

SB

203

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 8, 2004

FURTHER REFERRALS: Finance

Date of Committee Action: March 18, 2004

The JUDICIARY Committee considered:

CSSB 203(FIN) am

CS FOR SENATE BILL NO. 203(FIN) am

ADMINISTRATIVE HEARINGS/OFFICE

"An Act relating to administrative hearings, to hearing officers, and to administrative law judges; establishing the office of administrative hearings and relating to that office; and providing for an effective date."

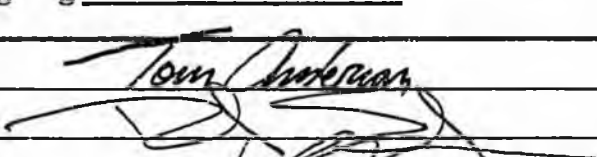
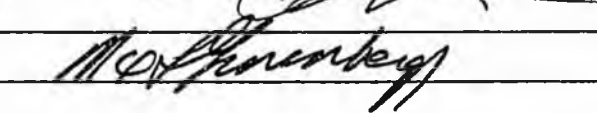
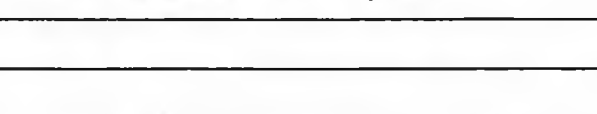
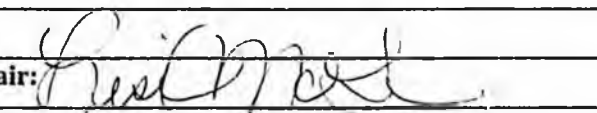
Recommends it be replaced with [] HCS or CS for SB 203 (JUD)
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ Same Title [] New Title

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

List of Abbrev for Depts.:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LEG
 LAW
 LWF
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CEA		✓		
PREVIOUS FN'S:				
ADM	1	✓		
REV	2	✓		
ADM	3	✓		
CEA	4	✓		
LAW	5		✓	
ADM	6	✓		
ADM	7	✓		
LWF	8			✓
DPS	9	✓		
HSS	10			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	11	✓		
CEA	12		✓	
EED	13			✓
DEC	14		✓	
CEA	15	✓		
CEA	16	✓		
LAW	17		✓	
EED	18		✓	
REV	19	✓		
REV	20	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	ANDERSON	<input checked="" type="checkbox"/>			
	SAMUELS GAMBA	<input checked="" type="checkbox"/>			
	McGurne	<input checked="" type="checkbox"/>			
Chair: 	McGurne	<input checked="" type="checkbox"/>			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 203 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Office of Administrative Hearings RDU Occupational Licensing (11)
 Component Occupational Licensing
 Sponsor Rules by Request
 Requester Senate Finance Component No. 2360

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 153.9
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office on or after January 1, 2005, it is anticipated that receipts from licensing fees (RSS) totaling \$77.0 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 3/1/04 4:08 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/1/2004
 Agency: Department of Community and Economic Development

23-LS0903J
Cook
3/17/04

HOUSE CS FOR CS FOR SENATE BILL NO. 203()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to administrative hearings, to hearing officers, and to administrative
2 law judges; establishing the office of administrative hearings and relating to that office;
3 and providing for an effective date."

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

5 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
6 to read:

7 PURPOSE AND INTENT. The purpose of this Act is to increase the separation
8 between the adjudicatory functions of executive branch agencies and the agencies'
9 investigatory, prosecutory, and policy-making functions. The legislature intends by this Act
10 to

11 (1) provide for the delivery of high quality adjudication services in a timely,
12 efficient, and cost-effective manner;

13 (2) ensure respect for the dignity of the individuals whose cases are being
14 adjudicated;

1 (3) foster open and clearly explained agency decisions and improve public
2 access to the process of administrative adjudication;

3 (4) guarantee protection of all parties' due process rights, increase the public
4 parties' perception of fairness in administrative adjudication, and foster acceptance of final
5 administrative decisions by the public and affected parties;

6 (5) protect the integrity of the process of administrative adjudication and
7 decisional independence of administrative adjudicators; and

8 (6) increase consistency in administrative procedures and decisions.

9 * **Sec. 2.** AS 44 is amended by adding a new chapter to read:

10 **Chapter 64. Hearing Officers and Office of Administrative Hearings.**

11 **Sec. 44.64.010. Office created.** (a) There is created in the Department of
12 Administration an independent office of administrative hearings under the direction of
13 the chief administrative law judge.

14 (b) The chief administrative law judge must

15 (1) be a resident of the state;

16 (2) have experience in administrative law;

17 (3) be licensed to practice law in this state and have been admitted to
18 practice law in this state for at least five years; and

19 (4) have experience representing clients in administrative or judicial
20 proceedings.

21 (c) The chief administrative law judge is appointed to a five-year term of
22 office by the governor and is subject to confirmation by the legislature. An individual
23 may serve not more than three full or partial terms as chief administrative law judge.
24 The governor may remove the chief administrative law judge from office only for
25 good cause and after a hearing conducted by the attorney general. The basis for
26 removal shall be stated in writing. A vacancy in the office of chief administrative law
27 judge shall be filled by the governor and the individual appointed serves for the
28 remainder of the term to which appointed.

29 (d) The chief administrative law judge shall receive a monthly salary that is
30 not less than Step A nor more than Step F, Range 27, of the salary schedule in
31 AS 39.27.011(a) for Juneau, Alaska. The chief administrative law judge is in the

1 partially exempt service.

2 **Sec. 44.64.020. Powers and duties of chief administrative law judge.** The
3 chief administrative law judge shall

4 (1) supervise the office;

5 (2) employ administrative staff, who shall be in the classified service;

6 (3) employ administrative law judges, who shall be in the partially
7 exempt service;

8 (4) preside over administrative hearings handled by the office or, based
9 upon the qualifications and expertise of the administrative law judges, assign
10 administrative law judges to preside over hearings, and protect, support, and enhance
11 the decisional independence of the administrative law judges;

12 (5) establish and implement performance standards, including
13 provision for timeliness, and peer review programs for administrative law judges
14 employed or retained by the office;

15 (6) make available and facilitate training and continuing education
16 programs and services in administrative procedure, administrative adjudication,
17 substantive law, alternate dispute resolution, and technical matters for administrative
18 law judges and other administrative adjudicators;

19 (7) survey administrative hearing participants and use other methods to
20 monitor the quality of administrative hearings held by the office and other state
21 agencies, and submit to the governor and the legislature on January 31 of each year the
22 results of the survey along with a report that includes a description of the activities of
23 the office and recommendations for statutory changes that may be needed in relation
24 to the administrative hearings held by the office or other state agencies;

25 (8) review and comment on regulations proposed by state agencies to
26 govern procedures in administrative hearings;

27 (9) enter into contracts as necessary to carry out the functions of the
28 office;

29 (10) annually prepare and submit to the commissioner of
30 administration a budget for the office for the next fiscal year that shall include and
31 separately identify funding for training and continuing education; a copy of the budget

1 submitted to the commissioner under this paragraph shall also be submitted to the
2 Finance Committee of each house of the legislature; and

3 (11) after consulting with affected agencies, adopt regulations under
4 AS 44.62 (Administrative Procedure Act) to carry out the duties of the office and
5 implement this chapter.

6 * **Sec. 3.** AS 44.64 is amended by adding new sections to read:

7 **Sec. 44.64.030. Jurisdiction of the office.** (a) The office shall conduct all
8 adjudicative administrative hearings required under the following statutes or under
9 regulations adopted to implement the statutes:

- 10 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
11 (2) AS 05.15 (charitable gaming);
12 (3) AS 05.20 (recreational devices);
13 (4) AS 05.90.001 (special racing events);
14 (5) AS 06 (banks and financial institutions);
15 (6) AS 08 (occupational licensing), other than AS 08.08 and
16 AS 08.62.046;
17 (7) AS 10.06 (Alaska Corporations Code);
18 (8) AS 10.13 (Alaska BIDCO Act);
19 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
20 (10) AS 10.50.408 (limited liability companies);
21 (11) AS 14.11.016 (education-related facility grants);
22 (12) AS 14.18 (discrimination in public education);
23 (13) AS 14.20.030 (teacher certificates);
24 (14) AS 14.48 (postsecondary educational institutions);
25 (15) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than
26 AS 17.20.060 and 17.20.360;
27 (16) AS 18.18.030 (hospice licenses);
28 (17) AS 18.20 (hospitals and nursing facilities), other than
29 AS 18.20.180;
30 (18) AS 18.35.040 (tourist accommodations);
31 (19) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,

- 1 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
2 (20) AS 25.27 (child support enforcement);
3 (21) AS 32.06 (Uniform Partnership Act);
4 (22) AS 34.45 (unclaimed property);
5 (23) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
6 (24) AS 36.30 (State Procurement Code), other than
7 AS 36.30.627(a)(2);
8 (25) AS 38.05.065 (contracts for sale of state land);
9 (26) AS 39.52 (Alaska Executive Branch Ethics Act);
10 (27) AS 43.23 (permanent fund dividends);
11 (28) AS 43.70 (Alaska Business License Act);
12 (29) AS 44.77 (claims against the state);
13 (30) AS 45.30.040 (mobile homes);
14 (31) AS 45.55 (Alaska Securities Act);
15 (32) AS 45.57 (Takeover Bid Disclosure Act);
16 (33) AS 47.33 (assisted living homes);
17 (34) AS 47.35 (child care);
18 (35) AS 47.45 (longevity bonuses).

19 (b) An agency may request the office to conduct an administrative hearing or
20 other proceeding of that agency or to conduct several administrative hearings or other
21 proceedings under statutes not listed in (a) of this section. The office may provide the
22 service after entering into a written agreement with the agency describing the services
23 to be provided and providing for reimbursement by the agency to the office of the
24 costs incurred by the office in providing the services.

25 (c) To the extent otherwise permitted by law, the agency may delegate to the
26 administrative law judge assigned to conduct the hearing on behalf of the agency the
27 authority to make a final agency decision in the matter. The final decision may be
28 appealed to the superior court by any party.

29 (d) Nothing in this chapter may be construed to create a right to a hearing or to
30 require a hearing that is not required under other law.

31 **Sec. 44.64.040. Administrative law judges.** (a) An administrative law judge

1 must be admitted to practice law in this state and must have been admitted to practice
2 in this state for at least two years before being employed or retained with the office.
3 The chief administrative law judge shall establish additional qualifications for
4 administrative law judges employed or retained by the office and for those
5 administrative law judges that may be assigned to particular types of cases.
6 Notwithstanding AS 39.25.120(b), full-time administrative law judges employed by
7 the office are subject to the personnel rules adopted under AS 39.25.150(7), (15), and
8 (16).

9 (b) An administrative law judge employed or retained by the office may, in
10 conducting an administrative hearing for an agency, exercise the powers authorized by
11 law for exercise by that agency in the performance of its duties in connection with the
12 hearing. An administrative law judge may

13 (1) engage in alternative dispute resolution under regulations adopted
14 by the chief administrative law judge that is in addition to any alternate dispute
15 resolution procedure used by an agency before the case is referred to the office;

16 (2) order a party, a party's attorney, or another authorized
17 representative of a party to pay reasonable expenses, including attorney fees, incurred
18 by another party as a result of actions done in bad faith or as a result of tactics used
19 frivolously or solely intended to cause unnecessary delay;

20 (3) perform other necessary and appropriate acts in the performance of
21 official duties.

22 (c) An administrative law judge employed by the office must devote full time
23 to the duties of the office unless appointed to a position that is less than full-time. An
24 administrative law judge employed by the office may not perform duties inconsistent
25 with the duties and responsibilities of an administrative law judge.

26 (d) The office may enter into a contract with an individual who meets the
27 qualifications established in (a) of this section to serve as an administrative law judge
28 in a particular administrative hearing or in several hearings of the same type. The
29 individual is subject to AS 39.52 (Alaska Executive Branch Ethics Act).
30 Notwithstanding AS 36.30.015(d), the office may contract for or hire an
31 administrative law judge without notifying or securing the approval of the Department

1 of Law.

2 **Sec. 44.64.050. Hearing officer conduct.** (a) An administrative law judge
3 employed full time by the office or a hearing officer employed full time by an agency
4 may not serve in any other judicial or quasi-judicial capacity or engage in the private
5 practice of law.

6 (b) The chief administrative law judge shall, subject to AS 39.52.920 and by
7 regulation, adopt a code of hearing officer conduct. The code shall apply to the chief
8 administrative law judge, administrative law judges of the office, and hearing officers
9 of each other agency.

10 (c) Except as provided in (e) of this section, the chief administrative law judge
11 shall receive and consider all complaints against administrative law judges or hearing
12 officers employed or retained by the office or another agency alleging violations of (a)
13 of this section or of the code of hearing officer conduct. The chief administrative law
14 judge shall deliver the complaint to the attorney general when the chief administrative
15 law judge determines that the conduct alleged, if true, would constitute a violation of

16 (1) subsection (a) of this section; or

17 (2) the code and would warrant disciplinary action under the
18 regulations adopted under (b) of this section.

19 (d) If the attorney general determines that a violation has occurred, the
20 attorney general shall submit written findings to the agency that employed or retained
21 the administrative law judge or hearing officer who is the subject of the complaint
22 together with recommendations for corrective or disciplinary action. If the
23 administrative law judge is employed or retained by the office, the chief administrative
24 law judge shall take appropriate corrective or disciplinary action.

25 (e) The attorney general shall, by regulation, establish procedures to
26 implement (d) of this section, including procedures for investigating and holding
27 hearings on complaints. The attorney general shall receive and consider any
28 complaint filed against the chief administrative law judge under this section, and may
29 investigate or hold a hearing on the complaint in compliance with the regulations
30 adopted under this subsection.

31 **Sec. 44.64.055. Reimbursement agreements.** The office may enter into

1 agreements for reimbursement for services related to an administrative hearing from a
2 school district, municipality, or other governmental entity if the reimbursement is
3 authorized by other law.

4 **Sec. 44.64.060. Procedure for hearings.** (a) The chief administrative law
5 judge shall, by regulation, establish procedures for administrative hearings conducted
6 by the office. Each administrative hearing under the jurisdiction of the office or that
7 has been transferred to the office by an agency shall be conducted in accordance with
8 statutes that apply to that hearing, including, if applicable, AS 44.62 (Administrative
9 Procedure Act). In case of conflict between this section and another applicable statute
10 establishing procedures for administrative hearings, the other statute prevails.
11 However, to the extent regulations adopted by an agency for the conduct of an
12 administrative hearing conflict with regulations adopted by the chief administrative
13 law judge under this subsection, the regulations adopted by the chief administrative
14 law judge control to the maximum extent possible without conflicting with applicable
15 statutes.

16 (b) When an agency receives a request for a hearing that is subject to
17 AS 44.64.030, the agency shall, within 10 days and in writing, deny the request for
18 reasons provided by law or grant the request and refer the case to the office. The
19 agency shall immediately give notice of the denial or referral to the requestors and the
20 office. If the request is denied, the denial may be appealed to the superior court as
21 provided by other law. If the request is granted, the agency shall, within 15 days after
22 receiving the request, compile and transmit to the office a copy of the request for a
23 hearing, the names, addresses, and telephone numbers of all parties and their
24 representatives, and the agency's decision, if any, together with the record relied on to
25 support the decision. Any information provided to the office that is confidential by
26 law shall be identified by the agency as confidential and shall be kept confidential by
27 the office.

28 (c) The agency may, with materials transmitted under (b) of this section,
29 request the chief administrative law judge to permit the entity that will make the final
30 decision to participate with the assigned administrative law judge in the conduct of the
31 administrative hearing. The chief administrative law judge shall determine the degree

1 and manner of participation and may terminate that participation at any time.
2 However, the entity that participates under this subsection may not serve as the
3 administrative law judge or preside during the hearing and may not take action on
4 behalf of the agency in the agency's capacity as a party to the proceedings.

5 (d) An administrative law judge employed or retained by the office shall,
6 within 120 days after the date the agency received the request for a hearing, prepare a
7 proposed decision, unless another time period is provided by law or agreed to by the
8 parties and the chief administrative law judge. The administrative law judge shall
9 immediately submit the proposed decision to the agency.

10 (e) A proposed decision in an administrative hearing shall be in a form that
11 may be adopted as the final decision by the agency with authority to make the final
12 decision. The proposed decision is a public record, except as otherwise provided by
13 statute. A copy of the proposed decision shall be served by the office on each party in
14 the case or on the attorneys representing those parties in the hearing. Unless the office
15 has established a shorter time period or another statute has established a different time
16 period, within 30 days after the proposed decision is served, a party may file with the
17 agency a proposal for action under (1) - (5) of this subsection. The agency with
18 authority to make a final decision in the case retains agency discretion in the final
19 disposition of the case and shall, within 45 days after the date the proposed decision is
20 served or at the next regularly scheduled meeting that occurs at least 45 days after the
21 proposed decision is served, do one or more of the following:

22 (1) adopt the proposed decision as the final agency decision;

23 (2) return the case to the administrative law judge to take additional
24 evidence or make additional findings or for other specific proceedings, in which case
25 the administrative law judge shall complete the additional work and return the revised
26 proposed decision to the agency within 45 days after the original decision was
27 returned under this paragraph;

28 (3) exercise its discretion by revising the proposed enforcement action,
29 determination of best interests, order, award, remedy, sanction, penalty, or other
30 disposition of the case, and adopt the proposed decision as revised;

31 (4) in writing, reject, modify, or amend a factual finding in the

1 proposed decision by specifying the affected finding and identifying the testimony and
2 other evidence relied on by the agency for the rejection, modification, or amendment
3 of the finding, and issue a final agency decision;

4 (5) in writing, reject, modify, or amend an interpretation or application
5 in the proposed decision of a statute or regulation directly governing the agency's
6 actions by specifying the reasons for the rejection, modification, or amendment, and
7 issue a final agency decision.

8 (f) If a final decision is not issued timely in accordance with (e) of this section,
9 the administrative law judge's proposed decision is the final agency decision.

10 **Sec. 44.64.070. Disqualification of administrative law judge.** (a) The chief
11 administrative law judge or an administrative law judge employed or retained by the
12 office is disqualified from a case in which the administrative law judge cannot accord
13 a fair and impartial hearing or for other reasons established in the code of hearing
14 officer conduct.

15 (b) A party may request the disqualification of the chief administrative law
16 judge or another administrative law judge by filing an affidavit, before the taking of
17 evidence at a hearing, stating with particularity the grounds upon which it is claimed
18 that a fair and impartial hearing cannot be accorded by that administrative law judge.
19 Notwithstanding AS 44.62.450(c), upon receipt of the affidavit, the administrative law
20 judge assigned to the administrative hearing shall make a determination. If the affiant
21 objects to the decision, the matter shall be decided by the chief administrative law
22 judge, whose decision is final, or if the hearing is assigned to the chief administrative
23 law judge, by the attorney general, whose decision is final.

24 (c) In addition to disqualification of an administrative law judge under (a) and
25 (b) of this section, each side is entitled to change the assigned administrative law judge
26 once. Two or more parties aligned on the same side of an action shall be treated as
27 one side for purposes of this subsection, but the chief administrative law judge may
28 allow an additional change to a party whose interests are adverse to the interests of
29 another party on the same side. A party wishing to exercise the right to change the
30 administrative law judge shall give notice to the chief administrative law judge within
31 five days after notice is given that the case has been assigned. A party waives the

1 right to a change in the assigned administrative law judge by participating before that
2 administrative law judge in any proceeding or conference involving the case.

