

HB

533

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT

MAY 04 2004

SENATE FINANCE
COMMITTEE

DATE TURNED
IN TO OFFICE: May 4, 2004

DATE: 04/29/04

FURTHER:

DATE TURNED
IN TO OFFICE:

Finance Committee considered CS FOR HOUSE BILL NO. 533(JUD)

HB 533 IF UNREAS. AGENCY DELAY, COURT DECIDES

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

and recommends:

- be replaced with S CS CS HB 533 (FIN)
- adopt previous _____ CS CS FORTHCOMING (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

Same Title

New Title

House Bill:

Same Title

Technical Title Change

New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DLAW	3/26/04	84.3			4
DHSS	3/23/04			✓	3
DFSG	3/23/04		X		2
Court System	3/18/04		X		1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

MAY 04 2004

SENATE FINANCE COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

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)

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

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	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Part-time						
Temporary						

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

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

MAY 04 2004

SENATE FINANCE
COMMITTEE

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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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						
1156 Receipt Supported Services						
TOTAL	*	*	*	*	*	*

Estimate of any current year (FY2004) cost: 0.0

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

POSITIONS

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

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

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

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

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

FISCAL NOTE #2

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

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

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

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

FISCAL NOTE

REPORTED OUT
 MAY 14 2004
 SENATE FINANCE COMMITTEE

STATE OF ALASKA
 2004 LEGISLATIVE SESSION

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

Revision Date/Time (Note if correction):

Title JUDICIAL OVERSIGHT OF ADMINISTRATIVE PROCEDURES

RDU Health Care Services
 Component Hearings and Appeals

Sponsor HOUSE (STA)

Requester HOUSE (JUD)

Component No. 1434

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES

CHANGE IN REVENUES (0)

FUND SOURCE (Thousands of Dollars)

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

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

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

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

COMMITTEE COPY

FISCAL NOTE
FN # 3

STATE OF ALASKA
2004 LEGISLATIVE SESSION

CSHB 533(JUD)

ANALYSIS CONTINUATION

HB533-DHSS-DHCS2-03-23-04

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

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

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSHB 533(JUD)
(H) Publish Date: 4/19/04

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

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

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

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

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

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

FISCAL NOTE #4

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 533(JUD)

ANALYSIS CONTINUATION

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

ADOPTED

WORK DRAFT

WORK DRAFT

WORK DRAFT

23-LS1833\I
Bannister
4/29/04

SENATE CS FOR CS FOR HOUSE BILL NO. 533()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

4 * Section 1. AS 22.10.020(d) is amended to read:

5 (d) The superior court has jurisdiction in all matters appealed to it from a
6 subordinate court, or administrative agency when appeal is provided by law, and has
7 jurisdiction over petitions for relief in administrative matters under
8 AS 44.62.305. The hearings on appeal from a final order or judgment of a subordinate
9 court or administrative agency, except an appeal under AS 43.05.242, shall be on the
10 record unless the superior court, in its discretion, grants a trial de novo, in whole or in
11 part. The hearings on appeal from a final order or judgment under AS 43.05.242 shall
12 be on the record.

13 * Sec. 2. AS 44.62 is amended by adding a new section to read:

14 Sec. 44.62.305. Judicial relief in administrative matters. (a)

L

1 Notwithstanding any other provision of law to the contrary and except as provided in
2 (f) and (g) of this section, a person may obtain judicial relief in an administrative
3 matter by the superior court before the state agency handling the administrative
4 proceeding on the matter issues a final administrative decision if

5 (1) the person is a party to the administrative proceeding;

6 (2) the person has satisfied the procedural requirements of the
7 administrative proceeding up to the time that the person petitions for judicial relief
8 under (b) of this section;

9 (3) the state agency has unreasonably delayed the progress of the
10 administrative proceeding; and

11 (4) further delay in reaching a final administrative decision will cause
12 the person immediate and irreparable damage.

13 (b) A person may seek judicial relief under (a) of this section by filing a
14 petition in the superior court. A person may not file the petition until 30 days after the
15 person has filed with the state agency handling the administrative proceeding a written
16 notice that the person intends to file the petition.

17 (c) In a proceeding begun under (b) of this section, if the superior court
18 determines that the person is eligible for judicial relief under (a) of this section, the
19 superior court may

20 (1) enjoin the administrative proceeding and determine the
21 administrative matter in the superior court;

22 (2) order that the administrative matter be handled by another form of
23 dispute resolution; or

24 (3) establish a deadline for the state agency to issue a final
25 administrative decision.

26 (d) After a person files a petition under (b) of this section, the state agency
27 shall continue with the administrative proceeding unless the superior court

28 (1) enjoins the administrative proceeding under (c)(1) of this section;

29 or

30 (2) issues an order under (c)(2) of this section.

