

HB

533

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: March 29, 2004

FURTHER REFERRALS:

Date of Committee Action: 4-15-04

The FINANCE Committee considered:

HB 533

HOUSE BILL NO. 533

IF UNREAS. AGENCY DELAY, COURT DECIDES

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

Recommends it be replaced with [] HCS or [] CS for HB 533 (JUD)
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ Same Title [] New Title

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of Abbreviations for Depts.:

- ADM
- CEC
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW		✓		

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
AK Court	#1		✓	
Commercial Fish	#2		✓	
DHSS	#3		✓	

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>K. May</i>	Maye	✓			
<i>Michelle Howard</i>	Howard	✓			
<i>Bill Holt</i>	STOLTZ			✓	
<i>Wendy E. Mason</i>	MOSES			X	
<i>Michelle Howard</i>	Howard	✓			
<i>Michelle Howard</i>	Fritz	✓			
<i>Michelle Howard</i>	FOSTER	X			
Chair: <i>Michelle Howard</i>	Williams	✓			
Chair: <i>Michelle Howard</i>	Williams	X			

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB533CS-LAW-L&SA-3:
Bill Version: CSHB533
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An act relating to the state's administrative procedures and to judicial oversight of administrative matters." RDU CIVIL
Sponsor House State Affairs Component Labor & State Affairs
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	67.3	67.3	67.3	67.3	67.3	67.3
Travel	0.2	0.2	0.2	0.2	0.2	0.2
Contractual	8.0	8.0	8.0	8.0	8.0	8.0
Supplies	1.4	1.4	1.4	1.4	1.4	1.4
Equipment	7.4	0.9	0.9	0.9	0.9	0.9
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	84.3	77.8	77.8	77.8	77.8	77.8

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.3	77.8	77.8	77.8	77.8	77.8
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
TOTAL	84.3	77.8	77.8	77.8	77.8	77.8

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0.5	0.5	0.5	0.5	0.5	0.5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would give the superior court jurisdiction over petitions for relief in administrative matters under AS 44.62.305 in circumstances where an individual, who has otherwise satisfied the procedural requirements of the administrative proceeding, is subject to unreasonable delay and immediate and irreparable damage as a result of such a delay, by a state agency. The bill allows the superior court to enjoin the administrative proceeding and make a determination in the matter, establish a deadline for the state agency to issue a final administrative decision, or order that the matter be handled by another for of dispute resolution.

Passage of this legislation will have an impact on the Department of Law. It is anticipated that Law will need to represent state agencies in instances where individuals seek relief from the superior court.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division Administrative Services Date/Time 3/26/04 1:49 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 3/26/2004
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. HB533

ANALYSIS CONTINUATION

The Department of Law estimates that the additional workload would amount to one-half of a full time attorney. The cost of such a position is based on the calculated FY 2005 timekeeping and billing rate of \$107.99 per billable hour. Average billable hours per attorney are 1,440 per year. Thus a half time attorney will cost $\$155,500/2 = \$77,750$, rounded. The rate includes salary, benefits, support staff, and other overhead costs. A one time cost of \$6,500 for furnishings and equipment is included in the first year.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 533(JUD)
 (H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title If Unreas. Agency Delay/Ct. Decides BRU Alaska Court System
 Component Trial Courts
 Sponsor House State Affairs
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 House Bill 533 allows a person proceeding through the administrative adjudication process under AS 44.62.330 - 44.62.630 to move his or her case to the superior court if the person alleges that the agency has unreasonably delayed the process and further delay will cause the person significant and irreparable damage. Once a case is before the court it may either determine the case on its merits, order that the dispute be handled by another form of dispute resolution or establish a deadline for the agency to issue a final administrative decision.
 This bill changes existing law by allowing a person to bring an administrative adjudication to the superior court prior to the issuance of a final agency decision. The court will be impacted by the number of cases that come before it under this provision. However, estimating the number of such cases is too speculative to support a fiscal note. Should the number of cases prove to be significant then the court may return to the legislature for additional funding.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 3/18/04 7:59 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 3/18/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 533(JUD)
(H) Publish Date: 3/29/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Fish and Game
Title "An act relating to judicial relief before final RDU Comm. Fish Entry Commission
administrative decisions of state agencies." Component Commercial Fisheries Entry
Sponsor House State Affairs Committee Commission
Requester House Judiciary Committee Component No. 471

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	*	*	*	*	*	*
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

The commission has averaged more than 70 final decisions on applications for limited entry permits each year since 1990 (more than 1,000 total). Seven appeals from these decisions are currently pending in court, representing about 10% of our average yearly final decisions on applications (the commission does additional kinds of cases including transfer cases).

