVE HEARINGS IS VESTED WITH THE "POWER TO CONDUCT ADMINISTRATIVE LAW HEARINGS."

Alaska law defines the term "administrative law hearings" broadly to cover any agency dispute-resolution process. An administrative adjudicative proceeding commences when one party serves on the other party a document that sets in motion **regulatory or statutory procedures for the resolution of a dispute**. Hickel v. Halford, 872 P.2d 171 (Alaska 1994) The term "administrative law hearings" would apply whether or not a hearing officer currently conducts the proceeding and would also apply to reviews currently conducted at a lower agency level. It would apply to hearings that are conducted in writing, rather than by personal appearances.

The boards and commissions that exist for the primary function of conducting administrative hearings 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 Appeals Council, State Assessment Review Board, Violent Crimes Compensation Board, Alaska Labor Relations Agency, Alaska Commission for Human Rights, Alaska Public Utilities Commission, and Alaska Public Offices Commission.

II. THE OFFICE OF ADMINISTRATIVE HEARINGS IS VESTED WITH THE "POWER TO RENDER FINAL AGENCY DECISIONS."

The term "agency decisions" is a misnomer, because the decision would not in fact be a decision by the agency.

The constitutional mandate would encompass all aspects of state programs. An attorney in the Office of Administrative Hearings would decide any formal dispute involving state licensing, loan programs, tax matters, public assistance programs, employee relations, resource use, safety regulation, state land allocation, procurement, and the myriad other state functions.

The constitutional mandate would include agencies of the legislature and the judicial branch, as well as the executive branch.

III. "THE JURISDICTION OF THE OFFICE SHALL BE PRESCRIBED BY LAW"

The proposed clause does not give the legislature the express authority to exempt agencies or certain levels of proceedings from the constitutional mandate. The Alaska courts hold that the identical language for the judiciary does not allow the legislature, by statute, to take away judicial power vested by the constitution in the courts.

IV. THE HEAD OF THE OFFICE IS NAMED "CHIEF ADMINISTRATIVE LAW JUDGE."

Alaska has previously not adopted the "Administrative Law Judge" style of hearing officer. An Administrative Law Judge is more likely to use hearing chambers, wear robes, and to be referred to as "judge" or "your honor." Alaska administrative proceedings are intended to be more informal and less threatening to the participants.