31 (e) If the superior court decides that a person is not eligible for judicial relief

1 under (a) of this section, a party to the administrative proceeding may exercise any
2 right of appeal allowed under law for the final administrative decision as if the person
3 had not filed a petition under (b) of this section.

4 (f) A person may not obtain judicial relief under this section in a personnel
5 proceeding by a state agency. In this subsection, "personnel proceeding" includes a
6 proceeding under AS 39.25 (State Personnel Act) and a proceeding in a grievance
7 arbitration procedure under a collective bargaining agreement.

8 (g) This section does not apply to an administrative proceeding of a state
9 agency if another statute of this state establishes a deadline for the state agency to
10 make a final decision in the administrative proceeding.

11 (h) In this section,

12 (1) "administrative matter" means the subject matter of an
13 administrative proceeding;

14 (2) "administrative proceeding" means

15 (A) a proceeding subject to AS 44.62.330 - 44.62.630; and

16 (B) a proceeding that is not subject to AS 44.62.330 -
17 44.62.630, that is authorized by statute for the adjudication of a state agency
18 matter by the state agency handling the matter or by a person appointed by the
19 state agency, and that involves a matter that directly affects the personal,
20 professional, or business interests of a specific person who is named in the
21 adjudication;

22 (3) "damage" means damage to the personal, professional, or business
23 interests of a person;

24 (4) "party" means a specific person whose personal, professional, or
25 business interests are the subject of an administrative proceeding and who is named in
26 the administrative proceeding;

27 (5) "person" does not include a state agency or other governmental
28 agency;

29 (6) "state agency" means a department, an institution, a board, a
30 commission, a division, an authority, and any other administrative unit of the
31 executive branch of state government, except a public corporation; the term includes

1

the University of Alaska.

Bill packet

ALASKA STATE LEGISLATURE

REPRESENTATIVE BRUCE WEYHRAUCH



ALASKA
STATE CAPITOL
JUNEAU, ALASKA
99801-1182

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

STATE AFFAIRS COMMITTEE

HB 533

Judicial Extraction from Administrative Review

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

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

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

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

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

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

LEGAL SERVICES

MAR 25 2004

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99501-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

March 25, 2004

SUBJECT: HB 533, relating to the state's administrative procedures
(Work Order No. 23-LS1833\A)

TO: Representative Bruce Weyhrauch
Chair, House State Affairs Committee

FROM:  Theresa L. Danner
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. States that the superior court has jurisdiction over petitions for relief in administrative matters under the new provision in bill sec. 2.

Section 2. Provides judicial relief in certain administrative matters.

Sec. 44.62.305(a) allows a person to obtain judicial relief in an administrative matter before a state agency issues a final administrative decision if four listed conditions are met.

Sec. 44.62.305(b) states that the person may seek the judicial relief by filing a petition in the superior court.

Sec. 44.62.305(c) lists what the superior court may do if it determines that a person is eligible for judicial relief under this section.

Sec. 44.62.305(d) requires the state agency to continue with an administrative proceeding after a petition is filed unless the court enjoins the administrative proceeding or issues an order that the matter be handled by another form of dispute resolution.

Sec. 44.62.305(e) allows (when the court decides a person is not eligible for the judicial relief under this section) a party to the administrative proceeding to exercise any right of appeal allowed under law for the final administrative decision as if the petition had not been filed.

Sec. 44.62.305(f) exempts personnel decisions from this section.

Representative Bruce Weyhrauch
Chair, House State Affairs Committee
March 25, 2004
Page 2

Sec. 44.62.305(g) defines certain terms for the bill.

If I may be of further assistance, please advise.

TLB:lmb
04-083.lmb

ALASKA STATE LEGISLATURE

Sen. Gene Therriault, Chair
Rep. Bruce Weyhrauch, Vice-Chair
Sen. Lyda Green
Sen. Hollis French
Rep. Tom Anderson
Rep. Les Gara



State Capitol, Room 429
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Fairbanks, AK 99701
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Administrative Regulation Review Committee

Memorandum

To: Senator Gene Therriault / Chair – Administrative Regulation Review Committee

From: Dave Stancliff / Committee Staff

Date: March 29th

Re: Inaccurate fiscal notes for SB 333 and HB 533

I am concerned that inaccurate fiscal notes generated by some of the agencies regarding these measures will be misleading.

HB 533 and SB 333 (companion to HB 533) will allow citizens who have been held in the administrative review process for unreasonable periods of time, to the point of being severely damaged, the opportunity to petition Superior Court for relief.

The standards for granting such relief are stringent. Only the most egregious cases will be extracted from the state administrative process and taken up by the court. Additionally, only a small percentage of those will prevail in their case against the state.