HB 533 will almost certainly increase the number of CFEC court cases the state must defend, though the exact number (and thus, the exact fiscal impact to CFEC) cannot be known at this time. Any increase in the number of cases filed will require additional staff and commissioner time. If 10% of the 321 applicants currently on appeal before our hearing officers or commissioners were to file a case

Prepared by: Shirley Penrose, Administrative Officer Phone 907-790-6960
Division: Commercial Fisheries Entry Commission Date/Time 3/23/04 10:13 AM
Approved by: Bruce Twomley, Chairman Date 3/23/2003
Agency: Commercial Fisheries Entry Commission

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

under HB 533 without having first exhausted the administrative appeal process available to them, 32 additional lawsuits would be generated. Because gathering and preparing records and assisting the Department of Law with court appeals of CFEC cases is enormously labor intensive and time consuming, if HB 533 results in 10% of the appeals pending before the commission being filed with the courts, the commission will need to add one paralegal position to assist with the additional workload.

The following personal services costs are calculated for a range 15 with salary, benefits and employer costs, including yearly merit increases (based on the current employer costs and XE salary schedule):

FY05: \$54.4
FY06: \$55.8
FY07: \$57.5
FY08: \$59.3
FY09: \$61.0
FY10: \$63.0

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 533(JUD)
 (H) Publish Date: 3/29/04
 Dept. Affected: Health & Social Services

Revision Date/Time (Note if correction):

Title: JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES
 RDU: Health Care Services
 Component: Hearings and Appeals

Sponsor: HOUSE (STA)

Requester: HOUSE (JUD) Component No. 1434

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual	*	*	>	*	*	*
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES (0)						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match	*	*	*	*	*	*
1004 GF						
1037 GF/Mental Health						
Other(Specify Type-do not abbreviate)						
Other(Specify Type-do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: _____
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill would allow parties involved in the administrative hearing and appeals process judicial relief if a party to the proceeding has satisfied all procedural requirements up to the time relief is sought, a state agency unreasonably delays the administrative process, and that delay causes significant and irreparable damage.

 HB 533 would circumvent the federal requirements set forth for the Medicaid Program, Temporary Assistance Program, and Food Stamps Program. 7 CFR 273.15 (Food Stamps), 42 CFR 431.200-250 (Medicaid Program), 45 CFR 205.10(Temporary Assistance) requires this

Prepared by: Dwayne Peoples, Director Phone 465-3355
 Division: Health Care Services Date/Time 03/13/2004
 Approved by: Joel S. Gilbertson, Commissioner Date 03/23/2004
 Agency: Department of Health and Social Services

FISCAL NOTE
FN # 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

CSHB 533(JUD)

ANALYSIS CONTINUATION

HB533-DHSS-DHCS2-03-23-04

state to provide a fair hearing through the administrative process. These federal regulations require the fair hearing process to be complete within 90 days from the date a person requests a hearing, and in some cases regarding food stamps, within 60 days.

Because federal law provides required completion dates, this bill has no fiscal impact on Health Care Services Hearings and Appeals.

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

(907) 465-3744
FAX (907) 465-2273

STATE AFFAIRS COMMITTEE

HB 533

Judicial Extraction from Administrative Review

HB 533 allows a person (petitioner) who is unable to obtain a final administrative decision from a government agency to ask the Superior Court for assistance.

Under the present system, the agency regulators have the power to keep a petitioner tied up in its process for extended periods of time. Long delays can mean high costs to the state, the petitioner and damage to the integrity of the administrative process itself. High costs are especially onerous to smaller businesses or individuals.

The legislature does not intend that agencies be able to tie up petitioners for unreasonable lengths of time. Since the judiciary requires administrative remedies to be exhausted before taking the matter up in court, abuse of agency authority can actually block or unduly delay due process.

For instance, if a state agency fears losing a contested rule in court, it has the ability to effectively delay judicial review by refusing to issue a final administrative decision.

House Bill 533 is an integral part of three-phase regulation reform package.

- Senate Bill 203 reforms the internal administrative hearing process.
- Senate Bill 287 / House Bill 424 reforms the initial phases of the regulatory process.
- Senate Bill 333 / House Bill 533 reforms the final phases of the administrative process.

LEGISLATIVE RESEARCH REPORT

APRIL 2, 2004



REPORT NUMBER 04.165

ADMINISTRATIVE APPEALS OF ONE YEAR OR LONGER DURATION

PREPARED FOR SENATOR GENE THERRIALT

BY PATRICIA YOUNG, MANAGER

You asked our agency to obtain information regarding the duration of the adjudication process from the various agencies that conduct administrative hearings. Specifically, for each such agency, you wished to know the following:

- ◆ The number of current, on-going cases that have been open for one year or longer;
- ◆ The number of cases closed within the past ten years that were open for one year or longer; and
- ◆ The number of cases closed between 1980 and 1993 that were open for one year or longer.

For the purposes of this report, you asked that we define *open* cases to include those cases in which all administrative remedies have not yet been exhausted, as well as those cases that have been remanded from the court for further administrative consideration.