3 **Sec. 44.64.080. Agency cooperation.** (a) All agencies shall cooperate with
4 the chief administrative law judge and with other administrative law judges of the
5 office in the matters involving the duties of the office.

6 (b) Except as provided under AS 44.64.070 or by regulation adopted under
7 this chapter, an agency may not select or reject a particular administrative law judge
8 for assignment to an administrative hearing.

9 (c) After an administrative hearing is referred by an agency to the office for
10 hearing, the agency may not take further adjudicatory action in the case, except as a
11 party litigant or to render a final decision as provided by law. This subsection does
12 not otherwise limit the agency's authority to take action affecting a party to the case.

13 **Sec. 44.64.090. Administrative hearing records.** (a) The office shall
14 acquire and organize statistical and other information relating to administrative
15 hearings of the office and of other agencies. The office shall acquire and organize
16 copies of proposed and final agency decisions in administrative hearings and copies of
17 court decisions resulting from those administrative hearings. The information and
18 decisions shall be made available to the public, agencies, and the legislature. The
19 office shall make final agency decisions reached after administrative hearings
20 available online through an electronic data base.

21 (b) This section does not apply to records that are confidential or privileged.

22 **Sec. 44.64.095. Federal requirements.** Federal requirements applicable to an
23 administrative hearing prevail to the extent they conflict with any provision of
24 AS 44.64.010 - 44.64.200.

25 **Sec. 44.64.200. Definitions.** In this chapter,

26 (1) "administrative hearing" means a quasi-judicial hearing before an
27 agency; it does not include an informal conference or review held by an agency before
28 a final decision is issued or a rate-making proceeding or other nonadjudicative public
29 hearing;

30 (2) "administrative law judge" means a hearing officer who is retained
31 or employed by the office;

1 (3) "agency" means an agency of the executive branch of state
2 government, including an officer, a division, or another subunit of an agency, a board
3 or commission, a public corporation, and the University of Alaska;

4 (4) "hearing officer" means an individual who presides over the
5 conduct of an administrative hearing and who is retained or employed by an agency
6 for that purpose;

7 (5) "office" means the office of administrative hearings established in
8 AS 44.64.010.

9 * Sec. 4. AS 04.11.510(b) is amended to read:

10 (b) The board may review an application for the issuance, renewal, transfer of
11 location, or transfer to another person of a license without affording the applicant
12 notice or hearing, except

13 (1) if an application is denied, the notice of denial shall be furnished
14 the applicant immediately in writing stating the reason for the denial in clear and
15 concise language; the notice of denial must inform the applicant that the applicant is
16 entitled to an informal conference with either the director or the board, and that, if not
17 satisfied by the informal conference, the applicant is then entitled to a formal hearing
18 conducted by the office of administrative hearings (AS 44.64.010) [BEFORE THE
19 BOARD]; if the applicant requests a formal hearing, the office of administrative
20 hearings [BOARD] shall adhere to AS 44.62.330 - 44.62.630 (Administrative
21 Procedure Act); all interested persons may be heard at the hearing and unless waived
22 by the applicant and the board, the formal hearing shall be held in the area for which
23 the application is requested;

24 (2) the board may, on its own initiative or in response to an objection
25 or protest, hold a hearing to ascertain the reaction of the public or a local governing
26 body to an application if a hearing is not required under this subsection; the board
27 shall send notice of a hearing conducted under this paragraph 20 days in advance of
28 the hearing to each community council established within the municipality and to each
29 nonprofit community organization entitled to notification under AS 04.11.310(b);

30 (3) if a petition containing the signatures of 35 percent of the adult
31 residents having a permanent place of abode outside of but within two miles of an

1 incorporated city or an established village is filed with the board, the board shall hold
2 a public hearing on the question of whether the issuance, renewal, or transfer of the
3 license in the city or village would be in the public interest;

4 (4) if a protest to the issuance, renewal, transfer of location or transfer
5 to another person of a license made by a local governing body is based on a question
6 of law, the board shall hold a public hearing.

7 * Sec. 5. AS 05.20.080 is amended to read:

8 **Sec. 05.20.080. Application of Administrative Procedure Act.** The
9 procedure for review of the orders or actions of the department, its agents or
10 employees, is the same as that contained in AS 44.62 (Administrative Procedure Act).
11 Administrative hearings on contested cases shall be conducted by the office of
12 administrative hearings (AS 44.64.010).

13 * Sec. 6. AS 06.01.030(f) is amended to read:

14 (f) Hearings required or authorized under this title are not subject to
15 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The
16 department shall adopt regulations, consistent with the provisions of this title,
17 establishing procedures for hearings held under this section. Administrative
18 hearings on contested cases shall be conducted by the office of administrative
19 hearings (AS 44.64.010).

20 * Sec. 7. AS 08.01.075(c) is amended to read:

21 (c) A board may summarily suspend a licensee from the practice of the
22 profession before a final hearing is held or during an appeal if the board finds that the
23 licensee poses a clear and immediate danger to the public health and safety. A person
24 is entitled to a hearing conducted by the office of administrative hearings
25 (AS 44.64.010) [BEFORE THE BOARD] to appeal the summary suspension within
26 seven days after the order of suspension is issued. A person may appeal an adverse
27 decision of the board on an appeal of a summary suspension to a court of competent
28 jurisdiction.

29 * Sec. 8. AS 08.01.087(b) is amended to read:

30 (b) If it appears to the commissioner that a person has engaged in or is about
31 to engage in an act or practice in violation of a provision of this chapter or a regulation

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adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone, telegraph, or facsimile to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the office of administrative hearings (AS 44.64.010) [COMMISSIONER OR THE COMMISSIONER'S DESIGNEE] shall conduct [BE THE HEARING OFFICER AT] the hearing and shall issue a proposed decision [FINAL ORDER] within 10 days after the hearing; the commissioner shall issue a final order within five days after the proposed decision is issued;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with business licenses or an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents.

* Sec. 9. AS 08.11.090(c) is amended to read:

(c) The department may summarily suspend a license before final hearing or during the appeals process if the department finds that the licensee poses a clear and

1 immediate danger to the public welfare and safety if the licensee continues to practice.
2 An individual whose license is suspended under this subsection is entitled to a hearing
3 conducted by the office of administrative hearings (AS 44.64.010) not
4 [DEPARTMENT NO] later than seven days after the effective date of the order. The
5 individual may appeal the suspension after the hearing to the superior court.

6 * **Sec. 10.** AS 08.32.171(c) is amended to read:

7 (c) The board may summarily suspend the license of a licensee who refuses to
8 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
9 whose license is suspended under this section is entitled to a hearing conducted by the
10 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
11 the effective date of the order. If, after a hearing, the board upholds the suspension,
12 the licensee may appeal the suspension to a court of competent jurisdiction.

13 * **Sec. 11.** AS 08.36.320(c) is amended to read:

14 (c) The board may summarily suspend the license of a licensee who refuses to
15 submit to a physical or mental examination under AS 08.36.070(b)(1). A person
16 whose license is suspended under this section is entitled to a hearing conducted by the
17 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
18 the effective date of the order. If, after a hearing, the board upholds the suspension,
19 the licensee may appeal the suspension to a court of competent jurisdiction.

20 * **Sec. 12.** AS 08.40.170(f) is amended to read:

21 (f) The department may summarily suspend a license before a final hearing is
22 held or during an appeal if the department finds that the licensee poses a clear and
23 immediate danger to the public health and safety. A person is entitled to a hearing
24 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)
25 [DEPARTMENT] to appeal the summary suspension within seven days after the order
26 of suspension is issued. A person may appeal an adverse decision of the department
27 on an appeal of a summary suspension to a court of competent jurisdiction.

28 * **Sec. 13.** AS 08.40.320(f) is amended to read:

29 (f) The department may summarily suspend a license before a final hearing is
30 held or during an appeal if the department finds that the licensee poses a clear and
31 immediate danger to the public health and safety. A person is entitled to a hearing

1 conducted by [BEFORE] the office of administrative hearings (AS 44.64.010)
2 [DEPARTMENT] to appeal the summary suspension within seven days after the order
3 of suspension is issued. A person may appeal an adverse decision of the department
4 on an appeal of a summary suspension to a court of competent jurisdiction.

5 * Sec. 14. AS 08.45.070(c) is amended to read:

6 (c) The division may summarily suspend a license before final hearing or
7 during the appeals process if the division finds that the licensee poses a clear and
8 immediate danger to the public health and safety if the licensee continues to practice.
9 A licensee whose license is suspended under this section is entitled to a hearing
10 conducted by the office of administrative hearings (AS 44.64.010) not [DIVISION
11 NO] later than seven days after the effective date of the order. The licensee may
12 appeal the suspension after a hearing to a court of competent jurisdiction.

13 * Sec. 15. AS 08.54.710(i) is amended to read:

14 (i) The department may summarily suspend a licensee from practice of the
15 profession under this chapter, for a period of not more than 30 days, before a final
16 hearing is held or during an appeal if the department finds that the licensee poses a
17 clear and immediate danger to the public health and safety. A person is entitled to a
18 hearing conducted by [BEFORE] the office of administrative hearings
19 (AS 44.64.010) [DEPARTMENT] to appeal the summary suspension within seven
20 days after the order of suspension is issued. A person may appeal an adverse decision
21 of the department on an appeal of summary suspension to a court of competent
22 jurisdiction.

23 * Sec. 16. AS 08.55.140(c) is amended to read:

24 (c) The department may summarily suspend a license before final hearing or
25 during the appeals process if the department finds that the licensee poses a clear and
26 immediate danger to the public welfare and safety if the licensee continues to practice.
27 A person whose license is suspended under this subsection is entitled to a hearing
28 conducted by the office of administrative hearings (AS 44.64.010) not
29 [DEPARTMENT NO] later than seven days after the effective date of the order. The
30 person may appeal the suspension after the hearing to the superior court.

31 * Sec. 17. AS 08.64.331(c) is amended to read:

1 (c) The board may summarily suspend a license before final hearing or during
2 the appeals process if the board finds that the licensee poses a clear and immediate
3 danger to the public health and safety if the licensee continues to practice. A person
4 whose license is suspended under this section is entitled to a hearing conducted by the
5 office of administrative hearings (AS 44.64.010) not [BOARD NO] later than seven
6 days after the effective date of the order and the person may appeal the suspension
7 after a hearing to a court of competent jurisdiction.

8 * Sec. 18. AS 08.65.120(c) is amended to read:

9 (c) The board may summarily suspend a license before final hearing or during
10 the appeals process if the board finds that the licensee poses a clear and immediate
11 danger to the public health and safety if the licensee continues to practice. A person
12 whose license is suspended under this section is entitled to a hearing conducted by the
13 office of administrative hearings (AS 44.64.010) not [BOARD NO] later than seven
14 days after the effective date of the order and the person may appeal the suspension
15 after a hearing to a court of competent jurisdiction.

16 * Sec. 19. AS 08.68.275(c) is amended to read:

17 (c) The board may summarily suspend a license before final hearing or during
18 the appeals process if the board finds that the licensee poses a clear and immediate
19 danger to the public health and safety. A person whose license is suspended under this
20 section is entitled to a hearing conducted by the office of administrative hearings
21 (AS 44.64.010) [BOARD] within seven days after the effective date of the order. If,
22 after a hearing, the board upholds the suspension, the licensee may appeal the
23 suspension to a court of competent jurisdiction.

24 * Sec. 20. AS 08.86.204(b) is amended to read:

25 (b) The board may summarily suspend the license of a licensee who refuses to
26 submit to a physical or mental examination under AS 08.86.075. A person whose
27 license is suspended under this subsection is entitled to a hearing conducted by the
28 office of administrative hearings (AS 44.64.010) [BOARD] within seven days after
29 the effective date of the order. If, after the [A] hearing, the board upholds the
30 suspension, the licensee may appeal the suspension to a court of competent
31 jurisdiction.

1 * **Sec. 21.** AS 08.88.460(b) is amended to read:

2 (b) A copy of a claim filed with the commission under (a) of this section shall
3 be sent to each real estate licensee alleged to have committed the misconduct resulting
4 in losses, to the principal real estate broker employing a licensee alleged to have
5 committed the conduct resulting in losses, and to any other real estate licensee
6 involved in the transaction at least 20 days before any hearing held on the claim by the
7 office of administrative hearings (AS 44.64.010) [COMMISSION].

8 * **Sec. 22.** AS 08.88.460(d) is amended to read:

9 (d) A claimant under this section shall pay a filing fee of \$250 to the
10 commission at the time the claim is filed. The filing fee shall be refunded if the

11 (1) [THE] commission makes an award to the claimant from the real
12 estate surety fund;

13 (2) [THE] claim is dismissed under (c) of this section; or

14 (3) [THE] claim is withdrawn by the claimant before the office of
15 administrative hearings (AS 44.64.010) [COMMISSION] holds a hearing on the
16 claim.

17 * **Sec. 23.** AS 08.88.472(c) is amended to read:

18 (c) The commission may contract under AS 36.30 (State Procurement Code)
19 with a person for the person to perform [HEARING AND] legal services for the
20 commission with regard to a claim against the real estate surety fund. The contract
21 may cover one or more claims.

22 * **Sec. 24.** AS 08.92.040(c) is amended to read:

23 (c) If the department determines that a person is acting as a promoter in
24 violation of this chapter, the department may order the person to stop the violation.
25 Upon receipt of the order, the person affected has the right to be heard and to present
26 proof to the office of administrative hearings (AS 44.64.010) [DEPARTMENT] that
27 the violation has not occurred. Upon [IN THE DEPARTMENT'S DISCRETION OR
28 UPON] application made by the recipient of the order, the office of administrative
29 hearings may [DEPARTMENT SHALL] schedule a hearing at the earliest possible
30 time. After the hearing the department may affirm, modify, or set aside the order.

31 * **Sec. 25.** AS 10.06.633(b) is amended to read:

1 (b) A corporation may not be dissolved under this section unless the
2 commissioner has given the corporation written notice of its delinquency, failure, or
3 noncompliance by mail as provided by (i) of this section. If the corporation fails,
4 within 60 days after the requirements of (i) of this section have been satisfied, to
5 contest the alleged neglect, omission, delinquency, or noncompliance by a written
6 request for a hearing conducted by [BEFORE] the office of administrative hearings
7 (AS 44.64.010) [COMMISSIONER] or fails to correct the asserted neglect, omission,
8 delinquency, or noncompliance, it may be dissolved under (d) of this section.

9 * Sec. 26. AS 10.06.865 is amended to read:

10 **Sec. 10.06.865. Cancellation of certificates issued and filings accepted.**

11 The commissioner may, within one year after a filing, and after written notice to the
12 corporation or individual making the filing, cancel a certificate issued or filing
13 accepted under this chapter, on any ground existing at the time of issuance or filing for
14 which the commissioner could have originally refused to issue the certificate or accept
15 the filing. The notice of cancellation must state the reason for the cancellation. A
16 corporation or individual may request a hearing conducted by [BEFORE] the office
17 of administrative hearings (AS 44.64.010) [COMMISSIONER] within 90 days after
18 receipt of the notice. Cancellation becomes final if the corporation or individual does
19 not request a hearing within 90 days after receipt of notice. Notice of cancellation
20 shall be sent by certified mail with return receipt requested. If the return receipt is not
21 received by the department within a reasonable time and the department has made
22 diligent inquiry as to the address of the corporation, notice may be made by
23 publication in a newspaper of general circulation in the vicinity of the registered office
24 of the corporation or the address of the individual who made the filing, and the
25 cancellation becomes final 60 days after publication of the notice if the person or
26 corporation does not request a hearing.

27 * Sec. 27. AS 10.13.770(b) is amended to read:

28 (b) If the department fails to promptly notify the office of administrative
29 hearings (AS 44.64.010) of the application and the office fails to begin a hearing
30 within 15 business days after the application is filed or within a longer period to which
31 the licensee or subject person consents, the order shall be considered rescinded.

1 * **Sec. 28.** AS 14.11.016(b) is amended to read:

2 (b) A district may appeal an adverse decision of the department under (a) of
3 this section by filing a written notice of appeal with the commissioner within 15 days
4 after the date of the department's decision. The notice of appeal must state the legal
5 and factual basis for the appeal and the precise relief sought. The failure of the district
6 to include an issue in a notice of appeal constitutes a waiver of the right to have the
7 issue considered. Not later than 10 days after receipt by the commissioner of a notice
8 of appeal, the chief administrative law judge of the office of administrative
9 hearings (AS 44.64.010) [COMMISSIONER] shall appoint an administrative law
10 judge [A HEARING OFFICER] who is qualified under AS 44.62.350(c) to serve as
11 hearing officer and consider the appeal. If the hearing officer finds that the notice of
12 appeal does not raise a reasonable issue of fact or law, the hearing officer shall issue a
13 written decision denying the appeal. Denial of an appeal by hearing officer is a final
14 decision that may be appealed under (d) of this section. If the hearing officer finds
15 that the notice of appeal raises a reasonable issue of fact or law, the hearing officer
16 shall conduct a hearing on those issues and recommend a decision to the board. The
17 hearing officer shall issue a decision on the appeal not later than 60 days after being
18 appointed. The board shall consider the recommended decision of the hearing officer
19 at its next regularly scheduled meeting and may adopt all, part, or none of the
20 recommended decision or may remand the issue to the hearing officer for further
21 hearings. The board shall issue its decision in writing within 10 days after
22 consideration of the hearing officer's decision.

23 * **Sec. 29.** AS 14.18.090(a) is amended to read:

24 (a) The board shall enforce compliance by school districts and regional
25 educational attendance areas with the provisions of this chapter and the regulations
26 and procedures adopted under it by appropriate order made in accordance with
27 AS 44.62. After a hearing conducted by the office of administrative hearings
28 (AS 44.64.010) and a finding by the board that a district or a regional educational
29 attendance area is not in compliance with this chapter and is not actively working to
30 come into compliance, the board shall institute appropriate proceedings to abate the
31 practices found by the board to be a violation of this chapter.

1 * **Sec. 30.** AS 14.48.130(b) is amended to read:

2 (b) The commission shall investigate the complaint and may attempt to effect
3 a settlement by persuasion and conciliation. A [THE COMMISSION MAY
4 CONSIDER A] complaint may be considered after 30 days' [DAYS] written notice
5 by registered mail to the institution or agent, or both, giving notice of a time and place
6 for hearing on the complaint. The hearing shall be conducted in accordance with
7 AS 44.62 (Administrative Procedure Act) by the office of administrative hearings
8 (AS 44.64.010).

9 * **Sec. 31.** AS 18.18.030(b) is amended to read:

10 (b) The department may, without a hearing, summarily suspend a license of a
11 hospice program if it finds that the actions or deficiencies of the program have caused,
12 or present an immediate threat of causing, serious injury to a hospice program client.
13 A licensee is entitled to a hearing conducted by the office of administrative
14 hearings (AS 44.64.010) [BEFORE THE DEPARTMENT] to appeal the summary
15 suspension within seven days after the order of suspension is issued. A licensee may
16 appeal an adverse decision of the department on an appeal of a summary suspension to
17 the superior court. A summary suspension remains in effect until the department finds
18 that the actions or deficiencies are corrected, the license is revoked, or the licensee is
19 successful in appealing the suspension.