Fiscal notes that fail to reflect agency savings when protracted administrative proceedings are reduced or eliminated are not accurate. Agencies should include positive fiscal impacts when protracted administrative cases are reduced.

It is entirely possible, if not probable in many instances, that agency fiscal increments will be more than offset when through HB 533 or SB 333 irresponsible administrative processes are reduced.

While indeterminate fiscal notes are in order both for costs and savings, those failing to reflect both sides of the equation, or attempting to project a hypothetical cost should be set aside as incomplete.

LEGISLATIVE RESEARCH REPORT

APRIL 2, 2004



REPORT NUMBER 04.165

ADMINISTRATIVE APPEALS OF ONE YEAR OR LONGER DURATION

PREPARED FOR SENATOR GENE THERRIAULT

BY PATRICIA YOUNG, MANAGER

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

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

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

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

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

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

Table 1: Administrative Appeals of One Year or Longer Duration

Department	Agency	Open	Closed 1993 - 2003	Closed 1980 - 1992	Comments
Administration	Office of Tax Appeals	3	24	data unavailable	Date available from July 30, 1997 forward. Among the open cases, 2 transferred to OTA from appeal procedures in other agencies; among the closed cases, 13 were tax appeals from the Dept. of Revenue, and 8 transferred from other agencies. It is possible that transferred cases may be reflected in the numbers provided by originating agencies.
	Division of Motor Vehicles	0	0	0	
Community & Economic Development	Division of Occupational Licensing	223	1,648	723	Data available from 1990 forward.
	Regulatory Commission of Alaska	108	962	881	
Fish & Game	Commercial Fisheries Entry Commission	321	748	674	Officials estimate that 75 - 85 percent of all cases involving applications for permanent entry permits in limited fisheries took one year or longer to resolve. The numbers shown here represent 85% and thus may overstate the number of lengthy cases.
Health & Social Services	Division of Medical Assistance	29	118	81	
Labor & Workforce Development	Alaska Labor Relations Agency	45	304	31	Agency created in July 1990.
	Division of Employment Security	0	22	56	
	Division of Workers Compensation	11	119	no data available	Tracking of cases (from the claimant's filing of an affidavit of readiness for hearing) has been available from late 1993 forward. The number of currently open cases is likely overstated because the database cannot distinguish between a single claim lasting over one year and multiple claims (based on a single injury) each lasting less than one year but having been filed serially.
	Division of Labor Standards and Safety	9	354	176	
	Division of Vocational Rehabilitation	0	0	0	Federal regulation requires hearing to be held within 60 days of a request; findings and written decision must be produced within 30 days of the completion of the hearing.

Table 1: Administrative Appeals of One Year or Longer Duration

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

NOTES:

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

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

SOURCES:

Representatives of the various agencies.

774 4930 2027 = 8,531

8 of 16 Reporting

Attachment A

"Final CFEC Decisions" and Commentary on CFEC Cases

FINAL CFEC DECISIONS

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

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

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

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

EXPLANATION

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

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

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

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

CONCLUSION/SUMMARY

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

Attachment B

Commentary on Alaska Labor Relations Agency Cases

Alaska Labor Relations Agency

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

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

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

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

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

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

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

Attachment C

Commentary on Workers' Compensation Board Cases

February 27, 2004

Dear Ms. Young:

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

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

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

Very truly yours,

Paul F. Lisankie,
Director

Judicial Proceeding By Year

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

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

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

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

Affidavit Tracking did not become available until late 1999.

STATE OF ALASKA

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

FRANK MURKOWSKI, GOVERNOR

P.O. BOX 25512

JUNEAU, AK 99801-5512

PHONE: (907) 465-2790

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WORKERS' COMPENSATION DIVISION

March 26, 2004

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

Dear Ms. Young:

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

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

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

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

Attachment D

Department of Revenue Commentary on Administrative Hearings

Department of Revenue

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

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

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

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

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

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

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

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER

TO: Patti Pettijohn
Legislative Research Services

DATE: April 1, 2004

TELEPHONE: 465-3752

FROM: Mark T. Handley
Senior Revenue Hearing Examiner

SUBJECT: Request for Information

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

In answer to your questions:

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

Dividends and Child Support

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

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

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

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

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

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

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

State Assessment Review Board

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

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

Dividends

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

Child Support

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

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

SENATE FINANCE COMMITTEE

SIGN-IN

HB 533-IF UNREAS. AGENCY DELAY, COURT DECIDES

✓ NAME: Doug Wooliver Subject/Bill No: HB 533
Co./Dept./Title: Alaska Court system Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions

NAME: _____ Subject/Bill No: _____
Co./Dept./Title: _____ Phone: _____
Address: _____ Zip: _____
Do you wish to testify? Yes No Respond To Questions