The attached table includes all the responses we received. We note that direct comparisons among agencies are problematic because of the widely disparate nature of cases and the varying levels of hearing officer responsibility. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals. We attach additional commentary and explanatory materials provided by the Departments of Fish and Game, Labor and Workforce Development, and Revenue.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Table 1: Administrative Appeals of One Year or Longer Duration

Department	Agency	Open	Closed 1993 - 2003	Closed 1986 - 1992	Comments
Administration	Office of Tax Appeals	3	24	data unavailable	Date available from July 30, 1997 forward. Among the open cases, 2 transferred to OTA from appeal procedures in other agencies; among the closed cases, 13 were tax appeals from the Dept. of Revenue, and 8 transferred from other agencies. It is possible that transferred cases may be reflected in the numbers provided by originating agencies.
	Division of Motor Vehicles	0	0	0	
Community & Economic Development	Division of Occupational Licensing	223	1,648	723	Data available from 1990 forward.
	Regulatory Commission of Alaska	108	962	881	
Fish & Game	Commercial Fisheries Entry Commission	321	748	674	Officials estimate that 75 - 85 percent of all cases involving applications for permanent entry permits in limited fisheries took one year or longer to resolve. The numbers shown here represent 85% and thus may overstate the number of lengthy cases.
Health & Social Services	Division of Medical Assistance	29	118	81	
Labor & Workforce Development	Alaska Labor Relations Agency	45	384	31	Agency created in July 1990.
	Division of Employment Security	0	22	56	
	Division of Workers Compensation	11	119	no data available	Tracking of cases (from the claimant's filing of an affidavit of readiness for hearing) has been available from late 1999 forward. The number of currently open cases is likely overstated because the database cannot distinguish between a single claim lasting over one year and multiple claims (based on a single injury) each lasting less than one year but having been filed serially.
	Division of Labor Standards and Safety	9	354	176	
	Division of Vocational Rehabilitation	0	0	0	Federal regulation requires hearing to be held within 60 days of a request; findings and written decision must be produced within 30 days of the completion of the hearing.

Table 1: Administrative Appeals of One Year or Longer Duration

Department	Agency	Open	Closed 1993 - 2003	Closed 1980 - 1992	Comments
Natural Resources	Division of Mining, Land and Water	20	41	110	Early records are incomplete. More than 20 appeals were open for over 4 years pending resolution of the Mental Health Lands Trust Settlement.
	Division of Oil and Gas	1	data unavailable		The division has not kept historical statistics on the length of time needed to resolve appeals on oil and gas issues.
	Division of Forestry	0	1	1	Statutes require the process to be completed within 35 days of a stop work order.
Revenue	Office of the Commissioner	3	500	90	Incompatible format of records for cases before 1995 renders them irretrievable; numbers of closed cases are estimates.
Transportation & Public Facilities	Office of the Commissioner	1	9	4	Data available from 1988 forward.

NOTES:

774 4930 2827 = 8,531

We urge caution in using these data to compare agencies. For some agencies, counts do not fit precisely within the 1993-2003 and 1980-1992 timeframes. More importantly, the number and complexity of decisions vary enormously across agencies. The Employment Security Division, for example, may hear 2,000 to 3,000 cases a year, while the Division of Forestry currently has no open cases and heard only one between 2000 and 2003. Decisions may be verbal, as are most issued by the Division of Motor Vehicles, or they may be technically complex documents addressing multiple disciplines, as are those issued by the Division of Oil and Gas. In addition, agencies with limited or incomplete records may have reported only those cases for which they have data, while others estimated totals.

For clarifying information on appeals lasting one year or longer, see attached commentary from the following agencies: Department of Fish and Game, Commercial Fisheries Entry Commission (Attachment A); Department of Labor and Workforce Development, Alaska Labor Relations Agency and Division of Workers Compensation (Attachment B and C, respectively); and the Department of Revenue (Attachment D).

SOURCES:

Representatives of the various agencies.

8 of 16 Reporting

Attachment A

"Final CFEC Decisions" and Commentary on CFEC Cases

FINAL CFEC DECISIONS

YEAR	DECISIONS ON APPLICATIONS (Permanent Entry Permits in Limited Fisheries)	OTHER DECISIONS (Transfers of Entry Permits)	TOTAL DECISIONS
1980	3	0	3
1981	22	1	23
1982	104	0	104
1983	83	6	89
1984	75	24	99
1985	54	49	103
1986	85	54	139
1987	50	54	104
1988	72	57	129
1989	59	61	120
1990	63	38	101
1991	123	13	136
1992	68	47	115
1993	100	54	154
1994	93	54	147
1995	60	66	126
1996	51	59	110
1997	64	55	119
1998	105	53	158
1999	80	47	127
2000	70	33	103
2001	71	37	108
2002	75	29	104
2003	43	38	81
TOTALS (24 years)	1,673 (average 68/year)	929 (average 39/year)	2,602 (average 108/year)

NOTES: CFEC's computerized data has proven to be unreliable; CFEC must go to individual files for accurate information about individual cases.