20 * **Sec. 32.** AS 18.18.030(c) is amended to read:

21 (c) The department may, without a hearing, reduce a hospice license to a
22 provisional license for a period of time established by the department if the depart: ent
23 finds that the licensee is temporarily unable to comply with 18.18.005 - 18.18.390 or
24 is in the process of becoming decertified under the Medicare program but is taking
25 appropriate steps to bring the program into compliance with 18.18.005 - 18.18.390 or
26 Medicare certification requirements. A licensee is entitled to a hearing conducted by
27 the office of administrative hearings [BEFORE THE DEPARTMENT] to appeal a
28 reduction to a provisional license under this subsection within seven days after the
29 order to reduce the license is issued. A licensee may appeal an adverse decision of the
30 department on an appeal of the order reducing the license to a provisional license to
31 the superior court. A program with a provisional license under this subsection may

1 not accept new clients. If the program fails to correct its deficiencies and does not
2 successfully appeal the order reducing the license to provisional status within the
3 period stipulated in the provisional license, the department shall revoke the license.

4 * **Sec. 33.** AS 18.60.093 is amended by adding a new subsection to read:

5 (g) After obtaining consent from the chief administrative law judge
6 (AS 44.64.020), the commission shall appoint an administrative law judge employed
7 or retained by the office of administrative hearings to preside at a hearing conducted
8 under this section. AS 44.64.060 and 44.64.070 do not apply to the hearing. The
9 administrative law judge who presided at the hearing shall be present during the
10 consideration of the case and, if requested by the commission, shall assist and advise
11 the commission. A member of the commission who has not heard all of the evidence
12 may not vote on the decision.

13 * **Sec. 34.** AS 18.67.020(f) is amended to read:

14 (f) After obtaining consent from the chief administrative law judge
15 (AS 44.64.020), the [THE] board may appoint one or more administrative law
16 judges employed or retained by the office of administrative hearings [HEARING
17 OFFICERS, WHO MUST BE LICENSED TO PRACTICE LAW IN THE STATE,]
18 to conduct hearings and take testimony in proceedings under this chapter, but final
19 determinations of any matter shall be only by the board. AS 44.64.060 and 44.64.070
20 do not apply to proceedings under this chapter. An administrative law judge [A
21 HEARING OFFICER] acting under this section shall report findings of fact and
22 conclusions of law to the board, together with the reasons for the findings and
23 conclusions. The board shall act only after consideration of the report and other
24 evidence that it considers appropriate.

25 * **Sec. 35.** AS 18.80.120 is amended by adding a new subsection to read:

26 (b) After obtaining consent from the chief administrative law judge
27 (AS 44.64.020), the commission shall appoint an administrative law judge employed
28 or retained by the office of administrative hearings to preside at a hearing conducted
29 under this section. AS 44.64.060 and 44.64.070 do not apply to the hearing. The
30 administrative law judge who presided at the hearing shall be present during the
31 consideration of the case and, if requested by the commission, shall assist and advise

1 the commission. A member of the commission who has not heard all of the evidence
2 may not vote on the decision.

3 * Sec. 36. AS 18.80.145(b) is amended to read:

4 (b) If, within the period allowed, [THE COMMISSION CONDUCTS] a
5 hearing is conducted and [REACHES] a decision is reached under AS 18.80.120 and
6 18.80.130, the decision of the commission is binding on the parties to the court action
7 as to all issues resolved in the hearing but not as to any issues not resolved in the
8 hearing.

9 * Sec. 37. AS 18.80.145(c) is amended to read:

10 (c) When proceedings in the superior court are deferred for a hearing and
11 decision [BY THE COMMISSION] under this section, the plaintiff may proceed, after
12 the decision of the commission, as an aggrieved party for the purpose of obtaining
13 judicial review under AS 18.80.135, whether or not the person was a party to, or
14 complainant in, the administrative [COMMISSION] proceedings.

15 * Sec. 38. AS 21.06.170(a) is amended to read:

16 (a) With respect to the subject of an examination, investigation, or hearing
17 being conducted by the director or an examiner, if general written authority has been
18 given the examiner by the director, the director or the examiner may subpoena
19 witnesses and administer oaths or affirmations and examine any person under oath,
20 and may compel the production of records, books, papers, contracts, and other
21 documents by attachments, if necessary. If, in connection with an examination of an
22 insurer, the director desires to examine an officer, director, or manager who is then
23 outside this state, the director is authorized to conduct and to enforce by appropriate
24 and available means an examination under oath in another state or a territory of the
25 United States in which the officer, director, or manager may then presently be, to the
26 full extent permitted by the laws of the other state or territory, this special
27 authorization considered. An administrative law judge from the office of
28 administrative hearings (AS 44.64.010) conducting a hearing under this title may,
29 in the course of the hearing, exercise the powers granted to the director under
30 this subsection.

31 * Sec. 39. AS 21.06.170(d) is amended to read:

1 (d) If a person disobeys or resists a lawful order of the administrative law
2 judge or director, refuses to respond to a subpoena, refuses to take oath or affirmation
3 as a witness, refuses to be examined, or is guilty of misconduct at a hearing or so near
4 the hearing as to obstruct the proceeding, the administrative law judge or director
5 shall certify the facts to the superior court where the hearing is held, and, upon
6 certification, the court shall issue an order directing the person to appear before the
7 court and show cause why the person should not be punished for contempt.

8 * **Sec. 40.** AS 21.06.180(b) is amended to read:

9 (b) The office of administrative hearings (AS 44.64.010) [DIRECTOR] shall
10 conduct [HOLD] a hearing on behalf of the director if required under
11 AS 44.64.030. Otherwise, the director shall conduct a hearing if required by a
12 provision of this title, or upon written demand to the director by a person aggrieved
13 by an act, threatened act, or failure of the director to act, or by a report, regulation, or
14 order of the director (other than an order for the holding of a hearing, or an order on
15 hearing or under it). A demand must specify the grounds to be relied upon at the
16 hearing as a basis for the relief. Unless postponed by mutual consent or for good
17 cause shown, the hearing shall be held within 30 days after receipt by the director of
18 the written demand.

19 * **Sec. 41.** AS 21.06.200 is amended to read:

20 **Sec. 21.06.200. Notice of hearing.** Not less than 20 days in advance, the
21 administrative law judge or director shall give notice of the time and place of the
22 hearing, stating the matters to be considered at the hearing. If the persons to be given
23 notice are not specified in the provision under which the hearing is held, the
24 administrative law judge or director shall give notice to all persons whose pecuniary
25 interests are to be directly and immediately affected by the hearing.

26 * **Sec. 42.** AS 21.06.210(a) is amended to read:

27 (a) The administrative law judge or director shall allow a party to the
28 hearing to appear in person and by counsel, to be present during the giving of all
29 evidence, to have a reasonable opportunity to inspect all documentary evidence and to
30 examine witnesses, to present evidence in support of the party's interest, and to have
31 subpoenas issued by the administrative law judge or director to compel attendance

1 of witnesses and production of evidence in the party's behalf.

2 * Sec. 43. AS 21.06.210(b) is amended to read:

3 (b) The administrative law judge or director shall permit to become a party
4 to the hearing by intervention, if timely, any person who was not an original party to
5 the proceeding and whose pecuniary interests are to be directly and immediately
6 affected by the director's order made upon the hearing.

7 * Sec. 44. AS 21.06.210(d) is amended to read:

8 (d) Upon written request seasonably made by a party to the hearing and at that
9 person's expense, the administrative law judge or director shall cause a full
10 stenographic record of the proceedings to be made by a competent reporter. If
11 transcribed, a copy of the stenographic record shall be furnished to the director,
12 without cost to the director or the state, and shall be a part of the director's record of
13 the hearing. If transcribed, a copy of the stenographic record shall be furnished to any
14 other party to the hearing at the request and expense of the other party. If no
15 stenographic record is made or transcribed, the administrative law judge or director
16 shall prepare an adequate record of the evidence and of the proceedings.

17 * Sec. 45. AS 21.06.210(f) is amended to read:

18 (f) If the parties agree, the administrative law judge or director may conduct
19 a hearing under this section by teleconference.

20 * Sec. 46. AS 21.06.210(h) is amended to read:

21 (h) The administrative law judge or director may close a hearing to the
22 public when the administrative law judge or director finds the closure is necessary to
23 protect a person against unwarranted injury or is in the public interest.

24 * Sec. 47. AS 21.06.220(a) is amended to read:

25 (a) In conducting the hearing, the administrative law judge or director shall
26 sit in a quasi-judicial capacity. Within 45 [30] days after termination of the hearing,
27 rehearing, or reargument, the director shall make an order on hearing, covering matters
28 involved in the hearing, rehearing, or reargument, and shall give a copy of the order to
29 the same persons given notice of the hearing.

30 * Sec. 48. AS 24.60.030 is amended by adding a new subsection to read:

31 (i) Except for supplying information requested by the hearing officer or the

1 entity with authority to make the final decision in the case, or when responding to
2 contacts initiated by the hearing officer or the entity with authority to make the final
3 decision in the case, a legislator or legislative employee may not attempt to influence
4 the outcome of an administrative hearing by directly or indirectly contacting or
5 attempting to contact the hearing officer assigned to the hearing or the entity with
6 authority to make the final decision in the case unless the

7 (1) contact is made in the presence of all parties to the hearing or the
8 parties' representatives and the contact is made a part of the record; or

9 (2) fact and substance of the contact is promptly disclosed by the
10 legislator or legislative employee to all parties to the hearing and the contact is made a
11 part of the record.

12 * **Sec. 49.** AS 34.45.400(c) is amended to read:

13 (c) At the formal hearing, the administrative law judge from the office of
14 administrative hearings (AS 44.64.010) [DEPARTMENT] may subpoena witnesses
15 and may administer oaths and make inquiries necessary to determine the validity of
16 the claim. The person aggrieved may present arguments and evidence relevant to the
17 decision or action of the department. If, after the hearing, the department determines
18 that a correction is warranted, the department shall make the correction.

19 * **Sec. 50.** AS 36.30.015(d) is amended to read:

20 (d) An agency may not contract for the services of legal counsel without the
21 approval of the attorney general. An agency may not contract for the services of a
22 hearing officer or administrative law judge for a administrative, quasi-judicial
23 hearing without the approval of the attorney general and the chief administrative
24 law judge of the office of administrative hearings (AS 44.64.010).

25 * **Sec. 51.** AS 36.30.615 is amended to read:

26 **Sec. 36.30.615. Hearing on protest appeal.** A hearing on a protest appeal
27 shall be conducted in accordance with AS 36.30.670 and regulations adopted by the
28 commissioner to the extent the regulations do not conflict with regulations
29 adopted under AS 44.64.060.

30 * **Sec. 52.** AS 36.30.630(a) is amended to read:

31 (a) Except as provided in (b) of this section, a hearing shall be conducted

1 according to AS 36.30.670 and, to the extent they do not conflict with regulations
2 adopted under AS 44.64.060, regulations adopted by the commissioner of
3 administration on a contract claim appealed to the commissioner of administration or
4 the commissioner of transportation and public facilities or referred to either
5 commissioner under AS 36.30.620(f).

6 * Sec. 53. AS 36.30.635(a) is amended to read:

7 (a) After consultation with the using agency and the attorney general and after
8 a hearing conducted according to AS 36.30.670 and, to the extent they do not
9 conflict with regulations adopted under AS 44.64.060, regulations adopted by the
10 commissioner of administration, the commissioner of administration or the
11 commissioner of transportation and public facilities may debar a person for cause from
12 consideration for award of contracts. Notice of a debarment hearing shall be provided
13 in writing at least seven days before the hearing. The debarment may not be for a
14 period of more than three years.

15 * Sec. 54. AS 36.30.650 is amended to read:

16 Sec. 36.30.650. Hearing on a suspension. (a) A person suspended under
17 AS 36.30.635 is entitled to a hearing conducted according to AS 36.30.670 and, to the
18 extent that they do not conflict with regulations adopted under AS 44.64.060,
19 regulations adopted by the commissioner of administration if the person files a written
20 request for a hearing with the commissioner of administration or the commissioner of
21 transportation and public facilities, as appropriate, within seven days after receipt of
22 the notice of suspension under AS 36.30.645.

23 (b) If a suspended person requests a hearing, the commissioner of
24 administration or the commissioner of transportation and public facilities, as
25 appropriate, after consulting with the office of administrative hearings
26 (AS 44.64.010), shall schedule a prompt hearing unless the attorney general
27 determines that a hearing at the proposed time is likely to jeopardize an investigation.
28 A hearing may not be delayed longer than six months after notice of the suspension is
29 provided under AS 36.30.645.

30 * Sec. 55. AS 36.30.670(a) is amended to read:

31 (a) The chief administrative law judge (AS 44.64.010) [COMMISSIONER

1 OF ADMINISTRATION OR THE COMMISSICNER OF TRANSPORTATION
2 AND PUBLIC FACILITIES] shall assign an administrative law judge to act as a
3 hearing officer [OR APPOINT A HEARING OFFICER] for a hearing conducted
4 under this chapter. The hearing officer shall arrange for a prompt hearing and notify
5 the parties in writing of the time and place of the hearing. The hearing shall be
6 conducted in an informal manner. The provisions of AS 44.62 (Administrative
7 Procedure Act) do not apply to a hearing conducted under this chapter.

8 * Sec. 56. AS 36.30.675(a) is amended to read:

9 (a) The [IF THE COMMISSIONER OF ADMINISTRATION OR THE
10 COMMISSIONER OF TRANSPORTATION AND PUBLIC FACILITIES IS NOT
11 ACTING AS HEARING OFFICER, THE] hearing officer shall recommend a decision
12 to the commissioner of administration or the commissioner of transportation and
13 public facilities, as appropriate, based on the evidence presented. The
14 recommendation must include findings of fact and conclusions of law.

15 * Sec. 57. AS 39.52.120 is amended by adding a new subsection to read:

16 (e) Except for supplying information requested by the hearing officer or the
17 entity with authority to make the final decision in the case, or when responding to
18 contacts initiated by the hearing officer or the entity with authority to make the final
19 decision in the case, a public officer may not attempt to influence the outcome of an
20 administrative hearing by directly or indirectly contacting or attempting to contact the
21 hearing officer or entity with authority to make the final decision in the case assigned
22 to the hearing unless the

23 (1) contact is made in the presence of all parties to the hearing or the
24 parties' representatives and the contact is made a part of the record; or

25 (2) fact and substance of the contact is promptly disclosed by the
26 public officer to all parties to the hearing and the contact is made a part of the record.

27 * Sec. 58. AS 39.52.350(c) is amended to read:

28 (c) If the subject of the accusation denies that a violation of this chapter has
29 occurred, the attorney general shall refer the matter to the personnel board, which
30 shall notify the chief administrative law judge (AS 44.64.010), who shall appoint
31 an administrative law judge to serve as a hearing officer to conduct a hearing.

1 * **Sec. 59.** AS 43.05.420 is amended by adding a new subsection to read:

2 (d) If there is a vacancy in the office of chief administrative law judge, the
3 commissioner may refer a case to a hearing officer for a hearing under AS 43.05.400 -
4 43.05.499.

5 * **Sec. 60.** AS 43.05.420(d) is repealed and reenacted to read:

6 (d) If there is a vacancy in the office of chief administrative law judge, the
7 commissioner may refer a case to the office of administrative hearings (AS 44.64.010)
8 and request that office to conduct the hearing. Once referred, the office shall have
9 jurisdiction over the case until the final administrative decision is made.
10 AS 43.05.435 - 43.05.499 apply to a hearing conducted by the office under this
11 subsection.

12 * **Sec. 61.** AS 43.70.075(m) is amended to read:

13 (m) The department may initiate suspension of a business license endorsement
14 or the right to obtain a business license endorsement under this section by sending the
15 person subject to the suspension a notice by certified mail, return receipt requested, or
16 by delivering the notice to the person. The notice must contain information that
17 informs the person of the grounds for suspension, the length of any suspension sought,
18 and the person's right to administrative review [BEFORE THE DEPARTMENT]. A
19 suspension begins 30 days after receipt of notice described in this subsection unless
20 the person delivers a timely written request for a hearing to the department in the
21 manner provided by regulations of the department. If a hearing is requested under this
22 subsection, a hearing officer of the office of administrative hearings (AS 44.64.010)
23 [DEPARTMENT] shall determine the issues by using the preponderance of the
24 evidence test and shall, to the extent they do not conflict with regulations adopted
25 under AS 44.64.060, conduct the hearing in the manner provided by regulations of the
26 department. A hearing under this subsection is limited to the following questions:

27 (1) was the person holding the business license endorsement, or an
28 agent or employee of the person while acting within the scope of the agency or
29 employment of the person, convicted by plea or judicial finding of violating
30 AS 11.76.100, 11.76.106, or 11.76.107;

31 (2) if the department does not allege a conviction of AS 11.76.100,

1 11.76.106, or 11.76.107, did the person, or an agent or employee of the person while
2 acting within the scope of the agency or employment of the person, violate a provision
3 of (a) or (g) of this section;

4 (3) within the 24 months before the date of the department's notice
5 under this subsection, was the person, or an agent or employee of the person while
6 acting within the scope of the agency or employment of the person, convicted of
7 violating AS 11.76.100, 11.75.106, or 11.76.107 or adjudicated for violating a
8 provision of (a) or (g) of this section.

9 * Sec. 62. AS 43.70.075(q) is amended to read:

10 (q) The department may adopt regulations that do not conflict with
11 regulations adopted under AS 44.64.010 to establish an administrative hearing
12 process for actions taken [BY THE DEPARTMENT] under this section. AS 44.62
13 (Administrative Procedure Act) does not apply to a hearing under this section.

14 * Sec. 63. AS 44.62.350(a) is amended to read:

15 (a) The governor shall assign a qualified, unbiased, and impartial hearing
16 officer, with experience in the general practice of law, to conduct hearings under this
17 chapter that are not conducted by the office of administrative hearings
18 (AS 44.64.010). A [. THE] hearing officer may perform other duties in connection
19 with the administration of this chapter and other laws.

20 * Sec. 64. AS 44.62.450(a) is amended to read:

21 (a) A hearing in a contested case shall be presided over by a hearing officer.
22 Unless the hearing is conducted by the office of administrative hearings
23 (AS 44.64.010), the [THE] agency itself shall determine whether the hearing officer
24 hears the case alone or whether the agency hears the case with the hearing officer.

25 * Sec. 65. AS 44.62.500(b) is amended to read:

26 (b) If a contested case is heard by a hearing officer alone, the hearing officer
27 shall prepare a proposed decision in a form that may be adopted as the decision in the
28 case. A copy of the proposed decision shall be filed by the agency as a public record
29 with the lieutenant governor, and a copy of the proposed decision shall be served by
30 the agency on each party in the case and the party's attorney. Except as otherwise
31 provided in AS 44.64.060(e), for a hearing conducted by the office of

1 administrative hearings, the [THE] agency itself may adopt the proposed decision in
2 its entirety, or may reduce the proposed penalty and adopt the balance of the proposed
3 decision.

4 * **Sec. 66.** AS 44.62.500(c) is amended to read:

5 (c) If the proposed decision is not adopted as provided in (b) of this section the
6 agency may decide the case upon the record, including the transcript, with or without
7 taking additional evidence, or may refer the case to the same or another hearing officer
8 to take additional evidence. If the case is so assigned the hearing officer shall prepare
9 a proposed decision as provided in (b) of this section upon the additional evidence and
10 the transcript and other papers that are part of the record of the earlier hearing. A copy
11 of the proposed decision shall be furnished to each party and the party's attorney as
12 prescribed by (b) of this section. The agency may not decide a case provided for in
13 this subsection without giving the parties the opportunity to present either oral or
14 written argument before the agency. If additional oral evidence is introduced before
15 the agency, an agency member may not vote unless that member has heard the
16 additional oral evidence. This subsection does not apply to a hearing conducted by
17 the office of administrative hearings.

18 * **Sec. 67.** AS 44.64.030(a), added by sec. 3 of this Act, is amended to read:

19 (a) The office shall conduct all adjudicative administrative hearings required
20 under the following statutes or under regulations adopted to implement the statutes:

- 21 (1) AS 04.11.510(b)(1) and (c) (alcoholic beverages license);
22 (2) AS 05.15 (charitable gaming);
23 (3) AS 05.20 (recreational devices);
24 (4) AS 05.90.001 (special racing events);
25 (5) AS 06 (banks and financial institutions);
26 (6) AS 08 (occupational licensing), other than AS 08.08 and
27 AS 08.62.046;
28 (7) AS 10.06 (Alaska Corporations Code);
29 (8) AS 10.13 (Alaska BIDCO Act);
30 (9) AS 10.25.375 (Electric and Telephone Cooperative Act);
31 (10) AS 10.50.408 (limited liability companies);

- 1 (11) AS 14.11.016 (education-related facility grants);
2 (12) AS 14.18 (discrimination in public education);
3 (13) AS 14.20.030 (teacher certificates);
4 (14) AS 14.48 (postsecondary educational institutions);
5 (15) AS 17.20 (Alaska Food, Drug, and Cosmetic Act), other than
6 AS 17.20.060 and 17.20.360;
7 (16) AS 18.18.030 (hospice licenses);
8 (17) AS 18.20 (hospitals and nursing facilities), other than
9 AS 18.20.180;
10 (18) AS 18.35.040 (tourist accommodations);
11 (19) AS 21.09, AS 21.22.190, AS 21.27, AS 21.34, AS 21.36,
12 AS 21.69, AS 21.86.200, AS 21.87, and AS 21.89 (insurance);
13 (20) AS 25.27 (child support enforcement);
14 (21) AS 32.06 (Uniform Partnership Act);
15 (22) AS 34.45 (unclaimed property);
16 (23) AS 34.55.024 and 34.55.026 (Uniform Land Sales Practices Act);
17 (24) AS 36.30 (State Procurement Code), other than
18 AS 36.30.627(a)(2);
19 (25) AS 38.05.065 (contracts for sale of state land);
20 (26) AS 39.52 (Alaska Executive Branch Ethics Act);
21 (27) AS 43.23 (permanent fund dividends);
22 (28) AS 43.70 (Alaska Business License Act);
23 (29) AS 44.77 (claims against the state);
24 (30) AS 45.30.040 (mobile homes);
25 (31) AS 45.55 (Alaska Securities Act);
26 (32) AS 45.57 (Takeover Bid Disclosure Act);
27 (33) AS 46 (water, air, energy, and environmental conservation),
28 other than AS 46.03.820, 46.03.850, AS 46.39, and AS 46.40;
29 (34) AS 47.33 (assisted living homes);
30 (35) [(34)] AS 47.35 (child care);
31 (36) [(35)] AS 47.45 (longevity bonuses).

1 * Sec. 68. AS 44.77.040(a) is amended to read:

2 (a) The Department of Administration, after consulting with the office of
3 administrative hearings (AS 44.64.010), shall fix a time for hearing the appeal and
4 shall notify the claimant and the officer who approved the voucher and give them a
5 reasonable opportunity to be heard. The hearing shall be conducted by the office of
6 administrative hearings.

7 * Sec. 69. AS 45.30.040(c) is amended to read:

8 (c) Whenever it determines that there may be a violation of the provisions of
9 this chapter by a manufacturer or dealer of mobile homes, the department may give
10 notice of hearing, and, within 30 days after giving notice, [HOLD] a hearing shall be
11 held by the office of administrative hearings (AS 44.64.010) to determine whether
12 there has been a violation. After notice and hearing,

13 (1) if the department finds that there has been a violation of the
14 provisions of this chapter, the department may issue an order directing that the person
15 who is violating the provision cure the violation in a reasonable time and in a
16 reasonable manner;

17 (2) if the department determines that violations of the provisions of
18 this chapter are regular and recurring, it may require forfeiture of the bond to the
19 benefit of the state and arrange for distribution of the proceeds of the bond to the
20 mobile home owners injured by the activities of the dealer or manufacturer, or to
21 mobile home dealers injured by the activities of the manufacturer.

22 * Sec. 70. AS 45.55.935 is amended to read:

23 **Sec. 45.55.935. Hearings.** (a) The administrator shall adopt regulations,
24 consistent with the provisions of this chapter and with regulations adopted under
25 AS 44.64.060, governing administrative hearings conducted by the office of
26 administrative hearings (AS 44.64.010) [ADMINISTRATOR OR A DESIGNEE OF
27 THE ADMINISTRATOR] for the following:

28 (1) orders issued under AS 45.55.120, 45.55.900(d), or 45.55.920; in
29 these instances, the administrator shall promptly send a notice of opportunity for
30 hearing to the issuer of the securities and to all persons who have filed with the
31 department a notice of intention to sell the securities; and

1 (2) orders issued under AS 45.55.060; before the administrator enters
2 an order under AS 45.55.060, the administrator shall send to the person involved a
3 notice of opportunity for hearing; if the person involved is an agent or investment
4 adviser representative, then the administrator shall, in addition, notify the employing
5 broker-dealer, state investment adviser, federal covered adviser, or issuer.

6 (b) In conducting a hearing in accordance with (a) of this section, the
7 administrative law judge [ADMINISTRATOR] may issue a subpoena to compel the
8 attendance of any witness or party and to compel production of evidence.

9 * Sec. 71. AS 45.55.950(e) is amended to read:

10 (e) Every hearing in an administrative proceeding shall be public unless the
11 administrative law judge, [ADMINISTRATOR] in the exercise of discretion, grants
12 a request joined in by all the respondents that the hearing be conducted privately.

13 * Sec. 72. AS 45.57.020(a) is amended to read:

14 (a) An offeror may not make a takeover bid unless at least 20 days before the
15 bid the offeror files with the department and with the registered agent of the offeree
16 company a statement containing all the information required by (c) of this section and
17 either

18 (1) within 10 days following the filing no hearing has been ordered by
19 the department or requested by the offeree company; or

20 (2) a hearing has been ordered within that time and, after [UPON] the
21 hearing conducted by the office of administrative hearings (AS 44.64.010), the
22 department has decided [ADJUDICATED] that the offeror proposed to make fair,
23 full, and effective disclosure to offerees of all information material to a decision to
24 accept or reject the offer.

25 * Sec. 73. AS 45.57.020(b) is amended to read:

26 (b) A hearing shall begin within 20 days of the date of filing of the statement,
27 and adjudication shall be made within 30 days of the filing unless extended by the
28 administrative law judge [DEPARTMENT] for the convenience of the parties or
29 protection of the offerees.

30 * Sec. 74. AS 46.15.065(c) is amended to read:

31 (c) The commissioner shall make investigations as necessary of rights asserted

1 by declarations filed under this section and shall determine each existing appropriation
2 and mail a summary of the determination to each person who has filed a declaration
3 with respect to the specified area or source. Any person adversely affected by a
4 determination may file with the commissioner a request for a hearing within 20 days
5 of the date the notice is mailed. If a hearing is requested, the commissioner shall,
6 after consulting with the office of administrative hearings (AS 44.64.010), send a
7 notice of the time and place of the hearing to each person who has filed a declaration.

8 * **Sec. 75.** AS 47.45.050 is amended to read:

9 **Sec. 47.45.050. Department hearing.** The Department of Health and Social
10 Services may arrange with the office of administrative hearings (AS 44.64.010) to
11 hold a [DEPARTMENTAL] hearing upon the request of an applicant or recipient who
12 has been disqualified. Before this hearing the department shall by certified mail notify
13 an applicant or recipient in plain and comprehensive language the exact reason for the
14 disqualification. Form letters using only referral to state statutes or department
15 regulations, or otherwise vague in detail, are not considered compliance by the
16 department with this section.

17 * **Sec. 76.** The uncodified law of the State of Alaska is amended by adding a new section to
18 read:

19 APPLICABILITY. (a) Sections 1 - 58, 60 - 66, 68 - 73, and 75 of this Act apply to
20 administrative proceedings that begin on or after July 1, 2005.

21 (b) Sections 67 and 74 of this Act apply to administrative proceedings that begin on
22 or after July 1, 2007.

23 * **Sec. 77.** The uncodified law of the State of Alaska is amended by adding a new section to
24 read:

25 REGULATIONS. The chief administrative law judge and any agency affected by this
26 Act may proceed to adopt regulations to implement this Act. A regulation adopted under this
27 section takes effect under AS 44.62 (Administrative Procedure Act) but not before the
28 effective date of the law implemented by the regulation.

29 * **Sec. 78.** The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings

1 pending under a law amended or repealed by this Act, or in connection with functions
2 transferred by this Act, continue in effect and may be continued and completed,
3 notwithstanding a transfer, amendment, or repeal provided for in this Act.

4 (b) Certificates, orders, and regulations issued or adopted under authority of a law
5 amended or repealed by this Act remain in effect for the term issued, or until revoked,
6 vacated, or otherwise modified under the provisions of this Act.

7 (c) Contracts, rights, liabilities, and obligations created by or under a law amended or
8 repealed on July 1, 2005, by this Act and in effect on July 1, 2005, remain in effect.
9 Contracts, rights, liabilities, and obligations created by or under a law amended or repealed on
10 July 1, 2007, by this Act and in effect on July 1, 2007, remain in effect.

11 (d) Upon the initial appointment of the chief administrative law judge under
12 AS 44.64.010(c), added by sec. 2 of this Act, the chief administrative law judge and the
13 commissioner of administration, the commissioner of community and economic development,
14 the commissioner of revenue, and the governor's office shall identify administrative law
15 judges and support staff to be transferred to the office of administrative hearings on or after
16 January 1, 2005. A state employee who is transferred under this section from another agency
17 to the office of administrative hearings shall continue to be compensated at the same range
18 and step of the salary schedule in AS 39.27.011(a) that the employee was receiving before the
19 transfer, and qualifies for salary increases authorized under AS 39.27.011 and 39.27.022.

20 (e) Procedural regulations of an agency that refers an administrative hearing to the
21 office of administrative hearings shall apply to the hearing until regulations adopted under
22 AS 44.64.060(a), added by sec. 3 of this Act, become effective.

23 * **Sec. 79.** Sections 1, 2, 59, 77, and 78 of this Act take effect immediately under
24 AS 01.10.070(c).

25 * **Sec. 80.** Sections 67 and 74 of this Act take effect July 1, 2007.

26 * **Sec. 81.** Except as provided in secs. 79 and 80 of this Act, this Act takes effect July 1,
27 2005.

March 18, 2004

To: House Judiciary Committee

From: David A. Ingram

Comments on SB 203

My name is David A. Ingram. I retired from state service on February 1, 2004, after working for more than 23 years as a hearing officer for the Commercial Fisheries Entry Commission. On February 6, I testified on this bill before the Senate Judiciary Committee and supplied written materials to supplement my testimony. Thank you for the opportunity to appear before the House Judiciary Committee.

As I testified previously, I fully support the general thrust of SB 203. Anything that helps produce a more professional corps of administrative adjudicators, and is affordable, is a good idea. I believe the creation of a central panel of administrative law judges (ALJs) is essential, and I look forward to the day when all hearing officers are removed from agency supervision and control.

I believe a central panel is essential because:

1. The appearance of fairness is greatly enhanced when the adjudicator is not employed by and under the control and supervision of the agency. How would the public feel if the state's general jurisdiction judges were employed by and under the control and supervision of the Department of Law?
2. ALJs and hearing officers are only human. They form friendships with agency personnel who appear before them as witnesses and whose actions they are frequently judging. Those friendships are bound to affect their decisions, no matter how hard they try to avoid it. The public is ill-served when the agency's adjudications are "all in the family."
3. ALJs and hearing officers should be free to expose misdeeds and corrupt practices by agency personnel without fear of retribution. As long as the ALJs and hearing officers are under the control and supervision of the agency, and thus subject to retribution in any number of ways, including adverse performance evaluation reports, denial of pay increases, and demotions, they will be loathe to expose agency actions that should be brought to the public's attention.

I have reviewed the latest committee substitute for SB 203. I'd like to offer the following suggestion for your consideration.

Strengthen the language in Section 1 of the bill (regarding the purpose of the act and the legislature's intent) to include respect for an individual's privacy and to prohibit actions that threaten, intimidate, or harass a member of the public.

I am attaching hereto several pages from a decision I issued on January 30, 2004, in Thomas, CFEC 01-010-A, that discussed a message a hearing officer for the Commercial Fisheries Entry Commission left on the telephone answering machine of a member of the public (the hearing officer, Jim Bowen, was acting as a state's representative at the time). I found that the message violated the individual's right to privacy and that it was, if not threatening, at least intimidating and harassing. While I am very encouraged by the existing language in Section 1 of the bill calling for high quality adjudications, respect for the dignity of individuals, fairness, protection of rights, and protection of the integrity of the process, I recommend that language be added to strengthen the protections afforded the public and to further clarify the legislature's intent. It could be done by adding language and making changes to the relevant portion of Section 1 as follows:

- (2) ensure respect for the privacy and dignity of the individuals whose cases are being adjudicated [;] and protect them from threats, intimidation, and harassment;

Again, thank you for the opportunity to submit comments on this very important bill.

Extract (pages 50-53) from Thomas, CFEC 01-010-A (Hearing Officer decision dated January 30, 2004)

More troubling, but equally lacking as proof of a conspiracy, is the message Mr. Bowen left on Mr. Thomas's home answering machine on Thursday, September 12, 2001. When Mr. Thomas did not contact him regarding Mr. Bowen's motion for a prehearing conference, Mr. Bowen called him and left the following message:

Yeah, Scott, this is Jim Bowen, and it's three o'clock on Thursday. I don't have time to mess around waiting for you to.... Apparently, you decided not to cooperate with me, so that's it. I mean, things are going to get difficult from here on out. You can count on that. It's going to be a broad brush that I paint with. Certainly a very fair and thorough ___icitation [solicitation?] of justice.

Mr. Thomas regarded the message as a threat and points to it as further evidence of a conspiracy against him. While the message might be construed as an implied threat (falling, perhaps, in the category of threats that pose as an assurance and which frequently contain the disclaimer "This isn't a threat. It's a promise."), it's more properly viewed as a statement of intimidation and harassment.

To fully appreciate the nature of the message, it must be put in context. This is not a case in which the Commission accused Mr. Thomas of wrongdoing and assumed the burden of proving he submitted false evidence. It initiated the case as an administrative hearing on an application, putting the burden of proof on Mr. Thomas to prove his entitlement to the permit sought. Mr. Thomas complained to the hearing officer, however, that Mr. Bowen had repeatedly called him in the early stages of these proceedings trying to get him to admit to the falsity of his claim, telling him that he was being investigated for fraud, and raising the specter of a criminal conviction and jail time, all of which caused him to hire an attorney to get Mr. Bowen off his back. There being no tape recording of those conversations, the precise language used by Mr. Bowen is unknown, but it's noteworthy that Mr. Thomas told one witness at hearing that someone

may go to jail over all this and advised another that Mr. Bowen told him he was being investigated for fraud. Even without knowledge as to those matters, however, it doesn't take a rocket scientist to divine what Mr. Bowen was saying in the tape-recorded message, especially if one listens to his tone of voice on the tape recording. Although he chose to speak in weasel words, Mr. Bowen was conveying the message that, because Mr. Thomas failed to "cooperate" with him, there was going to be trouble ("things" were going to "get difficult"); that there was going to be a lot of trouble (painting with a "broad brush"); that it was Mr. Thomas, not anyone else, who was going to have those troubles; and that it was Mr. Bowen ("I" will do the painting) who was going to make sure that Mr. Thomas had those troubles ("count on that").

The subtext to Mr. Bowen's message is as follows: ("Apparently, you decided not to cooperate with me, so that's it.") You've lost your chance for any favorable treatment. ("I mean, things are going to get difficult from here on out.") You're going to have a lot of trouble from here on out. ("You can count on that.") I promise you that you're going to have a lot of trouble from here on out. ("It's going to be a broad brush that I paint with.") I'm going to make trouble for you every way I can. ("Certainly a very fair and thorough ___ icitation of justice.") I'm going to get you, but I'll be fair in doing it.

What makes this intimidating and harassing message even more outrageous than it appears on its face is the fact that Mr. Thomas had not opposed Mr. Bowen's request for a prehearing conference. The message was delivered out of personal pique. Mr. Thomas didn't do what Mr. Bowen wanted, so he called and left the message. There was no legitimate government business being conducted. A legitimate call in the context of these proceedings would have been in the nature of something like this: "Mr. Thomas, this is Jim Bowen. I need to know whether you're going to cooperate with me. Please call me as soon as possible." A conscientious public servant doesn't offend a member of the public by telling him that he doesn't have time to "mess around" waiting for him and certainly doesn't leave intimidating and harassing messages on his answering machine.

To make matters worse, Mr. Bowen invoked the power of the government against Mr. Thomas. His mention of the "broad brush" he was going to use and "justice" were clearly meant to convey the message that it was the State of Alaska that was going to make trouble for him, not Mr. Bowen acting in a purely personal capacity. Such arrogance of power, and abuse of power, is unconscionable. The Alaska Supreme Court has held that article 1, section 1 of the Alaska Constitution gives Alaskans the right to be let alone. In doing so, it quoted the United States Supreme Court as follows:

No right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. As well said by Judge Cooley, 'The right to one's person may be said to be a right of complete immunity: to be let alone.'

Another provision of the Alaska Constitution, article 1, section 22, gives Alaskans what is probably the strongest right of privacy in the United States. In explaining where that right of privacy is the strongest, the Court held as follows: "If there is any area of human activity to which a right to privacy pertains more than any other, it is the home." Here, Mr. Bowen invaded Mr. Thomas's home, and his privacy, with a message of intimidation and harassment.

Further aggravating Mr. Bowen's act is the fact that he was so ill-informed at the time he did it. The case he was preparing against Mr. Thomas, that he made false landings on October 6, 1995, was a fiction, and the allegation that he made a false landing on October 28, 1996, was so ill-prepared as to be laughable. The Commission appointed him to represent the state in this matter because it felt that an investigation needed to be performed. It did not get what it bargained for. Mr. Bowen obviously did not do essential investigation of the case. He didn't look at (or understand) relevant fish tickets. He didn't gather essential information from processors, banks, and other witnesses who had information to offer that conflicted with his misguided theory. As a result, the resources of both the state and Mr. Thomas were essentially wasted throughout

the hearing that took place June 7-15, 2001. The hearing officer let the opposing parties try their own cases and did not undertake to develop the record for them, which was in accord with a ruling by the Alaska Supreme Court to the effect that CFEC hearing officers do not have an affirmative duty to develop the record. The hearing officer believed that was especially true if both sides were represented. The Commission nevertheless faulted the hearing officer for failing to develop the record in June of 2001 and ordered that he do so on remand. The hearing officer took over and gathered all evidence that was accumulated following the remand. Mr. Bowen produced no evidence whatsoever from the time of remand until he withdrew from the case on September 17, 2001. As the record of these proceedings since the remand amply demonstrates, diligent, purposeful work, coupled with polite and courteous treatment of the public, is not ineffective in getting at the truth.