Proceedings regarding applications for permanent entry permits in limited fisheries are timed so as not to interfere with an applicant's fishing, and applicants have the right to fish as long as the case is before the commission or the court. Between 75 to 85 percent of these applications require more than a year to resolve.

With applications for permit transfers, the immediate right to fish is at issue. CFEC normally hears and resolves these cases in a matter of days. None has been open as long as one year.

MEMORANDUM

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

TO: Patricia Young
Manager
Alaska Legislature
Legislative Research Services
State Capitol
Juneau, AK 99801

DATE: February 26, 2004

PHONE: (907) 789-6160 VOICE
(907) 789-6170 FAX

Phone: 465- 3991

FAX: 465-3908

Email: patricia_young@legis.state.ak.us

FROM: Bruce Twomley, Chairman
Commercial Fisheries Entry Commission

SUBJECT: Your February 19, 2004
Information Request Concerning
Administrative Appeal Cases
Pending at the Alaska Commercial
Fisheries Entry Commission

RESPONSE BY CASE CATEGORY

Your February 19, 2004 request asks for the number of current, on-going cases that have been open for one year or more.

At the Alaska Commercial Fisheries Entry Commission (CFEC) we have two broad categories of cases: (1) applications for transfers (permanent and emergency) of entry permits; and (2) applications for permanent entry permits in limited fisheries.¹

In the first category, transfer cases, the immediate right to fish is at stake: if a transfer is denied, the proposed recipient loses the opportunity to participate in a fishery. These cases are normally heard and resolved in a matter of days. Final review of these cases is always completed within a year. None of these cases has been open for as long as a year.

The second category, applications for permanent entry permits in limited fisheries, involve applicants who already have the privilege to fish and are seeking to make that privilege permanent in a limited fishery. These applicants have the right to fish as long as they can keep an application alive at the commission or in court. Their cases end when they are finally granted a permanent entry permit, or, when they are finally denied--in which event they can still obtain a permanent entry permit by transfer. The substantial majority of these cases always take longer than a year. Today 321 such permit application cases have been in the appeal process for a year or more. The following paragraphs offer a brief explanation for the time required by these cases.

¹ We are holding 17 fee arrearage cases in abeyance pending resolution of Carlson v. State (the class action challenging non-resident fees), which could render these cases moot.

EXPLANATION

As noted, all individuals who apply for a permanent entry permit can continue to participate in the fishery (without having to obtain a permit by transfer) until they receive a final denial by the commission or the courts. In turn, the commission is generous in granting applicants' requests for extension of time so that commission proceedings do not unnecessarily interfere with an applicant's fishing season. Our regulations are also designed to allow sufficient time so as not to intrude on a fishing season, and, in addition, we also make every attempt to avoid scheduling a hearing or issuing a decision or an order to which an applicant must respond near or during a fishing season.

When a fishery is limited, many applications are submitted simultaneously and substantial numbers of appeals, therefore, tend to arise at the same time. For example, in Alaska's limited salmon fisheries alone, more than 17,000 individuals applied to CFEC for limited entry permits.

Following the 1984 Ostrosky decision, the Alaska Supreme Court issued a series of decisions substantially increasing the commission's caseload. In 1988, the state settled the Wassillie class action authorizing several hundred additional new applications in the original limited salmon fisheries. Consequently, by 1990, the commission's caseload had almost doubled to nearly 900 cases. As noted, however, the commission has reduced the number of pending cases to 321 despite hundreds of new, incoming appeals. The commission's caseload is a moving bus: from 1990 to the present, the commission has limited an additional 26 fisheries (giving rise to hundreds of new appeals). While the commission has completed well over 1,000 adjudications (during this same time period) and thereby let many individuals off the bus, many new individuals (applicants in more recently limited fisheries) continue to climb on the bus. Our reduction of our caseload shows, during the last 13 years, the commission has decided application cases faster than applicants have filed new appeals (while at the same time hundreds of transfer cases).

As a final consideration, CFEC adjudications require more care than those of many other administrative agencies. In the Byavuk and Cashen cases, our Alaska Supreme Court held reversals of CFEC decisions can be applied retroactively to reopen previously closed cases and to authorize new applications for a limited fishery long after the application deadline. Thus, a CFEC error can literally undermine limitation of fisheries on which almost 12,000 Alaska fishers depend for their livelihood. In the face of this challenge, the commission is pleased to report that, during the last 13 years, the commission has suffered only two partial reversals of its cases by the Alaska Supreme Court.