While any number of words come to mind when one tries to describe the message Mr. Bowen left on Mr. Thomas's answering machine, perhaps it's best described as ill-advised, foolish, and lacking in professionalism. Mr. Bowen is an employee of the Commercial Fisheries Entry Commission and was acting as a representative of the State of Alaska when he made that call to a member of the public. Mr. Thomas is not charged with any wrongdoing and is not responding to any allegation of wrongdoing. He is merely a person who is trying to prove his entitlement to an entry permit in an administrative proceeding. He, like every member of the public, is entitled to be treated with courtesy and respect, not intimidation and harassment. Mr. Bowen's heavy-handed actions did not comport with the standards of conduct expected of public employees, and they bring discredit upon himself, the Commission, and the State of Alaska.

ALASKA STATE LEGISLATURE

SENATOR
Gene Therriault
119 N. Cushman Suite 101
Fairbanks, Alaska 99701
(907) 488-0857
FAX (907) 488-4271



While in Juneau
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
FAX (907) 465-3884

Senate
Senate District F

Memorandum

To: Representative Lesil McGuire / House Judiciary Chair

From: Senator Gene Therriault / Administrative Regulation Review Chair

Date: March 6, 2004

Re: SB 203

DAVE - 3444

I wanted to get a request for a hearing in as early as possible on SB 203 so your committee could begin deliberations. This is a very intricate bill from both a technical and procedural standpoint. Your tenure in Reg. Review is very fortuitous in this regard.

Our drafter Tam Cook continues with technical clean up, and the final negotiations with the administration on this bill are coming to a close. Unless you dictate otherwise, I will direct my staff to bring those final changes to you in the form of a blank CS.

As with any major government reform bill SB 203 has involved hundreds of hours of careful and somewhat delicate negotiations with the administration. The goal is to achieve affordable, meaningful reform throughout the state administrative hearing process. To do this we have constructed a moderately sized central hearing office that will easily receive additional jurisdictions in the future. We have tried to balance the concerns of agencies with the need to change the way the executive conducts administrative hearings. Under the present agency controlled system, no matter how unbiased it might be, the public perception is that it is prejudicial and unfair.

The challenge in SB 203 has been, and will remain for all of us who want to see this reform happen, to keep the negotiated balance within the bill in tact. I look forward in working with you and am available for any questions as you deliberate on SB 203.

ALASKA STATE LEGISLATURE

SENATOR
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Senate
Senate District F

Sponsor Statement SB 203

Fair Hearing Bill

Senate Bill 203 is a culmination of many years of effort to achieve a more efficient, timely, and fairer administrative hearing process. The purpose of this legislation is to separate the administration adjudication process away from the agencies that write, promulgate and enforce administrative law. As the separation occurs opportunities to create an efficient and more professional administrative hearing process in a central panel will be realized. It is through these efficiencies that any initial start-up costs are soon negated, and significant savings accrue over time. Of course the reductions in time and expense to citizens and businesses, though never reflected in fiscal notes, are equally important components in this major reform.

Instead of allowing hearing officers to be typical employees and extensions of the agencies whose administrative law they adjudicate, SB 203 is designed to give these administrative adjudicators a more independent and protected station from which to deliver timely due process through fair and objective hearings. This is accomplished through the creation of a model central independent hearing office, and the application of protections and new rules for all hearing officers in and out of that office.

As tempting as an all-encompassing reform might through placing all hearing officers and functions within a central office, two critical obstacles have caused us to move in a more incremental approach. The first is a commitment to keep costs down. The second is sensitivity to both employees and administrators who will be involved in the reform. The model central office created in this bill will over time incorporate more hearing functions and officers. In the interim it will provide resources and training and alternative dispute resolution for all state hearing officers.

The primary objectives of this act are to insure better quality, less costly, less time consuming, and fairer administrative hearings. Achieving these goals will not only be beneficial to our constituents, but good for business, and government as well. Creation of independent hearing offices in other states has enjoyed bi-partisan support. I look forward to the same as SB 203 proceeds through our legislative process.

An Act establishing an Independent Office of Administrative Hearings.

SB 203 (Fin) am

Section By Section Quick Reference

- Section 1.** Purpose and intent
- Section 2.** 44.21.510 Establishes location of independent office of administrative hearings and qualifications and compensation of Chief Administrative Law Judge.
- 44.21.520 Powers and duties of Chief ALJ.
- Section 3.** 44.21.530 Administrative hearing functions to be included in the new independent office. Provisions of service and delegation of decision authority.
- 44.21.540 ALJ qualifications and duties. Authority for Chief ALJ officer to enter into contracts with qualified individuals to serve as ALJ.
- 44.21.550 Code of conduct for hearing officers.
- 44.21.555 Reimbursement agreements
- 44.21.560 Establishment of procedures for administrative hearings, including time limits, decision authority, and rules for altering an ALJ decision.
- 44.21.570 Disqualification of an ALJ.
- 44.21.580 Agency cooperation with ALJ's. Selection of ALJ's. No agency interference.
- 44.21.590 Administrative hearing records. Record keeping requirements.
- 44.21.595 Federal requirement resolutions of conflict with federal law.
- 44.21.599 Definitions

Sections 4 – 53	Conforming technical amendments to affected statutes.
Section 54	Prohibits legislative influence in hearings
Sections 55 –64	Conforming technical amendments
Section 65	Prohibits undue agency influence
Section 66	Prohibits cross-jurisdictional involvements
Sections 67 – 70	Conforming technical amendments
Section 71	Brings certain sections of DEC into Central Panel after 2 years
Sections 72 – 83	Conforming technical amendments to affected statutes.
Sections 84 – 89	Applicability, regulatory authority, transition authority and timing to accommodate changes in administrative process.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSSB 203 (JUD)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Office of Administrative Hearings RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Rules by Request
 Requester Senate Finance Component No. 2360

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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 153.9
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office on or after January 1, 2005, it is anticipated that receipts from licensing fees (RSS) totaling \$77.0 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division Occupational Licensing Date/Time 3/1/04 4:08 PM
 Approved by: Edgar Blatchford, Commissioner Date 3/1/2004
 Agency Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: "An Act relating to certain administrative hearings..." BRU: Administrative Hearings
Component: Administrative Hearings
Sponsor: Rules
Requester: State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	686.6	686.6	686.6	686.6	686.6	686.6
Travel	15.0	15.0	15.0	15.0	15.0	15.0
Contractual	35.0	35.0	35.0	35.0	35.0	35.0
Supplies	6.0	3.0	3.0	3.0	3.0	3.0
Equipment	4.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	746.6	739.6	739.6	739.6	739.6	739.6

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1040 Real Estate Surety	12.1	12.1	12.1	12.1	12.1	12.1
1156 Rcpt. Sup. Svcs.	142.0	142.0	142.0	142.0	142.0	142.0
1004 GF	258.4	251.4	251.4	251.4	251.4	251.4
1007 Interagency Receipts	167.9	167.9	167.9	167.9	167.9	167.9
1133 Indirect Cost Reimb.	166.2	166.2	166.2	166.2	166.2	166.2
Other (Specify Type--Do not abbreviate)						
TOTAL	746.6	739.6	739.6	739.6	739.6	739.6

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	8	8	8	8	8	8
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. The OAH will conduct administrative hearings under the direction of the Chief Administrative Hearing Officer.

This fiscal note includes personal services and associated costs for the new Chief Administrative Hearing Officer position as well as five additional hearing officer positions and two support staff positions which will be transferred from the Departments of Revenue, Community and Economic Development, and Administration.

Although precise numbers are as yet unknown, budget savings are expected to result from the creation of the OAH. The new office will be able to conduct hearings that otherwise would have been contracted out. Economies of scale may produce additional savings.

Prepared by: Kevin Jardell, Assistant Commissioner
Division: Commissioner's Office
Approved by: Mike Miller, Commissioner
Agency: Department of Administration

Phone: _____
Date/Time: 5/6/03 2:48 PM
Date: 5/6/2003

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title: Office of Administrative Hearings BRU: Administration and Support
Component: Commissioner's Office
Sponsor: Rules Committee
Requester: Senate State Affairs Committee Component No.: 123

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)

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	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)
1005 GF/Program Receipts						
1113 Indirect Cost Reimbursement	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)	(189.2)
1007 Inter-agency Receipts	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)	(144.6)
TOTAL	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)	(379.4)

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would transfer the Department of Revenue's three hearing examiners and two support staff positions to the newly created Office of Administrative Hearings at the Department of Administration. Department of Revenue hearing examiners currently hear appeals of child support orders and modifications, Permanent Fund dividend eligibility cases and charitable gaming license cases.

The fiscal note shows the transfer of five positions and the accompanying funding for those positions. The Indirect Cost Reimbursement funding source is federal money allocated to the Department of Revenue as reimbursement for the cost of hearing child support cases. The Inter-agency Receipt funding is Permanent Fund Dividend funding allocated to the department for the cost of hearing dividend eligibility cases.

Prepared by: Larry Persily, Deputy Commissioner Phone 465-5469
Division: Department of Revenue Date/Time 5/6/03 10:19 AM
Approved by: Larry Persily, Deputy Commissioner Date 5/6/2003
Agency: Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: CSSB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: "An Act relating to certain BRU: Centralized Administrative Services
administrative hearings..." Component: Office of Tax Appeals
Sponsor: Rules
Requester: State Affairs Component No. 2131

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
1007 Interagency Receipts	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)	(40.9)
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0
Other (Specify Type--Do not abbreviate)	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)	(90.9)

Estimate of any current year (FY2003) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	-1	-1	-1	-1	-1	-1
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

SB 203 creates the Office of Administrative Hearings in the Department of Administration and transfers to it the Office of Tax Appeals Hearing Officer position.

Prepared by: Kevin Jardell, Assistant Commissioner Phone: _____
Division: Commissioner's Office Date/Time: 5/6/03 2:42 PM
Approved by: Mike Miller, Commissioner Date: 5/6/2003
Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction):
Title Office of Administrative Hearings
Dept. Affected: DCED
BRU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Rules by Request
Requester Senate State Affairs
Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
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						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1007 - Inter-Agency Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 140.7
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 203 establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) included in the FY04 budget request.

The fund source for these positions and related costs are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new Office, it is anticipated that receipts from licensing fees (RSS) will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone 907-465-2144
Division Occupational Licensing Date/Time 5/6/03 11:57 AM
Approved by: Edgar Blatchford, Commissioner Date 5/6/2003
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: SB 203
(S) Publish Date: 5/7/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to certain administrative BRU Civil Division
hearings; . . . the office of administrative hearings . . ." Component All
Sponsor Senate Rules Committee by Request
Requester Senate State Affairs Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*****	*****	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
Check 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 establishes the Office of Administrative Hearings in the Department of Administration. The office will conduct all adjudicative administrative hearings for an extensive list of state programs, including alcoholic beverage licensing, charitable gaming, banking, occupational licensing, and oil and gas exploration, production, and pipeline transportation property taxes, among others.

The fiscal impact on the Department of Law from this bill will be during the first year or two of transition from the current structure of agency hearing officers to the centralized Office of Administrative Hearings. Hundreds of pages of regulations directing how the current adjudicative process is handled will need to be rewritten to implement the new process. Boards, commissions, and agency staff will need to be trained. Whether or not the new workload can be absorbed with existing staff will depend on how quickly the revised regulations need to be implemented. This will likely

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division Attorney General's Office Date/Time 5/6/03 10:50 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 5/6/2003
Agency Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. SB 203

ANALYSIS CONTINUATION

vary from agency to agency. If any of the regulations projects assume an urgency that existing staff cannot meet, outside contract counsel may be necessary to handle them. Given the uncertainty, we cannot estimate what the potential cost might be.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSSB 203 (FIN)
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Office of Administrative Appeals RDU Centralized Administrative Services
 Component Office of Administrative Appeals
 Sponsor Senate Rules
 Requester Senate Finance 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	446.8	791.9	791.9	791.9	791.9	791.9
Travel	4.3	8.6	8.6	8.6	8.6	8.6
Contractual	44.9	89.8	89.8	89.8	89.8	89.8
Supplies	4.6	9.2	9.2	9.2	9.2	9.2
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	500.6	899.5	899.5	899.5	899.5	899.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1050 Permanent Fund Div. Fund	52.4	104.8	104.8	104.8	104.8	104.8
1133 CSED Admin	128.3	256.6	256.6	256.6	256.6	256.6
1004 GF	181.1	260.4	260.4	260.4	260.4	260.4
1005 GF/Program Receipts						
1007 Interagency Receipts	138.9	277.7	277.7	277.7	277.7	277.7
Other (Specify Type--Do not abbreviate)						
TOTAL	500.6	899.5	899.5	899.5	899.5	899.5

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	9	9	9	9	9	9
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. The OAH will conduct administrative hearings under the direction of the Chief Administrative Law Judge. FY2005 funding assumes a July 1, 2004 start date for the Chief Administrative Law Judge, and a January 1, 2005 start date for the remainder of the OAH.

This fiscal note includes personal services and associated costs for the new Chief Administrative Law Judge position as well as five additional hearing officer positions and four support staff positions which will be transferred from the Departments of Revenue, Community & Economic Development, and Administration.

Although precise numbers are as yet unknown, budget savings are expected to result from the creation of the OAH. The new office will be able to conduct hearings that otherwise would have been contracted out. Economies of scale may produce additional savings.

Prepared by: Kevin Jardell, Assistant Commissioner
 Division: Commissioner's Office
 Approved by: Mike Miller, Commissioner
 Agency: Department of Administration

Phone 465-5655
 Date/Time 3/2/04 5:01 PM
 Date 3/2/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 7
 Bill Version: CSSB 203 (FIN)
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Office of Administrative Appeals RDU Centralized Administrative Services
 Component Office of Tax Appeals
 Sponsor Senate Rules
 Requester Senate Finance Component No. 2131

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	(100.0)	(200.0)	(200.0)	(200.0)	(200.0)	(200.0)
Travel	(3.8)	(7.5)	(7.5)	(7.5)	(7.5)	(7.5)
Contractual	(8.4)	(16.7)	(16.7)	(16.7)	(16.7)	(16.7)
Supplies	(1.5)	(3.0)	(3.0)	(3.0)	(3.0)	(3.0)
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(113.6)	(227.2)	(227.2)	(227.2)	(227.2)	(227.2)

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	(92.6)	(185.1)	(185.1)	(185.1)	(185.1)	(185.1)
1005 GF/Program Receipts						
1007 Interagency Receipts	(21.1)	(42.1)	(42.1)	(42.1)	(42.1)	(42.1)
Other (Specify Type--Do not abbreviate)						
TOTAL	(113.6)	(227.2)	(227.2)	(227.2)	(227.2)	(227.2)

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	-2	-2	-2	-2	-2	-2
Part-time	-1	-1	-1	-1	-1	-1
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 SB 203 establishes the Office of Administrative Hearings (OAH) in the Department of Administration. Existing positions currently in the Office of Tax Appeals as well as existing GF totalling 185.1 (92.6 in the first year) will be transferred to the new OAH.

Prepared by: Kevin Jardell, Assistant Commissioner Phone 465-5655
 Division: Commissioner's Office Date/Time 3/2/04 4:49 PM
 Approved by: Mike Miller, Commissioner Date 3/2/2004
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 8
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time: 02/27/04 9:20AM Revised Department: Labor and Workforce Development
Title: Office of Administrative Hearings RDU: Labor Standards and Safety
Sponsor: Rules Committee Component: Occupational Safety and Health
Requester: Senate FIN Component Number: 970

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						
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CHANGE IN REVENUES ()						
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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	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: None
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)

See Attached Analysis..

Prepared by: Grey Mitchell, Director Phone 465-4855
Division: Labor Standards and Safety Date/Time 2/27/04 9:20 AM
Approved by: Greg O'Claray, Commissioner Date 2/27/2004
Agency: Department of Labor and Workforce Development

FISCAL NOTE #8

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL VERSION: CSSB 203(FIN)

ANALYSIS: (continued)

The Occupational Safety and Health (OSH) component currently contracts with a private attorney to act as a hearing officer for OSH Review Board cases under AS 18.60. The current contract, awarded through the competitive procurement process, establishes an hourly rate of \$125 and an annual amount of \$40,000.

This contract hearing officer has been the same individual for more than 15 years. The cases, which include workplace fatalities and serious injuries, require detailed understanding of a large body of complex federal regulations and interpretations. Due to the experience and efficiency of the current OSH Review Board contract hearing officer, significant cost increases are likely under this legislative proposal. The funding source of the OSH program is 50% federal funds and 50% Worker Safety Account. If hearing responsibility is transferred to the new Office of Administrative Hearings, the division will pay for hearing services through a reimbursable services agreement.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 9
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title An act related to administrative hearings, to RDU Statewide Support
hearing officers, and to administrative law... Component ABC Board
Sponsor Senate Rules Committee by Request
Requester S. Finance Component No. 2690

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	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

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						
1005 GF/Program Receipts	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)	(5.0)

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)

This bill establishes the Office of Administrative Hearings in the Department of Administration. The office would conduct all adjudicative administrative hearings to include alcoholic beverage licensing.

The number and cost of administrative hearings for the Alcoholic Beverage Control Board (ABC Board) can vary from year to year. Very often, a licensee will decide to settle their claim after their first meeting with a hearing officer.

Hearing officers are requested when the ABC Board takes action against a licensee or potential licensee and the matter cannot be resolved Informally. Due process affords licensees or prospective licensees a formal hearing under the Administrative Procedures Act. These actions include, but are not limited to: Denial of a new license or renewal or sanctions against a licensee (fines, closure of business for a specified period of time, conditions on operating a license, etc.). Typically, the ABC Board budgets \$5,000 each year for this purpose. In FY 02 the ABC Board spent \$2,900 and in FY 03 it spent \$2,340. A decrement for \$5,000 is a fair estimate.

Prepared by: Douglas B. Griffin, Director Phone 269-4532
Division ABC Board Date/Time 2/27/04 4:52 PM
Approved by: Commissioner William Tandeske Date 2/27/2004
Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 10

Bill Version: CSSB 203(FIN)

(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction):

Dept. Affected: Health & Social Services

Title CONSOLIDATING CERTAIN ADMINISTRATIVE HEARING FUNCTIONS

RDU Departmental Support Services

Component Commissioner's Office

Sponsor SENATE(RLS)

Requester SENATE (FIN)

Component No. 317

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						
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CHANGE IN REVENUES (0)						
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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)

Certain administrative hearings under the following programs in the Department of Health and Social Services would be conducted by the Office of Administrative Hearings: 1) hospice licensure; 2) hospital and nursing home licensure; 3) assisted living home licensure; and 4) child care facility licensure. These functions are currently located in four separate divisions within the department.

Formal adjudatory hearings in these areas are infrequent and the costs immaterial. For example in the Office of Children's Services for FY 03 and the first half of FY 04 the Office consumed 11 hours of hearing officer services for a total cost of approximately \$1,250.

Therefore, the department is submitting a zero fiscal note.

Prepared by: Sherry Hill, Special Assistant

Phone 465-1618

Division Office of the Commissioner

Date/Time 02/25/2004

Approved by: Joel S. Gilbertson, Commissioner

Date 02/25/2004

Agency Department of Health and Social Services

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 11
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: OOG
Title "An Act relating to administrative RDU _____
hearings, hearing officers and administrative law..." Component Human Rights Commission
Sponsor Senate Rules Committee _____
Requester Senate Finance Committee Component No. 1

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	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)

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	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)	(22.5)

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 Human Rights Commission will reduce its expenditures for contract hearing examiners if hearings are conducted by the Office of Administrative Hearings without a Reimbursable Services Agreement.

Prepared by: Paula M. Haley, Executive Director
Division: Alaska State Human Rights Commission
Approved by: Linda J. Perez, Administrative Director
Agency: Office of the Governor

Phone (907) 276-7474x241
Date/Time 2/27/04 3:23 PM
Date 2/27/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 12
 Bill Version: CSSB 203(FIN)
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Office of Administrative Hearings RDU Banking, Securities & Corporations (115)
 Component Banking, Securities & Corporations
 Sponsor Rules by Request
 Requester Senate Finance Component No. 1233

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						
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CHANGE IN REVENUES ()						
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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: **
 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)

This legislation establishes an Office of Administrative Hearings in the Department of Administration. This new office would conduct hearings for banking (AS 06), securities (AS 45.55) and corporations (AS 10.06). The office will also conduct any hearings under the Uniform Partnership Act (AS 32.06) and for limited liability corporations (AS 10.50.408). The division has few hearings in any of these areas making it difficult to estimate, with any degree of reliability, the cost of hearings. Based upon the division's experience, there may be no hearings for several years. Last year there was a single hearing that cost \$75.0. The cost of hearings is a function of the complexity, level of expertise, and amount of time required to hear the case.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Division of Banking, Securities & Corporations Date/Time 2/27/04 12:04 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/27/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 13
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Education
Title: An Act relating to administrative hearing officers, and to administrative law judges;... RDU: ACPE
Sponsor: (S)Rules Component: Program Administration & Operations
Requester: (S)FIN Component No.: 2738

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						
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CHANGE IN REVENUES ()						
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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	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)
It has been at least fifteen years since an Alaska postsecondary institution requested a hearing under AS 14.48. The Alaska Commission on Postsecondary Education anticipates that any future costs related to this process would be diminimus and will not seek related budget authority.

Prepared by: Sheila King, Finance Officer Phone 465-6757
Division: Finance Date/Time 3/1/04 8:37 AM
Approved by: Diane Barrans, Executive Director Date 3/1/2004
Agency: Alaska Commission on Postsecondary Education

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 14
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title Office of Administrative Hearings RDU All
Component All
Sponsor Rules Committee by Request
Requester Senate Finance Committee Component No. 633

Expenditures/Revenues (Thousands of Dollars)

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	*	*	*
1003 GF Match	0.0	0.0	0.0	*	*	*
1004 GF	0.0	0.0	0.0	*	*	*
1005 GF/Program Receipts	0.0	0.0	0.0	*	*	*
1037 GF/Mental Health	0.0	0.0	0.0	*	*	*
Other (Specify Type-Do not abbreviate)	0.0	0.0	0.0	*	*	*
TOTAL	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	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Due to the delayed effective implementation date of this bill of July 1, 2007 there is no fiscal impact on the Department through FY2007. * Impact in FY2008 and beyond is unknown at this time.

Prepared by: Tom Chapple Phone 269-7686
Division Air & Water Quality Date/Time 2/24/04 6:18 PM
Approved by: Kurt Fredriksson, Deputy Commissioner Date 2/24/2004
Agency Department of Environmental Conservation

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 15
Bill Version: CSSB 203 (FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Office of Administrative Hearings RDU Insurance (116)
Component Insurance
Sponsor Rules by Request
Requester Senate Finance Component No. 354

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	38.3	84.1	92.5	101.8	112.0	123.2
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	38.3	84.1	92.5	101.8	112.0	123.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES (1004)	38.3	84.1	92.5	101.8	112.0	123.2
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	38.3	84.1	92.5	101.8	112.0	123.2
TOTAL	38.3	84.1	92.5	101.8	112.0	123.2

Estimate of any current year (FY2004) cost: 90.0
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)

This legislation establishes an Office of Administrative Hearings in the Department of Administration. This new office would conduct hearings for insurance (AS 21.06.180-230, AS 21.14.010 and AS 44.62.310 and 3 AAC 25.040). The division estimates needing additional funds to contract with the Department of Administration for 1,020 hours for six hearings. On average, a hearing can involve 170 hours at a cost of \$75.00/hour. Hours are expected to increase by 10% annually. Due to a variety of circumstances the number of hearings conducted in any year can vary.

The fund source for these hearings are receipt supported services (RSS) from licensing fees. When the funds are transferred to the new office on or after January 1, 2005, it is anticipated that receipts for licensing fees totaling \$38.3 (half of the total annual amount) will be transmitted via Inter-Agency Receipts to support the hearing services requested by the division.

Prepared by: Linda S. Hall, Director Phone (907) 269-7900
Division Insurance Date/Time 3/1/04 4:15 PM
Approved by: Edgar Blatchford, Commissioner Date 3/1/2004
Agency Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 16
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction):
Title Office of Administrative Hearings
Dept. Affected: DCED
RDU Occupational Licensing (117)
Component Occupational Licensing
Sponsor Rules by Request
Requester Senate Finance
Component No. 2360

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						
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CHANGE IN REVENUES ()						
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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 1156 - Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 153.9
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

POSITIONS	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Full-time	-2					
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
CSSB 203 (JUD) establishes an Office of Administrative Hearings in the Department of Administration. Under the new Office of Administrative Hearings, the Division of Occupational Licensing would transfer its current Hearing Examiner (PCN 08-1040) and Law Office Assistant (PCN 08-1038) to the Department of Administration, included in the FY05 budget request.

The fund source for these positions are receipt supported services (RSS) from licensing fees. When the positions are transferred to the new office in FY05, it is anticipated that receipts from licensing fees (RSS) totaling \$159.5 will be transmitted via Inter-Agency Receipts to support the hearing services requested by Occupational Licensing.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
Division: Occupational Licensing Date/Time 2/27/04 8:46 AM
Approved by: Edgar Blatchford, Commissioner Date 2/27/2004
Agency: Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 17
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to administrative hearings, to RDU CIVIL
hearing officers, and to administrative law judges;..." Component: Labor & State Affairs
Sponsor: Senate Rules
Requester: Senate 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						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	*****	*****	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Check 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)

This bill establishes the Office of Administrative Hearings in the Department of Administration. The office will conduct all adjudicative administrative hearings for an extensive list of state programs, including alcoholic beverage licensing, charitable gaming, banking, occupational licensing, and oil and gas exploration, production, and pipeline transportation property taxes, among others.

The fiscal impact on the Department of Law will be during the first year or two of transition from the current structure of agency hearing officers to the centralized Office of Administrative Hearings. Hundreds of pages of regulations directing how the current adjudicative process is handled will need to be rewritten to implement the new process. Boards, commissions and agency staff will need to be trained. Whether or not the new workload can be absorbed with existing staff will depend on how

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division: Administrative Services Date/Time 2/12/04 2:03 PM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/12/2004
Agency: Department of Law

FISCAL NOTE #17

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSSB 203(FIN)

ANALYSIS CONTINUATION

quickly the revised regulations need to be implemented. This will likely vary from agency to agency. If any of the regulations projects assume an urgency that existing staff cannot meet, outside contract counsel may be necessary to handle them. Given the uncertainty, we cannot estimate what the potential cost might be.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 19
Bill Version: CSSB 203(FIN)
(S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
Title Office of Administrative Hearings RDU Revenue Programs & Services
Component Commissioner's Office
Sponsor Rules Committee
Requester Senate Finance Component No. 123

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	(198.1)	(396.2)	(396.2)	(396.2)	(396.2)	(396.2)
Travel	(1.8)	(3.5)	(3.5)	(3.5)	(3.5)	(3.5)
Contractual	(2.9)	(5.8)	(5.8)	(5.8)	(5.8)	(5.8)
Supplies	(0.8)	(1.5)	(1.5)	(1.5)	(1.5)	(1.5)
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(203.6)	(407.0)	(407.0)	(407.0)	(407.0)	(407.0)

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	(22.9)	(45.6)	(45.6)	(45.6)	(45.6)	(45.6)
1005 GF/Program Receipts						
1037 GF/Mental Health						
1133 CSED Admin	(128.3)	(256.6)	(256.6)	(256.6)	(256.6)	(256.6)
1007 Interagency Receipts	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
TOTAL	(203.6)	(407.0)	(407.0)	(407.0)	(407.0)	(407.0)

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	-5	-5	-5	-5	-5	-5
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would transfer the Department of Revenue's three hearing examiners and two support staff positions to the newly created Office of Administrative Hearings at the Department of Administration. Department of Revenue hearing examiners currently hear appeals of child support orders and modifications, Permanent Fund dividend eligibility cases and charitable gaming license cases. The fiscal note shows the transfer of five positions and the accompanying funding for those positions. The CSED Admin funding source is federal money allocated to the Department of Revenue as reimbursement for the cost of hearing child support cases. The Inter-agency receipt funding is the amount of the cost of hearing dividend eligibility cases. The general funds provide for the cost of other hearings such as charitable gaming, special racing events or unclaimed property. This fiscal note reflects the change in effective date from June 1, 2004, to January 1, 2005.

Prepared by: Steve Porter, Deputy Commissioner Phone 465-2365
Division Department of Revenue Date/Time 3/2/04 9:54 AM
Approved by: Steve Porter, Deputy Commissioner Date 3/2/2004
Agency Department of Revenue

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 20
 Bill Version: CSSB 203(FIN)
 (S) Publish Date: 3/3/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title Office of Administrative Hearings RDU Revenue Programs & Services
 Component Permanent Fund Dividend
 Sponsor Rules Committee
 Requester Senate Finance Component No. 981

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	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1050 Permanent Fund Dividend Fund	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)
TOTAL	(52.4)	(104.8)	(104.8)	(104.8)	(104.8)	(104.8)

Estimate of any current year (FY2004) cost: 0.0

Check 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 Permanent Fund Dividend division currently contracts with the Department of Revenue Commissioner's Office for hearing officer services. The cost to PFD is \$104.8 for FY 2004. Under this legislation, these hearing officers would be transferred to the new Office of Administrative Hearings. This fiscal note reflects the change in effective date from July 1, 2004, to January 1, 2005.

Prepared by: Sharon Barton
 Division: Permanent Fund Dividend
 Approved by: Steve Porter, Deputy Commissioner
 Agency: Department of Revenue

Phone: 465-4785
 Date/Time: 3/2/04 9:50 AM
 Date: 3/2/2004

Independent Administrative Hearings Why Central Panels Are Needed In Alaska

Alaska's Administrative Hearing System Fragmented

- ❖ In Alaska, there exists no central autonomous independent administrative hearing office.
- ❖ In the various office locations and political subdivisions of the Executive Branch employees serve as hearing officers to adjudicate administrative appeals.
- ❖ These employees are subject to control and supervision of the very agency that renders decisions or has taken some action that is the subject of the appeal being considered by the Hearing Officer.
- ❖ It is hard for those requesting a hearing to feel they will receive fair and impartial judgment from such an employee.
- ❖ 25 other states have now placed hearing officers in Central Panels to better protect adjudicators (Hearing Officers) from agency influence.
- ❖ Alaska's fragmented hearing officer arrangement suffers from a lack of cross training, direct supervision, as well as standard oversight in the conducting of hearings and writing the opinions. (Poorly written opinions often do not withstand the scrutiny of the Judicial Branch thus causing more work and expense for the state as well as private parties).
- ❖ In general, citizens are impacted more by administrative decisions than by Judicial ones. The decisions of an agency can be pervasive and the impacts can be extreme and costly to the economy and to the state. It is therefore, both in the interest of the state and the citizen to achieve the highest standards of due process possible in the Administrative Hearing process.

The following recommendations are based on actions and models used by other states that have sought to bring about, timely, fair, efficient, and high-quality Administrative Hearing Functions in their sovereigns.

Putting The House In Order

- ✓ **Alaska's Administrative Hearing functions should be centralized to the fullest extent possible.**
- ✓ **The Central Panel should be budgeted via the existing process; however, quality review and fiscal efficiency reports should be required.**
- ✓ **Efficiencies gained through training, logistics, and professional oversight will more than offset any upfront expenses of consolidation.**

Highly Qualified Adjudicators.

One of the improvements for high quality hearings involves changing the designation and the qualifications of Hearing Officers to those of Administrative Law Judges. This can be accomplished through a reasonable transition time and through the course of attrition. Trying to correct the present scattered system of unequally trained hearing officers through a band-aid approach would ultimately be more expensive and less certain of reaching high goals.

Change of Focus

The primary focus of independent Administrative Law Judges (ALJ) would not be agency expertise, political goals, or internal policies, but guaranteeing timely due process for the citizen. Agency representatives at independent hearings will provide expertise just as they do now in a court proceeding.

Well-Trained Professionals

Central Panel Administrative Law Judges should be well trained and well schooled in law and have the experience pertaining to the duties they will be carrying out. Ongoing training should be instituted as well as cross training for efficiency and expertise in adjudication matters. Non-legally trained Hearing Officers could be

retained contingent upon a commitment for training upgrades by those holding the present positions.

Autonomy

Administrative Law Judges should be employed as unclassified, however their positions should be protected through a dismissal for cause requirement. They should be fairly paid as professionals in a highly respected field, and expected to present and perform their duties in an atmosphere and manner of strict standards.

Oversight

A Chief Administrative Law Judge should have sole oversight responsibility of the Central Panel with well laid out duties including day-to-day functions as well as the hiring and the dismissal of those he or she is responsible to oversee.

Accountability

The Chief ALJ should be responsible for the overall goals of the Central Panel and report both fiscal and administrative performance each year to the Legislature. Reports should also include public approval ratings.

Good Government Reasons For Central Panels In Alaska

Central Panels are good for government and good for those government serves. High quality, fair, impartial hearings have the effect of improving all aspects of the regulatory process by requiring administrators to do their work well enough to pass judicial scrutiny. Citizens are benefited through a more timely and fair hearing process conducted by independent adjudicators.

A Different Master.

Central panels change the focus of Administrative hearings away from agency priorities to that of due process. Issues of salary, employment, promotions, benefits, even on down to office space, and parking privileges, would not be of any possible consideration or consequence to a non-agency hearing officer.

An Improved Standard.

High standards of due process will be more easily attained and sustained in a truly professional, judicially protected, well trained and well supervised Central Hearing Office that is separately budgeted and closely monitored by the legislature.

Reasonable Transition.

Current hearing officers could be retained, however cross training for better efficiency and reduction of burnout would be completed. This will lead to higher job satisfaction and ultimately higher expertise.

Human Resources.

Central Panels facilitate peer consultation and create an atmosphere of pride and lofty public purpose goals within the fundamental authority and obligations of the Executive Branch.

Back-up Coverage.

In the case of an ALJ being ill or unavoidably detained would serve the public well both in timeliness and efficiency. Additionally, the Chief ALJ can assign caseload in the most efficient and fair manner possible.

Outstanding Environment.

A well-directed Central Panel should attract those who see the vision and goals of due process as a highly desirable form of public service. It should be an interesting and challenging place of legal expertise to which better law school graduates would apply.

A Training Center.

The Central Office can provide the training for other Hearing Officers in the State who are not yet located there. It may also serve as a clearinghouse for troublesome decisions or those remanded by a Commissioner or even the Governor.

Applying High Standards.

A code of ethics would be required and the development of the most respectful demeanor and temperament should evolve. Performance evaluation standards would be put in place and an emphasis on well-written decisions established.

Wealth of Information.

A Central Panel offers the cost savings and efficiency of a pool of both written and institutional resources. A uniform standardized writing format can be put into place. Decisions can be published and available on a regular basis to the public, other ALJ's and State administrators and regulation writers and enforcers. A body of administrative law can be developed to facilitate participants with resolving future problems.

Real Expertise.

A Central Panel would have a single legal advisor to assist ALJs and is well schooled in administrative law, but does not appear in contested cases.

Built in Review.

A Central Panel would be a valuable resource when undertaking changes to administrative procedures acts. Conversely, scattered or fragmented system of hearing officers has little chance of pulling together the improvements needed in administrative law.

More Respect.

Attorneys on both sides of contested issues would respect and conduct their proceedings better in the presence of well-trained independent ALJs. Presentations would be more thorough and insightful. As an independent tribunal, the Central Panel would better serve the high goal of justice thereby providing resolution and in many cases the finality needed to reestablish productivity.

Bad Regulations Not Protected.

If ALJs are not attached to agencies, better drafted, more carefully promulgated and more judiciously enforced regulations are the end result.

Savings Through Time and Consistent Quality.

Evidence from other states reflects that by centralizing administrative adjudication procedures, tremendous economies of scale have resulted, and tax payers money expended in the administration of this quasi-judicial hearing function has been greatly diminished.

High Public Approval.

Whenever obvious and long term inefficiencies and biases are corrected in government the public approval is very high. In the case of administrative hearings, theory, common sense understanding and practical application are all easily understood and appreciated by the general public.

The economic benefit of a fair, high quality and efficient due process hearing is immense. Nothing is more crippling to an economy than unpredictable time constraints and inconsistent decisions by those who regulate and adjudicate administrative law.

The loss of productivity, the sense of discouragement and dismay that a poor hearing function can bring destroys not only current productivity, but crushes many future hopes as well. Dealing with government has come to occupy a larger and larger portion of every entrepreneur's plan and budget.

Summary

- Alaska's Administrative Hearing Officer functions are scattered, inconsistently trained, inconsistently paid, and too closely associated with agency influence. Oversight comes from a myriad of places and from matters that change with the political winds.
- There is no way for the legislature or the administration to accurately understand or assess either the efficiencies or the costs of Administrative Hearings. The quality of hearing decisions, both oral and written, varies.
- The quality of the atmosphere for both the Hearing Officer and the adjudication process varies widely. The respect of the public for the process is low. The confidence in the process is low. Those Hearing Officers who excel in their expertise are treated no differently than those who do not.
- The ability of an Agency to tie up a plaintiff in the hearing process is nearly unlimited. The percentage of decisions of the agency overturned by Hearing Officers is below national norms. The percentage of Hearing Officer decisions overturned by Agencies is below national norms.
- The cost to business in dealing with administrative hearings has never been calculated, but is likely to be enormous. Many small businesses simply cannot afford the delays agencies can cause in the process. Attorneys are reluctant to

put out a full court press at the administrative level because of the low chance of success.

- In the scale of delivering due process, Alaska's current administrative hearing process, barely passes even the most liberal litmus tests. Poor quality regulations, poorly administered, upheld through in-house hearing officers put the state at risk and a fragile economy in a tailspin.
- There simply is no positive reason to continue scattered, in-house administrative hearings in Alaska. On the other hand, there certainly is a host of good business, citizen and good government reasons to establish independent, central panels in the 49th state.