CONCLUSION/SUMMARY

In short, in the category of transfer cases where the immediate right to fish is at issue and time is critical, CFEC completes all such the cases within a year. In the category of application cases where the immediate right to fish is not at stake, almost all such cases require more than a year to resolve (321 such cases are currently pending). However, despite hundreds of new appeals having been filed from the limitation of 26 additional fisheries, the commission has reduced its application caseload by almost two-thirds since 1990.

Attachment B

Commentary on Alaska Labor Relations Agency Cases

Alaska Labor Relations Agency

Note: these numbers include cases that have been held in abeyance by a party or parties. Although we do not currently have a precise count of all cases in abeyance, we identified the following:

1. The number of current, on-going cases that have been open for one year or more.

Currently, 45 cases. Three cases are pending in the Alaska Superior or Supreme Courts. Sixteen are unfair labor practices (ULP), 25 are unit clarifications (UC), and 1 is a collective bargaining enforcement (CBA) petition.

- Of the 16 ULPs, one has been dismissed this week, and 7 are in abeyance. The others are awaiting agency action which may include awaiting information from the parties.
- Of the 25 unit clarifications, approximately 50% of them are in abeyance, and 50% are awaiting agency action. Of the latter 50%, some of the positions are vacant. We have previously not taken action when positions become vacant. I am now recommending we dismiss these cases and notify the petitioner to re-file the case when the position is filled.
- The one CBA case is a complex case. The State is the employer and did not provide information for a lengthy period. Then the union (APEA) asked us to hold up on the case so the parties could attempt to settle. There have been several requests to give the parties more time. We recently heard that settlement is imminent.

2. The number of cases closed within the past ten years that were open for one year or more. Answer: 384
3. The number of cases closed since 1980 that were open for one year or more.

Our Agency was created in July 1990. Since then, there have been 415 cases closed that were open for one year or more.

These are the raw data. We did not subtract out any factors that might affect the data. For example, we sometimes put cases in "abeyance" either on our own motion or on request of a party or parties. One example would be: the parties want time to settle their dispute without Agency help. These periods of abeyance mean that the Agency can't take action but the time continues to count. We recently modified our database structure to capture abeyance time.

Attachment C

Commentary on Workers' Compensation Board Cases

February 27, 2004

Dear Ms. Young:

Please find attached a response to your inquiry regarding the Alaska Workers' Compensation Board hearings administered by the Division of Workers' Compensation. As we discussed yesterday by phone most benefits are paid without any need for a hearing. For example, the number of 2003 filings indicative of some sort of dispute (a total of 1,224 workers' compensation claims and petitions) is dwarfed by the 25,981 injuries reported in 2003. When you consider that some of the 2003 claims and petitions involve injuries reported prior to 2003, the percentage of disputes diminishes further.

The attached spreadsheet responds to both definitions of appeals we discussed yesterday. The broader definition starts with the filing of a claim or petition and ignores the statutory requirement that a party file an affidavit of readiness for hearing before the Board schedules a hearing. However, the three columns to the far right on the spreadsheet reflect that limitation and therefore measure only from the earliest date that one of the parties to the dispute felt they were prepared for a hearing and filed the required affidavit. (In many cases the opposing party is not yet ready and a Board hearing is delayed while necessary preparations are completed.) Data for this more refined analysis is only available back to 2000.

Please feel free to call with any further questions or concerns.

Very truly yours,

Paul F. Lisankie,
Director

Judicial Proceeding By Year

Calendar Year	Proceedings Initiated By Claim or Petition	Proceedings With Hearings Scheduled	Proceedings With Hearings Held	Proceedings Longer Than 1 Year	Percent of Proceedings Longer than 1 Year	Affidavits Received	Resulting Hearings Continuing Longer than 1 Year	Percent of Hearings Continuing Longer than 1 Year
2003	1224	963	877	0	0	266	0	0
2002	1040	906	808	106	10.19%	245	12	4.90%
2001	949	805	720	192	20.23%	251	44	17.53%
2000	805	703	643	158	19.63%	275	63	22.91%

In the Workers' Comp system, a judicial proceeding number (JPN) is established when an initial claim or petition is filed. That JPN number is unique to the associated Alaska Workers' Compensation Board (AWCB) case file number, and subsequent judicial documents filed against the case file.

To track the length of judicial proceedings, we associated the earliest judicial document which created the JPN to the latest scheduled prehearing, hearing, or judicial appeal.

One must keep in mind that there can be – and usually are – multiple claims and petitions associated with any one JPN.

Affidavit Tracking did not become available until late 1999.

STATE OF ALASKA

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

WORKERS' COMPENSATION DIVISION

FRANK MURKOWSKI, GOVERNOR

P.O. BOX 25512

JUNEAU, AK 99801-5512

PHONE: (907) 465-2790

FAX: (907) 465-2797

March 26, 2004

Ms. Patricia Young
Manager
Legislative Research
State Capitol, Room 305 Terry Miller Bldg.
Juneau, Alaska 99801-1182

Dear Ms. Young:

We have attempted to further refine our computer search in order to respond to your inquiry. As I have discovered the Division's database is not configured to allow us to distinguish a single benefits claim that took two years to finally determine from two benefits claims (based upon the same injury) that were filed serially and each took only one year to finally determine. We would have to perform a manual examination of each file to make that distinction.