Positive Results Across the Board

- **Independent Administrative Hearings are usually established through the cooperation of an Administration that is willing to stay focused on goals that benefit the public through the improvements of the governing process.**
- **Not one of the 25 states using this reform has repealed or moved away from Central Panels once they put them in place.**
- **Not one state has reported anything but cost savings and public efficiencies.**
- **To the contrary, states that have enacted this vital reform report high public approval, a better business climate, a more efficient and effective government, fewer court cases, and large cost savings through efficiency of service delivery.**

Most good government reforms occur when there exists a high degree of cooperation between the Executive and the Legislature.

There may never be a more opportune time for Alaska to restructure and improve its administrative hearing functions.

MODEL CODE OF JUDICIAL CONDUCT
FOR STATE ADMINISTRATIVE LAW JUDGES©

Board of Governors

NATIONAL ASSOCIATION OF
ADMINISTRATIVE LAW JUDGES

PREAMBLE

Our state administrative legal system is based on the principle that an independent, fair and competent administrative judiciary will interpret and apply the laws that govern consistent with American concepts of justice. Intrinsic to all sections of this Code are the precepts that state administrative law judges, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in our legal system. The state administrative law judge decides questions of fact and law for the resolution of disputes and is a highly visible symbol of government under the rule of law.

This Code of Judicial Conduct for State Administrative Law Judges is intended to establish standards for ethical conduct. The Canons and Sections contained in this code are rules of reason. They should be applied consistent with constitutional requirements, statutes, administrative rules and decisional law and in the context of all relevant circumstances. The Code is to be construed so as to not impinge on the essential independence of the state administrative law judge in making judicial decisions.

The Code of Judicial Conduct for State Administrative Law Judges is not intended as an exhaustive guide for the conduct of state administrative law judges. They should also be governed in their official judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards which should govern the conduct of all judges and to provide guidance to assist such judges in establishing and maintaining high standards of judicial and personal conduct.

Except where modified, this Code follows the language of the American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges. This Code is also based upon the American Bar Association Model Code of Judicial Conduct (1990). The American Bar Association's codes are copyrighted by the American Bar Association and are used with permission.

The Model Code of Judicial Conduct for State Administrative Law Judges is copyrighted by the National Association of Administrative Law Judges.

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CANON 1

A State Administrative Law Judge Shall Uphold the Integrity and Independence of the Administrative Judiciary

An independent and honorable administrative judiciary is indispensable to justice in our society. A state administrative law judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards of conduct so that the integrity and independence of the administrative judiciary will be preserved. The provisions of this Code should be construed and applied to further that objective.

CANON 2

A State Administrative Law Judge Shall Avoid Impropriety and the Appearance of Impropriety in All Activities

A. A state administrative law judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the administrative judiciary.

B. A state administrative law judge shall not allow family, social, political or other relationships to influence judicial conduct or judgment. A judge shall not lend the prestige of the office to advance the private interests of the judge or others, nor convey or permit others to convey the impression that they are in a special position of influence. A judge shall not testify voluntarily as a character witness.

COMMENTARY

Public confidence in the administrative judiciary is eroded by irresponsible or improper conduct by state administrative law judges. Judges must avoid all impropriety and appearance of impropriety. Judges must expect to be the subject of constant public scrutiny. Judges must therefore accept restrictions on their conduct that might be viewed as burdensome by the ordinary citizen and should do so freely or willingly.

State administrative law judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for judges to allude to their office to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial or official letterhead must not be used for conducting a judge's personal business.

The testimony of a state administrative law judge as a character witness injects the prestige of the judge's office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. This Canon, however, does not afford the judge a privilege against testifying in response to an official summons.

C. A state administrative law judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

COMMENTARY

It is inappropriate for a state administrative law judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women and others that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on the history of the organization's selection of members and other relevant factors. An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex or national origin persons who would otherwise be admitted to membership.

When a person who is a state administrative law judge on the date this Code becomes effective learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in any other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within a year of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

A State Administrative Law Judge Shall Perform the Duties of the
Office Impartially and Diligently

The judicial duties of a state administrative law judge take precedence over all other activities. Judicial duties include all the duties of the office prescribed by law. In the performance of these duties, the following standards apply:

A. ADJUDICATIVE RESPONSIBILITIES

1. A state administrative law judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
2. A state administrative law judge shall maintain order and decorum in proceedings.
3. A state administrative law judge shall be patient, dignified, and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers or other representatives, staff members and others subject to the judge's direction and control.

COMMENTARY

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to promptly dispose of the business of the state administrative law judge. Judges can be efficient and businesslike while being patient and deliberate.

A state administrative law judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

4. A state administrative law judge shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law. A state administrative law judge shall not initiate, permit or consider *ex parte* communications or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

- a. Where circumstances require, *ex parte* communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

- i. the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the *ex parte* communication, and

- ii. the judge makes provisions promptly to notify all other parties of the substance of the *ex parte* communication and allows an opportunity to respond.

- b. A judge may obtain the advice of a disinterested expert on the law applicable to the proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

- c. A judge may consult other judges and support personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.

- d. A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

- e. A judge may initiate or consider any *ex parte* communications when expressly authorized by law to do so.

- f. Decisions of a state administrative law judge shall be based exclusively on evidence in the record of the proceeding and material that has been officially noticed.

COMMENTARY

This provision is in conformity with the American Bar Association Model Code of Judicial Conduct of 1990. The proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent reasonably possible, all parties and their lawyers shall be included in communications with a judge.

Whenever presence of a party or notice to that party is required by Canon 3 A. 4, it is the party's lawyer, or if the party is unrepresented the party, who is to be present or to whom notice is to be given.

*An appropriate and often desirable procedure for a judge to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.*

*Certain *ex parte* communication is approved by Canon 3 A. 4 to facilitate scheduling and other administrative purposes and to accommodate emergencies. In general, however, a judge must discourage *ex parte* communications and allow it only if all criteria stated in Canon 3 A. 4 are*

clearly met. A judge must disclose to all parties all ex parte communications described in Canon 3 A. 4 a and 3 A. 4 b regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case, unless authorized by law, and must consider only the evidence presented.

A judge may request a party to submit proposed findings of fact and conclusions of law, so long as the other parties are apprised of the request and are given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Section 3 A. 4 is not violated through law clerks or other personnel on the judge's staff.

If communication between the judge and the appellate tribunal with respect to a proceeding is permitted, a copy of any written communication or the substance of any oral communication should be provided to all parties.

5. A state administrative law judge shall dispose of all judicial matters promptly, officially and fairly.

COMMENTARY

Prompt disposition of the state administrative law judge's business requires a judge to devote adequate time to his or her duties, to be punctual in attending hearings and expeditious in determining matters under submission, and to insist that other subordinate officials, litigants and their lawyers or representatives cooperate with the judge to that end.

6. A state administrative law judge should prohibit broadcasting, televising, recording or photographing in hearing rooms and areas immediately adjacent to the hearing rooms during hearings or recesses between hearings, except that under rules prescribed by an appropriate authority, a judge may authorize broadcasting, televising, recording and photographing of proceedings in hearing rooms and areas immediately adjacent thereto consistent with the right of the parties to a fair hearing and subject to express conditions, limitations and guidelines which allow such coverage in a manner that will be unobtrusive, will not distract the hearing participants and will not otherwise interfere with the administration of justice.

7. A state administrative law judge shall require participants in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

COMMENTARY

A state administrative law judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the administrative judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give the parties, lawyers or representatives in the proceeding, and others an appearance of bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

8. A state administrative law judge shall not, while a proceeding is pending or impending, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair hearing. The judge shall require similar abstention on the part of agency personnel subject to the judge's direction and control. This Section does not prohibit state administrative law judges from making public statements in the course of their official duties or from explaining for public information the procedures of the agency. This Section does not apply to proceedings in which the judge is a litigant in a personal capacity.

COMMENTARY

This subsection is not intended to preclude participation in an association of state administrative law judges merely because such an association makes public comments about a pending or impending proceeding in an agency where the judge serves. The subsection is directed primarily at public comments by a state administrative law judge concerning a proceeding before another judge in an agency where the commenting judge serves.

9. A state administrative law judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law is not available to the general public.

10. A state administrative law judge should not be subject to the authority, direction or discretion of one who has served as investigator, prosecutor or advocate in a proceeding before the judge or in its pre-adjudicative stage.

B. ADMINISTRATIVE RESPONSIBILITIES

1. A state administrative law judge shall diligently discharge assigned administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other state administrative law judges.
2. A state administrative law judge shall require staff and other persons subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.
3. A state administrative law judge shall take appropriate action or initiate appropriate disciplinary measures against a state administrative law judge, lawyer, representative or others for unprofessional conduct of which the judge may become aware.

COMMENTARY

Appropriate action may include communication with the state administrative law judge, lawyer or representative, who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority, or other agency or body.

C. DISQUALIFICATION

1. A state administrative law judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
 - a. the state administrative law judge has a personal bias or prejudice concerning a party or a party's lawyer or other representative involved in the proceeding;
 - b. the state administrative law judge served as lawyer or representative in the matter in controversy, or a lawyer with whom the judge practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it.

COMMENTARY

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection.

c. the state administrative law judge has served in other governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

d. the state administrative law judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a more than de minimis financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

e. the state administrative law judge or the judge's spouse or a person within the third degree of relationship to either of them or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director or trustee of a party;

(ii) is acting as a lawyer or representative in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

COMMENTARY

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the state administrative law judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that "the judge's impartiality might reasonably be questioned" under Canon 3 C. 1. or that the lawyer-relative known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3 C. 1.(e)(iii) may require the judge's disqualification. A de minimis interest is an insignificant interest that would neither affect the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties.

2. State administrative law judges should be aware of their personal and fiduciary financial interests, and make a reasonable effort to keep informed about the personal financial interests of their spouse and minor children residing in the judges' households.

3. For the purposes of this section, the following words or phrases shall have the meaning indicated:

a. the degree of relationship is calculated according to the civil law system;

COMMENTARY

According to the civil law system, the third degree of relationship test would for example, disqualify the state administrative law judge if the judge's or judge's spouse's father, grandfather, uncle, brother or niece's husband were a party or representative in the proceeding but would not disqualify the judge if a cousin were a party or representative lawyer in the proceeding.

b. "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

c. "financial interest" means ownership of more than a de minimis legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the state administrative law judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

d. "proceeding" includes pre-hearing or other stages of litigation.

D. REMITTAL OF DISQUALIFICATION

A state administrative law judge disqualified by the means of Canon 3 C. may, instead of withdrawing from the proceeding, disclose on the record the basis of the disqualification. If, following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers or representatives, independently of the judge's participation, all agree that the judge should not be disqualified and the judge is willing, the state

administrative law judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

COMMENTARY

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the state administrative law judge, a judge must not solicit, seek or hear comment on possible remittal or waiver of the disqualification unless the parties jointly propose remittal after consultation as provided in the rule. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties sign the remittal agreement.

CANON 4

A State Administrative Law Judge May Engage in Activities to Improve the Law, the Legal System and the Administration of Justice

A state administrative law judge, subject to the proper performance of judicial duties, may engage in the following quasi-judicial activities, if in doing so doubt is not cast on the capacity to decide impartially any issue that may come before the judge:

- A. Speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.
- B. May appear at a hearing before an executive or legislative body or official and may otherwise consult with an executive or legislative body or official, unless otherwise prohibited by law.

COMMENTARY

Canon 4 C. of the Model ABA Code was modified to permit state administrative law judges to appear at public hearings and consult with executive and legislative bodies and officials, if not prohibited by law, e.g., the federal Hatch Act or other similar laws, and no doubt is cast on the judge's ability to decide impartially any issue that may come before the judge.

C. May serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. A state administrative law judge may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. A judge may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

COMMENTARY

As a judicial officer and person specifically learned in the law, a state administrative law judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial association or other organization dedicated to the improvement of the law.

Extra-judicial activities are governed by Canon 5.

CANON 5

A State Administrative Law Judge Shall Regulate the Judge's Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties

A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL

A state administrative law judge shall conduct all of the judge's extra-judicial activities so that they do not:

1. cast reasonable doubt on the judge's capacity to act impartially as a judge;
2. demean the judge's office; or
3. interfere with the proper performance of the judge's duties.

COMMENTARY

The complete separation of a state administrative law judge from extra judicial activities is neither possible nor wise. A state administrative law judge should not become isolated from the community in which the judge lives.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.

B. AVOCATIONAL ACTIVITIES

A state administrative law judge may write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities.

C. CIVIC AND CHARITABLE ACTIVITIES

A state administrative law judge may participate in civic and charitable activities that do not reflect adversely upon impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee or advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

1. A state administrative law judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings before any agency in which the judge serves.

COMMENTARY

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he or she is affiliated to determine if it is proper to continue the judge's relationship with it.

2. A state administrative law judge should not use or permit the use of the prestige of the judge's office for the purpose of soliciting funds for any educational, religious, charitable, fraternal or civic organization, but the judge may be listed as an officer, director or trustee of such an organization. The judge should not be a speaker or the guest of honor at an organization's fund raising events, but may attend such events.

COMMENTARY

This subsection is not intended to discourage participation in the identified organizations or preclude the use of a judge's name on stationary or other material used to solicit contributions, provided the judge's name and office are in no way selectively emphasized. The language of the Model ABA Code was modified to permit judges to solicit funds for charitable and other named organizations if they do not use the prestige of office in doing so.

A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

D. FINANCIAL ACTIVITIES

1. A state administrative law judge shall refrain from financial and business dealings that tend to reflect adversely on impartiality, interfere with the proper performance of judicial duties, exploit the judge's official position or involve the judge in frequent transactions with lawyers or persons likely to come before the agency in which the judge serves.

2. Subject to the requirements of subsection (1), a state administrative law judge may hold and manage personal investments, including real estate, and engage in other remunerative activity.

COMMENTARY

The specific prohibition contained in the Model ABA Code against a judge's service as an officer, director, manager, advisor or employee of any business (which has sometimes been interpreted to bar such participation in a family business) has been deleted, because the general prohibitions in Canon 3 C. 1. and statutes or rules prohibiting such activities by judges involving agencies wherein they serve render the specific prohibition somewhat superfluous and because generic prohibition of involvement in a family business was regarded as unnecessary and undesirable. Involvement in a business that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.

3. A state administrative law judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as judges can do so without serious financial detriment, judges shall divest themselves of investments and other financial interests that might require frequent disqualification.

4. Neither a state administrative law judge nor a member of the family residing in the judge's household should accept a gift, bequest, favor or loan from anyone except as follows:

a. A state administrative law judge may accept a gift incident to a public testimonial to the judge, books supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse to attend a function or activity devoted to the improvement of the law, the legal system or the administration of justice.

b. A state administrative law judge or a member of the family residing in the household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative or close personal friend; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not administrative law judges; or a scholarship or fellowship awarded on the same terms applied to other applicants.

c. A state administrative law judge or a member of the family residing in the household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge, or the gift is otherwise consistent with relevant agency rules and is reported to the extent required by such rules and other applicable laws.

COMMENTARY

The ABA Model Code of Judicial Conduct was modified to permit the acceptance of gifts permitted by agency rules.

5. For purposes of this section "member of the family residing in the household" means any relative of the state administrative law judge by blood or marriage, or a person treated by a judge as a member of the family, who resides in the household.

6. A state administrative law judge is not required by this Code to disclose income, debts or investments, except as provided by law.

COMMENTARY

Canon 3 requires a judge to disqualify himself or herself in any proceeding in which the judge has a significant financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's official duties. A judge has the rights of an ordinary citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of the judge's duties.

7. Information acquired by state administrative law judges in their judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to judicial duties.

E. FIDUCIARY ACTIVITIES.

A state administrative law judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary if such service will interfere with the proper performance of judicial duties or if it is likely that as a fiduciary the judge will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in an agency in which the judge serves or one under its appellate jurisdiction. While acting as a fiduciary, a state administrative law judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

COMMENTARY

A judge's obligation under this Canon and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust or divest it of holdings whose retention would place the judge in violation of Canon 5 D. 3. The specific prohibitions contained in the ABA Code of Judicial Conduct against a judge's service as executor, administrator, trustee, guardian or other fiduciary were deleted, because the general prohibition in Canon 5 C. and 5 D., and statutes or rules regulating conflicting activities in agencies where a judge serves, render such provisions somewhat superfluous and because a generic prohibition of service in such fiduciary capacities was regarded as unnecessary and undesirable.

F. ARBITRATION.

A state administrative law judge may act as an arbitrator or mediator if such activity does not affect the independent professional judgment of the administrative law judge or the conduct of his official duties. A state administrative law judge shall not be an arbitrator or mediator over a matter which the administrative law judge may later preside.

G. PRACTICE OF LAW.

A state administrative law judge may practice law if such activity would neither affect the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties. An attorney who is a state administrative law judge shall not accept the

representation of a client who is a litigant before the tribunal for whom the state administrative law judge serves or if there is a likelihood that such person will appear before the judge. A state administrative law judge shall not practice law before the administrative tribunal for which the judge serves.

COMMENTARY

The American Bar Association Model Code of Judicial Conduct for Federal Administrative Law Judges states that a federal administrative law judge should not practice law or act as an arbitrator or mediator. However, it is common for state administrative law judges to be hired on a part-time or as needed basis while maintaining a legal practice. Also, state administrative law judges are compensated at a much lower level than federal administrative law judges. As long as the professional judgment of the administrative law judge is not impaired by such unrelated activities, then conflicts should not normally occur. The provisions of this Code have been modified accordingly.

H. EXTRA-JUDICIAL APPOINTMENTS.

A state administrative law judge may accept appointment to a governmental committee, commission or other position that is concerned with issues of policy on matters which may come before the judge if such appointment neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties.

COMMENTARY

Valuable services have been rendered in the past to the states and the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on state administrative law judges must be assessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect judges from involvement in matters that may prove to be controversial and which may affect the judge's impartiality. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the administrative judiciary. State administrative law judges may be disqualified from particular cases due to Canons 3 A.4. and 3 C.1.c. The ABA Code of Judicial Conduct was modified to permit judges to accept appointments to appropriate organizations which do not appear before the agency they serve.

CANON 6

A State Administrative Law Judge Shall Limit Compensation Received for Quasi-Judicial and Extra-Judicial Activities

A state administrative law judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in the judge's official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

A. COMPENSATION.

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a state administrative law judge would receive for the same activity.

B. EXPENSE REIMBURSEMENT.

Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the state administrative law judge and where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount is compensation.

CANON 7

A State Administrative Law Judge Shall Refrain from Political Activity Inappropriate to the Judicial Office

POLITICAL CONDUCT IN GENERAL.

1. A state administrative law judge shall not act as a leader or hold an office in a political organization or party, the principal purpose of which is to further the election or appointment of candidates to political office.

2. A state administrative law judge shall not solicit funds for or be compelled to pay an assessment to a political organization or candidate or purchase tickets for political dinners or other similar functions.

COMMENTARY

Prohibitions in the ABA Code were deleted which were considered to be inappropriately and unnecessarily more restrictive than the federal Hatch Act provisions applicable to some state administrative law judges. Participation in political activities is a right of every person. Unless specified in this canon or otherwise prohibited by law, political activity that neither affects the independent professional judgment of the state administrative law judge nor the conduct of the judge's official duties is not prohibited.

3. A state administrative law judge shall resign from judicial office when the judge becomes a candidate either in a party primary or in a partisan general election except that the judge may continue to hold office, while being a candidate for election to or serving as a delegate in a state constitutional convention, if otherwise permitted by law to do so.