In order to respond to your inquiry, even at the risk of overstating the number of individual claims that actually took more than a year to reach a determination through hearing, we did the following. We performed a computer search for all claim files with an initial prehearing conference in the years from 1999 through 2003. We then generated a list showing those claim files that went on to have a subsequent prehearing conference or hearing more than one year later. If the last conference or hearing date listed was shown as March 2004 or later, we then counted that claim as still open. The results of that effort are reflected below:

<u>Year</u>	<u>Total open more than one year</u>	<u>Number still open</u>
2003	N/A	N/A
2002	8	3
2001	29	1
2000	28	4
1999	26	3

I think that this process has likely overstated the number of individual claims that took more than a year to hear and determine. The hearings we oversee are those of the Alaska Workers' Compensation Board. The Alaska Workers' Compensation Act (AS 23.30.110) specifically requires that a hearing be set within 60 days of a party filing an unopposed affidavit of readiness for hearing. If the affidavit is opposed a prehearing conference is required within 30 days at which a hearing is to be scheduled. Under the Board's

current regulations (8 AAC 45.070) at the prehearing conference considering the opposed affidavit a hearing must be scheduled within 60 days unless the parties all agree otherwise and the conference chair agrees. Once a hearing is completed, and the record closed, a decision must be filed within 30 days. (AS 23.30.110). Consequently, there should be few claims not heard within a year of the parties' readiness and none where a decision has not been reached for a year thereafter.

I can illustrate the situation we face in trying to report based upon our limited computer database capabilities by referring to a claim that appeared on our 1999 list, Cowgill v. State of Alaska. Prior to my appointment as Director in January, I was an assistant attorney general and actually represented the State in that matter.

In early 1999 Ms. Cowgill filed a claim for permanent impairment benefits and the Workers' Compensation Division held an initial prehearing conference. At that conference both parties requested the Board to appoint its own independent medical expert to address a medical dispute over the degree of permanent impairment attributable to Ms. Cowgill's 1998 injury. The Board's expert's report was issued in August 1999. Based upon that opinion the parties entered into settlement negotiations that appeared to have resolved the matter. Therefore no hearing was requested until January 2000 after the apparent settlement fell apart.

The Board heard the claim in July 2000 and published a decision six days later. It resolved Ms. Cowgill's claim for benefits based upon her 1998 injury. However, the decision also directed her counsel to seek additional evidence in support of a possible award for an injury during prior years that he had not pursued at the original hearing. Once that evidence was obtained a second hearing took place in April 2001. In May 2001 the Board issued its decision making a second award based upon the prior injury.

The State then appealed part of that order to the superior court. In April 2002 the court reversed that part of the decision and order and remanded the matter back to the Board. The Board heard the remand in October 2002 and issued a decision in December 2002.

The State appealed again with the superior court affirming most of the Board's decision in December 2003. A further appeal to the Supreme Court is still in progress. In late 2003, while all this was still going on, Ms. Cowgill filed yet another claim (for reemployment benefits) based upon the 1998 injury. A prehearing conference on that additional was recently held in February 2004.

Notwithstanding all of the above, with numerous claims and appeals having been serially filed and timely decided by the Board and the courts, it is not accurate to say that the Division or the Board somehow failed to resolve this matter during the four-year period from 1999 through February 2004. Yet that is the conclusion that one might draw based solely upon the Division's computer system showing an initial prehearing conference in 1999 and the date of the last prehearing conference in February 2004.

Thank you for your understanding and patience in awaiting this delayed response to your inquiry. I hope that you find this letter responsive to your inquiry and helpful in your consideration of this admittedly complex issue. Please feel free to give me a call with any additional questions or concerns.

Sincerely,

Paul F. Lisankie
Director

Attachment D

Department of Revenue Commentary on Administrative Hearings

Department of Revenue

In response to your legislative request for information about the length of the Department of Revenue appeals process, Mark Handley, Senior Revenue Hearing Examiner, asked Kimberly Rechin, the paralegal who manages the hearing office data base if she could provide accurate answers to the your specific questions. The answer is *no*, except for question number one.

The reason for this is primarily a data base problem. The hearing section inputs both the date that an individual files an appeal and the date that a final decision is issued in each case. However, they do not have the ability to run a list of cases in a given year where there are more than 12 months between these dates. I am afraid they are still using an old data base system. At one point the department actually got money to convert all files to a newer system, but there was no data processing staff available to do the work. The system they have is a bit inadequate for tracking and retrieving the needed information. It is not flexible at all for retrieving data in new ways. Records for cases before 1995 were in the old WANG data base and are not retrievable. The hearing section currently tracks case aging to monitor compliance with the 20 day rule for CSED and the 6-month rule for other cases.

Mr. Handley has been with the hearing section since 1995, Ms. Rechin started a few months earlier. When they started there were hundreds of Child Support Enforcement Division and Permanent Fund Dividend and tax cases that were at the formal hearing level for over a year before a decision was issued. There was a huge backlog at the formal hearing level and even bigger backlogs at CSED and PFD at their informal conference levels. Even as the hearing section began to clear out old cases, there was a huge temporary increase in the new caseload as the Divisions cleared out their respective back logs. It took the hearing section until about 1999 to get caught up. Now it is only the rare cases, usually those that get remanded back from court that are with the hearing section for more than a year. Almost all departmental cases have a decision issued in less than two months after the hearing.

Here are the best answers that we can give based on hearing section memories and records.

What is the number of current, on-going cases that have been open for one year or more: 3.

What is the number of cases closed within the past ten years that were open for one year or more: probably over 500.

What is the number of cases closed between 1980 and 1992 that were open for one year or more: probably under 100, perhaps 80-90.

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER

TO: Patti Pettijohn
Legislative Research Services

DATE: April 1, 2004

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

The following answers to your questions are based on my general estimations and sense of what has happened in the six years I have worked as a Revenue Hearing Examiner. When I first started, there were such huge backlogs both in dividend and child support cases that it took about six months to get through a child support appeal and more than six months to get through a dividend appeal. We do much better now.

In answer to your questions:

1) From the time of filing an appeal to the time the process is finally completed, what is the average length of time it takes for an appellant to get through the entire process? We understand times could vary wildly, but we are interested in some general sense of the process. We would also like a general estimation of the outliers (for example, perhaps most are done in two weeks but 20% take a month and five each year take six months).

Dividends and Child Support

The formal hearing process usually takes about 90 days to get through in dividend appeals (1) and 60 days to get through in child support appeals (2). This is how it breaks down:

After a child support parent requests a formal hearing, the agency forwards the request to the commissioner's hearing section. The division then files its motion for summary adjudication,

(1) In order to begin the dividend appeal process by requesting a formal hearing, you must first request and go through an informal conference, which is an in-house agency review of your case. Our goal is to issue most of our dividend formal appeal decisions within 30 days after the record closes, but we recently lost the hearing officer who did most of our dividend cases and we fell behind. We have since hired a new dividend hearing officer and we are getting caught up again.

(2) Child support cases are given higher priority because it is generally more important to resolve these cases as expeditiously as possible, as reflected by the 20-day statutory deadline for issuing a decision after the record closes.

motion to dismiss or motion for remand. If no motion is filed, the case is scheduled for a hearing within 15 days. (3)

In dividend appeals, the commissioner's hearing section holds the case until the division files a motion or we receive notice that the division will not be filing one. This usually happens within 30 days of the applicant's request for a hearing. A copy of the division's motion is also sent to the applicant.

The commissioner's hearing section then sends a notice to the parties explaining who will hear the case and giving them 30 days to respond to the motion in dividend cases and 21 days in child support cases. (4) After the deadline for responding to the motion — within about 60 days in the case of most dividend appeals and 20 days in most child support appeals — a decision is issued by the hearing officer either granting the motion, which is the final administrative decision, or denying the motion. If the motion is denied, the order will set the case on for a hearing — usually within 30 days in dividend appeals and 15 days for child support appeals — or remand the case back to the agency with instructions on what should be done. (5)

If the child support agency does not to file a dispositive motion, the hearing section schedules the hearing within 15 days.

After the hearing the record closes, the hearing officer issues a decision usually within 20 days in the case of child support appeals and 60 days in dividend appeals. (6)

Gaming, Tax and Unclaimed Property

In gaming, tax, and unclaimed property cases it usually takes about 120 days to get through the process. Here is how these cases usually progress.

A pre-hearing conference is scheduled within 30 days of the request for a formal hearing. At the pre-hearing conference, the parties agree to a status conference date if they are in the process of negotiating a settlement (7) or they agree to a hearing date and a schedule of due dates for motions and responses, discovery and depositions, etc that will precede the hearing.

(3) In about 75% of dividend cases and about 30% of child support cases, a dispositive motion is filed by the agency.

(4) This system is intended to avoid confusing and inconveniencing members of the public. Instead of sending them a notice that a hearing has been scheduled for a specific time and place, and then sending them a notice that the hearing has been cancelled because a dispositive motion has been filed, we just send them notice that a motion has been filed and tell them what they need to do to respond. This way they do not make plans to attend a hearing that will not occur.