4. A state administrative law judge should not engage in any other partisan political activity except with the intent to improve the law, the legal system or the administration of justice.

CANON 8

Compliance with the Code of Judicial Conduct for State Administrative Law Judges

Anyone employed by a state governmental agency or an instrumentality of a state or municipal corporation, who is empowered to preside over statutory or regulatory fact-finding hearings or appellate proceedings arising within, among or before public agencies, is a state administrative law judge for the purposes of this Code.

COMMENTARY

The ABA Code of Judicial Conduct was changed so that the Model Code would apply fully to part-time, pro tempore and retired judges.

EFFECTIVE DATE OF COMPLIANCE

A person to whom this Code becomes applicable should arrange his or her affairs as soon as reasonably possible to comply with it.

9/99

**Independent Administrative Hearings
Through A Central Panel**

Informal Legislative Brief

Prepared for
Senator Gene Therriault
Senate President

By David Stancliff
Staff / Administrative Regulation Review Committee

Contents

- I. Overview.
- II. Introduction to the Central Panel concept.
- III. Genesis of legislative action.
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Poorly written, poorly administered, poorly enforced regulations are costly to an economy, a government, and society in general and will likely continue until a fair and impartial system of adjudication of those regulations is in place.

I. Overview

Origin of Central Panels

The governance of administrative law has become a huge challenge in the United States. With this challenge have come reforms and the foremost is the establishment of quasi-judicial powers and proceedings to keep in balance the need to administer regulations with the public's right of due process and justice when those rules are challenged.

In many cases, it has become nearly impossible for all but the wealthy to take on regulators, and economically survive the process. Medium and small-scale businesses are desperate for speedy resolutions that are fair and impartial as are everyday citizens.

This chronic and suffocating problem of untouchable regulation has created a high social and political demand for a solution. Courts have long been uncomfortable with the erosion of due process evident in the aggressive growth of administrative law. The need for independent, highly skilled and trained adjudicators is a direct result of efforts to resolve this growing conflict.

The governing premise for this need is as old as our federal constitution and based on the premise that executive government can only be held in balance if it is constrained and held accountable through a separate and equal power that being the Judiciary.

When examining the damage caused by oppressive or poor regulations, it became evident that the balance needed to achieve fairness and due process within the administrative body of law was severely lacking or in some cases completely compromised through in-house bias or outright prejudice.

The answer has been the installment of separate and independent hearing officer functions within executive branches of government. These have come to be known as Central Panels.

II. Introduction of the Central Panel Concept to the Alaska Legislature.

The Term. Central Panels is commonly used to describe any number of varieties of independent hearing office functions either established or being established in various states.

Presently. Alaska's Administrative Hearing Officers are not centralized and for the most part are located within various State Agencies. They often serve as employees under the authority of a particular Commissioner. Qualification of hearing officers vary, and in many instances these adjudicators are not cross-trained.

Public Perception. Over the years the public has constantly wondered and complained about hearing officers who work for agencies and whether or not these officers are in fact unbiased and delivering fair, impartial, and timely decisions.

Not a New Concept. In doing research on how to achieve better regulations and more timely hearings, it was discovered that the issue of achieving high standards of due process in the administrative hearing function has been addressed in over half the 50 states through Central Panels.

Adjustments. To do so, other states have in many instances removed hearing officers from the burden of serving separate agencies and establishing a centralized, hearing office, with high standards, a strict code of ethics, and with a high degree of autonomy.

A New Mission. Central panels and the hearing officers in them are charged with serving the public with fair, efficient hearings based on the goal of complete due process under the law. While most fall under the administrative branch of government, theirs is very much a quasi-judicial responsibility as opposed to an extension of any particular agency.

III. Genesis of Initial Legislative Action

1996-97 The first legislation introduced to establish independent hearing office functions in Alaska occurred on April 4 during the 20th Alaska legislature. HB 232 was sponsored by Representative Scott Ogan and was based on a model provided by Mr. Edwin Felter, the Senior Administrative Law Judge and founder of Colorado's Central Panel.

Mr. Felter is a recognized national expert on Central Panels, a member and elected leader in the national organization of independent hearing officers, and has been instrumental in establishing what is considered to be one of the most efficient and well-organized Central Panels in the United States.

Also contacted was Mr. John Hardwicke of Maryland who is also an expert in the establishment and functions of Central Panels and served as Maryland's Chief Administrative Law Judge.

Mr. Felter and Mr. Hardwick provided much guidance and a model act for Representative Ogan's office to examine. Mr. Felter also offered, through teleconference, his testimony to the House Judiciary Committee then Chaired by Representative Joe Green.

Mr. Ed Hein, from Juneau, a former Legislative Legal Services bill drafter, Judge, and now an independent hearing officer for the National Marine Fisheries Service, also provided a great deal of expertise on the Central Panel concept. Mr. Hein is a leader in the State Association of Administrative law Judges and is active at the National level as well.

IV. Legislative Action

Much debate centered on how best to proceed based on cost and the highest chance of success in the application of the Central Panel during the Knowles Administration.

As predicted by Mr. Felter, many of the Knowles Department heads were concerned about losing the ability to have their own in-house hearing officers. While it was difficult for the Administration to object to fair, efficient administrative hearings, it was possible for them to provide inflated and very convoluted fiscal notes. If there was one fact that was surely established in the legislative process for HB 232, it was the true cost of Alaska's administrative hearing functions; their efficiency, and degree of fairness has never been established and reported to the legislature or the administration.

Mr. Felter explained that the lack of such details and inflated costs is not uncommon when states have not attempted to consolidate and centralize their hearing office functions. Many officers serve many different masters and in many cases have not been asked to keep track of and report specific costs of their hearing related duties.

One of the most important reasons states find to centralize their hearing officers is to reduce cost and be better able to track the behavior and efficiency of hearing officers.

Legislatures appreciate the ability to budget directly for centralized and well reported hearing office functions. Elected officials find it much easier to hold those they budget to high standards when performance is easily tracked.

When it became quite clear that Governor Knowles would veto HB 232, many legislators were uncomfortable with investing a lot of time and effort only to see the measure rejected by the Governor. There were also overtures by the Department of Law to work with the legislature to improve the hearing officer system. These good will gestures evaporated after the legislative session ended.

In an effort to avoid a future veto and to build a more active base of support for independent hearings among Alaskans, Representative Ogan elected to introduce in the 21st Legislature, a constitutional amendment requiring independent hearing officers through HJR-18.

Not only did this strategy involve a much cleaner and easy to understand document, it also quickly got the attention of the Governor's political advisors. It was much more difficult to raise fiscal objections since the resolution did not require a particular type of centralized effort. Throughout the 21st session, the administration vacillated between new promises of cooperation and fiscal warnings. In the end the effort for HJR - 18 was lost amidst a host of other budget driven priorities and failed to attract the attention it needed within the House leadership to achieve passage.

With new leadership in the House and the Senate and a new administration of the same party and persuasion, the opportunity to more cooperatively establish independent hearing office functions has vastly improved.

Addressing One of the Main Objections to Independent Hearing Officers

The In-house (agency) Expertise Issue.

- *Note: During hearings in the Alaska Legislature, one of the first issues that in-house hearing office advocates raised is the value of in-house expertise. Agencies desire hearing officers well versed in agency regulations and policy.*
- *Of course our state and federal constitutions recognize just the opposite in protecting due process. It would be unthinkable to allow a judge to be employed by an agency of the administration or the legislature.*
- *Results based data shows that impartial, well-trained hearing officers actually deliver higher quality, fairer, and more legally sustainable decisions if they are not under the watchful eye of a commissioner or director.*

A national expert counters the in-house expertise argument this way.

Agency expertise may actually cause impairment in the adjudication process. Judge Edwin Felter includes the following remarks in his written presentation to the Colorado Bar. *“Even though a hearing officer may exhibit an attitude completely independent from the agency and its staff, physical location and continuous relationships with only the personnel of the employing agency may bias his analytical capacities, or they may contribute to an inclination to narrow his perspectives to only those social problems and regulatory objectives sought by this one agency.”*

Another commentator considers *“the unavoidable appearances of bias”* when a hearing officer, attached to an agency, presides in litigation by that agency against a private party.

Mr. Felter goes on to say that “there are two competing concepts in administrative law. One is the concept that adjudicators should be separate from the regulatory agencies they serve. The second is what the author calls administrative law. The proponents of the latter concept maintain that adjudicators by the agency are a necessary part of statutory mandated policy formulation. In contrast, the opponents of agency law hold that the best approach to policy formulation is the adoption of rules and regulations by the agency.”

One proponent of Central Panels states that, *“the vast majority of hearings now consist of large numbers of fairly fungible cases which involve private rights rather than proceedings in which the agency has a major stake in a policy making issue. Antiquated ideas that for decades have controlled administrative practice and procedure must give way to a more practical and economic system if the public and Congress are to continue to accept this means of dispute resolution.”*

V. Options to Consider

The following options are provided for legislators and administration officials as they consider how best to improve Alaska's administrative hearing functions.

If a consensus can be reached on the good government principle of fair, efficient, timely, cost effective hearings that achieve the highest possible due process standards, then the only question remaining is how to do so in a responsible and affordable manner.

Reform through Central Panel

The following primary issues in Central Panel reform are location of hearing officers, their qualifications, standards and duties within the central office, panel reporting requirements, and training of hearing officers.

Location

The degree of separation from agencies can vary but the goals for such separations are consistent.

Hearing officers should not have ex-parte contact with agency people. Physically removing them to a central office avoids the easy temptation through the normal fraternization that occurs in office settings. To physically relocate is not absolutely necessary if cost becomes too large a consideration and other acceptable mitigation measures can be taken.

Qualifications

Standards of conduct, qualifications, and standards of performance for hearing officers can all be established by the legislature.

Duties

Better guidelines for hearing functions, including efficiency and atmosphere, can also be established by the legislature. Providing hearings in a timely manner, avoiding endless cycles of remanding decisions within agencies, and carrying out duties in a judicial setting can also be established by the legislature.

Standards

Establishing fair and balanced hearing rules and procedures can be accomplished through legislative action, as can other avenues of relief if the hearing process has not performed in a timely and responsible manner.

VI. Three Main Focal Points of Interest

1. **Public.**

Delivery to the citizen of the most efficient, fair, professional, due process hearings possible.

2. **Business.**

The ability to help establish a more secure and inviting business climate through consistent, efficient, and fair hearings.

3. **Government.**

The upfront costs of relocation of hearing officers and functions are real. Less costly, time consuming, better prepared and defensible hearing dockets should offset these.

VII. Mechanics

To Establish Professional Hearing Offices

- | | |
|-------------------------------|--|
| 1. <u>Ethical conduct.</u> | Judicial Cannon should be applied to the hearing officer function. |
| 2. <u>Mission statements.</u> | The legislative branch of government should establish high expectations. |
| 3. <u>Oversight.</u> | The legislature should establish a person to be responsible for hearing officer oversight. |
| 4. <u>Training.</u> | The legislature should establish training requirements as well as cross training. |

To Provide Facilitation and Accountability

- | | |
|--------------------------------|---|
| 1. <u>Central location.</u> | The legislature shall establish where hearing office functions occur and centralize them to whatever extent affordable. |
| 2. <u>Judicial atmosphere.</u> | Some states require hearing officers to robe and conduct their hearings in a judicial setting. |
| 3. <u>Reporting.</u> | The legislature can require the type of budgeting and reporting they deem best as well as performance evaluations and regular audits. |

VIII. Various Solutions For Consideration

The following options are arranged to provide policy makers the ability to weigh major considerations, both real and political, into their decision process. They are obviously open for alteration and exist to stimulate further discussion and ideas.

Plan A *Just change the rules*

1. Current hearing officers would basically remain in place and in their present locations at their same pay range.
2. New guidelines would be established by the legislature.
3. New budgeting procedures would be established for a more consolidated budget increment.
4. The legislature would place someone in an oversight position over all hearing officers that would be responsible for reporting to the legislature.

5. Annual performance reports would be required-including public surveys of how the hearing process is working.
6. Protections would be provided as an insulating factor to eliminate retribution fears from the agency they are operating in.
7. Establish basic professional standards for hearing officers including cross training and on going educational requirements. Allow a transition time for present hearing officers to gain that level of excellence.

Positive:

- a) Favorable public approval
- b) Least upsetting to agencies
- c) Least costly overall.

Negative:

- a) Results will happen slowly.
- b) Most vulnerable to internal bureaucratic resistance.
- c) Most dependent on pro-active (cooperative) administration.

Plan B *Create an affordable model with select officers*

1. Establish model system on a small scale
2. Determine what functions and hearing officers would be put into a central location.
3. As the new model succeeds, add in other hearing officers and functions as budgets allow.
4. Use the new model as an oversight office and a training facility for all hearing officers as well as a clearinghouse for adjudication cases that are not being handled well in the non-central locations.

Positive:

- a) Very few displacements of employees.

- b). Creation of an affordable model to demonstrate success.
- c). A new standard of expertise and autonomy for other hearing officers to work toward.

Negative:

- a) Some upfront costs of moving and office set up.
- b) Only a partial solution.
- c) Susceptible to administrative pressure if not carefully protected by the legislature.

Plan C

A Select Central Panel

1. Create a new central panel model and include all hearing office functions except those determined by the legislature to leave in place as is for the time being. Reasons for allowing an opt out provision would be established by the legislature and could include such items as cost, efficiency, or satisfaction with how the hearing officers are performing.

** New model will be complete with all the training and standards in place including professional qualifications.*

Positive:

- a) Faster results.
- b) Higher public satisfaction through better service.
- c) Less risk to agencies and less contested cases to the court system.

Negative:

- a) More resistance from bureaucrats
- b) Higher cost
- c) More complex and therefore more difficult to administer and set up.

Plan D

All hearing officers and functions included with all standards in place

1. Create the new model with an administrator, training requirements, professional qualifications, oversight, budget process, audit requirements, and performance requirements.

Positive:

- a) Highest public approval
- b) Fastest results in all sectors.
- c) The least likely to be undone by non-supportive administrations.
- d) greatest savings down-line

Negative:

- a) Highest upfront costs
- b) Most legislatively complex.
- c) Most threatening to bureaucracy.

Plan E

Amend the State Constitution

1. Define the issue and put it before voters for approval as an amendment to our state constitution.
2. Constitutional approach would not require dealing with the details until the public approved the reform through the voting process.
3. An example of constitutional language could be, "*Administrative hearing functions shall be separate and independent from all agencies of government.*"

Positive:

- a) Governor's signature not required.
- b) Public ultimately affirms issue.
- c) No specific costs or mandates on how to work out the details.
- 4. Likely to stimulate voters.

Negative:

- a) Subject to campaign distortion.
- b) Subject to unrealistic cost projections.
- c) Results will take longer.

Plan F *Request the Administration to undertake the reform*

1. Give the new administration the option of coming up with a plan to accomplish the objectives of central panels.

Positive:

- a) Demonstrates a high degree of trust and confidence in the administration.
- b) Relieves the legislature of being directly involved in the details.
- c) Allows the administration to accomplish a good government goal.

Negative:

- a) Absent legislative initiative, Central Panels will have to be of the highest priority to overcome the internal resistance to the concept.
- b) The task might become needlessly bogged down and many legislators would then be reluctant to push the Governor.

VII. Staff Recommendations

After several years of research and assessing the dynamics involved in implementing Central Panels, a few key suggestions are respectfully offered.

Cooperation and common goals

To achieve the least costly and best system of Central Panels, the Administration must be thoroughly involved and willing to stay focused on the broad based common goal of achieving the best possible hearing office function in Alaska. To enlist such support, the Legislature must be well informed and willing to share their support for reform with the Administration emphasizing a cooperative effort. This will necessitate a thorough presentation of a plan from concept to implementation as performed in other states and municipal governments.

Build public support through a bi-partisan good government approach

Central Panels are supported nationally without political boundaries. Liberals and conservatives support the formation of Central Panels albeit occasionally for slightly different reasons. The well-established facts are that fair, due process-oriented hearings, serve all sectors of society and commerce very well. In addition they restore faith in government and make life easier for Commissioners and those who need to concentrate their day-to-day efforts on purely administrative duties. Once the effectiveness and efficiencies of Central Panels are in place, in-house adjudication is a burden most agency officials are happy to have off their plate.

Reduce costs and errors through expertise

There is so much enthusiasm and interest in reforming Administrative Law and the adjudication on a national basis that many experts in the field are offering their assistance to government entities embarking on the reform. With each new state bringing about this reform, improved models are being offered and efficiencies of legislation and application improve. Alaska needs to avail itself to this expertise.

X. Primary National and State Contacts

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Basic Goals In Establishing Independent Hearing Office

1. Better public service through a higher level of due process.
2. Cutting hearing costs to both government and the public.
3. Improving hearing efficiencies for both government and the public.
4. Establishing high standards of performance and training and central oversight for hearing officers.
5. Eliminating unhealthy agency influence or impact on hearing officers.
6. Better balancing administrative goals (rule of necessity) with the tight and expectations for public due process.
7. Improving hearing functions including judicial settings and better-prepared dockets and decisions.
8. Improving the regulation process by requiring a high standard of performance as ultimately reviewed through independent, highly professional adjudicators.
9. Establishing better accountability through public surveys, annual reporting, and separate accounting and budgeting practices.
10. Relieving administrators of the oversight and mechanics of the in-house hearing office functions.

Background

- Central Panels of varying forms have been instituted in 25 states and several large metropolitan governments such as New York, Chicago and Washington, D.C.
- With few exceptions, savings have occurred and efficiencies in administrative adjudication have improved. Results depend on any number of factors including the degree of implementation, the willingness to execute reform, and the quality of the Central Office established.
- The fundamental changes that occur receive high public approval. Available statistics show high public approval with performance through surveys issued by the Central Panels.

- Most hearing officers that transfer over to the Central Panel are able to increase their skills as adjudicators through cross training and on-going professional education and associations such as the National Association of Administrative Law Judges.
- Most administrations, even those luke-warm to the initial reform, report high approval after working with new Central Panels. When the public becomes less adversarial towards government function and regulation writers and enforcers have to measure up to the standards of independent adjudicators agency heads have fewer controversies to quell.
- Legislatures have through a Central Panel a means to improve the entire regulations and APA function without meddling in the workings of the Executive or conducting constant and resented oversight of the internal administrative process. By being able to keep track of public performance and expenditures for the services rendered the legislative branch can more efficiently address public concerns with regulatory processes.
- Commissioners and courts report better quality decisions and more defensible dockets from Central Panels. Risk management also sees fewer potential problems when high quality adjudication takes place.
- Finally, the private and public business climate is enhanced when the adjudication process is fast, fair, and most of all professionally consistent. People who contest regulations receive finality in the most constructive way when they feel the process has been thorough, efficient and fair. Whether they rise from the proceedings in victory or defeat, the sense of justice being properly administered and a fair opportunity to be heard and receive redress is essential for constructive finality.

The primary reforms represented in the Central Panel movements are as follows:

1. Establishment of independent and protected adjudicators who are highly skilled and fair.
2. Establishment of a separate location for the resources and the adjudicators to study, train, and perform.
3. A resource for other hearing officers to be trained and members of the executive and the legislature to become educated about the workings and the needs within the administrative process.
4. Establishment of central arm of government designed and charged to deliver one of the most fundamental rights of the public not against, but in harmony with the intent and the administration of the law.