(5) About 75% of the dispositive motions filed by the agencies are granted. About 60% of those that are denied are remanded to the agency with instructions that will almost always result in final action favorable to the appealing party. The other 40% of motions that are denied are scheduled for a hearing.

(6) The record closes on the day of the hearing in about 70% of dividend hearings and about 30% of child support hearings. In cases where the record does not close on the day of the hearing, it is because the parties need time to send in more documents. It usually closes within two weeks after hearing.

(7) 80% these cases settle after several status conferences.

If the parties are negotiating, the hearing officer will continue to schedule status conferences to monitor their progress. If the parties reach a settlement, the hearing officer issues an order dismissing the appeal in accordance with the terms of the agreement. If negotiations break down a hearing is scheduled.

After the record closes the hearing officer usually issues a decision within 90 days. (8)

I should note that we have also conducted proceedings as the commissioner's designee for emergency orders prohibiting violations of charitable gaming laws. These special expedited proceedings initiated by the agency under AS 05.15.610 are generally concluded in a few days.

State Assessment Review Board

Appeals to the State Assessment Review board are all scheduled for the annual meeting of the board, which meets a few weeks after the deadline for filing appeals of tax division assessments under AS 43.56. All of the hearings are completed in a few days. The board decides the cases right after the hearing in executive session. The Senior Hearing Examiner acts as the board's legal counsel and drafts the decisions at their direction. The decisions are issued within 10 days after the hearing as required by statute.

2) In what percentage of these cases does the state prevail? Again, we would welcome specifics but would be satisfied to hear whatever general sense you can provide.

Dividends

The Dividend Division prevails in about 85% of its cases. This overturn rate increases after significant regulatory or statutory changes and decreases if there have been no recent changes. This is because new issues of law require the division to make new interpretations that have not been reviewed in any formal hearing. A large percentage of the cases are disposed of by motions because the applicant is disqualified as a matter of law based on the undisputed facts of the case. This may be because the law creates many bright line tests for dividend eligibility that can result in a disqualification that may seem harsh or counterintuitive to individual applicants. Applicants are required to pay a \$25 fee for the informal, administrative review of their case at the division. There is no additional fee required to request a formal hearing.

Child Support

It is difficult to say in child support cases when the agency has "prevailed" because there are many issues involved, and the division usually takes the position that some adjustment is needed to the decision that is being appealed. In less than 30% of the cases the formal hearing decision

(8) These hearings often involve complex issues with many witnesses. The hearings can last up to a week. It often takes several weeks after the hearing for the record to close because the parties want to file additional documents after the hearing and respond to each other's post hearing submissions.

fails to make any changes to support amounts last set by the agency, but this is partly because new income information is produced before or during the formal hearing process. The division gets most of what it recommends about 80% of the time. The obligors get most of what they want in about 40% of the cases. Custodial parents probably get most of what they want 70% of the time. Many issues brought to the hearing are resolved to the satisfaction of all the parties. Obligor probably get less satisfaction from the formal hearing process because they are the ones who have to pay child support, and this is often not easy to do at the level required by law. It is also not necessarily easy for custodial parents to support children on these amounts.

Gaming, Tax and Unclaimed Property

These cases usually settle so both parties prevail in most cases. In cases that go to hearing, the agency prevails over 90% of the time.

State Assessment Review Board

These cases also involve more than one issue. Also the state may be only one party of three, with the taxpayer arguing for a lower valuation and the municipality arguing for a higher valuation. Either one may agree with the state and oppose the valuation of the other. The board can assess a property at a valuation that is between the amount argued by the state or even higher or lower than advocated by any party. I would say the state gets most of what it wants 80% of the time.

3) What percentage of hearings are conducted by in-house personnel and what percentage are conducted by others?

About 5% of our caseload is handled by contracted hearing officers. In the past we have used outside contract hearing officers to help catch up with backlogs. In dividend cases, this usually means having them review and draft orders in cases where a dispositive motion has been filed or the applicant has asked for a hearing by correspondence. This is because it is not a cost-effective use of their time to have them conduct hearings. In child support cases we have had them conduct hearings because that was where we needed help. In one tax case we contracted with the Department of Administration because there was a conflict created by a disagreement by the parties as to whether the hearing section or the state assessment review board should hear the appeal. The case eventually settled without going to hearing.

FISCAL NOTE

addressed

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 533
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Pfund Appropriations & Investments RDU AK Permanent Fund Corporation
Component AK Permanent Fund Corporation
Sponsor House Finance Committee
Requester House Finance Committee Component No. 109

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 553 would change the amount available to distribute from the Permanent Fund to conform to a Percent of Market Value payout limit. HB 553 would not change the management or the cost of operations of the Fund.

Prepared by: Robert D. Storer, Executive Director Phone 465-2047
Division Alaska Permanent Fund Corporation Date/Time 4/12/2003
Approved by: Steve Porter, Deputy Commissioner Date 4/12/2004
Agency Department of Revenue